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*Mihaly vs. APEGA*

ENGG 513

# Introduction

Expertise and professionalism are needed to guarantee that factors like safety and economic feasibility are followed. The proper accreditation for individuals in professional disciplines is of the utmost importance to ensure the necessary expertise to carry the desired title. A professional engineer designation is amongst one of the disciplines that warrants consistency and precision when determining who is eligible. Several considerations must be reflected upon to subsequently determine if a person meets the noted requirements. For students who graduate from Canadian and American schools, the process is simple and methodical. Individuals with degrees from other countries usually need to meet further requirements before satisfying the general guidelines.

This report will discuss a court case between Ladislav Mihaly and The Association of Professional Engineers and Geoscientists of Alberta (APEGA), whereby Mr. Mihaly claims his level of education was misjudged and felt discriminated against [1]. Originally from the former Czechoslovakia, Mr. Mihaly obtained a M.SC Diploma with a specialization in Technology of Fuels and Thermal Energy in Bratislava. He later received a Certificate in Corrosion Engineering in Prague. APEGA declared that these were not equivalent to a Canadian undergraduate engineering degree but took the necessary steps to assist Mr. Mihaly and become accredited within their Association.

The components of the report will be as follows: First, I will give background information and summarize the case by describing the process through the Human Rights Commission, The Court of Queen’s Bench and finally at the Alberta Court of Appeal. This will lead into a greater detailed description and reasoning of The Court of Queen’s Bench decision as it overruled the initial verdict given by the Human Rights Commission [2]. Unsurprisingly, after the appeal was successful there was another counter appeal which then included the Alberta Court of Appeal [3]. In the concluding paragraph, I will reflect on the most recent outcome from this appeal whilst giving my opinion on whether I agree with the decisions the three courts made as well as if I believe APEGA should accommodate foreign-trained engineers and geoscientists.

Analysis of a situation such as this is extremely informative, regarding the level of expectation APEGA has for it a prospective individual to become a member of the Association.

# Stakeholders

The following key stakeholders require some discussion prior to the analysis of this case.

APEGA: Is the provincial governing body that ensures the satisfactory requirements have been met before an individual can obtain a professional status in engineering or geoscience. APEGA is the largest self-regulated professional association in Western Canada. They have the following statement regarding diversity on their website, “Encourage a business culture of belonging, inclusion, and diversity for equity within the engineering and geoscience professions [4].” Mandated requirements are in place for foreign applicants and each case is handled individually. In this report, they are the defendant regarding a discrimination claim stating an unfair justification of a prospective member’s level of education. APEGA disagreed with the accusation and defended themselves in court.

Mr. Ladislav Mihaly: Was born in Czechoslovakia and moved to Canada in May 1999 with his wife. He holds a M.SC Diploma with a specialization in Technology of Fuels and Thermal Energy from Bratislava and a Certificate in Corrosion Engineering from Prague. Upon arrival in Canada, he applied to APEGA to register for a professional engineer designation but was told his education was not equal to the Canadian standards. Mr. Mihaly was unable to secure a job in the engineering profession and was forced into working at less paying positions, which resulted in financial hardship [1]. He filed a discrimination complaint against APEGA in 2008 which was completely settled in 2017.

The Alberta Human Rights Commission: Is a body established to protect Albertans from discrimination and allow all Albertans an equal chance at employment and living opportunities. Fostering equality and reducing discrimination is the Commission’s two-fold mandate [5]. The first complaint made by Mr. Mihaly against APEGA was sent to this commission and they ultimately ruled in his favour in February of 2014. This was the first court hearing for this case and could be described as part one of three of this process.

Moosa Jiwaji: Is a tribunal chair and employee of the Alberta Human Rights Commission. He was the tribunal chair for the case Mihaly vs. APEGA, which he favoured on the side of Mr. Mihaly. After the appeal by APEGA was successful, Mr. Jiwaji no longer worked for the Alberta Human Rights Commission and began performing legal consulting work for Alberta Justice. He currently works at a divorce professional group as a divorce lawyer [6].

The Court of Queen’s Bench: Is a superior trial court for the province of Alberta which handles civil and criminal matters and appeals that an individual makes regarding an outcome from the provincial court as seen in this case [7]. The court is comprised of seventy-four justices, one of whom was assigned the case being presented in this report [7]. When APEGA appealed the case, it was sent to the Court of Queen’s Bench, which reversed the decision given by the Alberta Human Rights Commission. This could be described as part two of three of this court case.

Honourable Madam Justice J.M. Ross: Is a justice employee for the Court of Queen’s Bench who ruled to reverse the decision of the Alberta Human Rights Commission on the case Mihaly vs. APEGA.

Alberta Court of Appeal: Is a court that hears criminal appeals from the provincial court as well as criminal and civil appeals from the Court of Queen’s Bench. The court believes citizens have the right to come to an independent court and enforce the law where they deem fit [8]. Mr. Mihaly appealed the decision made by Justice Ross which was sent here to the Alberta Court of Appeal. This could be described as part three of three of this court case.

# Background

The history of this case is a long, drawn out process as it involved multiple court appeals with the overall completion of the case almost lasting an entire decade. Mr. Mihaly believed he was being discriminated against and APEGA believed they were doing their due diligence in maintaining the same consistency with all their prospective members.

In May of 1999 Mr. Mihaly moved to Canada from Czechoslovakia with the impression he would be able to obtain a professional engineers’ designation. Immediately after arriving, he submitted an application to APEGA and was quickly prompted by the organization to send in his transcripts as well as write a National Professional Practice Exam (NPPE). He ended up failing this exam twice and being absent for another. The other requirements he needed to accomplish were to write three confirmatory engineering exams as well as a course or test in engineering economics. From 1999 to 2008, he never attempted any of these. Czechoslovakia is on APEGA’s Foreign Degree (FD) list and these exams are the standard for all educational institutes on this list. After failing to meet the set guidelines APEGA provided, while consistently requesting his application to be re-opened as he was repeatedly failing to meet the deadlines, he filed a discrimination complaint against APEGA. The complaint was filed in August of 2008 with the Alberta Human Rights Commission. [1]

Nearly six years elapsed before a final decision was made in February of 2014. The tribunal chair, Moosa Jiwaji, decided that APEGA was being negligent towards certain foreign-trained workers, Mr. Mihaly included, thus siding with Mr. Mihaly. He believed APEGA’s standardized tests were “one test fits all” and should accommodate each individual case independently. His thought process was that APEGA should find the areas where the applicant is lacking and design a test for that individual. APEGA’s rebuttal was that they just don’t have the resources to carry out such a task. Regardless, the tribunal felt that Mr. Mihaly was being discriminated against and awarded him general damages of a sum of $10,000. Furthermore, the tribunal required APEGA to directly contact Mr. Mihaly’s prior University and Institute to determine in which areas he required testing. A mentor to guide Mr. Mihaly into the profession as well as networking and community resources were also supposed to be supplied by APEGA. Mr. Jiwaji directed the organization to establish a committee to allow more sufficient handing of prospective foreign applicants and exams catered on an individual level within a 3-month timespan. Upon this ruling, APEGA filed an appeal [2]. [1]

The APEGA appeal was then delivered to the Court of Queen’s Bench. APEGA claimed the tribunal’s decision was unreasonable and unjustifiable and the ruling was overturned. The process, decision and reasoning of what occurred here will be discussed in greater detail in the following section of this report. [2]

After the Court of Queen’s Bench reversed the decision of the prior ruling in January of 2016, Mr. Mihaly filed an appeal to the Alberta Court of Appeal of this verdict a month later in February of 2016. Upon the initial filing of this appeal, Mr. Mihaly did nothing further to perfect the appeal and in June of 2016, the appeal was struck off and nullified. Later, in December of 2016, he tried to restore his appeal but due to several reasons did not meet the requirements for an appeal restoration. He did not point out any patent error. He did not demonstrate anything as unjust when referring to the Canadian/European Union Agreement for Cooperation in Higher Education and Training and the 1979 UNESCO Convention of the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region. He did not comply with the proper criteria for restoring the appeal and never provided a reason for the tardiness on the first appeal. In January of 2017, the Honourable Mr. Justice Frans Slatter’s concluding verdict was that Mr. Mihaly did meet the proper grounds for the restoration of his appeal, and dismissed the application. This decision resolved the nearly decade long court battle with APEGA eventually becoming victorious and protecting their practices and accreditation process. [3]

# The Court of Queen’s Bench Decision

After the decision by the Alberta Human Rights Commission, APEGA immediately filed an appeal. They believe that Mr. Jiwaji’s statements were unreasonable and unjustifiable. They questioned if he followed the correct legal tests and if he breached the rules of procedural fairness when he decided on issues that neither APEGA nor Mr. Mihaly brought up. Thus, the case took the next step in the legal process and was to be handled by the Court of Queen’s Bench, who appointed the Honourable Madam Justice J.M. Ross as the judge. [2]

Mr. Mihaly cross appealed the tribunal’s decision from the Alberta Human Rights Commission to not reward the damages of lost income. He was seeking $1,000,000 and registration with APEGA, or $2,000,000 if not registered as a professional engineer. [2]

The conclusion of this appeal resulted in Madam Justice J.M. Ross overturning the decision made by the Alberta Human Rights Commission in favour of APEGA. She also concluded that the cross appeal made by Mr. Mihaly for lost wages was not justified and dismissed it. [2]

There was substantial evidence of wrong judgement made by tribunal Mr. Jiwaji in the initial verdict. Madam Justice J.M. Ross considered the statements and decisions of Mr. Jiwaji and described the errors with them.

Mr. Jiwaji stated that APEGA should be discussing and negotiating agreements with other institutions and used that as a means to show they discriminated against Mr. Mihaly when there is no evidence that APEGA is required to or even has the necessary resources. He goes on to also say the Fundamentals of Engineering Exam (FE) is too standardized and doesn’t mean that an internationally graduated student can’t complete the same tasks as a Canadian graduate. Justice Ross simply says this is their profession and they need to possess the knowledge to be safe and competent. She also discussed how the FE exam has a high pass grade of 85% and an individual can retake the test, while further pointing out that Mr. Mihaly never even wrote the exam. [2]

If one applies to APEGA with an education from a country other than the ones APEGA currently has agreements with, they individually assess what that individual needs to accomplish to become registered. Mr. Mihaly’s degrees were on the FD list, which means he needed to write the NPPE exam, three confirmatory exams, as well as the engineering economics course. The latter two can be waived, however, if the individual has ten years of quality work experience, which Mr. Mihaly did not. Mr. Jiwaji stated that it is hard for foreign workers to have that experience because they move to Canada earlier in their lives. This argument had no evidence to go with it and was flawed because Mr. Mihaly did have ten years of experience; it was just insufficient to meet APEGA’s standards. [2]

Justice Ross then revisited Mr. Jiwaji’s decisions on what APEGA was instructed to do following the initial verdict. APEGA to directly contact Mr. Mihaly’s prior education University and Institute to determine which areas he needed testing, in which Justice Ross already stated is not the duty of APEGA. A mentor to guide Mr. Mihaly into the profession as well as networking and community resources were also supposed to be supplied by APEGA, which Justice Ross deemed to go beyond any scope of discriminatory conduct found. [2[

In conclusion, Justice Ross found that APEGA’s evidence clearly met a reasonable and justifiable defence and ordered the reversal of the Human Rights Tribunal. [2]

# Reflection and Opinion

As stated prior, the last appeal was sent to and dismissed by the Alberta Court of Appeal. It was deemed that Mr. Mihaly’s arguments weren’t valid and APEGA proved they treat all individuals fairly and accordingly. The last document regarding this case found online is the appeal dismal from the Alberta Court of Appeal. Mr. Mihaly either declined to comment or was not available for comment from newspaper and journal groups following the decision.

Initially, I would like to state that I understand the difficulties that moving to a new country brings to an individual. Mr. Mihaly assumed he would be accredited with APEGA when relocating to Canada. He was mistaken, as it was actually an engineering technologists’ organization that confirmed they would credit him [2]. The language barriers and being advised that your education is not up to the same standard as a Canadian degree would be of great concern.

Although I sympathize with Mr. Mihaly’s point of view, I still decisively agree with APEGA and the strict guidelines they follow. Safety and economic feasibility are just two of the many important factors that a professional engineer oversees. That is why it is crucial to have strict, yet fair guidelines for every individual that comes from another country. Without proper knowledge of what an education institute teaches their students, APEGA needs to ensure the prospective member is equipped with the necessary skills and abilities to hold a professional designation.

My opinion on the decisions by the Alberta Human Rights Commission, the Court of Queen’s Bench and the Alberta Court of Appeal are obvious. The Alberta Human Rights Commission tribunal, Moosa Jiwaji, had a lapse in judgement when determining the outcome of the case. He believed that APEGA should do more to individualize the application process when, in reality, that is not achievable. APEGA gives their best efforts to ensure consistency for all applicants and was more than fair to Mr. Mihaly as they reactivated his file numerous times in the process before the discrimination claim [1]. Mr. Mihaly never even took his three confirmatory exams so he never even identified if he would pass or fail which is further reasoning why I am against the decision made by the Alberta Human Rights Commission [1]. Something noteworthy is that Mr. Jiwaji no longer works for the Alberta Human Rights Commission and the Commission declined to comment on the matter [9]. This appears as though the Commission also believed Mr. Jiwaji made the incorrect decision and possible private actions were taken.

I definitely agree with the decision made by the Court of Queen’s Bench to overturn the decision made by the Alberta Human Rights Commission. Mr. Mihaly did not give substantial or sufficient evidence proving APEGA was discriminating against him. APEGA followed the same guidelines for approval as they would another institution that is represented on the FD list. They did their due diligence in reactivating Mr. Mihaly’s file, while maintaining communication of what he needed to accomplish with stated deadlines [1]. This is also why I agree with the decision from the Alberta Court of Appeal. Mr. Mihaly once again did not give any new or valid evidence against APEGA. This appeal was then denied and the case has been closed, which, I agree, it should be.

This case can be viewed by some as a bad representation of a foreign trained worker. Although, that could be argued with some persuasion, this does not mean APEGA should stop accommodating foreign-trained engineers and geoscientists. Having diverse professionals within our society is essential in order to continue to grow and thrive as a community. We can’t guarantee that the number of professional workers needed are going to be able to be filled solely with Canadian graduates. Furthermore, foreign-trained workers can attribute and combine the knowledge they received from their institution and mix it with the normal Canadian methods; this would be excellent for problem solving in a group scenario. APEGA should continue to grow and establish their research of lesser known institutions and degrees, although it would be impossible and not feasible to individualize exams like Mr. Jiwaji had ordered. However, more investigation into these lesser known institutions and degree programs would aid subsequent requests for professional designation. Their current system is practical and fair and I believe should stay implemented as the strict guidelines need to be followed to ensure each applicant is suitable to receive their desired designation.

# References

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