



**UNIVERSITY OF  
CALGARY**

## **Ladislav Mihaly Case Study Report**

ENGG 513 Winter 2018:

*Roles and Responsibilities of Professional Engineering in Society*

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## Introduction

This report is a study of a complaint filed by Mr. Ladislav Mihaly against the Association of Professional Engineers (APEGA). APEGA had asked Mihaly to write confirmatory examinations, due to his education originating from an unaccredited engineering program in the Czech Republic. Through the Alberta Human Rights Commission (AHRC), Mihaly alleged that he was denied registration as a professional engineer due to discrimination contrary to the *Alberta Human Rights Act* <sup>[6]</sup>. The case was later brought to the Court of Queen's Bench of Alberta (Queen's Bench), when both parties appealed the AHRC's decision. The case was further brought to the Court of Appeal of Alberta, where the justification of the Queen's Bench was upheld. This case report includes a summary, analysis, and a reflection to Mr. Mihaly's case in response to the orders of the AHRC and the Queen's Bench.

## Stakeholders

A stakeholder is "any individual or group of people that has an effect on or is affected by a business or organization <sup>[1]</sup>." In this case study, the main stakeholders are the following:

- The Association of Professional Engineers and Geoscientists of Alberta (APEGA), is the regulatory body for professional Engineers and Geoscientists and is responsible for licensure in Alberta. APEGA's regulatory processes had a significant impact upon the career of Mr. Mihaly, as he was unable to become a licensed professional engineer in Alberta. This led to Mihaly filing a lawsuit against APEGA for discrimination based on place of origin.
- The Alberta Human Rights Commission is an organization that fights for equal opportunity based on the Alberta Human Rights Act. Mihaly filed his lawsuit through the AHRC which accused APEGA of discrimination. Mihaly later cross-appealed the AHRC's verdict which later got overturned by the Court of Queen's Bench and the Alberta Court of Appeal.
- The Court of Queen's Bench is constituted by the *Court of Queen's Bench Act* <sup>[7]</sup>, and conducts criminal matters, civil proceedings, and tribunal action in Alberta. Mihaly and APEGA both appealed the AHRC's verdict and resulted in the Court of Queen's Bench reviewing the

case. The Court of Queen's Bench overturned the AHRC's determination of discrimination while setting up changes towards the standardized testing issued by APEGA.

- Mr. Ladislav Mihaly was born in Czechoslovakia where he received his two Masters degrees. He obtained an M. Sc. diploma in Technology of Fuels and Thermal energy from the Slovak Technical University in Bratislava in 1975, and a certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague in 1981. <sup>[2]</sup> His references did not have the necessary professional experience to be valid, and his education was not accredited by the Board of Directors at APEGA. He was required to write a series of tests and gain Canadian engineering experience in which he failed over the course of three registration attempts. He later filed for discrimination through the AHRC on grounds of extraneous adversity based upon place of origin.
- Dr. David Lynch is on the APEGA Board of Examiners and is the Dean of Engineering at the University of Alberta. He appeared as an expert witness at the AHRC trial to provide insight for the process of accrediting international universities through Engineers Canada. He justified the process as fair and monitored according to international standards, as they use comparable exams to the United States.
- Dr. Gary Faulkner has a PhD. In Applied Mathematics, and former Chair of the Mechanical Engineering Department at the University of Alberta. He was the second witness to APEGA and outlined the background regarding the APEGA Board of Examiners. He stated that it was a statutory committee that acts under the *Engineering and Geosciences Professions Act* <sup>[4]</sup>. He also detailed the process of determining Mihaly's Chemical Engineering background and the creation of his Chemical Engineer Exams A and B.
- Mr. Mark Tokarik is a law and engineering graduate and former Director of Registration at APEGA. He was also a member of the Engineer Canada's Foreign Engineering Qualifications Committee (FEQC) as well as the Engineer Canada's Admissions Issues Committee. He testified at the AHRC trial and outlined that any immigrant engineer is free to commence working upon arrival in Canada to accumulate the one year required Canadian experience <sup>[2]</sup>. He also confirmed that APEGA did not interfere in any way with Mihaly's search of employment.

## Case Summary

Mr. Ladislav Mihaly was born in Czechoslovakia where he obtained his two degrees. He obtained an M. Sc. diploma in Technology of Fuels and Thermal energy from the Slovak Technical University in Bratislava in 1975, and a certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague in 1981 <sup>[2]</sup>. On May 1999, Mihaly first applied to APEGA for registration as a professional engineer. On Mar 13, 1999, APEGA requested Mihaly's transcripts, and instructed Mihaly to write the National Professional Practice Exam (NPPE). APEGA's Board of Examiners reviewed Mihaly's credentials and determined that his education was not equivalent to APEGA standards, and that his references had insufficient engineering experience. On February 11, 2000, APEGA informed Mihaly that in addition to passing the NPPE, he must complete three confirmatory examinations and take a course or pass an equivalent course in Engineering Economics by May 2001 <sup>[4]</sup>. He was also advised that he had failed his first attempt at the NPPE, which he wrote on January 17, 2000. Mihaly also applied to write the exam a second time on October 16, 2000 but failed to attend that day to write the test, resulting in APEGA withdrawing Mihaly's application for missing the May 2001 deadline. On May 31, 2002, Mihaly asked APEGA to reactivate his application for registration. He rewrote the NPPE on July 15, 2002, and failed, later resulting in APEGA withdrawing his application for missing his new deadline. In August 2006, Mihaly contacted APEGA's Director of Professional Practice, Mr. Ray Chopiuk, complaining about the mandatory exams and APEGA's refusal to recognize his academic credentials. On October 3, 2006, Mihaly asked APEGA to reactivate his request for a third time, and later submitted an updated resume and list of references. APEGA later determined that Mihaly had not acquired the required one year of Canadian professional engineering experience because it was not at a "D" level <sup>[4]</sup>. He was requested to write the three confirmatory exams, complete a course/exam in Engineering Economics, or the Fundamental of Engineering Exam, and obtain one year of "D" level engineering experience.

After failing to write the required exams, Mihaly filed a complaint with the Alberta Human Rights Commission on August 5, 2008. He alleged that APEGA discriminated against him based on his place of origin, according to the AHRA <sup>[6]</sup>. On February 6, 2014, the Commission found that the *Examination Standard* and *Experience Standard* used by APEGA, without exploration of other options, was unjust under the AHRA <sup>[6]</sup>. The commission awarded Mihaly \$10,000 in damages to dignity, as well as provisions requiring APEGA to appoint a committee to consider and provide options and support. The Commission declined to award Mihaly loss of wages, citing discrepancy between the connection of discrimination and any loss of wages. Mihaly cross-appealed, asking for \$1,000,000 for lost wages and registration with APEGA, or

\$2,000,000 if not registered with APEGA. APEGA appealed Mihaly's cross-appeal, forwarding the case to the Court of Queen's Bench of Alberta. The standard of review given by the Court was the reasonableness in accommodating Mihaly's requests. The Court held APEGA as a paramount regulator to public interest and as such, must be met with high regulatory standards. The risk of public safety justifies the APEGA application process and ultimately resulted in The Court reversing the decision of the AHRC. The various reasons of justifications affecting the Mihaly case are further explained in the following section.

Mihaly later appealed to the Alberta Court of Appeal citing that he had not given all of the evidence relating to the trial. The Court of Appeal determined Mihaly to have failed in providing reasonable explanation for his appeal delays, waiting six months after the verdict to file a claim <sup>[8]</sup>. Mihaly also had not ordered the required transcripts or files an Appeal Record for his case on January 10, 2017. On January 12, 2017, the case was dismissed by The Alberta Court of Appeal for failing to meet the aforementioned requirements <sup>[8]</sup>.

## **The Court of Queen's Bench Decision**

The Court of Queen's Bench appointed Madam Justice Ross for the Mihaly case. The scope of the appeal was the reasonableness APEGA demonstrated Mihaly during the application process. Justice Ross discussed the appropriate standards of review, and qualified the case under the following issues <sup>[2]</sup>:

[54] The Appellant raises the following issues:

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 justified the Commission's legal process in testing APEGA for discrimination.

Justice Ross determined that the commission (tribunal) did follow procedural fairness when they did not ask for the interpretation of the *Engineering and Geoscience Professions General Regulation* <sup>[5]</sup>. She also determined that the AHRC was not qualified to review the case as the issue was of Mihaly's place of origin regarding academic qualifications. She then determined that the AHRC was justified in focusing the case on *prima facie* discrimination. The *prima facie* discrimination alleged against APEGA by Mihaly falls under section 4 of the AHRA <sup>[6]</sup>, which reads:

"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, gender identity, gender expression, 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. <sup>[6]</sup>"

Justice Ross agreed with the AHRC that Mihaly's place of education was linked to his place of origin, and therefore a factor to his adversity. She alluded that while the requirement to write the confirmatory examinations were adverse to Mihaly's place of origin, the requirement to pass the National Professional Practice Exam and have one year of "D" class engineering experience were not. Justice Ross also disagreed with the AHRC's determination that APEGA assumes international engineers from unaccredited universities were less qualified than Canadian engineering standards. She stated that Mihaly's place of origin was not a disadvantage in completing the APEGA requirements <sup>[2]</sup>. It is also not a factor in completing the required engineering experience outlined by APEGA. The lack of evidence to support the AHRC's claims of *prima facie* discrimination resulted in its dismissal as a factor.

## Reflection and Opinion

It is important that we have a regulatory body to ensure the public safety is a top priority. APEGA emphasizes holding the safety of the public paramount and the importance of having proper knowledge and skills in geoscience and engineering. That being said, I agree that more individualized assessment or other options is necessary when it comes to international professionals. Writing a standardized test on engineering topics that haven't studied in years is a tough mountain to climb. This can restrict competent immigrant professionals from their desired workplace and drastically affect their quality of life.

I do believe that APEGA should accommodate foreign-trained engineers and geoscientists on the requirement of standardized testing, and they did to an extent. APEGA did do due process and determined that Mihaly's "Mechanical Engineering" education was closer to Chemical Engineering and gave him a more specific test to accommodate that. However, the standardized 8-hour tests can be very unfair immigrant professionals. Just because an immigrant electrical engineer can't pass a test on Dynamics of Economics, that doesn't mean that he is incompetent in his field of work. He/she may still fulfill the requirement outline in the APEGA Code of Ethics. As an example, I have listed the following rules below:

1. "Professional engineers and geoscientists shall, in their areas of practice, hold paramount the health, safety and welfare of the public, and have regard for the environment. <sup>[3]</sup>"
2. "Professional engineers and geoscientists shall undertake only work that they are competent to perform by virtue of their training and experience. <sup>[3]</sup>"
3. "Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices. <sup>[3]</sup>"

While the electrical engineer may fail the examination standard used by APEGA, they could still fulfill all aspects of the Code of Ethics and Rules of Conduct, and be a competent engineer in Canada. This is why the exploration of additional options is necessary regarding strict rules on the standardized testing. Example accommodations could include: special circumstances to avoid the minimums of Canadian engineering experience, or special circumstances depending on international professional experience.

I agree with the AHRC's stance on exploring additional options and straying away from standardized tests such as the FE Exam. I also agree with their order for APEGA to establish a committee which includes foreign trained engineers that have been successful in the process. This type of diversity can only strengthen the registration process and ensure we have multiple backgrounds and outlooks regulating the professional environment.

That being said, I disagree with how they applied this viewpoint towards the Mihaly case. Justice Ross noted that asking APEGA to find Mihaly a mentor and guide him was outside of APEGA's reach as a regulatory organization. Mihaly could have found help on his own or at least attempted to write the confirmatory and FE examinations. A professional engineer should be expected to put in the effort to help themselves succeed. This leads me to agree with the Court of Queen's Bench's decision to overturn the AHRC's ruling. Mihaly had the opportunities available to put in the effort to write the tests or gain the experience necessary to become a professional engineer. I don't believe he was discriminated by his place of origin which limited his opportunities to do so.

I agree with the Alberta Court of Appeal's decision to uphold the verdict because of Mihaly's failure to provide additional support for his case. As a merit for appeal, Mihaly did not list any errors in the decision, or provide any legitimate reason for his delays. Canada and Alberta are under no obligation to hold international credentials to the same equivalence as Canadian Standards, and because of that, regulatory organizations like APEGA are necessary in ensuring that professionals are held to a high standard of value.



## References

- [1] Andrews, G. (2014). Canadian Professional Engineering and Geoscience: Practice and Ethics (5th ed.). Toronto: Nelson Education.
- [8] Court of Appeal of Alberta. (2017). Mihaly v Association of Professional Engineers and Geoscientists of Alberta, 1603-0056-AC, par. 6, 8.
- [2] Court of Queen's Bench of Alberta. (2016). Association of Professional Engineers and Geoscientists of Alberta v Mihaly, ABQB 61, par. 4, 54, 112.
- [3] The Association of Professional Engineers and Geoscientists of Alberta. (2013). Guideline for Ethical Practice.
- [4] The Association of Professional Engineers and Geoscientists of Alberta. (2015). Engineering and Geoscience Professions Act, Chapter E-11, Section 86.2.
- [5] The Government of Alberta. (2014). Engineering and Geoscience Professions General Regulation, Alta Reg 150/1999, Section 13.
- [6] The Government of Alberta. (2018). The Alberta Human Rights Act, v12, Ch A-25.5, Section 4, 9.
- [7] The Government of Alberta. (2018). Court of Queen's Bench Act. Ch. C-31.