ENGG 513 – Mihaly Report

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**Introduction**

Mr. Mihaly versus APEGA was a court case between Mr. Ladislav Mihaly, an engineer who recently immigrated to Alberta in search of a career in the oil and gas industry, and APEGA, the governing body of professional engineers and geoscientists of Alberta. Mr. Mihaly felt there was discrimination during his application process and believed that APEGA was refusing to license him as a professional engineer because of his place of origin. The Alberta Human Rights Commission acted as Tribunal for this case after Mr. Mihaly sent a complaint that APEGA was violating the Alberta Human Rights Act.

The Tribunal came to the decision in favour of Mr. Mihaly based on previous cases and the evidence provided. Although APEGA had three expert witnesses to provide testimonies. Both APEGA and Mr. Mihaly appealed the decision provided by the Alberta Human Rights Commission. APEGA disagreed that there was discrimination, while Mr. Mihaly was expecting to be provided loss of income from the 10 years he spent in Canada not being an Engineer. The Court of Queen’s Bench finalized this case by reviewing the Tribunals decision and making a decision of their own based on the appeal and cross-appeal of APEGA and Mr. Mihaly, respectively.

**Stakeholders**

**APEGA**

From [3], APEGA is an acronym for Association of Professional Engineers and Geoscientists of Alberta and is the governing body that regulates the engineering and geoscientist professions within the province of Alberta. APEGA holds the responsibilities of; licensing engineers and geoscientists; setting the practice standard; developing the code of conduct and ethics to lead members; investigating and disciplining members for breaching the code of conduct; and providing services to support the professional careers of members.

Based on [1], APEGA is the respondent of a Human Rights dispute for a complaint of discrimination from Mr. Mihaly.

Appertaining from [1], at the time of the complaint for an International Engineer to be provided membership to APEGA, one must either; have obtained a degree and have experience from a country that is part of the Washington Accord; have 10+ years of experience and complete the National Professional Practice Exam (NPPE),which proves an applicant’s professionalism, and ethics [6]; have obtained a degree from the Foreign Degree List (FD List) and complete the NPPE, an Engineering Economics Exam, and three confirmatory exams; or complete the NPPE, an Engineering Economics Exam, and nine confirmatory exams. Later, the confirmatory exams were replaced with the Fundamentals of Engineering (FE) Exam.

**Mr. Ladislav Mihaly**

In Reference to [1], Mr. Ladislav Mihaly is a Czechoslovakian born engineer with a Master’s Degree in Technology of Fuels and Thermal Energy from the Slovak University of Technology and another Master’s Degree in Corrosion Engineering from the Institute of Chemical Technology. The Slovak University of Technology is on the FD List. In addition, Mr. Mihaly explained that he has worked as a senior engineer for international companies, such as Mitsubishi Heavy Industry, Raytheon Engineering, and Japan Gas Company. Mr. Mihaly believed that his skills and experience would translate easily to the oil and gas industry in Alberta. During the 10 years after Mr. Mihaly moved to Canada, he was unemployed for three of them and worked low paying jobs for five years. He also lost two fingers during that time and his hearing diminished.

**The Alberta Human Rights Commission**

From [4], the Alberta Human Rights Commission constitutes the Alberta Human Rights Act, which protects Alberta’s population from discrimination. This commission strives for the population to be given an equal opportunity to earn a living, find a place to live, and use public services without discrimination. If there is a complaint of discrimination, it is resolved through Human Rights Tribunals and court hearings.

In reference to [1], the Alberta Human Rights Commission acted as the Tribunal for the discrimination complaint against APEGA, by Mr. Mihaly.

**The Court of Queen’s Bench**

Belonging to [5], the Court of Queen’s Bench is constituted by the Court of Queen’s Bench Act, and is the superior trial court of Alberta that provides judicial reviews of government and Tribunal decisions in Alberta.

Based on [2], the Court of Queen’s Bench acts as a review to the Alberta Human Rights Commission Tribunal’s decision due to the appeal by APEGA and the cross-appeal by Mr. Mihaly.

**Dean David Lynch**

From [1], Dean David Lynch is the first expert witness for APEGA. David Lynch is the Dean of the Faculty of Engineering at the University of Alberta and has a Ph. D. in Chemical Engineering. In addition, Dr. Lynch holds a position on APEGA’s Board of Examiners and has held the positions of Chair, Past-Chair, and Vice-Chair on the Canadian Engineering Accreditation Board (CEAB). He provided a testimony on international agreements and the process of which APEGA evaluates the credentials of international engineers.

**Dr. Gary Faulkner**

Appertaining from [1], Dr. Gary Faulkner provided the second testimony for APEGA. Dr. Faulkner has a Ph. D. in Applied Mechanics and was Chair of the Department of Mechanical Engineering at the University of Alberta, but is now the Director of Rehabilitation, Research and Technology Development at the Glenrose Rehabilitation Hospital. Dr. Faulkner has been on the Board of Examiners at APEGA since 1988. Dr. Faulkner has also been a member of the Canadian Engineering Qualifications Board (CEQB). Dr. Faulkner’s testimony provided the Tribunal an overview of the Board of Examiners at APEGA because of his experience.

**Mr. Mark Tokarik**

From [1], Mark Tokarik provided the third testimony for APEGA. He has a Bachelor of Science in Engineering, and a Bachelor of Law. Mr. Tokarik joined APEGA in 1999 as the Assistant Director of Registration and was later appointed to the Director of Registration. In 2012, Mr. Tokarik became the Deputy Registrar for APEGA. During his tenure as the Director of Registration, Mr. Tokarik was responsible for APEGA’s registration process. In addition to the roles held at APEGA, Mr. Tokarik was also a member of the Foreign Engineers Qualifications Committee (FEQC), which holds the responsibility of updating the FD List. Due to his experience at APEGA, Mr. Tokarik provided a testimony about the requirements for an engineer to practice their profession in Alberta.

**Background**

**APEGA and Mr. Mihaly**

Based on [1], the contact between APEGA and Mr. Mihaly started in May of 1999 when Mr. Mihaly first applied for APEGA’s registration process. APEGA replyd within the same month and requested that Mr. Mihaly send his transcripts, visa, Landed Immigrant form, and that he take the NPPE. Mr. Mihaly complied and wrote the exam on January 17, 2000, to which he failed. In February of 2000, APEGA reviewed the full application and told Mr. Mihaly that in addition to the NPPE, he must complete three confirmatory exams and an engineering economics exam. Mr. Mihaly applied to rewrite the NPPE on October 16, 2000. However, there are no records of him writing the exam. On June 29, 2001, APEGA withdrew Mr. Mihaly’s application because he had failed to attempt the confirmatory exams before the deadline of May 2001.

From [1], a year later, Mr. Mihaly contacted APEGA asking for the reactivation of his application. APEGA reactivated his application and explained to Mr. Mihaly that he has to write the NPPE, three confirmatory exams, and the engineering economics exam. Mr. Mihaly again failed his attempt of the NPPE. On August 1, 2003, APEGA withdrew Mr. Mihaly’s application for a second time because Mr. Mihaly had failed to write any of the confirmatory exams by the specified deadline.

In reference to [1], in October, 2006, Mr. Mihaly asked APEGA to reactivate his application for a third time. APEGA complied in the same month and asked Mr. Mihaly for an updated resume and references. Again, APEGA determined that Mr. Mihaly would have to complete the three confirmatory exams and an engineering economics exam or the FE exam. The FE exam was now given as an option because of updates in the application process. At this time APEGA also concluded that the one year of North American engineering work experience, that Mr. Mihaly thought he had obtained, was not at the acceptable level.

Belonging to [1], because of Mr. Mihaly’s voiced displeasure, Mr Tokarik sent a Reconsideration and Appeal sheet to Mr. Mihaly on July 8, 2008. Then, on August 5, 2008, Mr. Mihaly filed a complaint with the Alberta Human Rights Commission.

**Mr. Mihaly’s Complaint**

In reference to [1], Mr. Mihaly filed a complaint under sections 4, 7, and 9 of the Alberta Human Rights Act, which prohibit discrimination “because of race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age ancestry, place of origin, marital status, and source of income” [7] in goods and services, employment practices, and occupational associations, respectively. Mr. Mihaly believed that he was being discriminated because of his place of origin. The Tribunal considered only sections 4 and 9 because APEGA provides a service to professional engineers and geoscientists and they are an occupational association.

**APEGA’s Testimonies**

Based on [1], Dean David Lynch was the first to provide his expert witness testimony. To disprove Mr. Mihaly’s claim of discrimination due to place of origin, Dr. Lynch testified that Mutual Recognition Agreements (MRA) are made when the CEAB determines if the accreditation process of a country is equal to the accreditation process followed by Canadian engineers and makes a recommendation to Engineers Canada. If Engineers Canada decided to take part in a MRA with this country, then engineers from these countries do not have to take confirmatory exams when immigrating to Canada. In addition, Dr. Lynch explained there are differences in how a Country uses the word engineer. He goes on to use the example that in China there are 600,000 new “engineer” graduates each year, but only a fraction of them are comparable to a Canadian bachelor’s degree.

From [1], Dr. Gary Faulkner was the second witness for APEGA. Dr. Faulkner first testified that the CEAB was only an advisory body for APEGA and that it is APEGA’s decision to use the information provided by the CEAB. In addition, Dr. Faulkner stated that the Board of Examiners at APEGA also take into consideration the experience of an engineer when deciding whether to wave a confirmatory exam, but the experience has to be increasing in responsibility and complexity. They concluded that Mr. Mihaly’s experience did not relate to the criteria.

Belonging to [1], Mr. Mark Tokarik was the third witness for APEGA. He testified that there are six requirements to be registered as a professional engineer in Alberta. They are: academic qualifications, experience, good character, competency of the English language, complete the NPPE, and either be a permanent resident or a Canadian Citizen. Mr. Tokarik also explained the significance behind the MRA and the effect the have on emigrating engineers and their APEGA applications.

**Alberta Human Rights Commission Decision**

In reference to [1], the Tribunal found that Mr. Mihaly has established a *prima facie* case, meaning that there was discrimination based on first impressions. The establishment of a *prima facie* case also means that APEGA must justify their conduct rather than Mr. Mihaly having to prove discrimination. Additionally, the Tribunal found that the FD List was insufficient to judge academic credentials because it is compiled from open sourced information. Another aspect that the Tribunal found to be in Mr. Mihaly’s favor is that based on the evidence provided by Mr. Tokarik, there are only 375 applicants that are similar to Mr. Mihaly each year and that this is a reasonable number to provide individual reviews. This is because the Tribunal believed that the “one test fits all” method does not apply to everyone leaving some unable to register. The Tribunal’s final decision was made and APEGA was ordered to: be in direct consultation with the schools Mr. Mihaly attended, establish a committee to individually assess Mr. Mihaly, match Mr. Mihaly with a mentor, and direct him to resources to assist him with the English language.

**Appeal/ Cross-Appeal**

Based on [2], APEGA appealed the decision that there was discrimination based on Mr. Mihaly’s place of origin and they refused to recognize his education as equivalent to an engineering degree obtained in at a Canadian accredited university. Mr. Mihaly cross-appealed because of the Tribunal’s decision to not reward loss of income. Therefore, Mr. Mihaly wanted $1,000,000 and a membership to APEGA or $2,000,000 without a membership. The Court of Queen’s Bench reviewed the Tribunal’s decision because of these appeals.

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

From [2], the Court of Queen’s Bench was not pleased with the decision provided by the Tribunal from the Alberta Human Rights Commission. It was felt that the comparison between cases to prove discrimination were not applicable. Especially the relation to the Meiorin case, where a woman was discriminated against due to not being able to reach the aerobic standards for firefighters. The Court of Queen’s Bench stated that the Tribunal seemed to have assumed that there is a disproportionate difficulty to foreign engineers taking the confirmatory and FE exams that inhibits these applicants from becoming licensed engineers. The stats actually depict otherwise as 85% of those who take the exam pass, and if one fails, they have a chance to retake the exam all together. The Court of Queen’s Bench also pointed out that it is unfair to judge discrimination based off these exams since Mr. Mihaly failed to write a single one. Therefore, the Court of Queen’s Bench agreed with APEGA that there is no evidence proving that there is discrimination based of place of origin for these exams that APEGA requires.

Regarding the Tribunals instructions to APEGA, in reference to [2], the Court of Queen’s Bench found that they were above the scope of discriminatory conduct and that they would require significant resources. In accordance to the Court of Queen’s Bench also indicated that the Tribunal never considered Mr. Mihaly’s obligation to find possible alternative outcomes or the capital APEGA would require to provide the cost of fulfilling the Tribunals decision to the 375 people with similar cases to Mr. Mihaly. Although the 375 similar cases is speculation.

Overall, accredited to [2], the Court of Queen’s Bench found that with their review of APEGA versus Mr. Mihaly, the Tribunal’s decision was riddled with errors, based on no evidence, and failed to account for relevant material. They were especially displeased with the Tribunals refusal to be cognizant of the fact that proving entry-level engineering competence is significant to ensuring safe practice as an engineer. In all, the Court of Queen’s Bench found that the Tribunal was correct in the decision that Mr. Mihaly had shown *prima facie*, but they were incorrect in that APEGA had disproved discrimination.

Therefore, based on [2], the Court of Queen’s Bench decided to reverse the Tribunal’s decision. This clears APEGA from discrimination. Allowing APEGA to continue governing the way they were. This decision also affects Mr. Mihaly because his cross-appeal for remedy is dismissed due to there not being a case of *prima facie*.

**Reflection**

Based on the information provided from the given resources, I believe that there is no case for discrimination against Mr. Mihaly. For this case warrants any discrimination, Mr. Mihaly would have had to place more effort into obtaining his license from APEGA. The Tribunal’s decision may have been justified if Mr. Mihaly had attempted his confirmatory exams. Even if Mr. Mihaly failed all attempts, it would be grounds to research a connection between failed attempts and a person’s “place of origin”. Even if Mr. Mihaly had suggested that he could not afford to pay for the three confirmatory exams and in response was denied registration, then, there would be discrimination. Although, since Mr. Mihaly only attempted two exams in the 10 years, from first registering for an application to the complaint, it cannot be justified that there was discrimination based on “place of origin” because there are 375 similar cases to Mr. Mihaly’s and 85% of those people pass the exams with opportunities to reattempt them.

However, I do empathize with Mr. Mihaly. I cannot imagine the difficulties relating to immigrating to a foreign country with a different language. To add to these difficulties, Mr. Mihaly lost two fingers and began losing his hearing. In addition, I believe that Mr. Mihaly would of felt disrespected that his degrees were not considered to be similar standard, and that his work experience was considered to not be challenging enough or hold responsibilities. Another aspect in which I empathize with Mr. Mihaly is that he considered himself a Mechanical Engineer, when APEGA considered him to be fit the definition of a Chemical Engineer. This difference in opinion may have discouraged Mr. Mihaly from ever writing the confirmatory exams. If I had been in Mr. Mihaly’s position and considered myself to be a Mechanical Engineer and was given syllabi of Chemical Engineering books, I would expect to fail as well. This is all speculation because Mr. Mihaly never sent in the appeal, although I feel the appeal was much too late as it was sent to him 8 years after he applied.

To prevent a similar situation from occurring, I would suggest that APEGA provides a personal interview of these 375 applicants, that are in the same category as Mr. Mihaly, who fail at least 2/3 of their confirmatory exams or if they fail the FE exam. If this is implemented there is an indication that the applicant attempted the exam but may have taken the exam in the wrong branch of engineering. Therefore, the applicant would not feel discriminated against and APEGA would not only creates a more just system, but they would build a better understanding of these applicants and their backgrounds.

**References**

[1] *Ladislav Mihaly v The Association of Professional Engineers, Geologists and Geophysicists of Alberta*, vol. AHRC 1. 2014, pp. 1-64.

[2] *The Association of Professional Engineers and Geoscientists of Alberta v Mihaly*, vol. ABQB 61. 2016, pp. 1-27

[3] ‘About APEGA’. [Online]. Available: https://www.apega.ca/about-apega/

[4] ‘About the Commission’, October 24, 2012. [Online]. Available: https://www.albertahumanrights.ab.ca/about/Pages/about.aspx

[5] ‘About Court of Queen’s Bench’. [Online]. Available: https://albertacourts.ca/qb/about/overview

[6] ‘National Professional Practice Exam’. [Online]. Available: https://www.apega.ca/apply/exams/national-professional-practice-exam-nppe/

[7] Government of Alberta, ‘Alberta Human Rights Act’, 2018. Available: http://www.qp.alberta.ca/documents/Acts/A25P5.pdf