Mihaly Case History

Engg 513

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**Introduction**

This report gives a brief summary of the court case involving Mr. Mihaly, where he complains that APEGA had discriminated against him based on his place of origin. The purpose of the report is to introduce the case study and to provide an opinion about the case as well as the decisions made. Firstly, the stakeholders of the case are introduced to provide an explanation about their role in this case. Afterwards, the background of the case is briefly explained to provide context to the reader. The Court of Queen’s Bench decision is then provided and explained to give the results obtained and the decisions made along with the reasons behind the decisions. Lastly, a personal reflection was written to give an opinion about this case and provide a different point of view for the case.

**Stakeholders**

This section explains each stakeholder involved in Mr. Mihaly’s case and explains their role in the case.

APEGA

APEGA is the Association of Professional Engineers and Geoscientists in Alberta. APEGA’s main role as an association is to regulate the practice of Engineering and Geoscientists on behalf of the Government of Alberta. APEGA is in charge of licensing individuals and companies that meet their own standards of ethical, professional and technical competency (1). APEGA is one of the main stakeholders of this case since Mr. Mihaly issued a complaint about the way APEGA manages foreign education and experience in Engineering accusing them of violating human rights for not letting him become a member of the association.

The Court of Queen’s Bench

The Court of Queen’s Bench is “the Superior Trial Court for the Province, hearing trials in civil and criminal matters and appeals from decisions of the Provincial Court”. Their main mission is to provide justice for legal disputes,to preserve the Rule of law and protect the dignity and rights of everyone (2). The Court of Queen’s Bench is highly involved in the case since they regulate the disputes of everyone involved and they help make a decision of what course of action to take regarding Mr Mihaly’s case.

The Alberta Human Rights Commission

The Alberta Human Rights Commission is guided by the Alberta Human Rights Act whose purpose 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” (3). Mr. Mihaly issued his complaint to the Alberta Human Rights Commission and stated that he was being discriminated based on his place of origin by APEGA when he applied to become a Professional Engineer.

Mr. Ladislav Mihaly

Mr. Ladislav Mihaly was born, educated and certified as an engineer in Czechoslovakia. He came to Canada and applied for APEGA to be recognized as a P.Eng. Mr. Mihaly held a complaint to the human rights tribunal that APEGA discriminated him in a basis of place of origin after failing the examinations several times (4). He is one of the main stakeholders in this case since he was the one that made the complaint against APEGA. He explains his personal and professional situation in the court.

Dean David Lynch

Mr. Lynch is the Dean of the faculty of Engineering in the University of Alberta. He was present as an expert witness “for the respondent to provide testimony on international agreements and evaluate the credentials of engineers in APEGA”. He has credibility for this position since he is a part of the Canadian Engineering Accreditation Board (CEAB). Mr. Lynch is a stakeholder since he is one of the represents that share his experience and knowledge about the situations involved in the case. He explains the meaning of an Engineer in Canada and how it differs from other countries, he also explains how the CEAB works when examining foreign education. Furthermore he talks about the USA ABET, Washington and France-Canada Accord, the FD list and the FE examinations.(4)

Dr. Gary Faulkner

Dr. Faulkner is the second witness of APEGA, he has a Phd in applied Mechanics and also the Chair of the department of Mechanical Engineering in the University of Alberta. Furthermore, he became the Chair of the Board of Examiners He provided an overview of the role of APEGA board of examiners. He also explained the requirements to be considered as an Engineer in Alberta(4). He is a stakeholder since he testified and reviewed the documents from Mr. Mihaly’s file. He has his word at stake.

Mr. Mark Tokarik

Mr. Mark Tokarik has a Bachelor of Engineering as well as a Bachelor of Law. He later became the Director of Registration of APEGA. He was also a part of the Engineer’s Canada Foreign Engineering Qualifications Committee (FEQC). He testified the requirements to be an engineer, he also testified that there are 68,000 members in APEGA, and he also testified how it is required to pass the NPPE to become a member. Mr. Mark Tokarik also has his word at stake.(4)

**Background**

Application

Mr. Mihaly first applied to APEGA to become a Professional Engineer in May 1999. He has a M.Sc diploma with a specialization in technology of fuel and thermal energy. On May 13, APEGA acknowledged his application, requested his transcripts and asked him to write the National Professional Practice Exam (NPPE). After reviewing Mr. Mihaly’s materials in February 2000, they advised him to write three confirmatory examinations and to take a course in Engineering Economics by May 2001. Mr. Mihaly wrote the NPPE exam on January 2000 but unfortunately failed the exam. He then applied to rewrite the exam on October 2000, but he failed to attend the day of the examination. On June 2001, his application was withdrawn because he had failed to complete the confirmatory examinations.(4)

First Reactivation

In May 2002, Mr. Mihaly requested APEGA to reactivate his application and he rewrote the NPPE examination in July but he failed. APEGA advised Mr. Mihaly to complete the three confirmatory examinations and the Engineering economics course by November 2003. He once again wrote the NPPE exam on January 2003 but failed. APEGA withdrew the application because he did not complete the confirmatory examinations by the date specified by APEGA.(4)

Second Reactivation

In October 2006, Mr. Mihaly asked to reactivate his application to APEGA. They requested an updated resume, a list of references and also asked for him to write three confirmatory examinations and the Engineering Economics course or the FE exam. In August 2007, they also determined that he had not gained the one year required experience in Engineering at a D level.(4)

Complaint and process to end up at Human Rights Commission

Mr. Mihaly did not write the required examinations and filed a complaint to the Alberta Human Rights Commission and stated that he had been discriminated against based on place of origin.(5)

Process to end up at the court of Queen’s bench

In the tribunal, APEGA had three representatives, Mr. lynch, Mr. Faulkner and Mr. Tokarik to explain APEGA’s registration procedure and explain how they made their decisions. In the end, Mr. Tokarik advised Mr. Mihaly to file a reconsideration request in case he thought they made a mistake but Mr. Mihaly did not file a request.(4)

Process to end up at the Alberta Court of Appeal

APEGA filed an appeal on November 2014. Mr. Mihaly also filed his appeal the same day. The law society of Alberta, as an intervener, filed a brief as well and lastly, the Tribunal filed limited submissions leading to the court requesting further counsel for the tribunal on certain legal issues. These issues were: the impact of this Court’s decision in the Human Rights Commission, a test for prima facie discrimination and a test for defense of a bona fide occupational requirement. The hearing was held in July 2015.(4)

Three decisions

The Alberta human rights commission decided that Mr. Mihaly had been discriminated against based on the place of origin. The Court of Queen’s Bench decided that the Appellant had not established a breach of the rules of procedural fairness, had not established that the Tribunal lacked jurisdiction and found the prima facie discrimination in relation to the requirements specified to be unreasonable. The Alberta Court of Appeal decided that the appeal is not justified because he failed to comply to three criteria necessary in the appeal.(6)

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

During the decision process, procedural fairness was reviewed on the basis of whether the proceedings met the level of fairness by law (Appeals Committee) or not. Questions of law in regards to the interpretation of the *Alberta Human Rights Law* were reviewed for reasonableness (Saguenay). There was also a prima facie test for discrimination(Steward and Saguenay). Lastly, the relevance of the evidence as well as evidence not provided were analyzed (Bombardier). (5)

The Appellant raises the following issues:

1. Procedural fairness: Did the Tribunal breach the rules of procedural fairness when he decided issues that were not raised by or with the parties?
2. Jurisdiction: Did the Tribunal err when he held that he had jurisdiction to determine whether discrimination based on the place a person receives their education constitutes discrimination based on place of origin?
3. Prima facie discrimination: did the tribunal rely on the correct legal test, and reasonably apply that test, to determine whether Mr. Mihaly had demonstrated prima facie discrimination?
4. Justification: Was the Tribunal’s decision that APEGA’s registration requirements were justified unreasonable? (5)

Procedural Fairness

Firstly, the tribunal concluded that the examinations assigned by APEGA were not because of a perceived academic deficiency. For this, APEGA responded that the interpretation of the EGPR is incorrect and refers to *Amacon*. In *Amacon* they mention a principle that applies only to new “grounds” for decision and tribunals or courts are not required to give parties an opportunity to be heard for every point wished to be made. Therefore the court concluded that the “Appellant has not established a breach of the rules of procedural fairness.”(5)

Jurisdiction

APEGA had submitted to the tribunal that they had no jurisdiction over Mr. Mihaly’s complaint because the AHRA didn’t protect against discrimination on “place or origin” (5). After analysing *Grover*, which states that “place of origin” does not mean “place of birth” but mean “where you came from” they concluded that *Grover* in no longer a good law and because of the lack of connection, adverse effect discrimination was not an issue. The court concluded that “the Appellant has not established that the Tribunal lacked jurisdiction” (5)

Prima Facie discrimination

The complaint from Mr. Mihaly about discrimination from APEGA falls under the provision of AHRA. The court agrees with the Tribunal’s finding that there is no supporting evidence that APEGA’s policies are based on discriminatory assumptions. However, they found that Mr. Mihaly’s place of origin was a factor in the adverse impacts. Through the Moore test, they found that the examination requirements had an adverse impact on Mr. Mihaly and that they were related to his place of origin. Due to the fact that the tribunal failed to apply the Moore test in relation to the NPPE and Canadian experience requirements, the court concluded that the prima facie discrimination was unreasonable.(5)

Justification

One argument that arose about the examinations required by APEGA is the fact that a one size fits all approach does not take into account the individual and does not take into account the fact that the individual may be able to complete tasks expected with reasonable safety and competency. This was related to the FE exam that was required that Mr. Mihaly take. They presented evidence that 85% of examiners pass the exam and that if one failed they could retake the exam. This is one example given when they looked into the justification. In the end, the court decided that APEGA’s registration requirements were justifiable and reasonable.(5)

**Reflection and Opinion**

I believe this case is sensitive since there was a fine line between considering Mr. Mihaly being discriminated or not. The “place of origin” description they gave is very controversial and I wouldn’t have thought of what they meant by it besides place of birth, whereas they explained that it could mean where one is from or where they come from. Mr. Mihaly had multiple chances to be a part of APEGA with the requirements that they requested but failed to complete them, although one never knows what his circumstances were exactly.

I personally agree with the decisions taken since they already looked at a lot of factors in regards to his education and experience as well as the way APEGA processes their registrations. They also looked into how there might be some experience missing to have him considered to be a member of APEGA. If we are to keep APEGA professional, ethical and have good standards it is reasonable for them to require members to have an equivalence of education and experience with one another.

APEGA should definitely accommodate foreign-trained engineers and geoscientists because Canada is well known for immigration and multiculturalism. The way that APEGA has their requirements in place is well organized with the FD list, examinations and experience standards.

Being an immigrant myself, my father was one of the applicants that only had to take two examinations and have the Canadian experience to become a member of APEGA. His University education was recognized as equivalent to the Canadian education so he didn’t have to write any more examinations. I believe that the way APEGA is accommodating foreign-trained engineers right now is reasonable.

**References**

1. APEGA Foundation. Available: <https://www.apega.ca/about-apega/> [Cited: February 9 2018]
2. Court of Queen’s Bench of Alberta. Available: <https://albertacourts.ca/qb/home> [Cited: February 9 2018]
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5. Court of Queen’s Bench Decision, Available: <https://www.apega.ca/news/appeal-mihaly-decision-succeeds/> [Accessed: February 15 2018]
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