

In the Court of Appeal of Alberta

**Citation: Mihaly v Association of Professional Engineers and Geoscientists of Alberta, 2017
ABCA 15**

**Date: 20170112
Docket: 1603-0056-AC
Registry: Edmonton**

Between:

Ladislav Mihaly

Applicant
(Appellant)

- and -

The Association of Professional Engineers and Geoscientists of Alberta

Respondent
(Respondent)

- and -

Alberta Human Rights Commission

Interested Party
(Respondent)

**Reasons for Decision of
The Honourable Mr. Justice Frans Slatter**

Application to Restore Appeal

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[1] This is an application by the appellant to restore this appeal, which was struck off for failure to file the Appeal Record.

[2] The appellant has engineering training from the Czech Republic and the Slovak Republic, but his academic credentials were not recognized as equivalent to Alberta qualifications. A tribunal of the Alberta Human Rights Commission found that he had been discriminated against based on place of origin. On judicial review, that decision was struck out in *Association of Professional Engineers and Geoscientists of Alberta v Mihaly*, 2016 ABQB 61, 30 Alta LR (6th) 125, which concluded at para. 149 that the tribunal's decision was "rife with logical errors, findings of fact that are not supported by the evidence, and failures to take into account relevant considerations".

[3] The appellant filed his appeal on time on February 22, 2016, but did nothing further to perfect the appeal. On June 23, 2016 the appeal was struck under R. 14.16(3) for failure to file the Appeal Record. On December 15, 2016, the appellant brought this application to restore the appeal.

[4] A number of factors are considered in deciding whether to restore an appeal:

- (a) arguable merit to the appeal;
- (b) an explanation for the defect or delay which caused the appeal to be taken off the list;
- (c) reasonable promptness in moving to cure the defect and have the appeal restored to the list;
- (d) intention in time to proceed with the appeal;
- (e) lack of prejudice to the respondents (including length of delay).

None of these factors are determinative. The failure of the appellant to meet one of them is not fatal, because all of the factors are weighed to determine whether, overall, it is in the interests of justice to permit the appeal to proceed: *Al-Ghamdi v Alberta*, 2016 ABCA 324 at para. 8; *Prochazka v Alberta (Maintenance Enforcement Program)*, 2014 ABCA 448 at para. 4.

[5] After the decision was rendered in the Court of Queen's Bench, the appellant attempted to have the decision reconsidered. The appellant complains that the Court of Queen's Bench refused to accept materials he tried to file in support of that application. Decisions of trial courts are generally final, and once an appeal is filed the mandate of the trial court is spent. It was not an error for the Court of Queen's Bench to refuse to reconsider the decision once the appeal was commenced.

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[6] As far as the merits of the appeal, the appellant does not point to any patent error on the face of the decision under appeal. Even Canadian educational institutions must demonstrate the equivalency of their programs, and Canadians who receive foreign training must also demonstrate equivalency. The appellant argues that the *Foreign Degree List* presented by the respondent is dated 2010, whereas his assessment should have occurred in 2000-2006. This document operated in the appellant's favour, because it showed that the degrees he had received were considered equivalent to a Canadian bachelor's degree in engineering. There is, in any event, no indication that the qualifications from the Czech Republic and the Slovak Republic were assessed any differently in 2010 than in that prior period.

[7] The appellant also refers to the Canada/European Union *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*, but the appellant has not demonstrated that there is anything in the *Agreement* or the *Convention* which holds that the respondent was required to consider his European credentials as equivalent to Canadian credentials. In any event, any violation of Canada's international obligations under these treaties is not within the Commission's mandate.

[8] The appellant has also failed to comply with the next three criteria for restoring an appeal. He has provided no explanation for the delay. Even though the appeal was struck off in June, and he expressed an intention at the time to have it restored, he did nothing until December. Finally, he has done nothing to perfect the appeal, and as of the hearing of this application has still not ordered the transcripts or prepared the Appeal Record.

[9] As far as prejudice goes, the complaint was filed with the Human Rights Commission in August 2008, and has been outstanding for over eight years. The respondent is entitled to have some finality to this matter, which questions its procedures for evaluating foreign credentials.

[10] When all the relevant factors are considered, the appellant has not met the test for restoration of this appeal, and the application is dismissed.

Application heard on January 10, 2017

Reasons filed at Edmonton, Alberta
this 12th day of January, 2017



Slatter J.A.

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Appearances:

Appellant Ladislav Mihaly, In Person

J.C. Casey, Q.C.
for the Respondent

K.A. McLeod (watching brief)
for the Interested Party