



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

Winter 2018
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Mihaly Case Study Report

February 16, 2018

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Introduction

The Mihaly Case Study Report explores the judgment from the Court of Queen's Bench of Alberta involving APEGA, the Alberta Human Rights Commission, and Ladislav Mihaly. Mihaly applied to APEGA to be registered as a Professional Engineer, but was denied his application after he failed to meet the requirements. He made multiple complaints to APEGA regarding their refusal to recognize his foreign academic qualifications, which he followed up by a filing to the Alberta Human Rights Commission alleging APEGA of denying his application based on his country of origin.

A further analysis of the reasoning behind APEGA's decision and Mihaly's appeal provides a better understanding of APEGA's Professional Engineer designation process and the need for those strict requirements. Since engineering is a self-regulated profession, APEGA operates in a legal and quasi-legal environment with its internal laws and regulations. As an engineering regulator, it has a fundamental responsibility to protect the safety of the public first and foremost, which is done by enforcing strict standards. This case study will highlight the potential dangers that arise when public safety becomes an afterthought to other values, thus emphasizing the importance of ensuring that professional regulatory organizations consistently uphold fair and proper standards.

Stakeholders

Ladislav Mihaly

Ladislav Mihaly was born and raised in the former Czechoslovakia, where he attended university and obtained two Masters of Science Diplomas in Engineering. After immigrating to Canada, his attempts to be registered as a Professional Engineer in Alberta were unsuccessful. His claim against APEGA for discrimination is the main focus of this case study, as a superior court overruled his initial victory in an appeal. As a professionally educated immigrant seeking a new life in a new country, Mihaly's case outlines a common challenge faced by many immigrants attempting to settle into the life in Canada.

APEGA

Association of Professional Engineers and Geologists of Alberta (APEGA) is a self-regulated organization governing the practices of engineers and geoscientists in Alberta (APEGA, n.d.). Under the Engineering and Geoscience Professions Act as set out by the Government of Alberta, it is responsible for licensing qualified candidates who want to practice as engineers or geoscientists in Alberta. Decisions made in the engineering and geoscience professions, if not reviewed carefully and thoroughly, are inherently dangerous due to the gravity of risks associated with each engineering decision. As such, APEGA enforces a strict system to ensure that only qualified individuals are given the Professional Engineer distinction to be able to make engineering decisions that affect many aspects of society, and that each decision is peer reviewed by other Professional Engineers.

Alberta Human Rights Commission

The Alberta Human Rights Commission was established by the Alberta Human Rights Act under the Government of Alberta. As a lower level of government at the provincial level, it has the authority to conduct civil proceedings and court hearings in matters related to the Alberta Human Rights Act. Its main goal is to “foster equality and reduce discrimination” (Alberta Human Rights Commission, 2012) in the workplace and the community. Especially for those who may not necessarily have the political or monetary power to protect their own basic rights as Albertans, the Alberta Human Rights Commission aims to provide a medium where individuals or organizations can fight for fair and equal access to their human rights.

CQB

The Court of Queen’s Bench of Alberta (CQB) is the superior court of criminal and civil jurisdiction in Alberta. As the higher court, it also performs judicial reviews of government decisions and acts as an appeal court to the decisions made by the Provincial Court or provincial tribunals (Alberta Courts, n.d.). The primary role of CQB in an appeal case is to provide additional objective and unbiased judgment to a lower court’s decision, if the applicant or the respondent are dissatisfied with the initial outcome. This secondary and more thorough review of a decision that has already been made at a lower level provides another filter layer to ensure that court decisions are made justly and fairly to the rule of law.

Current and future engineers

Current and prospective Professional Engineers, including engineering students not yet in the professional workforce, hold pride in knowing that the Professional Engineer designation from APEGA is a certificate of an individual being recognized as a qualified engineer in Canada. As members of APEGA, they have a right to hold APEGA accountable to enforce its own strict standards and regulations, especially when it comes to recognizing which individuals qualify for the Professional Engineer designation. They understand that a proper education in a recognized engineering undergraduate program along with years of engineering work experience is a mandatory prerequisite to be a practising engineer in Canada. As such, they abide by these standards because they understand the risks to public safety when unqualified individuals are given the ability to make major engineering decisions.

Other professional regulatory organizations

Various professional occupations, like doctors, lawyers, and accountants, are also self-regulated by their own organizations. Like APEGA, these regulators have a duty to keep the interests of the public as their primary focus, which is done by enforcing strict guidelines that define who can practice as a licensed professional. However, these guidelines could also prohibit potential capable candidates from becoming licensed, which is a common issue for foreign trained professionals that do not have Canadian equivalent qualifications. Professional regulatory organizations in a multicultural country like Canada face a difficult challenge in walking the fine line between avoiding discrimination and maintaining the standard of their licenses.

Public

As the citizens of a country with well-developed infrastructure and standards like Canada, Canadians have a right to expect a certain standard of duty and diligence carried out by people who hold professional occupations. Whether it is going to a doctor for a major surgery or an engineer for a house design, they must have the confidence in knowing that any professional they choose is qualified and can offer a standardized and government-regulated level of professional work. In engineering, the Professional Engineer designation is the guarantee that an individual can perform engineering work to Canadian standards and that their work is in the best interests of the public.

Background

Ladislav Mihaly graduated with two Masters degrees in Engineering from Czechoslovakia. After immigrating to Canada, Mihaly applied to register as a Professional Engineer with APEGA in May 1999. APEGA's Board of Examiners conducted a detailed review of the transcripts, references and experience provided by Mihaly for his application. It was determined by the Board that his qualifications did not comply with the registration requirements and he was required further examinations in addition to passing the National Professional Practice Exam (NPPE). Mihaly was advised to complete three confirmatory examinations and a course in Engineering Economics to correct any perceived academic deficiencies. Mihaly failed his first attempt at the NPPE in February 2000, and did not attend his second attempt in October 2000. APEGA withdrew Mihaly's application as he failed to complete the assigned examinations within the allotted time frame. In 2002, Mihaly requested APEGA to reactivate his application, a request which he withdrew in 2003. In 2006, Mihaly requested for his application to be reactivated again, at which point APEGA advised him to complete the previously assigned examinations and to acquire one year of North American engineering experience. The required examinations were not attempted. In 2008, Mihaly filed a complaint to the Alberta Human Rights Commission alleging APEGA for discrimination against his place of origin.

All internationally educated graduates (IEG) applying to become a Professional Engineer with APEGA are assessed using the Examination and Experience Standard, unless their country is recognized under the Mutual Recognition Agreement (MRA). Graduates of foreign institutions are reviewed during application to verify whether the university is on the foreign degree (FD) list. Upon finding out about the existence of the FD list at APEGA, Mihaly believed that there was a possibility of discrimination based on country of origin. The FD list evaluates foreign academic credentials without the need for accreditation visits. The list is built through an "open source" review of institutions with engineering programs, which provides confidence in the quality of education provided to its students. In a counter argument, APEGA stated that "place of origin" should not be defined as the place of educational completion.

APEGA's Experience Standard requires each applicant to obtain a minimum of four years of experience as an engineer. One year is required to be Canadian experience so foreign engineers can familiarize themselves with Canadian codes and practices. Mihaly brought forward the challenges foreign applicants face when attempting to obtain the Canadian experience without the registration with APEGA as a Professional Engineer.

The *Meiorin* case demonstrated that a "one size fits all" test is unfair without taking into consideration of an individual's background, training or experience (Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014). All engineering graduates are tested on the same Accreditation Standard, though some already have the ability to complete tasks expected of engineers. As such, APEGA was ordered to explore less discriminatory methods to examine IEGs and evaluate their ability to practice engineering in a safe manner.

The Human Rights Tribunal concluded that APEGA's Examination and Experience Standard constituted discrimination. APEGA was ordered to reconsider Mihaly's application through direct consultation with his educational institutes to identify areas of exemption. A committee established by APEGA was to perform individualized assessments of Mihaly's educational qualifications, correcting any academic credentials which were perceived to be insufficient. Mihaly was to be provided with a mentor of similar backgrounds to provide the necessary guidance to the engineering profession and awarded \$10,000 in damages (Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014; CBC News, 2016). Foreign engineers were to be guaranteed a fair assessment of their knowledge and experience without any concerns of discrimination.

APEGA appealed to the Court of Queen's Bench against the decision of the Alberta Human Rights Tribunal. This was cross-appealed by Mihaly, who was dissatisfied with the Tribunal's decision. Mihaly seek to increase the damage to millions of dollars as compensation for his loss of income incurred by APEGA. The reasoning for the Tribunal's decision was deemed by the Court as "rife with logical errors" (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016). The Court of Queen's Bench reversed the decision of the Human Rights Tribunal's unreasonable interpretations and unsupported assumptions, and dismissed Mihaly's cross-appeal as the *prima facie* discrimination could not be justified.

Shortly after the Court of Queen's Bench decision, Mihaly filed a Civil Notice of Appeal at the Alberta Court of Appeal for the decision to be reconsidered. However, Mihaly failed to file the required Appeal Record so the appeal was struck. In December 2016, Mihaly filed an application to restore the appeal. When considering the factors for restoration, Mihaly's actions clearly demonstrated a lack of interest in perfecting the appeal. The Alberta Court of Appeal determined the application to be dismissed as Mihaly was unable to meet the criteria for restoration (Mihaly v. Association of Professional Engineers and Geoscientists of Alberta, 2017). Outstanding for over eight years, the Court of Appeal ruled that APEGA should be entitled for the case to finally come to an end.

The Court of Queen's Bench Decision

The decision from Alberta Human Rights Commission to rule in favor of Ladislav Mihaly was appealed by APEGA, and cross appealed by Mihaly. The ruling from the Tribunal in 2014 found that APEGA's system of evaluating Mihaly's credentials constituted systemic discrimination, and thus his application was to be reconsidered. In addition, APEGA was to establish a committee to reassess Mihaly's academic credentials, provide a mentor to Mihaly, and to award damages of \$10,000 (Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014). In 2016, APEGA's appeal and Mihaly's cross appeal of the assessed amount of damage of the Tribunal's decision was brought to the Court of Queen's Bench.

The CQB was responsible to address the issues raised by APEGA, the appellant. APEGA believed with the Tribunal's interpretation of the Engineering and Geoscience Professions General Regulation (EPGR) was incorrect. The duty of fairness was breached as the Tribunal's decision was based without taking into consideration that APEGA provided an opportunity to address. APEGA argued the Alberta Human Rights Act does not protect against discrimination based upon the "place of origin of academic qualifications" (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016) hence the Tribunal should not have authority over Mihaly's complaint. In *Grover v Alberta*, Dr. Grover proposed that "place of origin" does not equate to "place of birth" but should be viewed as "where you came from." and "place of origin" should not be considered as place of education. In the consideration of *prima facie* discrimination, Mr. Mihaly claimed to be adversely impacted by APEGA's requirements. Mihaly's claims cannot be established as the confirmatory examinations or the FE Exam was never attempted.

The CQB examined the Tribunal's reasoning process towards his decision, which consisted of flaws and logical errors. The Tribunal failed to account for relevant considerations and findings provided by Mihaly were not supported by any concrete evidence. From unreasonable interpretations of the EGPR to unsupported assumptions, the Tribunal's decision for individualized assessments was unrealistic and goes beyond the scope from a regulatory role. A regulator should not have to alter their standards to provide accommodation. The Tribunal did not reason for the impact this costly and inefficient testing method would have on APEGA. It was clear that his conclusion was unreasonable.

The decision made by the Court of Queen's Bench Justice June Ross overturned the Tribunal's ruling. The cross-appeal by Mihaly was dismissed as *prima facie* discrimination could not be justified under the Alberta Human Rights Act.

Reflection and Opinion

The Mihaly case was a high profile regulatory case that drew the attention of many in Canada while it dragged on for nearly a decade. The case was a result of the clash of two extremely important values: public protection and individual equality. Ladislav Mihaly felt that the rejection of his application to be registered as a Professional Engineer rooted from discrimination based on where he was educated, while APEGA had no choice but to reject Mihaly's application where they could not verify that his foreign academic credentials were up to par with Canadian standards. What makes this case more important is that Canada is a multicultural country whose economy is heavily influenced by many immigrants bringing their professional skills and experiences from their motherland. Canada's strong commitment to multiculturalism, along with its excellence of enforcing strict regulatory standards in professional occupations, was seemingly brought into a collision course by Mihaly's case.

At a first glance, it is easy to understand Mihaly's position. He obtained two Masters degrees in Engineering, but because he did not do so in Canada, his academic credentials were not seen as even equivalent to an undergraduate engineering degree at an accredited Canadian university. He would have wanted to move to Canada to pursue an opportunity to live a new life while earning money at a high paying job as an engineer. He must have felt that he was qualified, if not very overqualified, to exceed APEGA's requirements. It must have come as a shock to him when APEGA refused to recognize his degrees, and he must have felt that he was cheated because of where he earned his degree. It makes sense that he would have wanted the Alberta Human Rights Commission to foster equality and take his side in a claim against APEGA's decision.

However, there are many factors to consider in this case. Firstly, without APEGA having to individually evaluate every engineering program in every single university in the world, it is extremely difficult to build a comprehensive list of schools with Canadian equivalent engineering programs. Many countries in the world, especially in the ones that are not as developed as Canada, have varying levels of standards to which their universities are held accountable. It would be an excessive and unnecessary effort to try to build a comprehensive FD list. From a practical point of view, APEGA's current FD list is not complete but it is sufficient to ensure that as many people are recognized of their degrees, without further documentation. For those who graduated from schools that are not listed on the FD list, it seems only fair that APEGA conduct confirmatory examinations to validate that their degrees are indeed up to Canadian standards. Secondly, Mihaly was given numerous opportunities to take his confirmatory examinations and prove his engineering capability to APEGA. Yet, he failed to do so when he did not pass his exams and did not show up for the others. From APEGA's point of view, they could not verify Mihaly's academic credentials, so the examinations were the only way for them to verify Mihaly's capabilities. His poor performance and attendance to those exams does not help his case to APEGA's BOE. Thirdly, APEGA has a duty to protect the public. Their existence is to regulate the engineering practices so that they are safe and in the best interests of the public. Mihaly's inability to meet

APEGA's Professional Engineer designation requirements goes directly against their fundamental goal of keeping the public safe by only licensing those who are qualified. The Tribunal's decision that focused on the non-discrimination policy is flawed, as it disregards the purpose of APEGA. Non-discrimination policy should be used to filter out racial discrimination against qualified candidates, which unfortunately, Mihaly was not. The non-discrimination policy cannot supersede the priority of keeping the public safe.

For these reasons, we believe that the Court of Queen's Bench made the right decision in endorsing APEGA's Professional Engineer registration requirements. As outlined by the Court of Queen's Bench ruling, accepting Alberta Human Rights Commission's decision would have set a dangerous precedent that not only affects engineers in Canada, but also doctors, lawyers, and dentists, among many others. It would have created a domino effect that would have eroded the authority of all professional regulatory organizations in Canada. It was also prudent of the Court of Appeal to allow APEGA to close this case, as it provided a permanent closure to a potentially dangerous case if its rulings were to be challenged once again.

This is not to say that foreign-trained engineers and geoscientists, among other professions such as doctors and lawyers, should not be accepted to work in Canada in their trained professions. The important distinction to make in the Mihaly case is that despite numerous opportunities, Ladislav Mihaly never properly demonstrated his engineering competence. There were no reasonable grounds to assume that he was able to perform engineering work to a Canadian undergraduate engineering program level. If there was a foreign-trained engineer of Mihaly's academic credentials who was able to meet APEGA's stringent requirements, APEGA would have gladly given them the Professional Engineer designation since the acceptance of their application would not have jeopardized public safety. One comment made in the Tribunal's ruling was that APEGA should be exploring less discriminatory methods to validate a candidate's engineering capabilities, which stands as a reasonable request in an otherwise unreasonable decision. In a special case where APEGA's BOE determines that a candidate would be qualified to meet their Professional Engineer designation requirements but certain circumstances prohibit them from doing so, then it would be fair and non-discriminatory for APEGA to accommodate for that individual, either by providing more guidance or time, or even waiving the need for an NPPE to be written.

In conclusion, the entire purpose of APEGA is to protect the public from unsafe engineering practices. If a capable candidate can prove their engineering competence to APEGA, then there are no risks to public by that individual being licensed to practice as a Professional Engineer. Unfortunately for Mihaly, whether his academic credentials were valid or not, he was unable to prove his engineering capabilities.

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