



ENGG 513 – Winter 2018

MIHALY VS. APEGA CASE STUDY

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Introduction

For over 150 years new immigrants have sought out and embarked on a new chapter in their lives by making Canada their new home. Simply stated, Canada's unique multicultural mosaic has led to one of the most diverse, tolerant and unified countries in the world. Sharing the spotlight with our neighbors to the south, Canada has built a strong reputation as a land of opportunity and equality. According to Statistics Canada on average, an astonishing 235,000 immigrants choose to abandon proverbial safety for a strange and foreign land. [1] Prospective migrants often sacrificing many resources to strict prescreening processes in hope of being chosen from the countless numbers who wish for change. New immigrants often come with very little to their name but passion and determination to make their wildest dream come into fruition.

The sad reality is the "Canadian dream" does not always meet the expectations of new migrants, especially when it comes to finding gainful employment. Many trained, experienced and respected professionals with foreign degree's or doctorates find themselves placed into competitive job markets without the proper tools to succeed. Language barriers, unusual cultural norms and the most notorious, unaccredited credentials are just a few barriers new immigrants face. However, it should be noted employment is not a new issue facing these mavericks. In fact, this a prime example of an area where Canada does live up to its reputation. With many free or discounted public and private job placement and retraining resources the transition process is made much easier.

Despite much progress in positive directions and many trained professionals are stuck jobs which they are vastly overqualified. Even more prevalent is the disdain harbored by many immigrants who are frustrated to find out time and resources required to have their credentials recognized. This highly debated dilemma has plagued professional regulators for years as the topic is much more complex than many outside observers perceive. This paper will delve into a case study which explores the dynamics and complexities of this process.

Outlined in the case study is the journey of Mr. Ladislav Mihaly to gain Canadian accreditation for his foreign Engineering credentials. APEGA (Association of Professional Engineers & Geoscientists of Alberta) with the help of the CEAB (Canadian Engineering Accreditation board) share the immense responsibility of upholding industry leading accreditation standards which ensure each professional Engineer meets or exceeds expectations. Mr. Mihaly believes APEGA is responsible for discrimination due to the location his credentials were attained. The paper will attempt to investigate without bias, reflect and finally give a professional opinion.

Stakeholders

Alberta Association of Professional Engineers & Geoscientists of Alberta (APEGA)

APEGA was founded in 1920 as a professional regulating body charged with the governing of all practicing professional Engineers and Geoscientist on behalf of the Alberta Government. [2] The Engineering and Geoscience Professions Act is the legislation which defines the jurisdiction, scope of practice and authority of this governing body. [3]

The Court of the Queen's Bench

The Court of the Queen's Bench is the highest court authority within the province of Alberta. [4] The court presides over appeals from provincial court while also overseeing matters of civil and criminal nature. [4] The Chief Justice and other Justice's supervise the court while also in charge of administration of estate affairs. [4]

Mr. Ladislav Mihaly

A native of former Czechoslovakia, in 1975 Mr. Mihaly earned his Master of Science post-graduate diploma in Technology of Fuels and Thermal Energy from the Slovak Technical University in Bratislava, Slovakia. (UBS) [5] He later on went on to complete a certificate in Corrosion Engineering in 1981 from the Institute of Chemical Technology in Prague, Czech Republic.

Humans Rights Tribunal of Alberta

Governed by the Alberta Human Rights Act which protects Albertans from discrimination. [6] The Human rights Tribunal of Alberta is charged presiding over case hearings and governing the dealings under the act. [6] The organization's bi-mandate serves to; "foster equality and reduce discrimination." These mandates are realized through conflict resolution, public education via community programs and tribunal hearings. [6]

Canadian Engineering Accreditation Board (CEAB)

CEAB is the national regulation body which sets academic requirements for licensing of professional Engineers in Canada. [7] The committee also accredits undergraduate engineering programs throughout Canada. [7] The CEAB accreditation process involves curriculum review, inspection of facilities and faculty in order to ensure high standards. [5]

Accreditation Board for Engineering & Technology (ABET)

ABET is the national accreditation for the United States of America. Similar to CEAB the organization accredits undergraduate programs in natural science, computing, engineering and engineering technology. [8] ABET and CEAB have a MRA (Mutual Recognition Agreement) to due to mutual recognition of each other's high standards and authenticity. [5]

Canadian Engineering Qualification Board (CEQB)

The CEQB is responsible for developing regulatory policy and procedure on the national level. Duties include regulation of entrance to the profession, moral code and code of conduct. [9] CEQB also focuses on development of Engineers already with the practice through mentorship programs, Engineering-in-Training positions and professional development. [9] Similar to CEAB the CEQB board works with provincial regulatory bodies (such as APEGA) to maintain consistency amounts across Canada, identify new Engineering fields and support all Engineers in the workplace. [9]

Background

In May 1999, Mr. Mihaly wrote a letter to APEGA stating his intention to register as a professional engineer. Within the letter the applicant included his educational background and professional references from projects in Bratislava in order to support his request. [10] As per standard policy APGA responded with a letter of acknowledgement, visa/landed immigrant form, requested his transcripts from educational institution and requested that he write the NPPE. (National Professional Practice Exam) [10] In January 28, 2000 the APEGA's board of examiners reviewed Mr. Mihaly's references, education and work experience. The board

determined that Mr. Mihaly education resembled what Canadian's regard as chemical engineering degree. His experience was also assessed then deemed scope of work was too narrow and also exposure to referenced supervisors was too short. As a result, the board also implored that Mr. Mihaly write three additional exams/courses by 2001 to ensure he met the necessary academic requirements. [10] Within the stated time period Mr. Mihaly attempted and failed the NPPE then failed to appear for his second attempt. On June 29, 2001 APEGA advised Mr. Mihaly that his application had been withdrawn due to his inability to complete the exams within the prescribed time period.

On May 31st, 2002, Mr. Mihaly again wrote to APEGA requesting his application be reopened. He detailed his accident and health issues as the main reason why he failed to complete the exams. [10] As requested on June 3rd, 2002, APEGA reactivated Mr. Mihaly's application with new exam completion dates. The applicant was given until May 2003 to complete three exams along with an engineering economics course or exam. [10] At this point the first point of contention was identified. In a letter wrote on June 20th, 2002, Mr. Mihaly claimed he was not told his education would not be considered as equivalent to a Canadian bachelor's degree until the second time his file was reactive. In response, APEGA replied over a number of correspondence informing Mr. Mihaly that their record indicated that he was told back in February 2000 that his degree did not meet academic requirements. He was also to be aware because his school had not entered into any mutual recognition agreements the academic requirements would have been required. Moreover, if it were not for his school being recognized under the foreign degree list the process may have included more testing may had been required.

After speaking verbally with Mr. Tokarik of APGA and asking for exams to be waived based off a 10 years international work experience clause stipulated by APEGA, Mr. Mihaly was advised to appeal the decision. Unfortunately, no appeal was submitted and on July 15th, 2002, the applicant failed the NPPE again. Once again as of August 1st, 2003, APEGA closed Mr. Mihaly's file based on his inability to complete the exams according to the standard time line. On August 10th, 2007 Mr. Mihaly complained to APGA's director of Professional practice but was referred back to Mr. Tokarik as he was the Director of Registration. [10]

On October 3rd, 2006, Mr. Mihaly sent a request for his application to be reopened. APEGA obliged the applicant on condition he resubmit an updated resume and references due to the time that had passed. After submission of the requested information including contacts from a Gas company based in Calgary. After review of his credentials for a third time the board advised Mr. Mihaly that he was to again complete the three academic exams in addition to the engineering economics course as requested before. The stipulation which allowed these exams to be waived if the applicant had over one year North American experience was not met due to the fact that it was not a "D level" North American Experience. After receiving the decision, on August 5th, 2005 Mr. Mihaly Filed a complaint with the Alberta Human Rights Tribunal. [10]

The Court of the Queen's Bench Decision

Mr. Mihaly's Claim

Mr. Mihaly's main claim accused APEGA of discrimination against him based off place of his place of origin. Launching a complaint under sections 4,7 & 9 of the Alberta Human rights act. Section 7 lays the foundation for the claim as it states:

*“No person shall (b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public, because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, **place of origin**, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons.” [10]*

Section 8 builds upon section 7 stating:

*“No trade union, employers’ organization or occupational association shall (a) exclude any person from membership in it, (b) expel or suspend any member of it, or (c) discriminate against any person or member, because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, **place of origin**, marital status, source of income, family status or sexual orientation of that person or member.” [10]*

Furthermore section 4 of the act specifies:

“Section 44(1)(j) defines “occupational association” as meaning: “occupational association” means an organization other than a trade union or employers’ organization in which membership is a prerequisite to carrying on any trade, occupation or profession;” [10]

Mr. Mihaly also presented his work experience as evidence to the tribunal. Within Czechoslovakia he had worked for over 25 years as a professional engineer. Working for many companies and at senior levels his projects included various construction projects including an international airport in Iraq. [10] Mr. Mihaly also testified on the impact the stress has had on his personal life. He includes testimony on the effects on his family since he was not able to work in his designated field for over 10 years. [10] Mr. Mihaly requested a compensation from APEGA in the for of \$1,000,000.00 and registration with APEGA or \$2,000,000.00 and no registration with APEGA. [5]

APEGA’s Defense

APEGA is governed by Engineering and Geoscience Professions act (EPGA) which dictates the structure of the organization. The EPGA Section 30(8) clearly gives the board of examiners of right to refuse membership based on plausible merit. As mandated by section 2 of the EPGA the

Engineering profession in Alberta is regulated to professionals registered with APEGA. [10] Most importantly section 30(9) states:

*“The Board of Examiners may, in its discretion, require an applicant for registration: (a) **to pass one or more examinations set by the Board**, (b) to obtain more experience of a kind satisfactory to the Board for a period set by the Board, or (c) to pass one or more examinations and obtain more experience before it approves the registration.” [10]*

APEGA also argues that the Human Right Tribunal does not have jurisdiction as the act does not protect the Mr. Mihaly on discrimination due to *“place of origin of academic qualifications.”* [10]

One of the first witnesses to defend APEGA’s actions in front of the human rights tribunal was Dr. David Lynch, a Dean in the University of Alberta faculty of Engineering. Dr. Lynch outlined the extremely difficult job APEGA examiners have hold assessing credentials. To begin with, the term Engineer is defined differently internationally. As many international applicants apply every year to have their credentials access there is a large variation in academic ability. Besides schools which have entered into MRA’s where their standards and integrity have been verified, it is hard to gauge standards besides academic exams. [10] Dr. Lynch also highlighted similar organizations such as the ABET in the United States follow similar policy and procedures to ensure the integrity of the profession. [10]

The second witness defending APEGA was Dr. Gary Faulkner a faculty member the University of Alberta’s Mechanical Engineering department. Dr. Faulkner iterated the responsibility APGA holds to keep the public safe. As engineers play such an integral role in public safety it is not safe for the organization to allow any doubt in academic aptitude. [10] As Dr. Faulkner was one of the board members who assessed Mr. Mihaly’s credentials he was even more concerned with his inability to pass the NPPE.

The final witness who appeared before the tribunal on behalf of APEGA was Mr. Tokarik who was first an Assistant Director of Registration then later became Director of registration for APEGA. Mr. Tokarik testified that the association receives about 1500 applications every year. Of the 1500, based on credentials and experience 60% do not have to write any other academic tests besides the NPPE. 25% of applicants will have to write academic exams and need one year Canadian experience from the necessary projects. Another 15% of applicants can be allowed into the profession without any exams needing to be written, however these applicants still need appropriate one year Canadian experience. [10]

[Alberta Human Rights Tribunals Ruling](#)

As for APEGA's claim of lack of jurisdiction was not acknowledged therefore the tribunal did hear Mr. Mihaly's case. The Human Rights Tribunal did side with Mr. Mihaly's claims under section 7 of the Alberta Human Rights act. Finding he was indeed being discriminated against due to "place of origin" therefore treated different because of the place of origin of his education credentials. [5] The tribunal found that APEGA requirements did "perpetuate discrimination" amongst immigrants from eastern Europe, Africa and Asia. [5] Finding that these migrants were at a disadvantage due to language, culture and racial prejudice within the workplace. The tribunal felt that APEGA was responsible for prima facie discrimination. Therefore forcing Mr. Mihaly to complete the academic exams without any accommodations to help mitigate said disadvantages constituted discrimination. [5] The tribunal found that Mr. Mihaly's claim for lost wages was not possible to calculate due to the many variables involved. However, they did find him entitled to \$10,000 in general damages. In the eyes of the Tribunal, Mr. Mihaly had already succeeded in

meeting examination standard as well as the experience standard. There Tribunal also deemed “individual assessment options,” optional exemptions and professional mentoring.

The Court of the Queen’s Bench Decision

On November 20th, 2014 APEGA filed an appeal questioning procedural fairness, jurisdiction, validity of prima facie discrimination and justification. [5] As for the procedure in any appeal the Tribunal was to submit the case to the Court of the Queen’s Bench in order to settle the matter. They had the right to confirm/reverse any decision or remit the matter back to the Tribunal with instructions on how to move forward. After reviewing the case the Court of the Queen’s Bench chose to reverse the ruling of the Tribunal. Citing improper use of the Morse Test to justify Prima Facie discrimination, improper use and interpretation based on incorrect circumstances to which it was applied. The court of the Queen’s bench was also found that the Tribunal was also assuming that all international graduates are held to the same standard and assessments. Therefore, though it does agree it does constitute as discrimination it is necessary in order to ensure engineers are academically competent to carry out their roles.

Reflection & Opinion

As a son of an immigrant who had foreign credentials and struggled to have them recognized after he immigrated to Canada, I do understand the frustration of Mr. Mihaly. It is hard for a respected professional to come to a new country, face the struggles of assimilation and culture shock only to be told their life long work or education is not enough. After years in the field you become skilled with many other application and tasks but when it comes to the basics you learned in school it is hard to recall everything. What frustrated Mr. Mihaly even

more is the fact that he had completed to have multiple post graduate programs which would equate to less than a bachelor's degree within this new system.

However, I do agree with the decision of APEGA to hold engineers to a uniform standard. Engineering is a high standard industry for a reason. Engineers often work in many safety sensitive roles which may result in loss of life. Not taking qualification of our Engineers serious that is negligence that could easily lead to death. Though it might seem like discrimination the only reason for varying levels of applicant assessment is because programs like the mutual recognition agreement that ensure that schools who attain membership have already and continue to uphold high standards. Throughout the entire process APEGA maintained an unbiased and professional demeanor toward Mr. Mihaly despite him failing standard NPPE exams multiple times. The fact that he did not pass the exam also is an indication maybe the standard or focus of his education was different than what Canadian engineers require to be successful.

Regardless of the outcome of this case it is obvious we have an apparent problem with educated immigrant coming to our countries to contribute to their field and hitting roadblocks. Though I do not believe recognizing their credentials instantly I do believe there is a solution somewhere between both sides. As these bright minds could help advance their fields I believe an assimilation program which focuses on teaching these professionals the necessary knowledge they need to become a good Engineer in Canada then test them. In the end, we as Canadians all benefit when we all are provided with equal opportunities.

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