

Engineering 513
Mihaly Case Study Report
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Introduction:

Mr. Ladislav Mihaly (Mr. Mihaly), who “was born and educated in the former Czechoslovakia” (AHRC 1), sought registration as a Professional Engineer in Alberta with The Association of Professional Engineers and Geoscientists of Alberta (APEGA). Years and many attempts later, and he was ultimately unsuccessful. Initially, he filed a complaint with the Alberta Human Rights Commission on the grounds that he was discriminated against based on place of origin. APEGA was found guilty of discriminating against Mr. Mihaly, “on the grounds of his place of origin, by refusing to recognize his education as the equivalent of an engineering degree from an accredited Canadian University, and by requiring him to write certain examinations to confirm his academic credentials” (AHRC 1). This decision lead APEGA to file an appeal to overturn the decision. The case worked its way through the Court of Queen’s Bench and to the Alberta Court of Appeal. The purpose of this report is to summarize, evaluate, and provide opinion on the case and its resulting stakeholders. Decisions of the Human Rights Commission, Court of Queen’s Bench of Alberta, and the Alberta Court of Appeal will be discussed and reflected upon.

Stakeholders:

APEGA, a regulatory body, governs its professional members regarding practice standards and “enlists guidelines pertaining to each members’ role and responsibilities” (APEGA.ca, 2018). To practice engineering and geoscience in Alberta, one must be “approved for registration pursuant to s 2 of the EGPA” (AHRC 1). APEGA found itself in the middle of a dispute regarding a Canadian immigrant claiming ‘APEGA discriminated against him based on his place of origin when it denied him registration as a professional engineer’ (AHRC 1). Mr. Mihaly was awarded \$10,000 in damages to integrity. However, APEGA later filed an appeal to overturn the court’s decision. APEGA has a duty to its members and future applicants that has been streaked with controversy since the initial claim of discrimination.

The Court of Queen’s Bench, is the Superior Trial Court for the Province of Alberta (Albertacourts.ca, 2018). The Court will decide based on: ‘the impact of this Court’s decision in *Grover v Alberta*, the test for *prima facie* discrimination, and the test for the defence of a *bona fide* occupational requirement” (ABGB 61). The Court of Queen’s Bench decision can set a new precedent for engineers from non-accredited institutions seeking certification in Alberta.

The Alberta Human Rights Commission, “protects Albertans from discrimination in certain areas based on specified grounds”. *The Human Rights Act* “established the Alberta Human Rights Commission to carry out functions under the act” (albertahumanrights.ab.ca, 2018). Mr. Mihaly’s counsel “referred to the decision of Veit. J in *Grover v. Alberta* (Human Rights Commission) where the Court of Queen’s Bench considered an allegation of systemic discrimination” (AHRC 1). APEGA wanted to use the *Grover v. Alberta* Human Rights Commission case decision to conclude that “*Alberta Human Rights Act*, did not protect against discrimination based upon the place of origin of academic qualifications” (AHRC 1). The Alberta Human Rights Commission needed to prove that Mr. Mihaly was discriminated against and that compensation is justified. The commission is invested in the outcome of the appeal because of the initial claim and settlement.

Mr. Mihaly is an immigrant to Canada seeking accreditation from APEGA as a professional engineer. He “was born and educated in the former Czechoslovakia and obtained a M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University in Bratislava in 1975. He obtained a Certificate in Corrosion

Engineering from the Institute of Chemical Technology in Prague in 1981” (AHRC 1). Mr. Mihaly “had complained that APEGA discriminated against him in relation to his application to be registered as a professional engineer” (AHRC 1). The respondent sought compensation for the loss of income he could have made as a professional engineer and registration with APEGA. He argued his case and proved that APEGA had discriminated against him but the decision was overturned by the Court of Queen’s Bench. To prove his case again, he filed an appeal with the Alberta Court of Appeal. However, his attempt was dismissed and after more than a decade, the case is closed.

Professional engineers from the rest of Canada will be invested in the outcome of the case. In Canada, “the licensing of engineers is the responsibility of the provincial and territorial regulatory bodies” (Engineers Canada). However, this deregulation at the federal level does not lower standards across the country. The standards that engineers from one province are held to is matched by the standards of professional engineers from other provinces and territories in the rest of Canada. If you meet the standard of one province, “you can work in another province or territory as long as you obtain a licence from that province’ or territory’s engineering regulatory association to do so. And you do not have to live in that province or territory to get that second licence” (Engineers Canada). Upholding Mr. Mihaly’s case could broaden the membership of the P.Eng. certification in Canada and open the door for others from unaccredited academic backgrounds to hold the same title. The appeal decision is important for APEGA and other professional engineering regulatory bodies in Canada to limit future discriminatory cases.

People living in Canada will also be affected by the decision. The work that is completed by professional engineers for the public is trustworthy and reliable. However, the trust that is instilled in professional engineers to do their job can be lost. If Mr. Mihaly was successful in obtaining registration with APEGA, he would not need a professional to look over and take responsibility for his work. However, per APEGA and the Fundamentals of Engineering Exam, he is not qualified to complete his job to acceptable APEGA standards. The public wants to know that what they are using is engineered properly. If not, they might lose confidence in the system and question APEGA’s current members and registration protocols.

Prospective engineers seeking registration to APEGA from both accredited and non-accredited institutions have a stake in this case. Mr. Mihaly could have successfully set a precedent that he was discriminated against based on place of origin. The decision may open that way for people who are not from the defined list of accredited-institutions to “have an opportunity to have their skills assessed based on their actual knowledge and experience” in their attempt to become a Professional Engineer in Alberta. If not, they could also bring future similar lawsuits to APEGA in the future. These people deserve to have their individual situation heard and evaluated because “APEGGA’s decisions affect the careers and lives of many professionals and their families immigrating to Canada” (AHRC 1).

Background:

In May 1999, Mr. Mihaly applied to APEGA (formally APEGGA) for registration as a professional engineer. After providing his application which described his qualifications and references, APEGGA acknowledged his application and required him to write the National Professional Practice Exam (NPPE). He failed his first attempt at the NPPE. He did not attend the test when it was administered for the second time.

Following his request to have his application reactivated, he wrote APEGA to inform them that he was unaware of the fact that his master’s degree doesn’t match the bachelor’s degree

requirements in Alberta. APEGA responded to this email by explaining that because his degree is on the foreign Degree list he is required to take the assessment to confirm that his education meets APEGA's standards. A reconsideration and appeal sheet was sent out, which Mr. Mihaly never completed. In August 2003, APEGA again withdrew his file because Mr. Mihaly had not written the required confirmatory exams within the period specified. In October 2006, Mr. Mihaly asked APEGA to reactivate his application for a third time. Next year, in August 2007 APEGA informed him that he was required to take the three confirmatory examinations and a course or exam in engineering economics. He was required to obtain one-year acceptable D Level North American engineering experience (AHRC 1). Mr. Mihaly did not write the required examinations.

Human Rights Commission of Alberta:

On August 5, 2008, Mr. Mihaly filed a complaint with the Alberta Human Rights commission, in which he alleges that he was denied registration as a professional engineer because APEGA discriminated against him based on place of origin (AHRC 1). "On February 6, 2014, the tribunal found that "Mr. Mihaly has succeeded in establishing that the *Examination standard* and the *Experience Standard* used by [APEGA] to assess his educational credentials, without more individualized assessment or exploration of other options, constitutes discrimination which cannot be justified under the [AHRA]: Tribunal Decision" (AHRC 1). The judge was provided with sufficient evidence to rule that Mr. Mihaly was discriminated against and "the process that was used did not appropriately individually assess Mr. Mihaly's qualifications" (AHRC 1). He was awarded general damages in the sum of \$10,000 and granted APEGA's cooperation when applying individual assessment options. However, the judge declined "to award lost wages to Mr. Mihaly [because] ... there are too many uncertainties involved in the licensure and then employment of Mr. Mihaly to find that there was a causal connection between the discrimination and any loss of wages" (AHRC 1). Mr. Mihaly was not registered as a professional engineer with APEGA.

The Court of Queen's Bench:

APEGA "sought a reversal of the decision of the Human Rights Tribunal" (ABGB 61). APEGA pursued this appeal because of the direction to "use its best efforts to match Mr. Mihaly with a Mentor who has a similar background and who can provide him with the necessary guidance to approach his challenges as an engineer and gradually integrate himself into the profession, and to direct Mr. Mihaly to resources to allow him to network with other foreign engineering graduates facing similar challenges and to assist him to increase his fluency and facility in the use of the English Language" (ABGB 61). APEGA argued that, "these directions go beyond the scope of any discriminatory conduct found or even alleged" (ABGB 61). Mr. Mihaly cross-appealed, seeking \$1,000,000 for lost wages and registration with APEGA, or \$2,000,000 if not registered with APEGA. The Judge reversed the decision of the Human Rights Commission.

Alberta Court of Appeal:

The Court of Queen's Bench decision was appealed to the Alberta Court of Appeal. Mr. Mihaly "filed his appeal on time on February 22, 2016 but did nothing further to perfect the appeal" (ABCA 15). The appeal was struck and a new application was filed to restore it. The evidence that Mr. Mihaly offered was not sufficient to have the decisions reconsidered. The

judge noted “even Canadian educational institutions must demonstrate the equivalency of their programs, and Canadians who receive foreign training must also demonstrate equivalency” (ABCA 15). However, the appellant did successfully argue “that the *Foreign Degree List* presented by the respondent is dated 2010, whereas his assessment should have occurred in 2000-2006” (ABCA 15). These findings proved that the degrees he had received were considered equivalent to the Canadian bachelor’s degree in engineering. Despite this and with ‘all relevant factors considered, the appellant has not met the test for restoration of this appeal, and the application is dismissed” (ABCA 15). After more than a decade of proceedings, this outcome is not what Mr. Mihaly wanted, however, finally brings closure to the issue and those affected.

The Court of Queen’s Bench Decision:

APEGA appealed the decision of the Human Rights Commission and Mr. Mihaly cross-appealed seeking \$1,000,000 for lost wages and registration with APEGA, or \$2,000,000 if not registered. The appellant (APEGA) identifies the issues in that case are as follows:

- “1. Procedural fairness: Did the Tribunal breach the rules of procedural fairness when he decided issues that were not raised by or with the parties?
2. Jurisdiction: Did the Tribunal err when he held that he had jurisdiction to determine whether discrimination based on the place a person receives their education constitutes discrimination based on place of origin?
3. *Prima facie* discrimination: Did the Tribunal rely on the correct legal test, and reasonably apply that test, to determine whether Mr. Mihaly had demonstrated *prima facie* discrimination?
4. Justification: Was the Tribunal’s decision that APEGA’s registration requirements were unjustified unreasonable?” (ABGB 61).

The judge deliberated on the likeliness that the Human Rights Commission acted in procedural fairness. Another case, *Pope & Talbot Ltd v British Columbia* is used as a benchmark and helps reach the conclusion that, “while it would have been prudent for the [Tribunal] to question [or put its interpretation of section 8 of the *EGPR* to] the parties about this issue, I do not consider [his] failure to do so to constitute a breach of the rules of procedural fairness in the circumstances her, particularly given the overall basis of the [Tribunal’s] decision” (ABGB 61). The first issue is resolved in that the “Appellant has not established a breach of the rules of procedural fairness” (ABGB 61).

The next issue that APEGA brought forward was that of jurisdiction. “APEGA submitted that the Tribunal had no jurisdiction over Mr. Mihaly’s complaint because the *AHRA* does not protect against discrimination based upon the “place of origin of academic qualifications”, as found by Veit J in *Grover v Alberta (Human Rights Commission)* However, the “test to demonstrate *prima facie* discrimination in this context has undergone development since *Grover* was decided almost two decades ago” (ABGB 61). The *Moore* test was also discussed but lacked connection. For these reasons, “the Appellant has not established that the Tribunal lacked jurisdiction” (ABGB 61).

Mr. Mihaly claimed *Prima facie* discrimination against APEGA. In this case, “the complainant has the onus to establish a *prima facie* case of discrimination: *Wright* at para 104.” (ABGB 61). To prove this, the Tribunal pointed to the legal test used in *Moore* which “required Mr. Mihaly as complainant to show that he has a characteristic that is protected from discrimination; that he experienced an adverse impact; and that the protected characteristic was a factor in the adverse impact” (ABGB 61). The judge agreed with the Tribunal that Mr. Mihaly

did endure adverse impact regarding the preparation for the FE exam. The use of the test in this case was ruled unreasonable.

Finally, the issue of justification is discussed. The judge states, “the Tribunal’s reasons leading to his conclusion that APEGA could have accommodated Mr. Mihaly and others sharing his characteristics are rife with logical errors, findings of fact that are not supported by the evidence, and failures to take into account relevant considerations” (ABGB 61). APEGA provided enough information and evidence to meet the onus to the “reasonable and justifiable defense” (ABGB 61). APEGA’s registration requirements were deemed justified and reasonable.

Reflection and Opinion:

For Mr. Mihaly the decision to seek legal action when he felt he had been wronged was perhaps not an easy one. The road has been long, and he and his family have endured a lot. The time it has taken to read and understand the proceedings, that have taken place over nearly a decade, has been invaluable when providing insight into the lengthy and taxing process immigrants go through when seeking professional registration in Canada. From the initial file with the Human Rights Commission, to the appeal at the Court of Queen’s Bench and finally the decision to file an appeal with the Alberta Court of Appeal, the case has, only recently, met its end.

I agree with the decisions of the Alberta Human Rights Commission. I believe that Mr. Mihaly was discriminated against on the grounds of place of origin. His unique qualifications and experience should have been evaluated on a more individualized basis. He was put into a stressful situation that he should not have been in because of the country in which he was educated.

I do not agree with the Court of Queen’s Bench decision to overturn, and failure to settle, in part, some of the damages Mr. Mihaly claimed he suffered. APEGA could have upheld the directions of the earlier court ruling, regarding Mr. Mihaly’s networking and community integration, with relative ease. However, I think the evidence was not conclusive for either side and the outcome was not optimal for any party. What bothers me about the decision is that APEGA failed to recognize how Mr. Mihaly’s membership could have benefited the organization. He has a unique perspective and experience in his field that was overlooked. The decision could have challenged the preexisting notion of “who becomes an engineer and why” (Chubin, May, & Babco, 2005). In a globalized world “it behooves engineering education to diversify while assisting current and future practitioners in becoming culturally competent” (Chubin, May, & Babco, 2005). Finding an internationally educated and trained engineer while not appropriately evaluating his skillset was a missed opportunity. In the future, APEGA must review each case more carefully as to not discount deserving applicants.

I do not agree with the Alberta Court of Appeal’s decision to dismiss Mr. Mihaly’s claim. I thought that the evidence seemed to support his position. However, the judge (and those at the other court levels) seemed divided on the issues present. The appeal could have been justified either way.

APEGA should accommodate foreign-trained engineers and geoscientists. Foreign-trained professionals in Canada are faced with challenging obstacles to reach their goal of professional practice. To alleviate the overwhelming task of applying and testing, APEGA should consider initiating a new approach. An approach that better identifies the value of work experience and diverse qualifications. For immigrants, “gaining recognition for professional experience overseas is arguably the greatest barrier to professional practice. Employers

frequently discount the value of overseas experience, and regulatory bodies often do not count it toward professional certification requirements” (Rabben, 2013). Canada is not the only country wasting human capital. In the United States, “barriers to professional practice are particularly daunting in the medical profession” (Rabben, 2013). The solution is not simple and will “require cooperation and coalition building among a range of stakeholders to simplify recertification processes, as well as long-term investments in a more comprehensive system of support for immigrant and refugee professionals” (Rabben, 2013). We must not let overregulation or complex administrative processes deter foreign-trained engineers from obtaining professional recognition in Alberta.

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