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**ENGG 513 – Project 1**

**Mihaly Report**

**February 16, 2018**

**Introduction**

When admitting foreign applicants, the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has 2 main routes for admission. First, there is an expedited route for individuals for individuals who attended Universities who were previously found to be acceptable or those who have demonstrated proficiency through experience and a post graduate degree. Second, for individuals who did not meet the standards for admission as stated above would be assigned to complete a series of exams designed to test their knowledge in both their field and in professionalism and ethics. Ladislaw Mihaly applied to join APEGA in 1999 and despite having a Master’s degree and 10+ years of relevant experience was asked to take confirmatory exams. This exam will explore the lawsuit filed by Mihaly in 2014 in which Mihaly is suing APEGA in the amount of one million dollars and admission into APEGA as a

**Stakeholders**

**APEGA**

APEGA is the organization in which the complainant, Ladislv Mihaly, has issued this suit against. If this suit goes through, it will likely cause largely negative press as the case is based around racial and cultural discrimination, a topic which gets highly publicized. Additionally, it would force APEGA to re-evaluate the process of determining whether an individual is deemed acceptable to be admitted into the organization as a professional member. Lastly, this is significant for APEGA as, if Mihaly was successful in this suit, APEGA may be forced to pay the loss in wages which Mihaly suffered due to his inability to practice engineering during his time in Alberta.

**The Court of Queens bench**

The Court of Queens bench is the provincial equivalent of the supreme court and the decisions it makes can largely affect future legal proceedings within the province by creating precedents. If Mihaly is successful in his suit against APEGA, this would, at minimum, create an influx of individuals who attempt similar cases targeted not only at APEGA but other professional organizations such as the provincial BAR and the Alberta Medical Association. At its worst, this decision could allow for precedent to be set which would make such a claim extremely easy to win and lead to an influx of individuals who are not qualified to work in the professions to practice.

**The Alberta Humans Rights Commission**

As mentioned above in the Queens Bench section, a victory for Mihaly may create a legal precedent allowing for engineers or other professionals who were unsuccessful in challenging the exams put out by the various professional organizations. This could lead to incapable individuals in positions for which they are not qualified. Most notably, in this case, the case of Wright v College and Association of Registered Nurses of Alberta was used by Mihaly and so is feasible that an individual uses this case to be admitted into the Alberta BAR as a lawyer or the Alberta Medical association as a physician, thereby lowering the quality of service expected of the professions and lowering the quality of service which civilians receive (which in the case of lawyers, doctors and engineers could have serious repercussions to person, property and to the associations)

**Ladisalv Mihaly**

Mihaly is the most important stakeholder in this case. As the complainant he has a stake financially, and professionally. In the case, Mihaly claims that he faced discrimination from APEGA due to his non-Canadian heritage and education if successful in his case, he would receive compensation for the 10 years in which his status as an engineer was withheld. He claims 1 million dollars for damages and an additional 1 million (2million total) if APEGA con Additionally, he would be able to receive a professional engineering designation which would permit him to practice as a professional engineer any where in Canada or wherever there is a partnership with Engineering Canada or APEGA.

**Slovak Technical University/Institute of Chemical Technology**

These two stakeholders were combined into a single section as the affect of this case would have a similar affect on both organizations. First of all, this case brought significant attention to both the academy’s which they would not have received, while free publicity is always welcome, It is possible that if they were seen to be unacceptable in Canada it would be likely that both institutes would lose prestige and many perspective students who may have been attending these schools in an attempt to gain employment in a country with a larger economy and higher potential earnings. Additionally, a victory from Mihaly could get both academies on a short track to accreditation.

**Other Immigrants Who Have Failed to Gain Professional Designations**

**Background**

Mihaly Immigrated to Canada in 1999 and applied to APEGA as a professional engineer. Mihaly had a Masters degree in fuels and thermal energy from the Slovak Technical University in Bratislava and a certificate in corrosion engineering from the Institute of Chemical technology in Prague. His application was responded to and he was asked to write the National Professional Practice Exam (NPPE) and informed that he must pass 3 confirmatory exam. He failed his first attempt at the NPPE in 2000. In 2001, he applied to write the test again however he did not appear for the exam. After this, APEGA withdrew his application due to his absence for his second attempt at the NPPE. Mihaly, in 2002 got his application reactivated and re-wrote the NPPE exam and again failed the exam. He wrote the exam for the third time in 2003 (fourth time scheduled). Additionally, he did not complete (or attempt) his confirmatory exams in the required time period.

In 2007, after an appeal to the APEGA Board of Examiners, the board reconsidered Mihaly’s application however found that Mihaly must still complete the exams if he wished to receive his professional designation.

In response, Mihaly filed a humans rights complaint against APEGA based on his place of origin. Mihaly was seeking compensation in the amount of one million dollars and his admission into APEGA or two million dollars without him being admitted into APEGA as a professional engineer. The financial compensation would be to Mihaly believed that the reason for him being required to take the confirmatory exams, despite his advanced degree and 10 years of experience in Slovakia was simply due to his Czechoslovakian heritage. The defense of APEGA was that both the Institute of Chemical technology and the Slovak Technical University had not been accredited by APEGA and that Slovakia and Canada are not a member of a mutual recognition program and not in the process of becoming mutually recognized. Additionally, while APEGA does have methods for individuals with an advanced degree and significant experience in their respective field, APEGA also requires that individuals advance in both degree of difficulty but also in level of responsibility, both of which were found to not be the case for Mihaly despite his work with corrosion in pipelines was considered acceptable engineering experience.

APEGA’s case is that the Institute of chemical technology and the Slovak Technical University were never examined or deemed acceptable by APEGA and that Slovakia and Canada is not in a mutual recognition progress and therefore Mihaly’s case could not be expedited. Additionally, another criteria when determining whether an individual is fit to become a member of APEGA is the candidates experience. A senior level engineer may receive an exception if an individual has both had a significant amount of experience as well as increasing complexity and responsibility. While it was determined that the experience which Mihaly possessed was acceptable in duration, his work was determined to not be increasing in responsibility and complexity. Additionally, if an individual possesses more than 10 years of experience as well as a pHd or masters degree the exams may be waived. It was determined however that his masters degree from the ICT was equivalent to a bachelors degree in Chemical engineering and he was therefore assigned to take the exams.

The Case was brought to a tribunal which found that Mihaly was not discriminated on due to his place of origin and treated as a foreign graduate was to be treated by APEGA guidelines. The tribunal also concluded that it is not possible to determine if Mihaly was even qualified to be an engineer as he had yet to attempt his confirmatory exams. Engineers Canada uses the following question in determining whether an individual with a foreign degree is eligible to be a professional engineer in Canada: Did the content of your undergraduate studies cover substantially the syllabus of Canadian undergraduate studies in the same engineering/geoscience field and was the quality of the program of studies at the level required for registration in Canada. Without taking the confirmatory exams, it would be impossible to determine whether Mihaly had the knowledge to be licensed as a professional engineer. Because of this, the tribunal could not say that he experienced discrimination due to his place of origin.

The tribunal did also find fault in his education. The institutions within the country must meet a minimum of four of the following seven criteria to be included in the FD List:

(a)        at least two different engineering programs are offered at the institution;

(b)       the institution has been offering degree programs at the university level for 20 years;

(c)       the overall student and teaching staff ratio is not more than 30:1;

(d)      the institution's library has at least 100,000 volumes;

(e)       the institution is a member of the International Association of Universities or the Association of Commonwealth Universities;

(f)        the institution has higher engineering degree programs; and

(g)        there is evidence of scholarly research activity in engineering.

In the case of Mr. Mihaly, the Slovak Technical University in Bratislava which he attended merited inclusion on the FD List, but the Institute of Chemical Technology did not. It was also found that his bachelors degree from the Slovak Technical University was more similar to a technical certificate and his Masters degree from the ICT was equivalent to a Bachelors degree.

The tribunal did admit, however, that while the current system was implemented in the intended fashion with its treatment of Mihaly, the current system did tend to discriminate against individuals with educations from Africa, Eastern Europe and Asia.

Mihaly made a claim of discrimination due to place of birth stating that his education was a proxy his place of birth as place of education is not a grounds for a discrimination case. While he had been in Canada for 10 years he had been unemployed for a 5 years and was doing work which required no more than a high school diploma and wished to be compensated for lost wages.

**Decision**

The decision of the court was Mihaly was successful in determining discrimination against him from APEGA and APEGA was to pay for compensatory damages however the punishment against APEGA was not to be punitive. The court decided that while APEGA was preforming its mandate and there were not mal intentions, the process used “did not appropriately individually assess Mr. Mihaly’s qualifications”. It was also found that there was no attempt made my APEGA to contact the Slovak Technical Institute or the Institute of Chemical Technologies to asses Mihaly’s qualifications or to address or correct any deficiencies.

The judge then moved forward to the matter of compensation. While Mihaly initially was seeking one million dollars and a licence as a professional engineer, the judge declined to offer compensation for lost wages as Mihaly had hoped. This was justified by the uncertainty involved in both licencing and employment of Mihaly to accurately determine lost wages. Additionally, Mihaly did not present any evidence in support of his claim for lost wages. However, due to the lack of explorations into assisting Mihaly in his attempt to join APEGA for options which would have both licenced Mihaly and met APEGA’s standards for competency and safety. Because of this, Mihaly was awarded with $10,000.

The Judge also instructed the APEGA board that if Mihaly still wished to pursue his professional engineering license, they are ordered to:

(a) Review Mr. Mihaly’s transcripts and experience in direct consultation with the Slovak University of Technology, the Institute of Chemical Technology and any of his references who may still be available, to better identify Mr. Mihaly’s skills and qualifications and to identify core areas of engineering from which Mr. Mihaly could be exempted

(b) Grant Mr. Mihaly the option to challenge specific examinations in areas where he is not granted an exemption by APEGGA;

(c) Within three months of the date of this decision, establish a committee that preferably includes engineers who received their qualifications in institutions and countries outside of Canada and who have successfully integrated themselves into the engineering profession, to specifically explore and investigate options to appropriately and individually assess the qualifications of Mr. Mihaly with a view to correcting any perceived academic deficiencies. Once these options have been evaluated, APEGGA shall apply these individual assessment options to Mr. Mihaly with a view to correcting any perceived academic deficiencies. These options may include exemptions from the Fundamentals of Engineering exam or the NPPE combined with the implementation of a different method of assessment, such as some type of graduated or modular approach which would provide Mr. Mihaly assistance and guidance to progress gradually in the engineering profession. Other explorations could include a possible collaboration of APEGGA with Alberta’s post secondary institutions in terms of offering programs or courses which could be offered to foreign trained engineers to correct any perceived academic deficiencies.

(d) Use its best efforts to match Mr. Mihaly with a Mentor who has a similar background and who can provide him the necessary guidance to approach his challenges as an engineer and gradually integrate himself into the profession;

(e) Direct Mr. Mihaly to resources within the profession which will allow him to network with other foreign engineering graduates facing similar challenges; and

(f) Direct Mr. Mihaly to community resources which would assist him to increase his fluency and facility in the use of the English Language.

Lastly, APEGA was suggested to use this case as an opportunity to develop a better approach to avoid situations with future foreign engineers. The tribunal stated: “it cannot be in anyone’s interest to continue to accept into this country some of the best and brightest individuals from around the world, and to then make it virtually impossible for them to use the skills that they bring with them”

**Reflection**

Racism is an ever-present reality in history and in current events. With the race riots in the USA and the violent struggle between people of color and police it is easy to forget that individuals receive small doses of often inadvertent racism on a daily basis. The African American teenager who gets followed around a store due to suspicions of shoplifting, or the “random” TSA checks at airports. In this case, Mihaly claimed that he was the recipient of this form of discrimination when APEGA made him take confirmatory exams before giving him a license as a professional engineer. While the first case was unsuccessful for Mihaly, he appealed the result and was ultimately successful. While I do believe that racism saturates many aspects of life, I believe that the actions by APEGA were not driven by discrimination but were instead diligence expected by a professional organization and that the decision in which Mihaly was able to determine Prima Facie discrimination. It creates a president in which doctors, lawyers, and pilots could sue their respective professional organizations for diligence after failing to complete the required tests for admission.

My perspective on this case is most strongly linked to Mihaly’s failure to pass his exam 3 times. In court you are innocent until proven guilty, however you are not qualified for a job until you have proven that you are. APEGA offers an exception for individuals with post graduate degrees and 10 years of experience in which their work progresses in difficulty and responsibility. While Mihaly had worked for 10 years in Slovakia it was determined that he had not progressed in level of difficulty or responsibility. While not necessarily a sign of a lack of understanding or aptitude, it certainly raises questions on Mihaly’s abilities as an engineer. Additionally, the master’s degree he had received from the Institute of Chemical Technology was determined to be equivalent to a bachelor’s degree in Canada with his bachelor’s degree being more similar to a certificate program rather than a university degree. While the evaluation of the institution was argued to be unfairly made which put institutes in eastern Europe, Africa and Asia at a disadvantage, we have seen a large number of Universities in Southeast Asia have immerged in the past ten years to become not only acceptable but world renowned. For this reason, I argue that the treatment of Mihaly when applying to APEGA was both just and necessary.

Mihaly failed his exams three times and did not attend twice. I would not want a hairdresser who was incapable of passing an exam design to determine qualifications. Imagine if a surgeon was unable to pass his medical licensing exams. It would be unfair to all his patients who expected a certain level of skill and knowledge which come with the title of medical doctor. Now imagine that the scalpel used by the surgeon was disinfected by a solution designed and made by a chemical engineer who couldn’t pass the confirmatory exams put out by APEGA. I would not want to trust either and believe the public should be able to have faith that this would not occur. However, in Mihaly’s case, he failed the exams on multiple occasions. If he wished to claim prima facie discrimination it should have been before he took the exams in the first place. From the first time he failed the National Professional Practice Exam (an exam which is designed to demonstrate knowledge of professionalism, law and ethics). he showed that he was incapable of practicing engineering. I understand that due to other legal precedents he was able to make this claim many years after he failed the exams on multiple occasions however I believe that his right to make such a claim was forfeit when he failed the exam, thereby proving that APEGA was not only correct in their decision to make Mihaly take the exam but that he was not at the standard for a professional engineer in Canada. Additionally, he never attempted the confirmatory exams, which he was also assigned to complete. I believe that while silence is not able to be used to convict someone of a crime. However, I do not believe that someone who refuses to take exams to prove that their knowledge is at an acceptable level should be assumed to be at that level.

Mihaly’s right to a discrimination case should have disappeared when he failed the exam the first time. While I believe that strides should be made towards permitting foreign professionals into local programs (my grandfather was a doctor who struggled to work in Canada for many years despite a PhD from the University of Hong Kong), I also feel like there needs to a standard upheld. While the process for determining whether an individual is exempt from examinations could be considered unfair to graduates of non-American/Western European graduates, the strides made in the integration of many schools in Asia into the accepted list for APEGA. While it may seem unfair to the individuals who graduated from a program not on the accredited list, the system is in place in order to protect the public and is therefore should be more strict than accepting. While I am sure this argument is probably being made by graduates of the top Engineering students at MIT and Berkley in reference to schools such as the University of Calgary, a line does need to be set somewhere, and I believe that the guidelines set by APEGA are not unfair or discriminatory, as argued by Mihaly and found by the Alberta Humans Rights Commission and I would stand by the decision set by the Court of Queen’s Bench.

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