ENGG 513:

The Role and Responsibilities of the Professional Engineer in Society

Assignment 1: Mihaly vs APEGA

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Introduction

This report covers the case of Mihaly vs The Association of Professional Engineers and Geoscientists of Alberta (APEGA). Mr Ladislav Mihaly Applied to APEGA to become a registered engineer, Mihaly deemed the series of requirements set by APEGA for him as unfair and discriminatory (Mihaly vs APEGA, 2014). Mihaly submitted a compliant to the Alberta Human Rights Commission (AHRC) which was dealt with a human rights tribunal (Mihaly vs APEGA, 2014).

APEGA’s appealed the outcome of the AHRC tribunal which found discrimination against Mihaly and Mihaly’s cross appeal to the Court of Queen’s Bench of Alberta (CQBA) (APEGA vs Mihaly, 2016). Associated stakeholders of these cases are identified and the significance of the case in regards to the stakeholders is expressed. A personal opinion and reflection of the case and the issues addressed within it are also shared within this report.

Stakeholders

There are many stakeholders in the case of Mihaly Vs APEGA, some of these stakeholders include: APEGA, Mr Mihaly himself, Alberta Human Rights Commission, The Court of Queen’s Bench, other applicants applying to APEGA, the general public and Immigration Canada.

The Association of Professional Engineers and Geoscientists of Alberta (APEGA), is the regulatory body for the practices of engineering and geoscience in Alberta (About APEGA, n.d.). APEGA is responsible of the licensing of Professional Engineers and Geoscientists (About APEGA, n.d.). APEGA is the defendant in the Mihaly vs APEGA case, accused of discrimination to Mr Mihaly based on his place of origin (McKay-Panos J. W., 2014). The outcome of this case could affect how APEGA considers licensing applications to be more inclusive and attentive towards foreign applicants (McKay-Panos J. W., 2014). APEGA could also have to pay damages towards Mr Mihaly (Mihaly vs APEGA, 2014).

Mr Ladislav Mihaly is an engineer who was educated in Czechoslovakia before immigrating to Alberta, Canada (McKay-Panos J. W., 2014). Mihaly applied to APEGA to become a registered engineer in Alberta, he’s degree was not directly recognised in Canada (McKay-Panos J. W., 2014). He was required undertake a series of exams set by APEGA including the National Practice Exam (NPPE) and four other confirmatory examinations (McKay-Panos J. W., 2014). Mihaly failed the NPPE twice and failed to show up to sit the exam for a third time (McKay-Panos J. W., 2014). Mr Mihaly then submitted a compliant to AHRC and took APEGA to court, claiming discrimination (Mihaly vs APEGA, 2014). Mr Mihaly therefore has not been able to work in his desired field as a registered engineer, the outcome of this case could allow him to become registered and receive a damages payout. The case could also rule on the side of APEGA and still require Mr Mihaly to complete the set examinations.

The Alberta Human Rights Commission is another stakeholder in the case. The AHRC carries out functions under the Alberta Human Rights Act and deals with complaints from the public of a discriminatory manner (About the Commision , 2013). A human rights tribunal dealt with Mihaly’s initial complaint to AHRC against APEGA, which found APEGA breached a discriminatory act (Mihaly vs APEGA, 2014). APEGA appealed the outcome and Mr Mihaly cross appealed (APEGA vs Mihaly, 2016). AHRC’s involvement in the case is quite clear, it was the initial point of contact for Mr Mihaly, the tribunal then failed to come to a resolution satisfactory to both parties, thus the outcome was appealed to The Court of Queen’s Bench.

The Court of Queen’s Bench of Alberta was now set to resolve the dispute between Mihaly and APEGA (McKay-Panos L. , 2016). CQBA is the superior court of civil and criminal jurisdiction, the court will finalize the outcome of the case (COURT OF QUEEN'S BENCH, n.d.). CQBA interest in the case is to determine if there has been any discrimination towards Mr Mihaly and if APEGA should be ordered to pay damages and grant Mr Mihaly a license (APEGA vs Mihaly, 2016).

The ruling of the case may have a big effect for future and past foreign applicants. If the court were to rule in the favour of Mihaly, a restructure on the APEGA applicant process would be needed (McKay-Panos L. , 2016). The restructure could make it easier for foreign applicants to gain a license and allow unsuccessful applicants in a similar position to Mr Mihaly gain their license.

The general public is also effected by the ruling of the case. If the court had ruled in favour of Mr Mihaly it could see a wave of unqualified engineers become registered in Alberta (McKay-Panos L. , 2016). This would have direct safety concerns to the public and possibly decrease the reliability of engineering services (McKay-Panos L. , 2016).

A change in how foreign applications are processed and who is deemed eligible for a practicing engineering license might cause for some change in immigration rules. Engineering falls under a Canada Priority Residence Program (CPRP) occupation, meaning foreign nationals who meet the set criteria of the CPRP are likely qualify to practice engineering in Canada and are granted access to work in Canada (Canada Priority Residence Program (CPRP), n.d.). Therefore if Mihaly won, the criteria for the CPRP may need to be changed.

Background

After immigrating to Canada from Czechoslovakia, Mr Mihaly applied to APGEA for a practicing license in his field of engineering (Mihaly vs APEGA, 2014). As Mihaly’s past institutions, where he received his degrees, did not have a mutual recognition agreement (MRA) with APEGA he was required to sit confirmatory exams (McKay-Panos J. W., 2014). Furthermore an exception of 4 confirmatory exams could be granted if Mihaly provided relevant engineering experience (McKay-Panos J. W., 2014). Mihaly’s experience was deemed long but narrow (McKay-Panos J. W., 2014), so he still needed to sit the examinations. Mihaly failed the NPPE exam twice and failed to show up for the third attempt (Mihaly vs APEGA, 2014). The NPPE is an examination which tests knowledge of law, ethics, professionalism, responsibility, legislation, among other things (McKay-Panos L. , 2016). Mr Mihaly filed a complaint against APEGA to AHRC.

The ARHC tribunal formed in response to Mihaly’s complaint ruled in favour of Mr Mihaly, claiming APEGA breached the discriminatory act (McKay-Panos J. W., 2014). ARHC ordered APEGA to pay a sum of ten thousand dollars in damages to Mihaly and to reconsider his application with a specialized committee (McKay-Panos J. W., 2014). APEGA appealed this decision to CQBA, subsequently Mihaly crossed appealed for 1 million dollars in damages and a practicing license or 2 million dollars in damages with no license (APEGA vs Mihaly, 2016).

The Court of Queen’s Bench of Alberta, reviewed ARHC’s tribunal decision in the request of APEGA. CQBA found errors in the way discrimination was tested by ARBH and found logistical issues in the individualized testing proposed to APEGA by ARHC (McKay-Panos L. , 2016). CQBA reversed ARHC’s decision on the grounds that discrimination was not present (McKay-Panos L. , 2016).

Mr Mihaly then applied to restore the appeal of his case to the Court of Appeal of Alberta (CAA). CAA, struck off the application due to Mihaly failing to meet the criteria to restore the appeal (Mihaly vs APEGA, 2017).

The Court of Queen’s Bench Decision

APEGA raised four issues in its appeal to CQBA, theses included: was procedural fairness breached by AHRC, jurisdiction of the tribunal, the testing of prima facie discrimination and the decision that APEGA’s registration requirements are unjustified was unreasonable (McKay-Panos L. , 2016).

Justice Ross from CQBA ruled that procedural fairness was not breached by AHRC when submissions were not requested on its interpretation of the Engineering and Geoscience Profession General Regulation (McKay-Panos L. , 2016). Justice Ross also concluded AHRC did not lack jurisdiction to hear the case of Mihaly on the grounds of discrimination due to the place of origin of academic qualifications (McKay-Panos L. , 2016).

Most of the decision was based the issues of improper testing for discrimination and weather the application process set by APEGA was unreasonable (McKay-Panos L. , 2016). The Moore test was used by AHRC to determine discrimination towards Mihaly (McKay-Panos L. , 2016). Although the test was not used on key areas such as the examinations Mihaly was required to take (McKay-Panos L. , 2016). Therefore Justice Ross found that there was insufficient evidence, due to insufficient testing, of any discrimination present from APEGA by appointing the examinations to Mihaly and requiring him to complete Canadian work experience (McKay-Panos L. , 2016).

AHRC argued that the examination and requirements put forward to Mihaly were unjustified as they were not individualized to his situation (McKay-Panos L. , 2016). AHRC found that the examinations should only cover any deficiencies of Mihaly’s credentials which would be decided after an individual assessment of his credentials (McKay-Panos L. , 2016). Justice Ross concluded that there was no evidence that an internationally educated graduate would have any difficulty passing the required examination and that the requirements in place help ensure the standard of practicing engineers in Alberta (McKay-Panos L. , 2016). Justice Ross also commented that it is not logistically possible for APEGA to assess every engineering program around the world to supply an individualized application process (McKay-Panos L. , 2016).

Justice Ross reversed the decision of the AHRC due to insufficient evidence of prima facie discrimination (McKay-Panos L. , 2016).

Reflection and Opinion

AHRC ruled that discrimination was present from APEGA due to it not accommodating to Mihaly’s individual case. APEGA set out an application process to ensure the quality of practicing engineers was of standard. The institutions where Mihaly received his credentials did not have mutual recognized agreements with APEGA, thus he needed to sit examinations to prove his competence. The examination Mihaly failed multiple times was related to ethics and practice (McKay-Panos L. , 2016), it is essential for any practicing engineer to be competent is these fields. Despite AHRC’s findings, any non MRA applicant would have to complete the same process as Mihaly no matter which country they received their credentials from, surely this proves APEGA did not discriminate against Mihaly due to his place of origin.

The court of Queen’s Bench of Alberta correctly reversed the decision made by AHRC due to insufficient evidence of discrimination (McKay-Panos L. , 2016). The tests were not properly conducted in relation to the requirements Mihaly needed to complete. It is also ridiculous to expect APEGA to individually assess each applicant and create an application process to fit around the applicant’s credentials. If the applicant’s credentials are not immediately recognised in Canada and the Applicant fails to provide of any appropriate documentation which may exempt them from testing, the applicant must complete the set exams.

The Alberta Court of Appeal struck Mihaly’s application as it did not meet the criteria necessary to restore the appeal (Mihaly vs APEGA, 2017). Mihaly also failed file the appeal record on time. There are no special considerations for Mihaly if he does not meet the criteria in his application the appeal cannot be restored.

APEGA should maintain its processes for registration. It is important to maintain diversity in the field of engineering and foreign-trained engineers should be given the same opportunities as Canadian engineers. APEGA already offers help to foreign applicants during the registration process, but the process should not be altered to allow foreign applicants to gain registration more easily as it could cause issues of unqualified engineers in the workplace.

# References

*About the Commision* . (2013, 10 24). Retrieved from Alberta Human Rights Commission: https://www.albertahumanrights.ab.ca/about/Pages/about.aspx

APEGA vs Mihaly, ABQB 61 (The Court of Queen's Bench of Alberta 1 26, 2016). Retrieved from http://www.apega.ca/assets/PDFs/mihaly-decision.pdf

*Canada Priority Residence Program (CPRP)*. (n.d.). Retrieved from immigration.ca: http://www.immigration.ca/canada-priority-residence-program-cprp/

*COURT OF QUEEN'S BENCH*. (n.d.). Retrieved from Alberta Courts: https://albertacourts.ca/qb/home

McKay-Panos, J. W. (2014, 3 17). *Professional Bodies, Internationally Educated Graduates and the Alberta Human Rights Act*. Retrieved from ABlawg: Professional Bodies, Internationally Educated Graduates and the Alberta Human Rights Act

McKay-Panos, L. (2016, 3 23). *Alberta Court of Queen’s Bench Overturns Discrimination Decision on Foreign Trained Engineer*. Retrieved from ABlawg: https://ablawg.ca/2016/03/23/alberta-court-of-queens-bench-overturns-discrimination-decision-on-foreign-trained-engineer/

Mihaly vs APEGA, ABCA 15 (Court of Appeal of Alberta 12 1, 2017). Retrieved from https://www.apega.ca/assets/news-releases/2017-milhaly-court-decision.pdf