**ENGG 513 – The Role and Responsibilities of the Professional Engineers in Society**

**Mihaly v APEGA – a Case Study**

Maria Scheuerlein 30058015

Leon Keim 30058017

02/16/2018

Prof. Denis Onen

**Introduction**

The following report is based on a case study of Mr. Mihaly who was applying to be a registered professional engineer in Canada.

The purpose of this report is to gain greater insight on the requirements to be a professional engineer and the APEGA’s legal and quasi legal environment.

Mr. Mihaly was born and educated in Czechoslovakia and after education he also got certified as an engineer in Czechoslovakia. After moving to Canada he applied to APEGA for registration as P.Eng in 1999. APEGA then asked him to write the National Professional Practice Exam. In the first try he failed, then Mihaly didn’t attend the second examination. In his third attempt he failed again. Realising he wouldn’t be a registered professional engineer, he complained to the Human Rights Tribunal that APEGA discriminated him because of his origin. After complaining to the tribunal, the case went to Alberta Court of Queen’s Bench. [1]

**Stakeholders**

Mr. Mihaly

Mr. Mihaly was born in Czechoslovakia. After finishing his education career, he got a professional engineer in the 1970’s in Czechoslovakia. [3] He moved to Canada and was hoping to get a registered professional engineer. However, after failing two exams and not attending one, APEGA stated that he did not meet the requirements to be a registered professional engineer. Not accepting the decision, he complained to the Human rights commission because of discrimination regarding his origin. [1]

APEGA

APEGA is the Association of Professional Engineers and Geoscientist of Alberta, the origin is in the 1920 ‘s when the Association of Professional Engineers of Alberta was founded. The main purpose of APEGA is registering professional engineers, setting standards of practice and determining disciplinary action for it’s members. Therefore, the association always served a public interest and contributed significantly to the success of the province of Alberta. [2]

The Alberta Human Rights Commission

The commission was founded as an independent commission of the Government of Alberta.

“The purpose of the Alberta Human Rights Act is to ensure that all Albertans are offered an equal opportunity to earn a living, find a place to live, and enjoy services customarily available to the public without discrimination.” [4]

To achieve it’s goal the commission has a two-fold mandate. “It fulfills this mandate through public education and community initiatives, through the resolution and settlement of complaints of discrimination, and through human rights tribunal and court hearings.” [4]

Alberta Court of Queen’s Bench

The Alberta Court of Queen’s Bench is Alberta is the superior court of the province of Alberta. It conducts criminal matters, civil proceedings and the judicial review of government and tribunal action in Alberta. Currently the court comprises a Chief Justice, an Associate Chief Justice, seventy-four Justices, several Supernumerary Justices and Master in chambers. The courts vision is: “A leader in innovative, responsible and accessible justice”. [5]

Public

The public’s main interest in this case is the trust in registered professional engineers. Companies who are hiring a professional engineer expect a certain level of performance and a standard of practice. Furthermore, if engineers could register without requirements the safety of the public is at stake.

Immigrants

Many people are dreaming of living in Canada, including engineers from all over the world. For many of them the National Professional Practice Exam is a barrier for fulfilling their dream. Unequal education in other countries leads to unequal chances of passing the exam. For immigrants from especially third world countries this case is important, because it determines if they will be able to make a career in Canada as a registered professional engineer.

Registered Professional Engineers

For the already registered professional engineers it all comes down to reputation. Immigrants who might not pass this exam but still are a registered as professional engineers will lower the reputation and the standard of knowledge. Fairness is also a concern for people who passed the exam or made it through APEGA’s requirements.

**Case summary**

Mr. Mihaly migrated to Canada after finishing two masters and working in Czechoslovakia. His first degree he received from the Slovak University of Technology in Bratislava and the other one was obtained from the Institute of Chemical Technology in Prague. After finishing his degrees, he worked for 25 years in his country of origin in senior or lead engineering positions for different international companies. [6]

After moving to Canada, he first applied to APEGGA for registration as a Professional Engineer in May 1999. Acknowledging his letter, APEGGA advised Mr. Mihaly on May 13, 1999 to write the required National Practice Exam (NPPE). To pass the NPPE he had to “complete three confirmatory examinations and take a course or pass an equivalent exam in Engineering Economics by May 2001.” [6]

After failing his first exam on January 17, 2000 he applied for a second time but didn’t participate that exam on October 16, 2000 because he found out “he was being treated differently by APEGGA than engineers from countries like France, UK, Ireland etc.”. [6] After this action APEGGA had withdrawn his application for the registration as an Professional Engineer in Canada.

May 31, 2002 Mr. Mihaly wanted to apply for the registration and the NPPE a second time. After reactivating his application, he still had to write the three confirmatory examinations and the Engineering Economics exam all by November 2003. On July 15, 2002, he failed the NPPE again so APEGA retracted his file after not writing the confirmatory exams by the due date.

After 3 years in 2006 Mr. Mihaly asked APEGGA to reactivate his application for a third time.

Reactivating his files October 18, 2006 APEGGA advised Mr. Mihaly to update his resume and present them a list of references. Providing this information Mr. Mihaly, still had to write the three confirmatory exams and a course or exam in Engineering Economics or the Fundamentals of Engineering Examination. However, Mr. Mihaly decided to not write the required exam on August 5, 2008 again instead he filed a complaint with the Commission. [6]

Mr. Mihaly went to the Human Rights Tribunal because he felt discriminated by APEGA based on his origin. The Tribunal decided: “Mr. Mihaly has succeeded in establishing that the Examination Standard used by APEGA to assess his educational credentials, without more individualized assessment or exploration of other options, constitutes discrimination which cannot be justified under the [Alberta Human Rights Act]” [7]. Mr. Mihaly didn’t agreed to the awarded $10,000 and the reconsideration of his application by APEGA. Just like APEGA so both parties appealed to Alberta Court of Queen’s Bench. Furthermore Mr. Mihaly cross appeals the tribunals refusal to award him damages for loss of income over the period of trying to become a Professional Engineer in Canada. [7]

**The Court of Queen’s Bench Decision**

The Appeal

APEGA appealed against the decision of the Alberta Human Rights Tribunal. The Tribunal found that APEGA discriminated Mr. Mihaly on the ground of his place of origin. APEGA refused to recognize Mr. Mihaly’s education as the equivalent of an engineering degree from an accredited Canadian University and required him to write certain examinations. [1]

To be discriminated by the Alberta Human Rights Act, discrimination must be linked to certain grounds. Mihaly pledged he was discriminated because of his place of origin. Therefore, a complaint must show that the discrimination was related to his place of origin. An older case law in Grover had held that education was not included in the place of origin. Although the court found that there was a sufficient connection between his place of education and his place of origin.

Mihaly claimed that he was discriminated, especially because other countries educations were not treated like his. The court found out that MRA Agreements of APEGA are not discrimination. They are based on actual knowledge of the countries educational programs.

While the Tribunal found that APEGA’S standard registration requirement of the standard practice exam and the one year of Canadian experience was not justifiable. Court again rejected this because imposing the same entry level requirement on every international applicant as on every Canadian applicant is not discrimination. Also, Mihaly had failed the exam multiple times and there is no evidence that that was because of his place of origin.

The big concern regarding the discrimination was not the practice exam everybody has to write, it has been the special confirmatory exams that he had to take. Madam Justice Ross agreed the there was an adverse impact of the confirmatory exam on international applicants. However, she rejected that the confirmatory exam is based on the idea of inferior international education. It is based on the fact that APEGA does not have sufficient knowledge of the international engineering programs.

The supreme court in Meiorin stated that APEGA had not done enough to individually asses Mr. Mihaly and therefore confirmatory exams were not reasonable necessary. Court again overruled this by saying that APEGA did individually asses Mr. Mihaly. Considering that an applicant is required to write the confirmatory exam should be enough individual assessment. Also, it was found that confirmatory exams were a reasonable necessary measure and they were a valid tool for determining entry-level competence.

Furthermore, court found that Mr. Mihaly did not meet the obligation to assist in the search for accommodation, by not even attempting the exams. [7]

The Court then decided; “I conclude that the decision of the tribunal should be reversed. There is no need, in the circumstances, to remit the matter back to the Tribunal”. [8]

The Cross-Appeal

Mr. Mihaly cross-appealed the Tribunals decision to refuse him damages for loss of income. Furthermore, he seeks for an award of $1.000.000 and registration with APEGA or $2.000.000 if not registered.

The court dismisses the cross appeal as it relates to remedy only. [1]

**Reflection and Opinion**

First of all, as Exchange Students we may have a different perspective to this topic. Our opinion is quite similar to the Alberta Human Rights Commission. APEGA failed to do an individual examination of the applicant. It is hard to believe that a Person with two Masters Degrees and 25 years of experience does not meet the standard of APEGA. Especially considering his experience is based on senior and lead engineering positions. As we have witnessed now, most students probably won’t even do a Masters and will still be registered as a professional Engineer. Therefore, APEGA can’t justify why he had to do these exams.

Mihaly didn’t behaved clever in our opinion, he should have said from the beginning that he feels discriminated by having to write the exams. The way he did it really goes into the favour of APEGA, they easily can now justify that he was just not good enough because he failed the exam multiple times. But as we understand he never wanted to write the exams and probably didn’t study for them and therefore failed. This does not make him look like having a good character, which is pretty bad because it is clear that you need to have a good character to become a professional engineer according to APEGA.

Cross appealing the Human Rights Tribunal decision and wanting millions of dollars does make him look like a bad character as well.

The main concern we had with the process at the Alberta Queen’s Bench is the huge public interest. Letting Mihaly be a registered professional engineer would have end in a landslide. Associations in all over Canada would have been flooded with people who want to become engineers but didn’t pass the exam or couldn’t get registered for other purposes. Therefore, the court did not even have the chance to give Mihaly right without causing major problems in Canada.

To us it seems like APEGA is overestimating their standard of education by far. Thinking a person with two masters does not equal the knowledge of bachelor degree in Alberta is just not justifiable. Furthermore, it seems like they have a superior thinking above other countries education or want to give advantage to their own population. We are pretty sure that if they would have looked at the programs Mr. Mihaly took there would not have been a doubt that he was qualified enough to be a registered engineer. Concerning the public safety and standard of practice in Alberta, again there is absolutely no justification to not let Mr. Mihaly be a registered engineer. The exam itself has no discriminational aspects. However, the procedure to determine who must take part in the exam shows discriminational aspects. Would APEGA develop an exam for every applying engineer from another country based on the knowledge of their educational system for engineers every foreigner would have to deal with the same situation and more fairness would be created.

The court of appeal’s decision was probably caused by public interest as well. Even though it is stated that Mihaly’s degree is equivalent to the Canadian one they refused to reopen the case.

Our conclusion is that the major issue is not solved by finishing the appeal. APEGA did fail on assessing his individual information. It is also questionable that a single Association can make the applicants writes exam 25 years after they finished university. Solving this problem will be hard without risking the before mentioned landslide. Our thought is that this case would have gone the other way if another person with a more suitable character would have done the appeal. However, this person should also have made the complaint before writing the exam.

**References**

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