

The Mihaly Report

ENGG 513

The Role and Responsibilities of the
Professional Engineer in Society

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Introduction

This report has been prepared to analyze a recent and relevant legal battle regarding the accreditation of professional engineers in Alberta. The Mihaly conflict between Ladislav Mihaly and the Alberta Professional Engineering and Geoscience Association is an excellent example of how important it is as engineers to understand the processes and legislations in place. These guidelines ensure that the highest standards of professional engineering in Alberta are maintained.

Over the course of this report we will develop the background of the Mihaly case, including information about the relevant stakeholders, the final Queen's Bench verdict, and our personal thoughts and opinions on the case and its relevance and impact on the future of engineering in Alberta. As developing engineers, it is important to recognize and learn from these types of conflicts, as their outcomes can have a massive effect on professional engineering not only in our own province, but those across Canada.

This case is extremely relevant to our studies in ENGG 513, as it gives us a real-life example of how the professional engineering accreditation process is constantly under the microscope. As future engineers, it is important to not only understand the roles and responsibilities of the professional engineer in society, but to also understand the value of a strong and reliable professional engineering accreditation process.

Stakeholders

APEGA

The Association of Professional Engineers and Geoscientists of Alberta (APEGA) is the largest association of self-regulated professionals in western Canada. The association acts on behalf of the government of Alberta to regulate the practices of geoscience and engineering in Alberta through the engineering and geoscience professions act. The self-stated goal of APEGA is "a shared commitment to public safety and well-being through the self-regulation of the (engineering and geoscience) professions". APEGA is the defendant when reviewing the Mihaly case, as they stand by their claim that at no point during their accreditation process did they mistreat or discriminate against Mr. Mihaly for his foreign schooling and place of origin.

The Court of Queen's Bench

The Court of Queen's Bench is the higher court of criminal and civil jurisdiction in Alberta, when compared to the lower level provincial court. It holds trials by judge alone and jury trials for criminal and civil matters. The Queen's Bench rendered the verdict of the Mihaly case after both APEGA and Mr. Mihaly appealed the results of the Alberta Human Rights Commission's reconciliation verdict based on the claims of discrimination by APEGA towards Mr. Mihaly. This verdict set a precedent for future cases of this nature that are brought before the Court of the Queen's Bench.

The Alberta Human Rights Commission

The Alberta Human Rights Commission is an independent commission of the government of Alberta that Mr. Mihaly filed his discrimination complaint with against APEGA. The commission provides public information and education programs and helps to resolve human rights complaints in the province. The Commission's mandate is "to foster equality and reduce discrimination". After consultation and review of the case, they provided the verdict that Mr. Mihaly had been discriminated against by the APEGA group.

Mr. Ladislav Mihaly

Mr. Ladislav Mihaly was born and educated in the former Czechoslovakia and immigrated to Canada in 1999. He graduated with a M.Sc. Diploma in Technology of Fuels and Thermal Energy as well as a Certificate in Corrosion Engineering from technical schools in his homeland. Mr. Mihaly is considered the plaintiff in this case as, after APEGA refused to recognize him with his professional engineering credentials in Alberta, he sued the organization on grounds of discrimination with the help of the Alberta Human Rights Commission.

Current & Prospective Professional Engineers

The Mihaly Case had huge implications on the process of becoming a professional engineer in Alberta, and in turn has affected both current and prospective professional engineers in the province. The case confirmed APEGA's fair use of rules and stipulations on what qualification a professional engineer in Alberta must have. The ruling maintained the admission standards that have been demanded for some time. This ensures confidence in the quality and professionalism of newly accepted applicants while remaining fair to those who qualified before the case took place by not changing any of the associations entry regulations.

Post-Secondary Facilities (Colleges, Universities, and Technical Schools)

This case also had ramifications on post-secondary institutions in Canada and abroad. It showed that the standard for transferrable education and experience towards APEGA acceptance was not negotiable subject to location or origin. The APEGA guidelines specifically list certain degrees and diplomas as well as educational institutions that can be accepted for transfer as well have their transcripts reviewed for admission. In maintaining these standards, the association proved that it will not alter the value of education at any one institution based on a case by case circumstance. This creates a clear criterion to all those institutions wishing to adapt their programs towards more global acceptance, while maintaining the value of the educational achievements of current APEGA members.

Other Canadian Professional Associations

The Mihaly case showed that the standards set by professional associations must be clear, universal, and fair to all applicants. The trial showed that the province valued the core identity of APEGA and its goal to promote the safe practice of engineering and geoscience in the province above all else. This case and its outcome can not only be used as an example for other professional engineering and geoscience associations across the provinces, but for all associations of this kind (such as medical or financial), to help create fair and universal standards for professional practice within Canada.

Citizens of Alberta

The results of this case have a large effect on the engineering practice within Alberta. History has proven that when changes are made to longstanding rules, practices, or legislations, there is a transition period where the assurance of quality and safety of the given result or product is reduced. The results of this case helped maintain the high standards of professional engineering qualification in Alberta, and in doing so most likely reduced any chance of transition-based engineering error or negligence that may have led to a reduction in public safety.

Background

Mr. Ladislav Mihaly is a Canadian immigrant who was born and educated in the former Czechoslovakia. He obtained his M.Sc. Diploma in Technology of Fuels and Thermal Energy from the Slovak Technical University in Bratislava in 1975. He also has a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague that he obtained in 1981.

In May of 1999 he immigrated to Canada and applied to APEGA for registration as a professional engineer. APEGA acknowledged his application and requested his transcripts. APEGA's Board of examiners reviewed Mr. Mihaly's materials and found that he would have to pass the National Professional Practice Exam (NPPE) as well as complete three confirmatory examinations and take a course in Engineering Economics. He failed his first attempt at the NPPE on January 17, 2000. He failed to show up to another examination date and on June 29, 2001 and his application was withdrawn as he failed to write the tests in time.

He reactivated his application on May 31, 2002 and failed the NPPE twice before it was once again withdrawn. He asked APEGA to reactivate his application for a third time on October 3, 2006. APEGA requested an up to date resume and transcript to once again assess his acceptability. On August 10, 2007 it was found that once again Mr. Mihaly had to complete three confirmatory examinations plus a course in Engineering Economics. It was also found that he had to complete a year of Canadian engineering experience because his previous work experience was not acceptable.

He did not attempt any examinations set out by APEGA. Instead, he filed a complaint with the Alberta Human Rights Commission on August 5, 2008. He claimed that APEGA discriminated against him based on his place of origin by not allowing him to be a registered Professional Engineer.

Mihaly filed his complaint under ss. 4, 7, and 9 of the act. It states that:

No person shall

- a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or
- 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,

No employer shall

- a) refuse to employ or refuse to continue to employ any person, or

- b) discriminate against any person with regard to employment or any term or condition of employment,

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, color, 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.

APEGA recognizes the importance of immigration and how our society benefits from diverse culture. APEGA stood by its legislative framework as the safety of the public is the greatest priority. Their opposition was based on the fact that someone's place of origin cannot be expanded to include the place where the person received their education.

The Human Rights Tribunals of Alberta found that APEGA discriminated against Mr. Mihaly by refusing to recognize his education of an equivalent degree based on his origin. They Awarded Mihaly \$10,000 for general damages but didn't award him for lost wages. The tribunal ordered APEGA to review transcripts from the Slovak University of Technology, allow him to challenge exams, establish a committee of foreign professional engineers to assess his qualifications, match him with a mentor, and help him increase his fluency in the English language.

After the Human Rights Tribunal outcome, both parties appealed. Mihaly wanted \$1,000,000 and APEGA registration or \$2,000,000 and no registration. APEGA appealed against the Tribunal because they felt they were not discriminating against him and this verdict could have an extreme impact on a self-regulating profession like APEGA. During the Court of Queen's Bench hearing, it was found that the decision of the Human Rights Tribunal should be reversed. This meant that APEGA did not discriminate against Mr. Mihaly. It was also found that Mihaly did not have any evidence to support his claims of discrimination. Therefore, his first appeal was dismissed.

On December 22, 2017 Mr. Mihaly tried again to file an appeal of the Court of Queen's Bench decision. He claimed that they refused to accept his supportive materials. His appeal did not meet the test for restoration and was dismissed.

The Court of Queen's Bench Decision

During the Court of Queen's Bench hearing, they found many errors in the verdict of the Human Rights Tribunal. The tribunal found that the requirements by APEGA were not justified because they were "for the purpose of correcting a perceived academic deficiency". They misinterpreted this legislature, as the script referenced the adequacy tests directly, stating "confirmatory examinations are for the purpose of correcting a perceived academic deficiency". The tribunal's interpretation of this section was illogical and incorrect.

It was found that APEGA's 'discriminatory policies' as outlined by the tribunal were assumptions and not supported by the evidence. The tribunal once again misinterpreted the information provided and thought that if you were not from Canada or a country with a Mutual Recognition Agreement (MRA) that your engineering degree was lesser. This is an assumption and is not supported by any evidence. It is a very lengthy endeavor to determine whether a program in another country is equivalent to a Canadian engineering program. The tribunal wanted APEGA to contact the Slovak University and determine the extent of his education. In reality, this is very unrealistic as you can't do this for every applicant that is not an MRA country. They also knew that the distinction between equivalent programs and other programs is based on knowledge of the programs - not assumptions. When APEGA states a program is not an equivalent, it is not because it is inferior, it is because they simply do not know enough about the concepts this program covered.

The National Professional Practice Exam (NPPE) is required by all applicants regardless of their place of origin or their education. The fact that Mr. Mihaly failed this examination three times has no relation to his place of origin. The fact that there was an absence of any evidence to prove that APEGA is discriminatory lead to the conclusion that the tribunal was irrational. The tribunal offered no line of reasoning in drawing these conclusions.

APEGA requires at least one year of work experience in Canada. Engineers who immigrate to Canada are free to commence work on arrival to start accumulating experience as long as they work under the supervision of a licensed professional engineer. Mihaly testified that he had trouble finding a job because the engineering firms "refuse to hire engineers with more than six years of experience for junior positions". The tribunal cited this but did not draw enough evidence to conclude that Mihaly had difficulties finding employment because of his

origin. They found that there was no connection between discrimination and loss of wages. The tribunal did not determine that the employers were discriminating against Mihaly but somehow, they determined APEGA was being discriminatory.

APEGA doesn't assign examinations to applicants based on their perceived academic deficiencies. It does so to assess the quality of undergraduate engineering programs taken by the applicant. This is because APEGA lacks evidence about the programs. There is no way APEGA has the resources to proactively negotiate agreements with thousands of other institutions. This was another senseless recommendation by the tribunal.

The tribunal thought that the Fundamentals of Engineering Examination (FE Exam) are unreasonable because it is standardized. They assumed that a large amount of foreign educated engineers would fail the FE Exam causing them to not become registered professional engineers, when in fact the pass rate of the FE Exam is as high as 85%. Persons that do not pass these tests also have the option to retake them, leaving no reason why internationally educated graduates would have any problem passing the exam.

The tribunal suggested that Mihaly should be able to change examinations in the areas where he is not granted an exemption. They did not consider is that Mihaly failed to attempt either of the three conformity examinations or the FE Exam, or that he also scheduled an exam that he never showed up to. The conclusion of the tribunal that APEGA should accommodate Mr. Mihaly is rife with error based on the evidence of his own wrongdoing during the application process.

The findings from the tribunal are full of logical error. They jump to conclusions and are in general unreasonable. Madam Justice Ross of the Court of Queen's Bench concluded that the tribunals finding go "beyond the scope of any discriminatory conduct found or even alleged".

Reflection and Opinion

Through careful research of the Mihaly case, we have been able to formulate strong opinions about the overall legal process, the case verdict, and its future impacts. Unsurprisingly, we shared extremely similar views on this case and its verdict. However, we also found a secondary benefit to this research assignment, as it made us think critically about a real life professional engineering scenario and how seemingly small disputes between individuals and professional organizations can have drastic impacts on the standards and regulations to which these associations abide.

The first controversial topic reviewed during our research was the decision of the Alberta Human Rights Commission, that deemed APEGA had discriminated against Mr. Mihaly. As stated above, this verdict was made with extremely poor judgement, as seemingly little research went into APEGA's side of the case, especially about their rules and stipulations. The commission seemed to take Mr. Mihaly's word as fact and refused to examine the APEGA admission process. The standards set by APEGA are applied to all those of foreign origin, and they are accommodating enough to review all applicant's transcripts and provide the tests required to prove professional adequacy. The commission ignored the fact that Mr. Mihaly had multiple chances to complete his accreditation tests and failed by his own negligence. For these reasons we found the commission's verdict of discrimination completely unfounded.

The decision by the Court of the Queen's Bench made a clear statement about the importance of retaining safety and preserving accreditation systems for professional associations across the nation. Just as we had concluded from our research, Justice Ross found that the commission had no true grounds to claim Mr. Mihaly had been discriminated against and refuted many of the key points that their argument raised. Shifting the focus away from Mr. Mihaly himself, the Judge clarified that "More significant than the Tribunal's assessment of cost, is his [Mihaly's] failure to consider the impact that this form of accommodation would have on APEGA, fundamentally altering its standards and being required to act outside of its regulatory role". We completely agree with the verdict to overturn the commission's ruling due to its clear lack of fundamental evidence and its potential impact on professional associations across Alberta and Canada. There cannot be exceptions made for one individual that can have an impact on an entire profession.

Though both parties had earned their right to a first appeal before the Queen's Bench verdict, the second appeal by Mr. Mihaly was rightfully dismissed as he brought no new evidence to the case, and it had been clearly explained to him in court that the association would not and could not change its regulations to accommodate a single application. It was Mr. Mihaly's own fault that he had failed to pass or even show up to his previous APEGA accreditation tests, and he had no grounds to claim further discrimination.

We fully believe that APEGA should accommodate for foreign engineers and geoscientists, however we also agree that the association currently has a very clear and fair system in place to do this. The review of transcripts is thorough, and the accreditation tests are designed to prove adequacy of engineering and geoscience topics that are expected within the province. This accreditation process is vital to ensuring the high professional standards of these occupations in Alberta, and is based solely on one's professional knowledge, not their origins or cultural background.

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