ENGG 513

Case Study on The Court of Queens Bench of Alberta judgement involving APEGA, the Human Rights Commission and Mr. Ladislaw Mihaly

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**Introduction**

The case study of Mr. Ladislaw Mihaly, The Court of Queen’s Bench of Alberta, APEGA and the Human Rights Commission is an intriguing example of ethical issues surrounding organizations and the requirements of becoming a registered Professional Engineer. This report will discuss the case of Mr. Mihaly against APEGA in relation to his application to be registered as a Professional Engineer in Alberta. I will cover the main stakeholders of this case in addition to the decisions made by the courts and how these decisions relate to the contents of this course and my opinions on the subject with respect to engineering ethics. The study of this case and ones similar to it is extremely important in understanding the processes of APEGA and why they require the things they do for becoming a Professional Engineer. This case also presents a spotlight on discrimination, particularly based on place of origin which is a very relevant issue within Canada due to the levels of immigration we see in this country. This report will serve as an analysis of the process of becoming a Professional Engineer in Alberta and the experience a particular person had and the resulting legal decisions that were made.

**Stakeholders**

APEGA

The Association of Professional Engineers and Geoscientists of Alberta is one of the main stake holders of this study. This is an organization in Alberta whose purpose is to license Professional Engineers and Geoscientists, set practice standards and develop a code of conduct and ethical foundation for all members. (About us APEGA, n.d) With respect to this case, APEGA is the organization that received Mihaly’s application for registration as a Professional Engineer, reviewed his transcripts and work history and advised him that he needed to pass the National Professional Practice Exam (NPPE), complete three confirmatory examinations and pass an exam in Engineering Economics. (APEGA v Mihaly, 2017, p. 3) APEGA is a Respondent in the initial case and an Applicant and Respondent on the cross-appeal after the initial tribunal and court decision.

The Court of Queen’s Bench of Alberta

The Court of Queen’s Bench is the superior trial court for the province of Alberta and is one of the primary stakeholders and decision makers of this case study. The Court of Queen’s bench hears trials on civil and criminal matters and also deals with appeals from the decision of provincial courts. (Queen’s Bench, n.d) With respect to the Mihaly case, the Court of Queen’s Bench heard the appeal from APEGA and the cross-appeal from Mihaly.

The Alberta Human Rights Commission

The Alberta Human Rights Commission has a mandate to foster equality and to reduce discrimination. They do this using the Alberta Human Rights Act and advising the courts with their expertise on cases of discrimination. The Alberta Human Rights Commission is an extremely significant stakeholder in this study working to ensure that all Albertans including Mihaly are ”offered an equal opportunity to earn a living, find a place to live, and enjoy services customarily available to the public without discrimination.” (About us AHR, n.d) After reviewing all of the evidence, The Human Rights Commission advised the court to award Mihaly $10000 in general damages and require APEGA to reconsider Mihaly’s application and push APEGA to “consider and provide options and support” for Mihaly’s integration into the engineering profession. (Mihaly v APEGA, 2014, para. 247)

Mr. Ladislav Mihaly

Mr. Mihaly was the initial Complainant and then the Respondent and Applicant of the cross-appeal on the case study of him versus APEGA with regards to his applications to become a Professional Engineer. Mr. Mihaly is a primary stakeholder in this study and is an individual who was born and educated in the former Czechoslovakia and graduated with a master’s degree in engineering specializing in Technology of Fuels and Thermal Energy from Slovakia. [Mihaly v APEGA, 2016, para. 4) Mihaly applied to become a Professional Engineer after coming to Canada and subsequently failed multiple qualification exams and felt that he was discriminated against by APEGA based on his country of origin. He was awarded $10000 in damages and reconsideration of his application by APEGA. He had his cross-appeal on APEGA’s appeal on the initial decision dismissed. (Mihaly v APEGA, 2016, para 154)

Engineering Companies within Alberta

Engineering companies within Alberta are indirect stakeholders in this case as the results of it may influence their hiring procedures and their ethical dealings on discrimination. Mihaly claims that he was unable to work as a Professional Engineer in Canada due to not being able to register as a Professional Engineer. The Human Rights tribunal has a goal of fostering equality and reducing discrimination so companies from the engineering industry would be very interested to know if they must change their hiring standards due to the results of this case or if they are discriminating against an individual if they do not hire them if they are not members of APEGA. (About Us AHRC, n.d) Their concern would be any legislation change as a result of this study and how it will affect their procedures.

Canadian Engineering Accreditation Board

The CEAB is an organization recognized by APEGA that grants accreditation to Canadian institutions for the validity of their programs to gain recognition by Professional Engineer organizations such as APEGA, across Canada. (Mihaly v APEGA, 2014, para 145) This is the board that determines whether an engineering program’s graduates meet the requirements of Canada’s Professional Engineering associations. This board has an interest in this case as their accreditation process has come into question and has been used to explain why Mihaly’s degree from Slovakia was insufficient for immediate membership as the school had not been accredited or given a mutual recognition agreement by the CEAB.

Government of Alberta

The government of Alberta is also an indirect stakeholder in this case as they are the governing body over the Courts and the Human Rights Commission. Any conclusions based on the adequacy of the ruling or the effectiveness of the Alberta Human Rights Act is a reflection on the governing of the Government of Alberta. Any legislative changes that need to be made based on this case would have to be enacted by the government.

**Background**

The case of Mihaly vs APEGA took place over nearly two decades and appeared in the hands of the Alberta Human Rights Commission, The Court of Queens Bench of Alberta and the Alberta Court of Appeal.

Mr. Mihaly immigrated to Canada from the former Czechoslovakia with a Master’s of Science degree in Engineering with special qualifications in Technology of Fuels and Thermal Energy and Corrosion Engineering. He applied for APEGA membership for the first time in May 1999 and after review of his application, transcripts and work history, APEGA announced on the basis of the Board of Examiners that he must pass the National Professional Practice Exam in addition to three confirmatory exams and an equivalent exam in Engineering Economics by a specific deadline. (APEGA v Mihaly, 2016, para. 7) It was determined that Mihaly must take these extra steps as his degree from Slovakia was not accredited to the same level as their standards for other approved universities. Mihaly had several failed attempts at the NPPE with subsequent reactivations of his application.

At this point, Mihaly finally decided to take legal action on August 5, 2008 where he made several complaints about the decisions of APEGA to the Alberta Human Rights Commission based on section 4, 7 and 9 of the Human Rights Act of Alberta. (Mihaly v APEGA, 2014 para. 29/30) At this point, the case was before the Alberta Human Rights Commission. A tribunal of the case ensued with evidence and testimonial being presented from both sides. Mihaly presented that he was unaware of APEGA’s foreign degree list and that he was concerned APEGA was discriminating based on an individual’s country of origin. Additionally, he complained that APEGA was not complying with international agreements that provided reciprocal recognition of engineers from the European Union. (Mihaly v APEGA, 2014 para. 55) Finally, he argued his vast experience in Czechoslovakia should have been suitable to gain PE recognition in Canada and that this confusion over his status and his inability to find proper work in his field due to his lack of status as a PE caused him and his family great trauma. (Mihaly v APEGA, 2014 para. 68)

APEGA responded to each of these complaints stating that for the most part they had explained each decision through correspondence with Mr. Mihaly. Multiple witnesses from the side of the respondent came in to provide testimony on the practices of APEGA and discredit many of the claims Mihaly had made. As a result of all of the information provided and basing decisions from the Human Right Act of Alberta, the human rights tribunal decreed that $10000 be paid in general damages to Mr. Mihaly, APEGA must review Mihaly’s transcripts and experience in direct consultation with Mihaly’s alma maters, allow Mihaly to challenge exams in areas he hasn’t been exempted, establish a committee of individuals with similar experiences and help him correct any “perceived academic deficiencies”, mentor and direct Mihaly to resources that will assist him with his English and integration into the Profession of Engineering in Alberta. (Mihaly v APEGA, 2014 para. 247,248,249)

This case ended up in the Court of Queen’s Bench of Alberta as a result of an appeal by APEGA against the decision of the Human Rights Tribunal made on February 6, 2014. APEGA made the appeal based on issues with the procedural fairness of the Tribunal, questions of the jurisdiction of the Tribunal to determine discrimination based on place of origin, whether Prima facie discrimination had actually occurred and the question whether the Tribunals decision that APEGA’s registration requirements were unreasonable was in itself unreasonable. (APEGA v Mihaly, 2016, para. 54) The Court of Queen’s Bench of Alberta upheld APEGA’s appeal on January 27, 2016 and reversed the Tribunal’s decision. (APEGA v Mihaly, 2016, para. 153) Mr. Mihaly’s cross-appeal was also rejected. (APEGA v Mihaly, 2016, para. 154)

Finally, Mihaly filed an appeal to restore his previous appeal and the case ended up in the Court of Appeal of Alberta. The Court of Appeal of Alberta states that the lack of any errors pointed out by Mihaly in the ruling and his failure to comply with the criteria for restoring an appeal resulted in the dismissal of the application on January 10, 2017. (Mihaly v APEGA, 2017, p.2)

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

The Court of Queen’s Bench of Alberta governed over the case between APEGA, the applicant, and Ladislav Mihaly and the Alberta Human Rights Commission, the respondents. The Court of Queen’s Bench had to make a decision based on the appeal by APEGA to reverse the initial decision made by the Alberta Human rights Tribunal on February 6, 2014 where it was determined that Mr. Mihaly would receive $10000 in damages and be reconsidered and assisted for recognition by APEGA as a Professional Engineer. Additionally, the respondent Mr. Mihaly, cross appealed the Tribunal’s decision to not award him damages for loss of income. (APEGA v Mihaly, 2016, para. 2)

The decision made by the Court of Queen’s Bench of Alberta was to reverse the decision of the Tribunal and to not send the matter back to the Tribunal. Additionally, the Court of Queen’s Bench decided to dismiss Mihaly’s cross appeal based on the court not being able to find *Prima Face* discrimination. (APEGA v Mihaly, 2016, para. 150, 154)

The appeal was based on four main issues that were mentioned prior. First is the procedural fairness of the Tribunal. The concern was that the Tribunal’s decision that the exams assigned by APEGA to Mihaly were not “for the purpose of correcting a perceived academic deficiency.” (APEGA v Mihaly, 2016, para. 55) APEGA believed that this was unfair as the Tribunal ignored the “or” in APEGA’s framework and that the Tribunal breached the duty of fairness since APEGA and Mihaly were not able to advance their interactions with regards to Mihaly becoming a Professional Engineer. The Court of Queens determined that the Tribunal did not breach the rules of procedural fairness. (APEGA v Mihaly, 2016, pages 9-10)

The issue of Jurisdiction was also brought up as APEGA felt the Tribunal may have overstepped when they decided they had the jurisdiction to determine whether discrimination on where a person receives their education constitutes discrimination based on place of origin mentioned in the Alberta Human Rights Act. APEGA alleged that since the AHRA does not protect against discrimination based upon the “place of origin of academic qualifications” they should not be able to make a decision regarding this point against them. The Court then proceeded to use the *Moore* test to determine whether a *prima facie* case of discrimination has been carried out. The Court decided that there was enough of a connection between place of education and place of origin, so the court upheld that the Tribunal did have jurisdiction over this issue. (APEGA v Mihaly, 2016, pages 10-12)

The issue of *Prima Face* discrimination and if the Tribunal correctly applied the test to prove that Mr. Mihaly had experienced Prima facie discrimination was a majorly discussed issue in this appeal. Prima facie discrimination is a case of discrimination where the plaintiff has sufficient evidence to prove they were discriminated against. (Lamance, K, 2017) It needed to be proven that Mr. Mihaly had a characteristic that is protected from discrimination, that he experienced an adverse impact and that the protected characteristic was a factor in the adverse impact. (APEGA v Mihaly, 2016, para. 76) The Tribunal found that place of education was a proxy for place of origin which is an adverse impact on Mihaly and did constitute substantive discrimination. (APEGA v Mihaly, 2016, para. 81) The Court however found that the Tribunal failed to consider all of the required elements of the legal test so that renders the Tribunals finding of Prima facie discrimination unreasonable. (APEGA v Mihaly, 2016, pages. 12-19)

Finally, the issue of justification was addressed questioning whether the Tribunal’s decision that APEGA’s registration requirements were unjustified was unreasonable in itself. In order to establish justification of its requirements, APEGA had to prove that it (1) adopted its standard for a purpose or goal that is rationally connect to the function being performed, (2) adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal and (3) the standard is reasonably necessary to accomplish its purpose or goal in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship. (APEGA v Mihaly, 2016, para. 112) The Tribunal found that APEGA easily fulfilled the first two requirements but that the issue was with the third point where they found APEGA did not reasonably accommodate Mr. Mihaly. The Court however determined that the Tribunal’s reasoning behind APEGA’s failure to justify their requirements was unreasonable and was trumped by APEGA’s undisputed evidence supporting their procedures. (APEGA v Mihaly, 2016, pages. 19-26)

**Reflection and Opinion**

This case was reviewed in three separate courtrooms spanning the Alberta Human Rights Commission, The Court of Queen’s Bench of Alberta and the Alberta Court of Appeals. With regards to the initial review by the Alberta Human Rights Commission, I find that it was very important for a case such as this one to be brought to light. Though I disagree with the ruling that Mihaly was awarded damages and that he should be reconsidered, I think this ruling brought focus to the bigger issue of accommodating immigrant workers into the Canadian workforce. I agree that APEGA should do more to develop more MRA programs and do more research on universities and technical colleges abroad to better understand the training foreign workers have when they apply to work in Canada and try to join organizations such as APEGA. However, Mihaly’s lack of commitment to fulfilling the criteria established by APEGA for registration as a Professional Engineer made me question his experience and understanding of the purpose of APEGA. Though he did have to face language barriers, with his technical knowledge he should have been able to pass these exams and become a PE quite quickly. It was perhaps a bit excessive to request he take five exams.

The Court of Queen’s Bench decision to uphold APEGA’s appeal I feel was the correct one. APEGA provided enough evidence to support the reasoning behind their registration requirements and that the Tribunal’s findings of Prima facie discrimination based on the equivalence between place of education and place of origin was in fact unreasonable. It seems to me that the Tribunal did not take enough time and did not properly apply the Alberta Human Rights Act in accordance with the evidence they were presented with.

Finally, I absolutely agree with the Alberta Court of Appeals decision to dismiss Mihaly’s appeal to restore his previous cross appeal for damages in lost wages. Though Mihaly likely did suffer as a result of his lack of recognition as a Professional Engineer in potentially find jobs, there are way too many other factors to consider than just APEGA’s requirements being excessive to just award him the money. Also, Mihaly’s inability to follow procedures set out by the judicial system with regards to paperwork make it seem as if he lacks the commitment to follow through with his complaints.

The main question of this case is whether APEGA should accommodate foreign trained Engineers and Geoscientists. Personally, I believe that APEGA should do its due diligence in accommodating foreign Engineers and Geoscientists. My issue is that they already do accommodate foreign applicants as they have a framework of analysis of experience and transcripts and a series of examinations that applicants must pass in order to prove their technical knowledge is at the level it needs to be to be recognized as a Professional Engineer in Alberta. Having any type of system to integrate foreign workers is already accommodating them. Should APEGA do more than what they’re already doing? Yes, they should, and I believe this is the real question. If the Canadian government will be accepting immigrants into this country, then funding should be provided to APEGA and organizations similar to it to expand on Mutual Recognition Agreements and further research and agreements from nations we receive a high influx of foreign workers from to audit their universities and make it easier for them to gain recognition as Professional Engineers. The standards are there for a reason and that reason is to protect the professions of Engineering and Geoscience in Canada. Applicants must satisfy these standards, but we should do more in accommodating them due to some of the difficulties they face such as language barriers. Perhaps APEGA providing mentors for applicants who have language difficulties could also be a practical solution.

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