

The University of Calgary  
ENGG 513 Roles and Responsibilities of the Professional Engineer  
Instructor: Dr. Denis Onen

# **Mihaly vs. APEGA**

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## **Introduction**

The main purpose of this report is to examine the Alberta Human Rights Commission, the Court of Queen's Bench, and the Court of Appeal's decisions regarding Mr. Ladislav Mihaly; who was denied registration as a professional engineer by APEGA. This report explores the process, issues, and consequences regarding Mr. Mihaly's appeal to the Alberta Human rights Commission for *prima facie* discrimination. This case also outlines and emphasizes the concerns regarding integrating foreign-trained professionals in society as well as the roles and responsibilities of regulating organizations in Alberta.

## **Stakeholders**

### ***APEGA:***

APEGA is the Association of Professional Engineers and Geoscientists of Alberta. It regulates and licenses individuals and their practices through the *Engineering and Geoscience Professions Act*, with a mission to protect the public interest. Mr. Mihaly applied to APEGA to become a professional engineer in Alberta, but a set of terms was laid out before his application could be processed. APEGA follows guidelines from the Canadian Engineering Accreditation Board (CEAB), that assigns confirmatory exams based on Mutual Recognition Agreements (MRA) or the Foreign Degree (FD) List.

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

The Court of Queen's Bench is the higher Court dealing with criminal and civil jurisdiction in Alberta. APEGA appealed to the Court of Queen's Bench to reverse the decision of the Alberta Human Rights Tribunal in Mr. Mihaly's case. The Court is responsible for upholding justice when resolving disputes in a fair manner. The Honourable Madam Justice J.M Ross oversaw the case and gave the final decision both in APEGA's initial appeal, and Mr. Mihaly's cross-appeal.

### ***The Alberta Human Rights Commission (AHRC):***

The AHRC is an organization that aims to protect Albertans from discrimination through the *Alberta Human Rights Act* (AHRA). Mr. Mihaly filed a complaint to the AHRC under sections 4,7, and 9 of the AHRA claiming APEGA discriminated against his place of origin. The human rights tribunal agreed and awarded Mr. Mihaly \$10,000 and ordered APEGA to make amends for their act of discrimination. The tribunal's terms were for APEGA to reconsider Mr. Mihaly's application, appoint a committee that would individually assess his qualifications, provide support for him through mentors and programs, exempt examinations not aimed at correcting academic deficiencies, and guide him towards networking and language resources.

### ***Mr. Ladislav Mihaly:***

Mr. Mihaly was an engineer born in the former Czechoslovakia. He obtained two master's degrees, one from the Slovak University of Technology in Bratislava and another from the Institute of Chemical Technology in Prague. He practiced engineering in the former Czechoslovakia for close to 12 years, then immigrated to Canada and applied to become a Professional Engineer with APEGA. Although his application was acknowledged, after thorough consideration from the Board of Examiners, Mr. Mihaly

was required to not only pass the National Professional Practice Exam, but to complete three confirmatory exams and an engineering economics course or exam. After a series of failing the NPPE, withdrawing and reactivating his application, Mr. Mihaly filed a complaint with the Alberta Human Rights Commission. He alleged that APEGA discriminated against him based on his place of origin when he was denied registration as a Professional Engineer.

***The General Public:***

The mission's statement of APEGA is to "regulate the practices of engineering and geoscience to serve the public interest in Alberta". APEGA is fighting so hard for the Mr. Mihaly case to protect the public. If the regulations for professionals weren't strict, it could allow unqualified individuals to practice the profession, compromising public safety. It is also important for APEGA to be consistent with its qualifications and admission requirements as well as have non-discriminatory processes so that the public can trust their organizations workings.

***The Canadian Engineering Accreditation Board (CEAB):***

The primary purpose of the CEAB is to assess engineering programs within and outside of Canada to see if reviewing a programs curriculum, faculty and facility accredits them. A candidate's institution with an equivalent accreditation process as Canada, can enter a Mutual Recognition Agreement and have their confirmatory examinations waived. Mr. Mihaly's institution did not apply for an MRA. For engineering programs that have not undergone the accreditation process, can be included in the Foreign Degree List. These programs are usually assigned three confirmatory examinations or the Fundamentals of Engineering (FE) Exam.

***The Court of Appeal:***

The Court of Appeal is the highest Court in Alberta. It deals with serious criminal and civil appeals and has the jurisdiction to reverse appeals made by lower courts. After the Court of Queen's Bench ruled that the Alberta Human Rights Tribunal's decision be reversed, and Mr. Mihaly's cross-appeal be dismissed, Mr. Mihaly restored his appeal against APEGA to the Court of Appeal. However, he did nothing to further the appeal and his case was dismissed accordingly.

**Background:**

Mr. Ladislav Mihaly was a foreign engineer who had close to 12 years of engineering experience before immigrating to Canada. He received his education in his place of origin, the former Czechoslovakia, and obtained two master's degrees. One of which was a specialization in Technology of Fuels and Thermal Energy from the Slovak University of Technology in Bratislava and the other was a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague.

After immigrating to Canada, Mr. Mihaly applied to APEGA to become a professional engineer. His application was acknowledged, and he was told to send in his transcripts, visa and Landing Immigration form. He was also instructed to take the National Professional Practice Exam (NPPE), as this was required of all applicants wanting to become a professional engineer.

Canadian universities go through an extensive assessment process for the engineering program to receive accreditation within the Canadian Engineering Accreditation Board (CEAB). This includes review of the curriculum, facilities, faculty and a detailed package prepared by the university, as well as an in-person inspection by Dr. Faulkner to ensure all graduates of the program meet requirements set by the board. Other countries with an equivalent accreditation process for engineering programs can enter into Mutual Recognition Agreements (MRA's) with CEAB. There is another process in which an engineering program can be assessed by CEAB if requested by the institute, to determine if the accreditation process is substantially equivalent to that of Canada. If the applicant is a graduate from an MRA country or from a program assessed by CEAB to be a Substantially Equivalent Program, the applicant is generally not assigned any additional exams by APEGA. The exams may also be waived if the applicant has a graduate degree from either a Canadian university or an MRA country. However, because Slovakia does not have any MRA's with Canada and the Slovak University of Technology has never applied for assessment, Mr. Mihaly was assessed as an "Examination Candidate".

Engineering programs that have not been assessed by the previously mentioned methods may also be included in the Foreign Degree List (FD List). There are several thousand institutes included in the list based off publicly available information gathered. Applicants graduated from an institute on the FD List are assigned three confirmatory exams instead of the five exams assigned to applicants from an institute not included in the list. APEGA's Board of Examiners oversees assessing applicants. In addition to academic assessment to determine whether an applicant must take the confirmatory exams, there is also an experience assessment. If the applicant has 10 years of experience deemed acceptable by the Board, the confirmatory examinations may be waived. Because Mr. Mihaly's foreign experience was not seen as highly complex or a role in which there was not a high level of responsibility, the Board assigned him three confirmatory examinations.

In addition to the required NPPE exam, Mr. Mihaly was told he needed to write three confirmatory exams and an Engineering Economics course or exam once his application

was assessed, within a specified timeframe. Mr. Mihaly failed the NPPE exam three times and failed to show up one time. Mr. Mihaly failed to comply with the terms and complete the exams within the timeframe twice, so his application was withdrawn both times. After Mr. Mihaly asked for reactivation after the second withdrawal, he was asked to send in his updated resume and references, since quite some time (seven years) had elapsed. He was also told the same terms, the three confirmatory exams and the Engineering Economics course or exam and was also given the option of taking the FE exam because APEGA changed its policies. The Board also determined that Mr. Mihaly required gaining one year of North American engineering experience in a D-level position because his previous position was at a C-level.

After hearing back from APEGA, Mr. Mihaly filed a complaint under sections 4, 7, and 9 to the Alberta Human Rights Commission (AHRC) claiming APEGA had discriminated against his place of origin. The AHRC held a tribunal and agreed with Mr. Mihaly's case, awarding him \$10,000. The tribunal ordered APEGA to reconsider Mr. Mihaly's application and asked for possible examination exemption, individualized assessment, course or program provisions, and directing Mr. Mihaly to mentorship, networking and language resources.

APEGA disagreed with the Tribunal's ruling for this case and appealed to a higher court, the Court of Queen's Bench, in hopes of reversing the decision. Mr. Mihaly cross-appealed to the Court for \$1 million and to register with APEGA or \$2 million without registration, due to his loss of wages over the years being under-paid. APEGA brought witnesses to come forward and explain standard registration processes. All applicants were expected to write the NPPE exam and the confirmatory exams or FE exams that may only be waived in certain conditions. The Board of Examiners assessed that Mihaly's academic background and experience did not meet the qualifications. APEGA stated that it was their responsibility to regulate engineering and geoscience professions. Therefore, it was not the place of origin in which the applicant was born that was of interest, but rather where the applicant received their education. It was important for APEGA to guarantee the quality of education received and make up for possible "academic deficiencies" by assigning the additional examinations. The Court of Queen's Bench ruled in favour of APEGA, reversing the decision made by the Human Rights Tribunal.

Mr. Mihaly filed for appeal to the Court of Appeal of Alberta after losing the case in the Court of Queen's Bench. He referred to the Canadian/European Union Agreement for Cooperation in Higher Education and Training as well as the UNESCO Convention on the Recognition of Studies, Diplomas and Degrees Concerning Higher Education in the States Belonging to the European Region, but neither the Agreement nor Convention had any relevance to the case. It did not establish that APEGA had to consider his European credentials equivalent to Canadian credentials. Mr. Mihaly also failed to complete three criteria needed in order to restore the appeal. He did not provide explanation for his delay, perfect his appeal or prepare the Appeal Record. His appeal was therefore not restored, and the decision of the Court of Appeal of Alberta was to dismiss this application.

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

Initially, Mr. Mihaly filed a complaint to the AHRC claiming APEGA discriminated against his place of origin. This incident has established a prima facies case, in which if the respondent, in this case APEGA, couldn't justify their actions, then discrimination would have been found to occur. The court of Queen's Bench decided to reverse the decision made by the AHRC Tribunal. This decision was made on the basis that Mr. Mihaly's arguments regarding the discrimination had been justified by evidence from APEGA witnesses and policies.

Mr. Mihaly argued that "place of origin" was not "where you were born", but rather where you came from. The Court rejected this statement because the definition for "place of origin" could not be stretched to include where a person obtained their education. He testified stating that he was unaware of the FD list initially and became aware of potential discrimination after he gained more information. He felt it was wrong for an "Albertan authority" to judge an applicant based on completing their degree in another country. In cross-examination, APEGA brought out a letter written to Mr. Mihaly, informing him that he would need to write three confirmatory exams because his institute was on the FD list. He was told that if his institute were not included, he would need to write nine. Mr. Mark Tokarik, director of registration at APEGA, also cross-examined, stating that on the APEGA website, there was a section dedicated to international engineering graduates (IEG). This section included videos and brochures, with all the information regarding the application process. Mr. Mihaly had access to these resources.

Mr. Mihaly also indicated that APEGA did not obey the international agreements that recognized engineers from other countries, such as the Libson Treaty. In cross-examination, Mr. Mihaly was advised that this treaty was a part of the European Union and Canada was not. Mr. Mihaly also brought forth another agreement APEGA didn't obey. It was regarding an agreement in which the federal government signed with the European Union. However, since he was not specific with his evidence, it was dismissed.

Another piece of evidence Mr. Mihaly brought was his variety of experience working in Czechoslovakia for 25 years. He claimed he could continue working as a professional engineer there but decided to move to Alberta for more opportunities in oil and gas. He had expected his skills and education to be accepted and that he would be able to make an impact on the profession in Canada. However, upon assessment, the examination board had deemed his previous experience to lack the increasing responsibility and complexity needed to waive the exams. Because Mr. Mihaly had asked for his exams to be waived due to his experience and was denied by the board, Mr. Tokarik advised him to send in an appeal if he believed a mistake was made. Dr. Faulkner on APEGA's Board of Examiners testified that Mr. Mihaly never sent the appeal.

During the cross-examination, Mr. Mihaly questioned Dr. Dean Lynch who appeared as an expert witness to testify the evaluation of credentials for engineers. Mr. Mihaly asked him how APEGA assessed his master's degree to be equivalent to a Bachelor's in Canada and why he was assessed differently from other European citizens. Dr. Lynch explained

that the definition of a master's program varies between countries. In Canada, a master's degree takes two years and required a detailed thesis, whereas Mr. Mihaly's master's degree was five years with a thesis. This was closer to a bachelor's degree in Canada. Dr. Lynch continued to rationalize that some institutes in Europe have requested for Substantial Equivalency with the CEAB and have undergone evaluation and therefore are treated differently. The Slovak Technical University had never requested for an evaluation, so it is APEGA's policy to assign confirmatory exams to make up for any academic deficiencies. Dr. Lynch went on to confirm that an applicant's place of origin had no relation to the evaluation process as APEGA's process regarding this matter was used in other Canadian jurisdictions as well.

Another policy APEGA had was that an applicant needed to obtain one year of Canadian engineering experience to understand Canadian codes and standards. Mr. Mihaly criticized that it was very difficult for him to find an employer that would hire someone with over six years in junior positions. He sent out 2000 applications and only got two interviews. Mr. Tokarik testified that APEGA did not interfere with Mr. Mihaly's job search, as employers do not require clearance from APEGA to hire an employee. Nothing would have barred Mr. Mihaly's search for employment if an employer wanted to employ him.

During cross-examination, Mr. Mihaly was asked about an email he sent to APEGA proposing a "trade". He offered to revise Alberta's Building and Fire Safety Codes etc., so APEGA could assess his skills and knowledge, and in return waive his examinations. If APEGA had accepted his offer, they would have overlooked their policies, treating him as an applicant from a substantially equivalent program. Mr. Mihaly also claimed that some exams required of him by APEGA, were material he learned in high school. Based on this statement, Counsel indicated that he should have written the exams because they would have been easy for him. Mr. Mihaly never attempted any confirmatory exams or the FE exam.

Mr. Mihaly cross-appealed in the Court for the compensation of lost wages that the Human Rights Tribunal did not grant him. He had asked for one million along with APEGA registration or two million without APEGA registration. The Court of Queen's Bench did not grant request this either because he could not provide any evidence of his lost wages.

Although it is true that international engineers, such as Mr. Mihaly can face many adversities working in Canada, it is also APEGA's responsibility to adhere to strict policies and protect the title of a professional engineer. These policies are built to keep the public safe and ensure all applicants entering the profession are qualified. APEGA provided strong evidence through their witnesses and policies in this case against Mr. Mihaly. Thus, the Court of Queen's Bench has ruled in favour of APEGA, reversing the Human Rights Tribunal's decision.

## **Reflection and Opinion**

### ***Do you agree with each Court's decisions?***

I disagree with the Alberta Human Rights Commission in their decision to side with Mr. Mihaly's claim of discrimination. I believe that the Court of Queen's Bench was rightful in reversing the tribunal's ruling and dismissing Mr. Mihaly's cross-appeal. I also agree with the Court of Appeal's decision in dismissing Mr. Mihaly's second appeal. In the perspective of APEGA, their primary concern for this case was to uphold their mission in regulating the practices of professional engineers and geoscientists for the public interest to be served and protected. In Mr. Mihaly's case, his goal was to attain the professional engineer title and continue working in Alberta, as he did in Slovakia. Both the appellant and respondent had reasons to fight for their beliefs. But ultimately, I believe that Mr. Mihaly's complaint for *prima facie* discrimination lacked sufficient evidence, and APEGA had the grounds to refuse his application.

Mr. Mihaly filed a complaint to the AHRC under section 4,7, and 9 of the AHRA. Specifically, he targeted the sections that state no person or employer should discriminate against any person based on their place of origin. Mr. Mihaly believed that the reason APEGA didn't allow him to register as a professional engineer in Alberta is because he was born in Slovakia. This is not true, instead APEGA refused his registration because the institution where he received his education did not have an MRA with CEAB. This means that his education was not recognized as an equivalent to a Canadian institution. His experience was also not classified as D-level and could not be considered for his application.

APEGA follows strict guidelines and regulations to assess individuals seeking to join the organization. Professional engineers and geoscientists are not only respected but have important responsibilities to the public. It is a title that cannot be taken lightly as their area of work will directly impact the framework of society. From day one, Mr. Mihaly was aware of the terms he needed to comply with to be registered as a professional engineer. He even received a phone call from Mr. Tokarik to ensure the terms were outlined and to clarify his experience. Since the institution where Mr. Mihaly received his education did not have an MRA with CEAB, he was required to pass the National Professional Practice Exam, complete three confirmatory exams, and take a course or exam in engineering economics. These requirements were not based off APEGA discriminating against his place of origin, but rather the existence of a mandate that all applicants must follow.

The Alberta Human Rights Commission was wrong in accusing APEGA of discrimination, and it was unnecessary for APEGA to be fined and forced to make amends as they were purely following procedures. I do agree with the Court of Queens Bench's decision in reversing the AHRC's appeal and dismissing Mr. Mihaly's cross-appeal.



### ***Should APEGA accommodate foreign engineers and geoscientists?***

I believe that APEGA should accommodate foreign engineers and geoscientists in Alberta. There are many skilled professionals that could greatly benefit projects and processes with their extensive knowledge. However, I think that it is necessary to have measures to assess their qualifications and not allow them to begin working immediately. In every country there are different regulations and practices that may differ heavily from one to another. It is necessary to assess candidates using confirmatory exams, and work experience gained in the country of interest. Although the integration of foreign trained workers is quite difficult, it is more important to protect the public's safety. If they can complete the required exams and terms laid out by APEGA, they should be more than welcomed to work in Alberta.

Mr. Mihaly most likely felt wronged and offended that he needed to prove his qualifications since he thought he already had two master's degrees and close to 12 years of engineering experience. He felt that he didn't need to complete any confirmatory exams and should be allowed to work immediately. This is a surprisingly common problem in society where extremely qualified foreign professionals work in minimum wage jobs.

For example, in 2015 Iraj Khalil Nasrabadi a doctor with 16 years of experience in Brazil, passed three medical exams, spent 18 months shadowing a Canadian doctor and even became a Canadian citizen. However, he was unable to secure a residency and was not allowed to become a fully qualified doctor. As a result, he was forced to work at McDonald's to feed his family even though the industry was desperate for family doctor's. It is quite difficult for foreign workers to obtain job experience in Canada before being allowed to work as a professional in the industry.

In Mr. Mihaly's case however, I believe that he was in the wrong. APEGA clearly laid out the terms to be allowed registration as a professional engineer. Mr. Mihaly even worked as an engineer in Calgary after the withdrawal of his application. The problem with his experience was that he was always working at lower than a D-level, this means that he didn't have any leadership responsibilities or wasn't able to advance in his industry for close to 12 years. Since it is necessary for a professional engineer to approve stamps, drawings, and teams there is a heavy responsibility in the role.

In conclusion, I believe that foreign-trained professionals should be accommodated if they have the necessary qualifications and experience. Through confirmatory exams, Canadian experience and courses taken, foreign-trained engineers and geoscientists should be able to register with APEGA and continue their careers.

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