**ENGG 513 The Role and Responsibilities of the Professional Engineer in Society**

**Mihaly Case Study**

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**Introduction**

This report is about the Court of Queen’s Bench of Alberta case between The Association of Professional Engineers and Geoscientists of Alberta (APEGA) and Ladislav Mihaly and the Alberta Human Rights Commission. This case was meant to determine if APEGA discriminated against Mr. Ladislav Mihaly based on his place of origin, which is illegal under Alberta’s Human Rights Act. Further, the case examined if it was acceptable for APEGA to continue their method of certifications and examinations for foreign graduates based on their location of studies. The Alberta Human Rights Commission tribunals’ decision was made on Feb 16, 2014 in favor of Mr. Mihaly, awarding him damages for his troubles and asking APEGA to guide him through his application process of becoming a certified professional engineer. However, APEGA made an appeal to the court’s decision and on January 26, 2016 and the court upheld APEGA’s appeal. This case is vital to regulated professions in Canada, supporting the fact that not all academic establishments worldwide can be considered equivalent and that professional workers must prove they are qualified for the title.

**Stakeholders**

• APEGA

The Association of Professional Engineers and Geoscientists of Alberta (APEGA) is the regulatory body that “regulates the practices of engineering and geoscience in Alberta on behalf of the government of Alberta through the Engineering and Geoscience Professions Act” [4]. Essentially, APEGA maintains the status of these professions by ensuring every applicant to receive the title “Professional” is qualified. They ensure that applicants have an understanding of the standards set in place and the codes of conduct and ethics that the permit holders are expected to adhere to. This case threatened APEGA’s ability to regulate the profession by proposing they do not have the right to test applicants knowledge if they come from somewhere without Mutual Recognition Agreements (agreements that confirm certain programs in different nations are substantially equivalent).

• The Court of Queen’s Bench

The Court of Queen’s Bench of Alberta is the superior court in Alberta. “It holds jury trials for both criminal and civil matters and it can hear civil trials for damages, regardless of the amount.” [5]. Its role in the case was to make a final decision on APEGA’s appeal that was made against the Alberta Human Rights Commission’s tribunal decision, which had ruled in favor of Mr. Mihaly.

• The Alberta Human Rights Commission

The Alberta Human Rights Commission’s duty is to ensure that the Alberta Human Rights Act is enforced and that violations are identified. The Alberta Human Rights Act is meant to protect Albertans from discrimination based on characteristics such as race, religious beliefs, age, etc. The characteristic in question in this case is *place of origin* (which is included in the Alberta Human Rights Act); Mr. Mihaly claims that APEGA discriminated against him based on his place of origin, Czechoslovakia.

• Mr. Ladislav Mihaly

Mr. Ladislav Mihaly submitted his complaint to the Alberta Human Rights Commission, claiming that APEGA had discriminated against him based on his place of origin. He requested financial compensation for his missed wages as he could not work as a professional engineer and was forced to work lower paying jobs. Born in Czechoslovakia, Mr. Mihaly obtained a M. Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy in Bratislava in 1975 and a Certificate in Corrosion Engineering in Prague in 1981 [2]. He immigrated to Canada in May 1999 and applied for APEGA registration as a Professional Engineer. Mihaly was told he was required to pass a number of tests, the ones of which he wrote he failed. After multiple failed attempts on the exams Mr. Mihaly filed his complaint with the Alberta Human Rights Commission on August 5, 2008.

* General Public

The general public is a stakeholder in this case due to the nature of the work performed by regulated professions. Professionals are held to higher standards often because the work they perform can have immediate effects on public safety and interests. For example, structural engineers who are responsible for designing city infrastructure must be qualified for their job or else their designs may fail, resulting in injury or death to the public that uses it. It is in the general public’s best interests that professional jobs maintain the highest standard of qualification.

* All registered professionals (Engineers, Geoscientists, Doctors, etc.)

All registered professionals are also stakeholders in this case as they are individuals who have already gone through the certification process and are classified as professionals. These individuals have undoubtedly gone through years of schooling and training in order to achieve this status, it is a symbol that represents their ability to perform their jobs while maintaining high standards of ethics and accountability. To remove APEGA’s ability to challenge outsiders who wish to attain the status of “Professional” would essentially discredit the work that these individuals have put into their careers.

* The family of Mr. Mihaly

The family of Mr. Mihaly is also a stakeholder in this case, as dependents on Mr. Mihaly his salary directly affects them and their standard of living. He claimed that his lack of a certification as a “professional” engineer forced him to work lower paying jobs. This lack of income affected his family and was why he asked for financial reparations in his complaint.

**Background**

APEGA was created in 1920 and is the regulatory body for engineers and geoscientists in Alberta. It’s tasked with ensuring that every engineer and geoscientist who receives the title “Professional” is fit for the title both in capability and standards of ethics. Although APEGA has easy viewing of Canadian institutions, and can ensure that the courses in these institutions are sufficient for the professional careers, it becomes more complex when dealing with individuals who have studied at a school outside of Canada. For this reason, Canada has entered into Mutual Recognition Agreements (MRA) with many different countries; this establishes a standard that is expected to be met by the educational institutions in each country and ensures that certifications are equivalent. For example, a structural engineering degree in Canada would be equivalent in the USA and the degree is recognized in both countries as equal. The process of attaining a Mutual Recognition Agreement includes sending officials from the Canadian Engineering Accreditation Board (CEAB) to certify that the courses taken ensure equivalent degrees from both locations. This greatly simplifies the process of registering Professional Engineers in Alberta who studied outside of the province. In the event that an individual studied in a country that does not have a MRA with Canada then it is expected for them to write three confirmatory exams or the FE exam (an American exam that all engineering graduates who wish to attain professional certification must write). This ensures that the graduate is qualified to be labelled as a Professional Engineer. It is possible that the exams may be waved for foreigners who have 10 years of engineering experience.

Mr. Mihaly attained both of his degrees in Czechoslovakia in the years 1975 and 1981, after working in Czechoslovakia for a number of years he immigrated to Canada in 1999. Upon his arrival he applied to APEGA to become registered as a Professional Engineer. Since Slovakia does not have a MRA with Canada, Mr. Mihaly’s degrees were not blindly accepted by APEGA and it was determined he would have to write the National Professional Practice Exam (NPPE), 3 confirmatory exams, and take a course in engineering economics. Although Mr. Mihaly did have previous work experience, the board determine that it was insufficient to wave his exams. Mr. Mihaly failed his first attempt at the NPPE on January 17, 2000, after which he applied to write the exam again on October 16, 2000. Mr. Mihaly did not attend to write his exam on that day, he later cited a vehicle accident as his reason for absence. Mr. Mihaly’s initial application to APEGA expired when he failed to write his exams by his deadline of May 2001. On May 2002 Mr. Mihaly asked APEGA to reactivate his application and applied to write the NPPE on July 12, 2002, upon writing this exam Mr. Mihaly failed again. Mr. Mihaly failed a third attempt at the NPPE on January 20, 2003. Upon Mr. Mihaly’s third reopening of his APEGA application on October 16, 2006, APEGA also requested he present an updated resume due to the scale of time that had passed since his initial application.

On August 5th, 2008, Mr. Mihaly submitted a complaint to the Alberta Human Rights Commission claiming he had been discriminated against by APEGA based on his place of origin, former Czechoslovakia. The Alberta Human Rights Commission Tribunal determined that APEGA’s examination and experience standard did enact discrimination towards Mr. Mihaly based on his place of origin and ruled they pay him $10,000 in damages and guide him through the application process as well as give him English language support. The tribunal did not award missed wages to Mr. Mihaly due to a lack of evidence to support such claims. APEGA appealed the tribunal’s decision to the Court of Queen’s Bench in Alberta.

The Court of Queen’s Bench reviewed the case on January 26, 2016, and determined that APEGA had not acted discriminatorily against Mr. Mihaly. It instead overturned the Alberta Human Rights Commission tribunal’s decision and did not require APEGA to pay any damages or change any standard of testing. Mr. Mihaly then submitted an appeal to the Alberta Court of Appeal which was again rejected on January 12, 2017.

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

The Alberta Human Rights Commission Tribunal ruled in favor of Mr. Mihaly, claiming that he had been discriminated against based on his place of origin. They awarded him $10,000 in damages and ruled that APEGA had to assist him in his application process and give him support in both academic and linguistic areas. APEGA appealed this ruling to the Court of Queen’s Bench in Alberta. Upon review, the Court of Queen’s Bench ruled against the Alberta Human Rights Commission’s verdict, claiming that APEGA had acted legally and that there was no wrong doing.

The Court of Queen’s Bench found that APEGA was justified to challenge persons with foreign degrees who wished to attain professional certification in Alberta. The reasoning for these challenges is based on the nature of professional careers; if the people working in these careers are not capable of performing to the acceptable standard, they could potentially be putting the general public in danger. Therefore APEGA must ensure that those who are labelled as *Professional* Engineers and Geoscientists are qualified. This becomes complex when assessing individuals who hold foreign degrees from educational institutions that have not been fully evaluated by the CEAB. The most effective and efficient way to assess individuals with foreign degrees is through standardized testing which challenges the knowledge of these individuals.

The Court of Queen’s Bench also ruled against the Alberta Human Rights Commission’s decision that Mr. Mihaly had been discriminated against based on his place of origin. The reasoning behind this was that Mr. Mihaly was not asked to write exams due to his *place of origin* but rather the *place of his education*. The court determined that APEGA was fully justified to challenge Mr. Mihaly with examinations based his place of education in order to ensure that his schooling was sufficient and met Canadian standards. He had an opportunity equal to any other individual to write the necessary exams and thus attain his professional certification; however upon attempt Mr. Mihaly failed his initial exams multiple times.

The court ruled that it was not necessary to award Mr. Mihaly any sort of financial compensation or damages based on his experience dealing with APEGA. The request for compensation for lost wages (based on Mr. Mihaly’s inability to attain an engineering job due to his lack of professional status) was dismissed, and the Alberta Human Rights Commission’s ruling for $10,000 in damages and for support given to Mr. Mihaly was also overturned. The court found that to give any applicant with a foreign degree the support of one-on-one peer mentoring and support in learning the English language would be inefficient and would put a drain on APEGA and its capabilities. Therefore it was determined that APEGA had acted legally throughout the application process and was not required to give Mr. Mihaly any sort of standard support.

**Reflection and Opinion**

As a current Mechanical Engineering student at the University of Calgary (U of C), I am in a position to reflect on the events that have transpired and to offer the opinion of someone currently undergoing an academic program similar to the one in question. I can first mention how strenuous the engineering program has been, and how it has been very mentally demanding. Engineering students are required to complete 44 courses to graduate, only two of which are chosen by the student as ‘options’ (courses that expose students to areas other than their major, in this case examples could be Greek and Roman Studies or Geography). As a blanket statement this shows how Engineering degrees are extremely concentrated degrees that are oriented towards career requirements. There is a very high standard for academic capabilities focused mainly in the areas of mathematics and science. In my opinion it would be negligent to blatantly assume that all engineering or technical degrees are equivalent across the world. Different countries have different academic standards and it is important that we ensure individuals requesting professional status have adequate education and capabilities, at the very least out of respect for individuals who have undergone that process here.

When focusing on the Alberta Human Rights Commission and their Tribunal’s decision on the case, I completely disagree. I agree with the Court of Queen’s Bench that there was no discrimination based on place of origin, but rather on the place of education. Obviously there is a high probability that where someone is from will determine where they choose to pursue their education; however the choice to challenge foreign degree holders is not based on geographic location, race or ethnicity, or popular religion in the state but rather on the academic standard of the educational institution. The fact that the universities that Mr. Mihaly attended had not been evaluated by the CEAB gives APEGA sound reasoning to question the standard of Mr. Mihaly’s education, as there is no determining evidence that it can be considered equivalent.

When considering why testing must be done in general, I believe the safety of the public is the driving factor. When individuals are designing equipment and infrastructure it is vital that they have adequate knowledge and understanding of the item they are designing; a lack of this could quickly lead to injury or dead of its users. I agree that it is in the public interest to ensure that all engineers and other professionals are capable and qualified. The Canadian provincial governments have established associations, such as APEGA, that ensure these individuals are qualified. To remove APEGA’s ability to challenge foreign degree holders would put the general public in immediate danger and is something that should be absolutely avoided.

In my opinion it is beneficial for Canada to accept foreigners into our country as a means of driving both population and economic growth. A key component of this is determining what jobs foreign degree holders are qualified for and helping to expose them to that field within Canada. APEGA is essential in determining if foreign degree holders are eligible to become professional engineers and geoscientists and thus supports the Canadian economy by regulating these newcomers. I believe that APEGA should objectively evaluate these individuals in order to best bulk the workforce with adequate professionals, however I do not believe there should be any sort of special treatment to foreigners. They are educated individuals who are wishing to pursue a professional career in Alberta; if they are afraid to be challenged in the skills and knowledge they claim to have, this can be assumed to be a sign of either arrogant pride or insufficient capability. Canada is a country of equal opportunity, not of handouts, and anyone wishing to pursue a professional career must prove they are capable.

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