

ENGG 513

The Roles and Responsibility of the  
Professional Engineer in Society

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**Report 1: Mihaly Case Study**

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## **Introduction**

The purpose of this report is to investigate and analyze the joint procedures and decisions made by APEGA, The Court of Queen's Bench and The Alberta Human Rights Commission (Tribunal) on the case of Mr. Ladislav Mihaly originated from the year 2000. Mr. Mihaly who immigrated to Canada in 1999 showed very little patience, impractical and no respect regarding his eagerness to be acknowledged as a professional engineer in Alberta through APEGA. This case outlines and emphasizes the importance of being professional and being aware of the necessary requirements to be registered as a professional engineer. Not to mention, this case also showcases the main regulatory processes and code of conduct that APEGA follows primarily through their Board of Examiners.

## **Stakeholders**

Definition of a stakeholder according to the Merriam Webster Dictionary is "one who is involved in or affected by a course of action" [3]. Specifically, the main stakeholders are:

### **1. APEGA:**

Examined Mr. Ladislav Mihaly's initial application to be registered as a Professional Engineer in Alberta in 1999 and came up with a decision by the Board of Examiners the following year. The decision established included a few requirements which the respondent did not complete between the year 2000 to 2003. Reevaluated the case again in 2006 before going forward with a few other sets of requirements. Proceeded to hearings and appeals from other organizations to resolve the lengthy case.

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

Reassessed the decision made by the Human Rights Tribunal in 2016. Discovered many insufficient rebuttals and weak allegations of the legislation provided. Holistically dismissed the cross appeal the same year. Finally, determined and enforced the necessary resolution of Mr. Ladislav Mihaly's case.

### **3. The Alberta Human Rights Commission:**

Received the first complaint by Mr. Ladislav Mihaly against APEGA in 2008. Investigated the case based on allegations of discrimination revolving around the information on the place of origin. Came to a decision of dismissing the case. Made an appeal to the Chief of Commissioner. After a hearing was made in 2013, formed major successive steps for Mihaly to follow.

4. Mr. Ladislav Mihaly:

An engineer graduate from Czechoslovakia. He obtained a Science Diploma in 1975 with a specialization in technology of Fuels and Thermal Energy from Slovak Technical University in Bratislava. Immigrated to Canada in May 1999 and applied to APEGA. Got advised to do a several things before being acknowledged as a Professional Engineer in Alberta. Failed and did not attend the National professional practice Exam (NPPE) with a total of 4 times. Resorted filing a complaint to the Alberta human Rights Commission Tribunal.

5. Dr. David Lynch:

During 2008, held the position as the Dean of the Faculty of Engineering at University of Alberta. At the same time was also a part of the Board of Examiners for APEGA and the Canadian Accreditation Board (CEAB) which was in charge to assess the engineering program structured by other institutions outside of Canada. Prepared the report which reviewed the case. Concluded that the Slovak Technical University of Bratislava has not been assessed as a substantially equivalent program.

6. Dr. Gary Faulkner

Chair of the APEGA Board of Examiners and reviewed Mr. Mihaly's application. Remarked Mr. Mihaly's Master's degree was equivalent to a Bachelor's degree along the Chemical Engineering program. Explained to Mr. Mihaly that his experience in piping design and fabrication did not increase his responsibility or complexity. Provided the option to Mr. Mihaly of either conducting the confirmatory examination or the FE Exam after the reactivation of his case on 2006.

7. Mr. Mark Tokarik:

Deputy Registrar for APEGA and reviewed Mr. Mihaly's application with the surfacing of further relevant evidences. Assessed whether university in Slovakia is on the FD list and evaluated the applicant's options based on either circumstance. Advised Mr. Mihaly to submit a reconsideration request to APEGA if the result was not satisfactory. Sent a reconsideration letter and appeal sheet to Mr. Mihaly.

## **Background**

Mr. Ladislav Mihaly was an Czechoslovakian engineer claiming to have two Master's Degree from Slovak University of Technology in Bratislava and the other from Institute of Chemical Technology [ICT] in 1981. He moved to Canada in May 1999 and applied to APEGA to practice engineering legally and registered as a Professional Engineer. The Board of Examiner's from APEGA reviewed his application and required him to pass the National Professional Practice Exam(NPPE), three confirmatory exams and completed an Engineering Economic course. He failed the first NPPE exam which he took on January 17,2000. Then, he applied for second NPPE test and granted the permission to take it on October 16, 2000 which he failed to attend on the exam date.

From the year of 2000 and 2003, he failed another two NPPE(s) exam and APEGA had decide to withdraw his file due to failure to complete all the required exams during the specified period. In 2016, he then requested APEGA to activate his application for the third time and APEGA had requested him for an updated resume and reference in addition to the NPPE exam, confirmatory exams or the Fundamental of Engineering Examination(FE) and one-year Canadian engineering experience. At the end, he did not successfully write all the exam required and decided to complaint with the Alberta Human Rights Commission claiming that APEGA had practice discrimination against his place of origin under the *Alberta Human Rights Act*, RSA 2000, c A-25.5[AHRA] on August 5,2008[1].

Following the year 2008 to 2012, all the complaints were investigated and most of were dismissed with no hearing from the court. Despite that, the Chief Commissioner had directed the complaint to proceed under the Hearing Rights Tribunal in 2013. On February 2014, The Tribunal had found that the application process experience by Mr. Mihaly was indeed based on discrimination and Mr. Mihaly was compensate with \$10,00 due to loss damage. Next, the Tribunal had ordered APEGA to reevaluate Mr. Mihaly application and provide him with mentorship and the possibilities of exemptions from any examinations.

In response to the Tribunal orders, APEGA appeal to court of Queen's bench against the decision made by tribunal based on four factors which is procedural fairness, jurisdiction, *prima face* discrimination and justification. Mr. Mihaly had cross appeal and self-represented after the appeal was filled and requested \$1,000,000 with Professional Engineer title or \$2,000,000 without the title. On 2016, the Court of Queen's bench had dismissed the cross-appeal by Mr. Mihaly and the Tribunal's decision based on these factors:

- 1) Tribunal's failed to provide evidence with the claim made by Mr. Mihaly
- 2) Failure to interpret the Legislation fairly by breaching the jurisdiction of AHRA

The decision made by the Court has increased the credibility of APEGA as "gatekeeper of engineers and responsible for licensure in Alberta" [1] and proves there is no discrimination during the evaluation process.

## The Court of Queen's Bench Decision

APEGA had submitted their appeal for reversal of Human Right Tribunal's decision on November 20, 2014 and hearing was set on December 12, but it did not happen on that day. Court's had asked the Tribunal for broader judicial review and the hearing was set on July 23 and July 24, 2015. The appeal made by APEGA address the 3 main issues and the court has responded to every issue as follow:

### Procedural Fairness

Tribunal had decided that the examination made by APEGA were not required to correct a perceived academic deficiency under s8(b)(ii) of the Engineering and Geoscience Professions General Regulation [EGPR][1]. APEGA claimed that tribunal has misinterpret the EGPR by ignoring the "or" in the term "confirmatory examination or examinations for the purpose of correcting a perceived academic deficiency" [1]. Then, APEGA claimed that tribunal had violated the duty of fairness by not giving an opportunity to address the new ground. APEGA that backed up this claim by referring to *Amacon Property Management Services. Inc v Dutt* [1] where the reviewing court had concluded that both parties should have the opportunity to review "any new ground". The Court of Queen's bench later stated that the *Amacon* case was different with this case due to the Tribunal's decision and the hearing both have same ground which was the *prima facie* discrimination in APEGA's standard of qualification. Thus, Tribunal are not required to gives other parties acknowledgement before deciding on a case. The Court of Queen Bench had decided the Tribunal's does not breach the rules of procedural fairness

### Jurisdiction

Next, APEGA had appeal to the Court by stating that Tribunal had no jurisdiction in deciding the discrimination based on "the place of origin of academic qualifications" [1] based on AHRA. The founding was based on the case *Grover v Alberta (Human Rights Commission)*, (1997) [1]. Since the case of *Grover* case was established 20 years ago, a new test had been made based on recent case which is *Moore v British Columbia* [1] that concluded the term "place of origin" does not always include the "place of education" [1]. Due to this reason, the Court agreed that Tribunal's had the jurisdiction in Mihaly's discrimination as his place of education had an adverse effect in the application process. Thus, APEGA has not establish that Tribunal's is out of their authority in evaluating this case.

### Prima facie Discrimination

Using **Moore** test, someone can establish *prima facie* discrimination by “having characteristic that is protected from discrimination”, “experienced adverse impact” and “protected characteristic was a factor in adverse impact” [1]. The Court indeed agreed with Tribunal decision that Mr. Mihaly’s place of origin is the protected characteristic and it has impacted him by having to take the FE exams. APEGA later claim that stereotype or arbitrariness were needed to justify discrimination but later overruled by The Supreme Court of Canada; the statement provided by APEGA was not necessarily needed to define discrimination. Despite that, Tribunal’s failed to provide evidence when stating that APEGA’s policies was discriminatory as the NPPE exams were required to evaluate all engineer’s credibility. Mr. Mihaly had failed NPPE exam three times and the place of origin was not a characteristic for his failure. The requirements of having 4 years of engineering experience (one of the year in Canada) supervised by licensed professional engineer have not been completed by Mr. Mihaly. Mr. Mihaly indeed claimed that he had difficulties in finding this experience but there were no findings supporting that he failed to acquire a job due to his place of origin. Based on the reasons above, the *prima facie* discrimination appealed by the Tribunal was not established.

In short, Tribunal’s had concluded that Mr. Mihaly was experienced *prima facie* discrimination due to the requirements assigned by APEGA. In contrast, the Court of Queen’s Bench had decided that evidence provided by APEGA was more “reasonable and justifiable” [1]. On January 26<sup>th</sup>, 2018: after evaluating all the issues, complaints and supporting claims, the Court of Queen’s Bench had decided to reverse the decision made by Tribunal and the issues should not be refer again to the Tribunal. In addition, the cross-appeal by Mr. Mihaly were also dismissed as the *prima facie* discrimination was not establish under s11 of the AHRA [1].

## **Reflection and Opinion**

Alberta Human Rights Commission:

1. In 2014, the Human Rights Tribunal saw systemic discrimination in the evaluation of Mr. Mihaly's credentials by APEGA. The Tribunal ordered:
  - a. Mr. Mihaly's application to be reconsidered
  - b. Mr. Mihaly is exempted from specific exams
  - c. To give \$10000 Canadian Dollars to Mr. Mihaly for any damages
  - d. APEGA to form a committee which would aid Mr. Mihaly through the evaluation process.
  - e. APEGA to appoint a mentor with Mr. Mihaly so he could be guided.
  - f. Mr. Mihaly to establish and work on building connections with fellow engineers.
  - g. Mr. Mihaly to engage with language resources.
2. Reflection on the decisions:

We believe that The Alberta Human Rights Commission's decision was deemed to be one sided in the favor of Mr. Mihaly. The first reason would be the assessment of Mr. Mihaly's engineering credentials. APEGA did not confirm that his education and skills were equivalent to the engineers from North America which was contradictory to what Mr. Mihaly testified during the hearing. Next, APEGA clearly stated in an email on June 21,2002 that after assessing Mr. Mihaly's education, he only needs to sit for three confirmatory exams since his previous education was listed under the Foreign Degree List, but he still failed to do so. On the other hand, Mr. Mihaly complaint that according to the Lisbon Treaty, engineers from the European Union would have similar recognition but little did he know that Canada was not a member. It was proven that Mr. Mihaly did not take any exams prescribed by APEGA since 2008. His alibi was the difference in how APEGA treated engineers from other countries which seems unprofessional considering his 25 years of engineering experience in Czechoslovakia. Mr. Mihaly had failed the National professional practice Examination three times between 2000 to 2003 and this shows that he is incompetent with APEGA's requirement. Finally, APEGA could not accept his "offer to trade" because it would break APEGA's code under section 13 that in order to be an approved member, he needs to complete all the examinations prescribed by the Board of Examiners.

The Court of Queens' Bench:

1. In 2016, The Court of Queen's Bench decisions include to:
  - a. Overrule the decision by Alberta Human Right Commission and dismissed them.
  - b. Decline Mr. Mihaly's cross-appeal to increase the money for damages.
2. Reflection on the decision:

We strongly agree with the decision by the Court of Queen's Bench decision because their justification through the three aspects of procedural fairness, jurisdiction and Prima facie discrimination discuss in the previous section of the report are very strong .

The Alberta Court of Appeal:

1. In 2017, The Alberta Court of Appeal decided to:
  - a. Reject the proceedings for Mr. Mihaly's application to restore his initially struck appeal the previous year.
2. Reflection on the decision:

We agree with the decision made by The Alberta Court of Appeal was just and relevant. The first reason is that it allows the standardization of the evaluation process for foreign applicants done by APEGA. This proceeding assures that there is no exception for Mr. Mihaly or any other foreign engineers to become a professional member of APEGA must comply to APEGA's legislative framework and registration process. Hence, Mr. Mihaly must go through the examination advised by the Board of Examiners under section 30 of the Engineering and Geoscience Professions(EGPA).

APEGA should certainly accommodate to the foreign-trained engineers and geoscientist because the statistics shown that as per 2016, there are closer to 50% of APEGA applicants are foreign trained [6]. The reason behind this include:

1. Equal opportunity:

Foreign graduates had obtained their degree in either engineering or geoscientist which shows that they are competent in their respective fields. Hence, APEGA as the regulator should offer equal opportunity by demonstrating just decisions. Based on Mr. Mihaly's case, APEGA did evaluate his application within one year and came up with a few requirements by the Board of Examiners which shows efficiency and opportunity to be recognized as a professional Engineer.

2. Compensate for the industry's workforce

There is a strong demand for geologist and various discipline of engineers in Alberta but not enough candidates to fill. A report entitled Engineering Labor Market in Canada: Projections to 2020 by Engineers Canada states that there is a shortage of engineers in Alberta especially petroleum, aerospace and computer engineers and foreign workers are needed to solve the problem [4]. In order to fulfil the industry's demand, APEGA should take action into doing all they can to achieve the supply.

3. Full use of potential

Trained immigrants in engineering and geoscience are valuable and considered as human capital which should be streamed for good purpose. Based on the Alberta Government, a total of 96000 workers ranging in 10 different fields are needed in Alberta in the next 10 years to maintain optimum economical growth of the province [5]. As a result, these



immigrants professional could bridge the gap and ensure that not only Alberta's economy prosper but at the same time benefiting themselves in the process.

There are many steps that APEGA could take to accommodate these foreign –trained engineers and geoscientists which include:

1. Be more transparent on the education background requirements (Foreign Degree List)

APEGA has set certain education standards to ensure that all engineers and geoscientists have the right education to practice their profession with integrity. These specific credentials are based on Foreign Degree List set by the Canadian Council of professional Engineers and only degrees found on that list are considered to meet the requirement. In the case of Mr. Mihaly, he was unaware that his Chemical Engineering Degree from Bratislava was not sufficient enough to be in the list which cause a chain of problem on his behalf. Therefore, in order to accommodate these foreign professionals, APEGA should ensure that they have full and accurate information regarding the qualifications needed to be accredited and recognized.

2. Reduce the requirements for foreign applicants:

As the regulator, APEGA should take the initiative to allow foreign newcomers an easier opportunity to be recognized in their field. Those professionals did not come to Alberta by chance, it was through research and seen potential. Hence, by reducing the requirements for them to obtain their professional license it would allow them to unleash their expertise to the industry. However, APEGA must not compromise the public's safety by approving unqualified applicants with the reduce requirements. Finally, programs such as mentoring and job boards would allow those licensed foreign applicants to be effective in their new work environment.

3. Form a committee to help and guide foreign applicants through the process:

One of the decision by the Alberta Human Rights Commission was to establish a committee with approved APEGA Professionals from foreign countries to guide Mr. Mihaly through the process of being accredited. We believe that this is actually a very good idea because there are a lot of other individuals facing the same problem from APEGA. Based on the Foreign Qualification Recognition Plan for Alberta, an international graduate name Guillermo Barreiro expressed that applying to APEGA would be a lot easier if he had someone to talk too about the steps [5]. The prior situation proves that by having a support committee or collaborating with private institutions and immigrant-serving organization, accommodating for foreign professionals could be eased.

As a conclusion this case study highlights the importance of knowing the requirements of being an approved professional engineer by APEGA from a foreign applicant standpoint and the strict procedures that APEGA follows in order to regulate the profession of engineers and geoscientists. The main take away from Mr. Mihaly's case is to always cooperate with the regulator since the professional association are trying their best to protect the public from unqualified applicants. Finally, both APEGA and foreign-trained individuals are responsible to make rational judgement and initiative in order obtain economic growth as well as society well-being.

## References:

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