

# ENGG 513

## Assignment #1 Mihaly Report

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## **Introduction**

This report is a case study of the human rights complaint that Mr. Ladislav Mihaly has placed on APEGGA in 2008, and corresponding judgement made by The Court of Queen's Bench of Alberta.

Mr. Ladislav Mihaly is a foreign trained engineer from Czechoslovakia, who has immigrated to Canada, seeking for broader opportunities in his career. Upon his application, APEGGA had requested him to write Fundamentals of Engineering (FE), economics, and ethics Exams as a part of the assessment. Mr. Mihaly considered this to be a discriminatory act against foreign trained engineers.

The first judgement regarding the case was made by The Alberta Human Right Tribunal in 2014, stating that APEGGA's assessment process was discriminatory. APEGA appealed, and the Court of Queen's Bench has reversed the decision made by The Alberta Human Right Tribunal in January 2016. The case was finally settled in 2017 after Mr. Mihaly's cross appeal was dismissed by Alberta Court of Appeal.

In this report, decisions that each party made will be investigated, and APEGA's P.Eng requirements and regulatory requirements will be discussed.

## **Stakeholders**

A number of parties, including the complainant, Mr. Ladislav Mihaly, and the respondent, APEGA, were involved and were interested in the outcome of this case. Below are the stakeholders who have direct or indirect impact from the case.

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

One role of APEGA is to regulate the profession of engineering in Alberta. It is to protect the public from poor quality work, and safeguard the respect and title of "Professional Engineer". One way it accomplishes these aims is by having candidates whose educational quality cannot be determined equivalent to Alberta standards write exams to prove their competence. The outcome of this case would affect their ability to screen candidates and control who can and cannot practice engineering in the province of Alberta.

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

The Court of Queen's Bench of Alberta is the Superior Trial Court of Alberta, and its objective is to provide innovative, responsible, and accessible justice. Its role is to provide an impartial forum for the just and proportional resolution of legal disputes, to preserve the Rule of Law and to protect the rights and dignity of all. It conducts law and has jurisdiction in many different areas such as civil, criminal, family, commercial, case management, judicial dispute resolution, and reviews and assessments. Its role was to hear the appeal of APEGA against the ruling of the Alberta Human Rights Tribunal.

### **The Alberta Human Rights Commission**

The Alberta Human Rights Act protects Albertans from discrimination in certain areas based on specified grounds such as race, age, and in this case, place of origin. Its purpose is to ensure all Albertans are offered equal opportunity, and reduce discrimination. In order to carry out its purpose the act established the Alberta Human Rights Commission. This

commission investigates and resolves complaints of discrimination and has legal authority to impose consequences in its judgements. In this case it's role was to review the country of origin discrimination complaint made by Mr Mihaly and make appropriate judgements.

### **Mr. Ladislav Mihaly**

Mr. Ladislav Mihaly is the complainant of this case. He was born in Czechoslovakia, immigrated to Canada, and applied for P.eng certification in 1999. He studied at Slovak Technical University in Bratislava from 1970 to 1975, and has graduated with M. Sc. Diploma with specialization in Technology of Fuels and Thermal Energy. From 1977 to 1979, he has enrolled in Institute of Chemical Technology (ICT) in Prague, and graduated with a Certificate in Corrosion Engineering in 1981. [1] APEGGA could not ascertain the equivalence of his education and assigned him to write confirmatory exams which he failed.

### **Self Regulating Professions (Dentistry, Law, Medicine, etc) [7]**

While not directly part of the case they are affected by the final judgement made as if they were APEGA. This is because the verdict sets a precedent that can be used when these self regulating professions encounter a similar situation. All self regulating professions maintain high standards for practicing and aspiring members. A decision made in favor of Mihaly could set a precedent such that the human rights tribunal could remove standards it deems violate human rights. This would limit their ability to self regulate, especially regarding foreign trained professionals. It is also important to remember that one reason professions self regulate is to safeguard the public from poor quality. The trial pitted safety against inclusiveness, and a decision in favor of Mihaly would mean that inclusiveness is valued above safety, opening the door to a drop in quality.

### **New Immigrants, Specifically From Africa, Eastern Europe, and Asia**

Though APEGA does make efforts to sign equivalence agreements enabling engineers to practice in many jurisdictions equivalence agreements for Africa, Eastern Europe, and Asia are few. Immigrants from those areas face more challenges than their peers because APEGA has no way of assessing their credentials other than exams. These exams are designed to assess a basic level of competence and most applicants pass without issues. Unfortunately a select few such as Mr Mihaly do not pass these exams and suffer professional setbacks or ceilings. The Human Rights Tribunal decision, if upheld, would make it easier for people such as Mr Mihaly to achieve the standards tested by exams, and increase the amount of people who become certified professional engineers.

### **Individual Members**

The human rights tribunal ruled that APEGA was to provide accommodations to Mr Mihaly beyond what they normally do to allow him to integrate into the engineering profession. This would require more resources of which over 70% is provided through membership dues and much of the rest through registration, permitting, and examination fees. So an increase in accommodation costs would very likely be reflected through increased member dues. This would make some people unhappy and critical of the path their organization is taking and cause some strife within the organization.

## Background

### APEGA and the Title 'P. Eng'

APEGA has reserved the title "Professional Engineer" to be used by those who meet the standard. To be registered in APEGA as a member, one must graduate from an accredited educational institution with a degree in Bachelor of Science in Engineering or Bachelor of Engineering. To receive a P. Eng title, one must achieve all requirements such as 48 months of engineering work experience and passing grade on the National Professional Practice Exam. [6] Since engineering is a field of profession that is directly related to health and safety of people, APEGA enforces a strict law to grant the individuals authority to take responsibilities of their engineering work.

All immigrants to Canada with engineering backgrounds are striped of their right to practice engineering upon arrival to Canada until their credentials are verified to be equivalent to Canadian engineers. For foreign trained engineers to be accepted as a member of APEGA, they need a proof of their education, which is required to be assessed to ensure their eligibility. If the particular foreign educational institute is not acknowledged by APEGA, the applicants are required to write Fundamentals of Engineering (FE) exam to prove their eligibility. [6]

### Timeline of the Case [1] [2] [3]

1970-1975, 1977-1979, 1981: Mr Mihaly attends school and obtains M.Sc, Specialization in Technology and Fuels Energy, and certificate in corrosion engineering.

1999 : Upon his immigration, Mr. Mihaly applies to APEGGA to be registered as a Professional Engineer.

2000 : APEGGA evaluates application and requires Mr Mihaly to write National Professional Practice Exam, 3 confirmatory examinations, and engineering economics exam. He had failed his first attempt.

2001 : Mr. Mihaly reactivates his application for the first time. Mr. Mihaly applied to write writes National Professional Practice Exam, but did not attend the exam to write it.

2002: Mr. Mihaly had a conversation with P. Eng and was recommended to submit an appeal based on his experience in Slovakia. However, he did not submit an appeal.

2006: Mr. Mihaly reactivates application again; Mr. Mihaly attempts to negotiate a trade with APEGGA, by offering them that he would revise Alberta's Building and Fire Safety Codes in exchange of becoming a member. APEGGA differs this offer, and suggests that they could not treat him equivalently as engineers, but to write and pass the exam.

2007: APEGGA reconsiders application and requires Mr Mihaly to pass the National Professional Practice Exam, write confirmatory examinations, write engineering economics exam, and obtain 1 year of Canadian engineering experience. Mr Mihaly does not write the examinations

2008: Mr. Mihaly refuses to write the exam once again, and files human rights complaint against APEGGA alleging discrimination based on place of origin.

2008-2012: Complaint was investigated and dismissed without hearing. Mr. Mihaly appeals to Chief Commissioner, which then proceeds to a hearing.

2013: Hearing before Human Rights Tribunal happened.

2014: Human Rights Tribunal finds that system for evaluating foreign credentials constituted systematic discrimination. Directed that application be reconsidered, \$10000 in damages awarded APEGGA also ordered to appoint committee to assist Mr Mihaly, including match him with a mentor, and providing networking, and language resources.

2015: APEGGA appealed against the Human Rights Tribunal's decision.

2016: Decision of Court of Queen's Bench overturns Human Rights Tribunal decision. The Queen's Bench cites logical errors, facts unsupported by evidence, failure to account for relevant considerations, unreasonable interpretations of legislation, and etc.

2016: Mr Mihaly appeals to Court of Appeal in June, but did not submit an official appeal until later in the year. Appeal was discontinued, but Mr Mihaly applies again to Court of Appeal to restore the appeal.

2017: Court of Appeal does not allow appeal to proceed due to low quality of appeal.

## **Decisions of the Three Bodies**

### **Decision made by Alberta Human Rights Tribunal (Commission) on February 6, 2014:**

Alberta Human Rights Tribunal commented that the process used by APEGGA did not properly assess Mr. Mihaly's qualifications. No one from APEGGA contacted directly to his University to find out his qualifications nor provided him with direct assistance with Mr. Mihaly to help him understand his qualifications and meet his competency and safety required. It was stated by APEGGA that only about 25% of 1500 annual applications from IEG (Internationally Educated Graduates) are processed individually, which it would not have been much difficult for an organization like APEGGA to evaluate all applicant's qualifications. [1]

IEG requires at least an year of Canadian experience at an engineering firm, and require to be trained under supervisor with P. Eng to familiarize themselves with Canadian standards. Many have testified that immigrants who do not possess language skills or Canadian experience face difficulties in getting employed by a firm. The Tribunal stated that APEGGA has failed to recognize this. [1]

Alberta Human Rights Tribunal acknowledged that Mr. Mihaly has suffered in loss of dignity and financial difficulties due his unemployment. Conclusion was that Mr. Mihaly has succeeded in fulfilling Examination Standard and Experience Standard without more individualized assessment. [1]

As per the result of the decision, APEGGA was to award general damages in the sum of \$ 10,000.00 to Mr. Mihaly. If Mr. Mihaly wishes to pursue career in engineering, APEGGA was required to find him a mentor who best fits his background of studies and can provide him the necessary guidance in engineering practices. APEGGA to establish a committee, preferably including some foreign trained members to investigate options to properly assess Mr. Mihaly's qualifications. [1]

### **The Decision made by The Court of Queen's Bench in June 2016:**

APEGA's appealed against the decision made by Alberta Human Right Tribunal, and Mr. Mihaly has cross-appealed against APEGA's appeal, while the The judgement of the Court of Queens bench overruled the judgement given by the Human Rights Tribunal in 2014.

The Court has acknowledged that the decisions made by the Tribunal included some logical errors such as failing to see that Mr. Mihaly has already failed the FE exam several times. [2] Also, the Court pointed out that and the court has concluded that the decision made by the Tribunal should be reversed.

### **The Decision made by Alberta Court of Appeal in January 2017:**

After APEGA's appeal was accepted by The Court of Queen's Bench, the appellant, Mr. Mihaly has applied to restore the appeal On December 15, 2016. [3] In response to Mr. Mihaly, the Alberta Court of Appeal has assessed the application for the appeal, and has dismissed it as Mr. Mihaly was not considered to be meeting the test for restoration of the appeal.

The Court of Appeals recognized that even Canadians who have foreign training are required to receive equivalent assessment to prove their qualifications, and thus cannot be seen as a discriminatory case against foreign engineers. Also, the Court criticized Mr. Mihaly's actions in failing to provide explanations for the delay for his attempt for restoration of the appeal, as he has originally expressed his will to restore the appeal in June of 2016. [3]

### **Court of Queen's Bench Decisions**

After the decision of the Alberta Human Right Tribunal was issued on February 6, 2014, APEGA has appealed against it. Decisions made by the Tribunal were reconsidered for the appeal.

Canada and a number of countries across the world are in process for establishing an equivalent accreditation system for engineering programs. If the engineering standards satisfy the requirements, Mutual Recognition Agreements [MRAs] maybe settled. Internationally trained engineers who have graduated from the accredited institution covered by MRAs are not required to take examinations to register as a member of APEGA. However, Slovakia had not established MRA with Canada. [2] Since the term 'engineer' is used interchangeably with other professions such as engineering technologist or mechanics in countries without MRA, FE exams must be written by anyone which country of origin of these countries to prove their education and knowledge. Thus, Mr. Mihaly was required to write an exam to prove his competency as an engineer. The Tribunal has found that Mr. Mihaly should not have been required to write an FE Exam, and but rather be individually assessed, with only examinations to correct his academic deficiencies based on the assessment should have been given.

FE exams test for entry-level competency, and have a pass rate of 85%. [2] Individuals who did not pass are not permitted to rewrite the exam. Since Mr. Mihaly has never attended to write this exam, it is uncertain that he would have passed this exam or not. Tribunal has

claimed that Mr. Mihaly should have not been given a standardized exam, but Standardized tests are common practice seen in professional regulatory environment to assess qualifications including skills, knowledge and language. APEGA was lacking in information on Mr. Mihaly's engineering program and institute, and thus required to assess the quality of his education. Therefore, the court has concluded that APEGA's request for Mr. Mihaly to write the FE exam was concluded not to be discriminatory against a foreign trained engineer.

While the Tribunal's decision has directed APEGA to match a mentor with similar backgrounds, who will 'assist him to network with other foreign engineers' or 'help improve language skills', [2] the Court stated that Tribunal's reasonings for Mr. Mihaly's need for a mentor are beyond discriminatory conduct. The Tribunal, upon making the decision, also have contempt that all foreign trained applicants would be mentored by appropriate personnel. However, the Court of Queen's Bench have acknowledged that implementing such practice will be costly and inefficient, and may cause failure to provide assessments with consistent standards and quality. Thus, The Court of Queen's Bench has concluded that the Professional regulatory body as APEGA is not in need to provide mentorship to Mr. Mihaly, nor alter its practices in a fundamental way in such ineffective manner.

Lastly, the Court of Queen's Bench dismissed the Tribunal's decision that APEGA should grant Mr. Mihaly an opportunity to take examinations in areas he is not exempted in. It was noted that the Tribunal has failed to realize that Mr. Mihaly has failed or has not written his confirmatory exams or FE exams three times. [2] APEGA has been prohibiting applicants to rewrite the exam once failed, and Mr. Mihaly was not to be an exception.

Overall, it was found that the Tribunal's decisions and reasoning on claiming APEGA's assessment on Mr. Mihaly's qualifications lack in evidence, and have failed to account relevant information.

## **Reflection and Opinion**

Reflecting to the decision made by Alberta Human Rights Commission, we do not agree with the result nor the remedy it imposed on APEGA. Looking at the situation from a high level there are other things to consider that the Human Rights Commission did not place much weighting on. Given its focus and mission it is easy to understand why the Human Rights Commission is shortsighted. Some of the aspects it didn't weigh as much as discrimination are workplace safety, protection of the title "Professional Engineer", dedication to quality required by the nature of the profession, and public trust. APEGA has the responsibility to maintain public trust in engineers and makes sure that all who practice it have the required knowledge. A decision to shorten or adapt the process for anyone jeopardizes the ability of APEGA to to make that guarantee to the public. Workplace safety is also built on trust and expectations, coworkers expect a pattern of behavior and quality consistent with the profession. When that quality cannot be determined or does not exist mistakes can be made or allow to continue unfixed. Safety should not be triumphed by inclusiveness.

If the decision by the Alberta Human Rights Commission stood then it would reduce the quality of the engineering profession and compromise trust. This could result in industrial disasters, loss of economic opportunity due to questions regarding safety, and lowering of perceived value resulting in depressed wages.

First and foremost APEGA has a mandate to safeguard the engineering profession such that the public can trust all Professional Engineers and the work they do. This mandate trumps the need for inclusion and accommodation because putting inclusion first violates the Engineering and Geosciences Profession act. APEGA also has limited resources and cannot accommodate every situation. Some examples of practices APEGA does not have resources for include evaluating every university program, even the ones who do not ask. And it does not have the manpower to replace examinations with personal interviews. Nor is this a good idea since it would not provide consistent, standardized, and objective outcomes.

While keeping with its mandate and regarding limited resources APEGA reasonably accommodates foreign trained engineers and geoscientists. APEGA and sister organizations seek out and participate in mobility agreements that allow credentials to be valid in many jurisdictions. For example, an engineer trained in France can also practice in Canada. It will also send representatives to evaluate any educational institution that asks to be evaluated. But in order for a mobility agreement to be in place each party must acknowledge that the training in the other is equivalent to its own. When mobility agreements are not in place and APEGA has no ability to verify credentials they give candidates chances to prove their knowledge without requiring extra classes to be taken. The chances to prove their knowledge mainly consist of exams since it is a very efficient and fair way to judge candidates.

Situations such as Mr Mihaly's are very rare. There are approximately 1500 foreign trained applicants each year, all individually assessed. Of those 60% register with no issues, 25% write confirmatory exams, and 15% have examinations waived.

Mr Mihaly did not make a reasonable effort to resolve his situation, and APEGA should not compensate for his lack of initiative. This is shown by his failure to network, and to write all the required exams. Also by his failing to pursue an internal appeal. His poor english skills were mentioned in the 2014 Human Rights Tribunal judgement as an area APEGGA was to assist him with, despite being in Canada for over 10 years by that point.

It is my conclusion that APEGA does make reasonable efforts to accommodate foreign trained engineers but it does not nor should it accommodate to the jeopardy of it's core mandates. And it should not compensate for the lack of initiative of its applicants.

## References:

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[3] *Mihaly v. The Association of Professional Engineers and Geoscientists of Alberta*, 2017



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