

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

The Ladislav Mihaly Case

A Study of International Mobility of the
Engineering Profession in Canada

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Introduction

The purpose of this report is to provide background and reflection on the Mr. Ladislav Mihaly from the former Czechoslovakia versus the Association of Professional Engineers and Geoscientists of Alberta (APEGA) case. This includes an overview of the stakeholders involved with the case and our opinions on the decisions made and on how accommodating APEGA should be when licensing foreign trained engineers.

Mr. Mihaly was educated in Czechoslovakia between 1975 and 1981 (Ross, 2016). He immigrated to Canada and in 1999 applied to be an accredited engineer in Alberta (Ross, 2016). This was the beginning of a decade of application attempts with APEGA, which ended with Mr. Mihaly filing a complaint with the Alberta Human Rights Commission (AHRC). The grounds for this complaint were discrimination due to his country of origin. Having the discrimination case initially won in Mr. Mihaly's favour, APEGA appealed the ruling from the tribunal and Mr. Mihaly filed a cross-appeal because he wanted to additionally recover alleged lost wages. This case was heard by the Court of Queen's Bench, who found that the AHRC was unjustified in finding APEGA's accreditation process as discriminatory, and reverted their decision (Ross, 2016). Mr. Mihaly appealed this verdict as well, taking it to the Court of Appeal of Alberta, but did not provide enough evidence to support his case and therefore it was dismissed (Slatter, 2017).

Stakeholders

The organizations and individuals which make up the primary stakeholders involved in this case are Mr. Ladislav Mihaly, the Association of Professional Engineers and Geoscientists of Alberta (APEGA), the APEGA Board of Examiners, the Alberta Human Rights Commission (AHRC), Mr. Mark Tokarik, Dr. David Lynch, the Court of Queen's Bench of Alberta, the Law Society of Alberta, and the Court of Appeal of Alberta.

Mr. Ladislav Mihaly

Mr. Ladislav Mihaly is a Czechoslovakian man who submitted a complaint to the AHRC following several failed attempts to acquire licensing from APEGA. His licensing was made more complicated due to his academic accreditation from a foreign institution not being evaluated as equivalent to APEGA's professional engineering standards. He attended the Slovak Technical University in Bratislava from 1970 to 1975 and received

a M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy. He then attended the Institute of Chemical Technology in Prague from 1977 to 1979 to receive a Certificate in Corrosion Engineering. He claims to have acquired 12 years of international work experience before he immigrated to Canada from Czechoslovakia. He first applied for a license from APEGGA (since renamed to APEGA) in May of 1999 (Jiwaji, 2014).

The Association of Professional Engineers and Geoscientists of Alberta (APEGA)

The Association of Professional Engineers and Geoscientists of Alberta (APEGA) is responsible for regulating the professions of engineering and geoscience in Alberta. Established in 1920 as the Association of Professional Engineers of Alberta (APEA) (Onen, 2017), it has evolved to include geoscience and regulates these professions on behalf of the Alberta government through the *Engineering and Geoscience Act*. Its core responsibility is to issue licences only to competent individuals who submit applications. Aside from issuing licenses, they are responsible for setting professional practice standards, developing codes of conduct and ethics for APEGA's members, investigating and disciplining members when required, ensuring the profession is not practiced or impersonated by unlicensed individuals or organisations, and providing support services to members and permit holders (APEGA, 2018).

In this case study, Mr. Ladislav Mihaly claimed that APEGA was violating his human rights by not issuing him a license due to his place of origin.

The APEGA Board of Examiners

The APEGA Board of Examiners is responsible for establishing the admission standards for professional engineering and geoscience licenses in Alberta. To accomplish this they review membership applications and approve, defer, or reject them. In the case of a deferred membership, the applicant may be asked to take certain confirmatory exams. The board is also responsible for creating and updating the syllabi for these exams which are designed to determine whether applicants are qualified to practice engineering or geoscience in Alberta (APEGA, 2018).

The APEGA Board of Examiners is an important entity in this trial since they are the organization within APEGA who was responsible for reviewing Mr. Mihaly's application and assigning him the exams which he ultimately failed to complete. During the time of this case, Dr. Gary Faulkner was chairing the board and testified during AHRC tribunal (Jiwaji, 2014) and the Court of Queen's Bench trial (Ross, 2016).

The Alberta Human Rights Commission (AHRC)

The Alberta Human Rights Commission (AHRC) was created to ensure the *Alberta Human Rights Act* is obeyed. The goal of this Act is to avoid discrimination and ensure equal opportunity to all Albertans. Aside from being responsible for promoting equality through public education and community initiatives, it enforces the Act by resolving or settling complaints of discrimination and through tribunal or court hearings revolving around human rights (AHRC, 2012).

Mr. Ladislav Mihaly first submitted a human rights complaint to the AHRC to begin legal action against APEGA and the results of the tribunal, chaired by M. Jiwaji, lead to further response from APEGA.

Mr. Mark Tokarik

Mr. Mark Tokarik was working as the Director of Registration for APEGA at the time of Mr. Mihaly's first application and became the Deputy Registrar for APEGA in 2012. Mr. Tokarik was a witness for APEGA during the AHRC tribunal and explained the registration process and requirements to the court. The tribunal also presented some of his communications with Mr. Mihaly during Mr. Mihaly's application attempts (Jiwaji, 2014).

Dr. David Lynch

Dr. David Lynch testified during the AHRC tribunal regarding the renewal process that universities need to undergo to maintain accreditation with the Canadian Engineering Accreditation Board (CEAB). He was the Dean of the University of Alberta's Engineering Faculty when they went through the process and thus provided insight to the process during the tribunal. A process which meets Canada's Accreditation Standard would have to be completed by any foreign institution to allow its graduates full degree mobility to Canada (Jiwaji, 2014).

The Court of Queen's Bench of Alberta

The Court of Queen's Bench of Alberta is one of Alberta's superior courts. Superior courts are a province or territory's highest level courts. It is a trial level court that hears more serious criminal or civil trials that come up in the province or territory. The hearings are lead by judges that are appointed by the federal government (Department of Justice, 2017). These judges consist of the Chief Justice and other Justices of the Court of Queen's Bench (Alberta Courts, 2018).

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The Court of Queen's Bench of Alberta was where the trial was held under Honourable Madam Justice Ross to settle the disagreement between APEGA and the AHRC and the conclusion of their tribunal stating that APEGA was violating Mr. Mihaly's human rights.

The Law Society of Alberta

The Law Society of Alberta is an independent regulatory body whose primary goal is to maintain high standards in professional law in Alberta. They regulate under the *Legal Profession Act* by creating a Code of Conduct and the "Rules of the Law Society of Alberta". They also work with members of the justice system to improve legal services for Albertans (Law Society of Alberta, 2018).

In the Ladislav Mihaly Case, the Law Society of Alberta was involved as an independent intervener in the Court of Queen's Bench trial under Honourable Madam Justice Ross where APEGA was the applicant.

The Court of Appeal of Alberta

The Court of Appeal of Alberta, or the Alberta Court of Appeal, is Alberta's second superior court. It is an appeal level court that hears appeals for cases after going through the Provincial Court or the Court of Queen's Bench. The intent of these appeals is not to retry the case but to look for errors of law and fact in the reasoning for the verdict (Court of Appeal of Alberta, 2018). Similarly to the Court of Queen's Bench, the hearings are lead by judges that are appointed by the federal government (Department of Justice, 2017).

The Court of Appeal of Alberta was the court that reviewed the verdict of the Court of Queen's Bench under Honourable Mr. Justice Slatter at Mr. Mihaly's request.

Background

The case of Mr. Ladislav Mihaly starts with his educational background. As stated in the facts from *Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016*, Mr. Mihaly is from the former Czechoslovakia. He has received his education (M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy) from the Technical University of Bratislava in 1975. Six years later, in 1981, he completed more education to receive a certificate in Corrosion Engineering from the Institute of Chemical Technology, located in Prague.

Mr. Mihaly then immigrated to Canada and, in May of 1999, submitted an application to APEGA to become registered as a Professional Engineer (Ross, 2016). This began a lengthy process for Mr. Mihaly, in which he attempts to pass examinations (deemed necessary by APEGA's Board of Examiners), which lasted almost a decade and ends with Mr. Mihaly filing a complaint with the Alberta Human Rights Commission. As outlined in Ross (2016), the following provides more detailed insight into the situation:

- [May 13, 1999] APEGA sends a letter to Mr. Mihaly asking for his transcripts so they can be reviewed and informing him he will need to write the National Professional Practice Exam (NPPE).
- [January 17, 2000] Mr. Mihaly writes the NPPE (1st attempt).
- [February 11, 2000] APEGA informs Mr. Mihaly that he has failed the NPPE. They reiterate that he will need to pass the NPPE to be approved, and after review of his supporting materials, they have also found he will need to pass three more confirmatory exams and take a course in Engineering Economics by May 2001.
- [August 1, 2000] Mr. Mihaly applies to write the NPPE on October 16, 2000.
- [October 16, 2000] Mr. Mihaly does not attend to write his exam (2nd attempt).
- [June 29, 2001] APEGA informs Mr. Mihaly that they have withdrawn his application because of his failure to write the required confirmatory examinations by May 2001.
- [May 31, 2002] Mr. Mihaly reactivates his application with APEGA, and schedules a new date for the NPPE.
- [June 3, 2002] APEGA reactivates Mr. Mihaly's application with the deadlines of May 2003 to write the three confirmatory exams and November 2003 for the Engineering Economics course.
- [July 15, 2002] Mr. Mihaly writes and fails the NPPE (3rd attempt).

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- [January 20, 2003] Mr. Mihaly fails the NPPE again (4th attempt).
- [August 1, 2003] APEGA withdraws Mr. Mihaly's application citing the fact he did not write his confirmatory examinations within the period specified.
- [October 3, 2006] Mr. Mihaly reactivates his application for the third time.
- [October 18, 2006] APEGA requests a new resume and a list of updated references due to the amount of time that has passed.
- [November 16, 2016] Mr. Mihaly provides new support material.
- [August 10, 2007] The board of examiners again finds that he must either take the previously assigned set of exams and economics course or alternatively pass the new Fundamentals of Engineering Examination (FE Exam). He also has not met the required professional engineering experience and will be required to obtain this.
- [August 5, 2008] Mr. Mihaly files a complaint with the Alberta Human Rights Commission (AHRC), alleging discrimination based on his country of origin.

The AHRC formed a tribunal that found that APEGA had discriminated against Mr. Mihaly by not having a more individualized exploration and assessment of his educational credentials (Jiwaji, 2014). On February 6, 2014, they awarded Mr. Mihaly \$10,000 in general damages but no financial compensation for Mr. Mihaly's claimed income losses (Jiwaji, 2014). Mr. Mihaly's application with APEGA was to be reconsidered under a newly appointed committee. APEGA and their new committee would be required to take a more individual approach to help Mr. Mihaly with different assessments of his credentials and provide him language support (Jiwaji, 2014).

This ruling would force APEGA to make exceptions for Mr. Mihaly therefore, they made an appeal against the tribunal's decision. Mr. Mihaly also made a cross-appeal because the tribunal refused to pay him damages for lost income, and was asking for \$1,000,000.00 with an APEGA license or \$2,000,000.00 without (Ross, 2016). The Court of Queen's Bench, under Madam Justice Ross, found that the tribunal presented no evidence that APEGA's policies were discriminatory, and that their interpretation of the term "place of origin" was flawed as outlined by the Court of Queen's Bench (Ross, 2016). The tribunal's decision was reverted.

Mr. Mihaly then made another appeal on February 22, 2016 with the Alberta Court of Appeal (Slatter, 2017). His main points were the following:

- That the “*Foreign Degree List*” he was assessed under was dated 2010, whereas the 2000-2006 assessment would have been more favourable for him (Slatter, 2017).
- The Canadian-European *Agreement for Cooperation in Higher Education and Training* and the 1979 UNESCO *Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region* both required that Canada view his European credentials as Equivalent to Canadian credentials (Slatter, 2017).

However, Mr. Mihaly failed to comply with three other criteria to appeal. This includes an unexplained delay between the Court of Queen’s Bench verdict and the submission for the appeal and no action to perfect his appeal and at the time of the filing of Mr. Justice Slatter’s Reasons for Decision, had not ordered any information on the appeal. Therefore, the court rejected his request for restoration of the appeal and the application was dismissed (Slatter, 2017).

The Court of Queen’s Bench Decision

The Court of Queen’s Bench of Alberta found that the Alberta Human Rights Commission’s decision was not justified and should be reversed (Ross, 2016). Madam Justice Ross determined that Mr. Mihaly’s claim that APEGA had failed to justify their requirement that he write the confirmatory exams or FE Exam was unreasonable, and his assumption that APEGA was discriminatory towards his place of origin was unjustifiable (Ross, 2016). Madam Justice Ross is quoted saying “these directions go beyond the scope of any discriminatory conduct found or even alleged” (Canadian Consulting Engineer, 2016).

However, Madam Justice Ross did agree that Mr. Mihaly did suffer due to his place of origin. This is because Mr. Mihaly had no way of avoiding having to write the confirmatory examinations or the FE Exam. This was as a direct result of completing his education in his place of origin, Czechoslovakia. The only way to avoid the hardships of writing the examinations was to have been educated in Canada or another country with professional policies that were more similar to Canadian policies. However, due to the close link between his place of origin and his place of education, Madam Justice Ross concluded there was a lack of opportunity for him to make any other choice with his education, and therefore, his place of origin had an

adverse impact on his ability to pursue a career in professional engineering in Canada (Ross, 2016).

Another finding of the tribunal was that APEGA's policies were discriminatory towards foreign engineers (Ross, 2016). They provide no reason, evidence, or explanation as to why foreign programs were up to par with Canadian standards, leading Madam Justice Ross to view their conclusion as unreasonable. Determining whether an accreditation program from another country is equivalent to Canada's accreditation program requires a great deal of concerted effort from both institutions. Unfortunately, no such arrangement was made with Mr. Mihaly's schools of choice. In this case, APEGA is not assuming that Mr. Mihaly's education was inferior in some way to that of accepted institutions, they simply do not have enough information to guarantee that the program was adequate by Canadian standards. As stated in the tribunal, APEGA "has the statutory responsibility for the registration of international engineers to assure itself of their competency to practice in Alberta without causing harm to the public" (Ross, 2016). When Mr. Mihaly failed to write and pass his examination, Madam Justice Ross agreed that APEGA was accountable to reject Mr. Mihaly's application until such time that he could prove his competence.

Reflection and Opinion

In this case, we agree with the final verdict that Mr. Mihaly was not being discriminated against and that APEGA was correct for not granting Mr. Mihaly a professional license. Also, we disagree with the conclusions reached by the AHRC tribunal which lead to the appeals sessions. APEGA is obligated to maintain its standards and the organization cannot risk sacrificing these standards by making exceptions for any individual. The tests he was being asked to take help to ensure only competent individuals receive licenses and, therefore, the public remains safe. This is not to say that APEGA should disregard foreign-trained engineers but we believe these standards should not be sacrificed while doing so. We think that the current approach APEGA has to licensing already accommodates foreign-trained engineers quite well.

Reflection on the AHRC Decision

The decision from the Alberta Human Rights Commission's tribunal was flawed and under examined. Mr. Mihaly was given multiple chances to write examinations, as is

visible in the timeline in the Background section. Whether it is due to incompetency or perhaps a language barrier, his inability to pass these examinations determines that he is unqualified to practice engineering at the level demanded by Alberta's standards. It is not as if he was given a different exam from any other individual writing it that day. Regardless, he never made any attempts to complete the other examinations that APEGA had requested he take and did not attend the required engineering economics course. His apathy resulted in his application being rejected three times after failing to complete APEGA's requests before the deadline.

Furthermore, APEGA did evaluate Mr. Mihaly's credentials to reduce his workload. He was required to write three extra exams but this was dropped from five exams due to APEGA's evaluation of his previous experience (Jiwaji, 2014). As a side note, the programs from which he was educated by were not recognized at all by APEGA before 1999 so had he attempted to apply for a license even a year earlier, he would have been required to write nine exams (Jiwaji, 2014).

Because of this, we do not agree with the compensation awarded to Mr. Mihaly or the AHRC tribunal's order to change APEGA's accreditation procedure for Mr. Mihaly.

Reflection on the Court of Queen's Bench Decision

The Court of Queen's Bench was justified in its action to revert the AHRC tribunal's decision. Madam Justice Ross thoroughly went through APEGAs accreditation process (more than the tribunal had) and determined the complaints had no merit except for in one regard, Mr. Mihaly was at a disadvantage due to his place of origin and could not be expected to go out of his way to get his education elsewhere. Even considering this, after going over his application history, it was not unjustly discriminatory for APEGA to expect him to pass their exams before issuing him a license. It is unfortunate that he was not able to be educated elsewhere, or that Canadian and Czechoslovakian institutions did not have similar accreditation processes, but as stated above, it is APEGA's job to maintain a standard across all practicing engineers in Alberta. This is to ensure public safety which means they had no choice but to require this application process. Had APEGA approved Mr. Mihaly's application without assessing his education, they risk devaluing the Professional Engineer title and encountering more severe legal consequence down the road. The reason is not known for Mr. Mihaly's moving to Canada, which could potentially explain some of his lack in preparation, but Mr. Mihaly should have ideally done more research into the potential risks to his professional status when deciding to immigrate to Canada.

Reflection on the Alberta Court of Appeal Decision

The Alberta court of Appeal was justified in dismissing Mr. Mihaly's appeal of the Court of Queen's Bench decision since, again, he did not provide enough evidence or prepare enough in advance for his case. He also failed to take action on three of the five requirements that were needed to approve an appeal. The judge really did not have enough material to make a proper case let alone honour his appeal.

Accommodating Foreign Engineers and Geoscientists

APEGA should continue to accommodate foreign engineers and geoscientists as they do today. That is, allowing them to be licensed once it is determined that they meet certain competency standards. We think it is reasonable and courteous for APEGA to provide avenues for help to foreign-trained immigrants. Immigrants should know where to go if they require help with language skills and should not be struggling to get their license because of lack of direction for mundane tasks. It is also not unreasonable to provide some sort of study guide and support for their exams, which already exists for the NPPE for example (NPPE participating associations, 2017). Even going as far as offering examination preparation or 'refresher courses' for them when faced with these accreditation exams.

What should not be done is lowering the required standard to become an accredited engineer in Alberta. These standards are in place to protect the public's interest, not to accommodate every individual who would like to live in Alberta. Also, the examinations are a significantly better replacement than making foreign-trained engineers take an entire degree again in Canada. If given those two options, most would happily take three to five exams with previous work experience over four years in a university taking courses they have mostly already completed. In Mr. Mihaly's case, he did spend nine years trying to become an accredited engineer in Alberta, so going back to school might have been the quicker option (although likely much more expensive). Based on the overview of their process in the Ladislav Mihaly Case, APEGA already does a good job of accommodating foreign engineers and geoscientists while maintaining their necessary standards.

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