

“MIHALY CASE STUDY”

COURSE 513: The Roles and
Responsibilities of a Professional Engineer
in Society

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Introduction

Engineers make crucial day to day decisions that directly impact the lives of people. These individuals should be of sound knowledge, qualifications and an attitude of responsibility towards safety. APEGA has a body of experts known as the Board of Examiners to see this through thoroughly. Board of Examiners strictly ensure which individuals to license as a Professional Engineer in Alberta. This report outlines and summarizes a case study performed on Mr. Ladislav Mihaly. Mr. Mihaly immigrated to Canada from Czechoslovakia. He went through multiple applications in an attempt of becoming a licensed Professional Engineer. This report summarizes the process that took place and reflection and opinion on the decisions made by the involved bodies.

Stakeholders

A stakeholder is defined as, “one who is involved or affected by a course of action [5]“. The key stakeholders identified in this case study are as follows.

- **APEGA**

Created in 1920, The Association of Professional Engineers and Geoscientists of Alberta (APEGA) regulates the practices of engineering and geoscience in Alberta on behalf of the Government of Alberta through the Engineering and Geoscience Professions Act. Their main regulatory function is licensing individuals and companies that want to practice engineering and geoscience in Alberta. These applicants are extensively reviewed and considered by the Board of Examiners established under s 30 of the EGPA.

- **The Court of Queen's Bench**

"The Court of Queen's Bench is the Superior Trial Court for the Province, hearing trials in civil and criminal matters and appeals from decisions of the Provincial Court [3]." The court conducts criminal matters, civil proceedings and the judicial review of government and tribunal action in the province of Alberta.

- **The Alberta Human Rights Commission**

The Alberta Human Rights Commission is a body established to regulate and function under the Alberta Human Rights Act. It is responsible for ensuring no Albertan is faced with discrimination based on specified grounds and each Albertan has an equal opportunity of having a source of earning, living and enjoying services available to public. This is done "through the resolution and settlement of complaints of discrimination, and through human rights tribunal and court hearings [1]."

- **Mr. Ladislav Mihaly**

Mr. Mihaly was born and got his education from former Czechoslovakia. He received his MSc. Diploma from the Slovak Technical University Bratislava in 1975 with a specialization in Technology of Fuels and Thermal Energy. He also received a certificate in Corrosion Engineering from the Institute of Chemical Technology [ICT] in Prague in 1981. In May 199 he moved to Canada as an immigrant and applied to be registered as a Professional Engineer to APEGA [2].

- **Dr. David Lynch**

The first witness for APEGA, Dean of Faculty of Engineering at the University of Alberta and holds a statutory position on the Board of Examiners. Dean Lynch was also a member of the Canadian Engineering Accreditation Board (CEAB), which assesses engineering programs within and outside of Canada [2].

- **Dr. Gary Faulkner**

The second witness for APEGA and Chair of the APEGA Board of Examiners. He testified about the review of Mr. Mihaly's application [2].

•**Mr. Mark Tokarik**

The third witness for APEGA and the Deputy Registrar for APEGA. He supplied additional supporting evidence regarding the application and a review on the application of Mr. Mihaly.

Background

Mr. Mihaly applied for the status of a Professional Engineer in May 1999 which was acknowledged by APEGA on May 13 and he was requested of transcripts and told to write the National Professional Practice Exam (NPPE). He was also told that in addition to passing his NPPE, written in 2000 which he failed, he had to complete three confirmatory examinations and a course or its equivalent. Mr. Mihaly was supposed to write his second NPPE on October 16, 2000 but he did not attend it. APEGA informed him in June 2001 that his application was being closed and Mr. Mihaly requested it to reopen in May 2002. He wrote and failed his third NPPE in July 2002 and another one in January 2003. Upon not writing the confirmatory courses, APEGA again withdrew his file in August 2003 [7].

Mr. Mihaly requested another reactivation in October 2006 and was asked by APEGA to submit an updated resume and references, which he did. In August 2007, Board of Examiners reconsidered his application and mentioned the courses he needed to complete and one-year acceptable D level Canadian engineering experience. Mr. Mihaly did not write his exams and filed a complaint with the Alberta Human Rights Commission under the Human Rights Act charging that he was being discriminated against based on his place of origin by APEGA [7].

APEGA had three witness representations. Dr. Lynch explained that in Canada the regulation of the engineering profession falls within provincial jurisdiction and the province controls the right to the title to be called an “Engineer”. He also explained

APEGA's registration process and value of the FE exam. Second, Gary Faulkner, described the role of APEGA's Board of Examiners. He mentioned that at least one of the four years of experience required to be registered as an Engineer should be Canadian. He also explained the process of examination assessment appeals. Third, Mr. Mark Tokarik, explained the six requirements which are: academic qualifications, experience, good character, English language competency, NPPE and either Canadian citizenship or permanent residency in Canada to be eligible to apply. He confirmed the absence of Mr. Mihaly from October 16, 2000's NPPE [7].

After reviewing, the Tribunal stated that Mr. Mihaly successfully met the Examination Standard and the Experience Standard used by APEGA and did not need further assessment. Mr. Mihaly was also awarded \$10,000 in general damages. APEGA was ordered to reconsider his application individually, matching up Mr. Mihaly with a mentor for his engineering profession and directing him to networking and language training resources. Tribunal declined to award Mr. Mihaly lost wages.

As a result, APEGA filed the appeal on November 20, 2014 and Mihaly filed a response statement. The appeal hearing was rescheduled to July 23 and 24, 2015. In the appeal, APEGA requested the decision of the Human Rights Tribunal to be reversed. After detailed consideration Mr. Mihaly's cross appeal was regarded as being dependent on a finding of prima facie discrimination that was not justified under s 11 of the AHRA. Hence, the cross appeal was dismissed by the Court of Queen's Bench in Alberta.

After the decision was of the Court of Queen's Bench, Mr. Mihaly attempted to have the decision reconsidered stating that Court of Queen's Bench refused to accept materials he tried to file in support of that application. The Honourable Mr. Justice Frans Slatter, from Court of Appeal of Alberta, carefully reconsidered and dismissed Mr. Mihaly's application [6].

THE COURT OF QUEEN'S BENCH DECISION

The appellant raised the issues of procedural fairness, jurisdiction, prima facie discrimination and justification. For procedural fairness, it was concluded that AHRT did not breach the rules when no supporting documents were asked for the interpretation of the Engineering and Geoscience Professions General Regulation (EGPR).

Moreover, Justice Ross concluded that the Appellant did not establish that the AHRT lacked jurisdiction to hear the case as it was about discrimination based upon the “place of origin of academic qualifications.” APEGA took on the case of *Grover v Alberta Human Rights Commission*, 1999 ABCA 240 (CanLII) as a supportive example. Justice Ross felt that a better representation was as set out in *Moore v British Columbia (Education)*, 2012 SCC 61 (CanLII). Justice Ross concluded that the presence of arbitrariness and stereotyping do not strongly support of prima facie discrimination. She also stated that the AHRT’s decision does not go in line with section 8 with no request for supporting submission from the party or familiarity with AHRT. According to Justice Ross, with thousands of diverse types of engineering programs it is out of capacity and resources of APEGA to accommodate variations for all of them and so exams are assigned to assess the quality of engineering programs that are undertaken by applicants [4].

Justice Ross also added that the AHRT overlooked crucial factors in the assessment of undue hardship (at para 149). Hence, the AHRT’s argument that APEGA failed to accommodate Mihaly unfairly are unjustified. APEGA had met its onus to establish that any prima facie discrimination was reasonable and justifiable (at para 150) [4].

Justice Ross reversed the decision of the AHRT and did not remit the matter back to the tribunal [4].

Reflection and Opinion

It is evident that Mr. Mihaly immigrated to Canada with his family for a bright and successful future in his field of engineering. His academic credentials were not fully in line with APEGA's standards of being licensed as Professional Engineer and so he had to undergo NPPE and other courses to fulfill the requirement, like any other foreign national, as outlined by several witnesses from the Board of Directors. He failed his NPPE repeatedly and was absent for one of them too. His application was withdrawn by APEGA and reactivated multiple times due to his delay in completing the required courses. Failing the course and not completing further requirements portray negligence as no formal reasoning was provided. Mr. Mihaly, at one point also wrote that it was new knowledge for him that his academic records were considered insufficient to which he received replies from Jennifer Scherban and Mr. Tokarik that he had been previously informed about it [2]. Clearly, Mr. Mihaly was not thoroughly aware of the process of application and his own standing in it. Tribunal's decision of appointing him a mentor and providing language assistance could help overcome this miscommunication.

Justice Ross very rightly identified the loopholes in the case and information overlooked by Alberta Human Rights Commission. Justice Ross also clearly stated that due to various engineering programs it is not possible for APEGA to deal all matters at an individual level and so everyone must follow a common set out set of exams. As a result, the matter was not referred back to the Tribunal. Mr. Mihaly did submit his appeal to the Alberta Court of Appeal but Justice Frans Slatter did not accept it. He restated the fact that it was not the Court of Queen's Bench's mistake to not take more material once the appeal had commenced, as complained by Mr. Mihaly. Justice Slatter also identified that Mr. Mihaly did not prepare the Appeal Record or provide an explanation for his delays [6]. Hence, the decisions made by the Court of Queen's Bench and the Court of Appeal of Alberta were clear and thorough. The matter being referred to the Tribunal

was not necessary based on the facts laid out by the two courts. Hence, the decisions are reasonable and justified.

APEGA must cater to accommodating foreign-trained engineers and geoscientists to add diverse, experienced and expert engineers to the pool of engineers in Canada. For safe practice of engineering, Canadian rules and regulations must be thoroughly followed by foreign trained engineers and geoscientists. This is reflected in the examinations set out by the Board of Examiners. APEGA can narrow down to exempt certain parts of the examinations to make the transition of foreign-trained engineers to Canada. However, none of these exemptions should give them an unfair advantage of ease over Canada's trained engineers. None of the exemptions should compromise safe practice of engineering in Canada. APEGA can also consider reducing the amount of engineering work experience required from for years in total and 1 year of Canadian experience to lesser and provide necessary on the job training in the first few months as a Professional Engineer.

References

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