

ENGG 513: The Role and Responsibilities of the Professional  
Engineer in Society

Assignment 1: Mihaly vs APEGA trial

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## **Introduction**

This report is designed to detail information related to the Mihaly vs APEGA court cases of 2014 and 2015. In this report, there are details pertaining to the history and events leading up to and during the court, the parties involved and affected, the results of the case and our opinion on how it should have been resolved.

Mihaly immigrated to Canada from Czechoslovakia in 2001, and applied to be a professional engineer through APEGA. He took the National Professional Practice Exam multiple times, and either failed it or didn't attend the exams. He was given three other confirmatory exams, which he did not do. He filed a complaint to the Alberta Human Rights Commission after several attempts of taking the National Professional Practice Exam. He claimed he was being mistreated due to his place of birth and should have simply been given engineering qualifications when he immigrated and shouldn't have taken the exam.

Despite finding very little evidence supporting the discrimination charges, the court decision was that Mihaly was discriminated against and APEGA was charged \$10,000 for Mihaly's troubles. Mihaly was also given a mentor to assist with registration and a different committee was setup to reassess Mihaly's competency. However, the Court of Queen's Bench had reverted that decision.

## **Stakeholders:**

### **APEGA:**

APEGA is the Association of Professional Engineers and Geoscientists of Alberta. It is a self-regulated and self-governing association which "Licence(s) Professional Engineers and Geoscientists, set(s) practice standards and develop(s) codes of conduct and ethics that govern Members and Permit Holders" [7], among other responsibilities. APEGA has its own courts for dealing with engineering and geoscience related issues. APEGA created an exam, known as the National Professional Practice Exam, or NPPE for short. This exam "confirms knowledge of professionalism, law, and ethics." [8] This exam can be retaken to determine whether or not an engineer is competent.

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

The Court of Queen's Bench is "the Superior Trial Court for the Province" [9], a provincial court. A supreme court is able to "hear cases in any area, except when a statute or rule limits their authority" [12]. The Court deals various types of matters, such as "criminal matters, civil proceedings and the judicial review" [9]. The court is a court of first appeal to provincial and territorial courts. The court is divided into several types of judges, such as the Chief Justice, the Associate Chief Justice and other various justices. All of the justices are appointed and paid federally.

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

The Alberta Human Rights Commission is an appointed group with the jobs of spreading equality among Albertans and ensure they aren't discriminated against. They are responsible for ensuring the Alberta Human Rights Act is followed. They are responsible for educating justices and solicitor generals about human rights issues and ensuring they are updated regarding these issues. The Alberta Human Rights Commission also receives and resolves complaints. Most complaints (93% in the 2015-2016 year) are resolved through the commission and the remaining are resolved through the tribunal process. Discrimination or equality related complaints can be sent in assuming: Alberta was where the incident occurred, you think you were/are been/being discriminated against and the complaint was made within one year of the incident occurring.

### **Mr. Ladislav Mihaly**

Mr. Ladislav Mihaly originally lived and worked in Czechoslovakia. He originally worked as a chemical engineer, with two degrees, before immigrating to Canada. He applied to join APEGA as a professional engineer shortly after immigrating. He was informed he would be required to write the National Professional Practice Exam to confirm his competency. He ended up writing and failing the exam. Due to the failures, he was also required to do three confirmatory examinations and pass an Engineering Economics exam. During further tests, Mihaly either didn't pass the exams or he didn't attend them. He never wrote the three confirmatory examinations. After several times of failing and not writing tests, and having APEGA constantly reactivating his account, Mihaly filed a complaint to the Alberta Human Rights Commission, claiming APEGA was denying him registration due to him originating from Czechoslovakia.

### **Moosa Jiwaji:**

Moosa Jiwaji was the judge who ruled for Mihaly to receive \$10,000 from APEGA during the case. He decided for Mihaly to receive the money, claiming he was discriminated against. He ruled that "APEGA had relied on second-handed, outdated information to evaluate the schools where Mihaly had trained" [16]. He ruled the court

case in Mihaly's favour and required APEGA to pay Mihaly \$10,000 for his troubles, provide a mentor for him and to set up a new committee to redetermine whether or not Mihaly was competent as an engineer. Jiwaji was fired from the Alberta's Human Rights Commission due to his decision.

**Tawney Meiorin:**

Tawney was a firefighter in B.C. who was fired due to not being able to pass a new physical examination for firefighters. The rules required firefighters to be able to run 2.5 kilometers in less than 11 minutes. Meiorin was able to pass everything else in the examination, including a minimum number of situps and pushups. However, she failed the running test by 49.4 seconds. She was later rehired due to successful claims that the test discriminated against women, and the test was not practical to be a competent firefighter. Mihaly tried to claim that he dealt with a comparable scenario. He claimed he was a competent engineer, but not he was not able to pass the NPPE due to living in Czechoslovakia. He filed this as discrimination due to place of birth.

**National Protective Practice Exam**

The National Protective Practice Exam is the final exam taken to be registered as a professional engineer from APEGA. The exam is comprised of 110 multiple choice questions and has a 2.5 hour duration. It is required to score 65 or more to pass the exam. The exam is divided between 6 sections, with the percentages being how much of the exam is comprised of each section: Professionalism (10%), Ethics (20%), Professional Practice (27%), Communication (1%), Law for Professional Practice (23%), Professional Law (8%) and Regulation & Discipline Processes (11%). [8]

## **Background:**

The background of this case dates back to May 13th 1999, when Ladislav Mihaly immigrated to Canada. Mr. Mihaly initially tried to gain engineering recognition through APEGA's NPPE exam, with the goal of being certified. He applied for this process several times, for which he wrote one of the required exams each time. All of his attempts he failed the test, except for one time when he didn't show up. For a time period of eight years Mr. Mihaly applied for certification through APEGA, where he often tried to use his over 10 years of work experience and his two degrees to obtain the certification without writing the tests.

After continuously approaching/applying to APEGA for a time period of eight years and frustrated for not having his credentials recognised, Ladislav Mihaly decided to make a case for discrimination. Mihaly claimed APEGA was denying him certification due to his place of origin. There was later much debate regarding the terms used for discrimination and place of origin, as there was confusion regarding whether or not this term also meant place of education as opposed to place of birth. In the year 2008 Mr. Mihaly approached Alberta Human Rights Commission, where he reported the alleged mistreatment. The Alberta Human Rights Commission then formed a tribunal where this complaint was to be discussed.

Luckily for Mr. Mihaly, he had won in this initial stage as the certification process was declared to be discriminatory. The Alberta Human Rights Commission had ordered APEGA to pay Ladislav Mihaly a fee of \$10,000 for general damages. They were also ordered to form a committee that would assist Mihaly with the registration process. APEGA was also asked to have another look at his credentials, this time with an individualized team.

The decision made by the Alberta Human Rights Commission however was appealed by APEGA at the Court of the Queen's Bench. The appeal was accepted and the decision of the tribunal was reversed as it was seen as unfair. The decision also would have undermined the requirements for future immigrating engineers and put the general public at risk. The jurisdiction was that the NPPE or FE examinations were necessary for anyone applying for a professional engineering designation while having studied at a non accredited institution. The decision made by the Court of the Queen's bench was then again challenged by Ladislav Mihaly in the Alberta Court of Appeal. However this decision was not overruled due to the lack of evidence provided by Ladislav Mihaly, resulting in the case to be closed.

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

The justice J.M. Ross decided to reverse the decision put out by the tribunal. The reversal was due to responses to each of the four points: procedural fairness, jurisdiction, prima facie discrimination and justification.

First, there was the issue on procedural fairness. The question raised by procedural fairness was: "Did the Tribunal breach the rules of procedural fairness when he decided issues that were not raised by or with the parties" [1]. In short, some of the issues brought up were not raised before the trial and APEGA was not given sufficient time to respond to the issues. The trial had claimed that "examinations assignment by APEGA were not 'for the purpose of examining deficiency'" [1]. In short, the concern raised by the tribunal claimed one of the problems with the investigation is that it wasn't in the purpose of correcting Mihaly's errors. However, APEGA claimed it "did not advance, and that they were not given the opportunity to address". Another case, the Amacon Property Management Services Inc. vs Dutt was cited. In this previous case, the landlord had not broken any laws regarding his tenants, but was still held responsible for neglecting them. In this case, APEGA was not given sufficient time to be heard before a conclusion was drawn.

Second, there was the issue of jurisdiction. The question raised in the jurisdiction was: "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" [1]. In short, Mahaly claimed because he was not educated to the standards of the test, due to the education in Czechoslovakia, it must have been APEGA discriminating against him due to his original birthplace. APEGA claimed that the Tribunal should not have had jurisdiction over whether judging based on educational standards is the same as judging based on birthplace. APEGA's response was to refute the claims, based on there being very little evidence to support the discriminatory charge.

Third, there was the issue of prima facie discrimination. The question raised by prima facie discrimination was: "Did the Tribunal rely on the correct legal test, and reasonably apply that test, to determine whether Mr. Mihaly had demonstrated prima facie discrimination?" [1]. Prima facie discrimination is simply restricting the use of public goods and services, such as employment and vehicles, due to various differences, such as social class, race and disability. Mihaly claimed offence due to

APEGA not permitting non-certified engineers from working, an issue resolved in the 1980's. A test was brought up describing various prima facie discrimination policies called the Moore test. To use the Moore test, the complainant must provide "a characteristic that is protected from discrimination; that they experienced an adverse impact; and that the protected characteristic was a factor in the adverse impact". APEGA claimed that the Moore was not complete and for it to be justified, there must be a breach in human dignity, something more severe than not getting a job because you couldn't pass an exam required to demonstrate you are competent at the job.

The final issue was justification. The question raised by this was: "was the Tribunal's decision that APEGA's registration requirements were unjustified unreasonable?" [1]. The Tribunal claimed that APEGA did not accommodate Mihaly, claiming Mihaly should not have been required to write the NPPE and the FE examinations. The Tribunal claimed Mihaly should have had a personalized accreditations and should not have been subject to the generalized test. APEGA's response was to state the FE exam in which Mihaly didn't attend any has a pass rate of 85%. APEGA's response to the NPPE is the purpose of the exam is to determine whether the engineer is capable of working as an engineer.

**Reflection and Opinion:**

While Mahaly may have believed he was being discriminated against due to his place of origin, there was very little evidence to support his claim, and much evidence to support against it. Because of this, we agree with the Court of Queen's Bench. Mahaly should not have been given anything for his complaint.

For someone to be qualified for a particular job, they must meet the requirements. If someone is not able to do their job competently, they should either not have their job or be disciplined/trained in such a manner to ensure they are able to do their job.

While engineering has high requirements, it is because there is great responsibility to engineering. If an engineer is incompetent, it means their designs may not be sound. If their designs are not sound, it puts all those near those designs in danger. If a mechanical engineer designs an engine poorly and it blows up, it will kill whoever's in the vehicle. If a civil engineer designs a skyscraper poorly and it collapses, people will die from that error. If a chemical/corrosion engineer designs a pipe poorly for corrosion, there is a good chance the pipe will be corroded and whatever the pipe's transporting will leak. If the leakage enters a river upstream of a population center, there is the risk of poisoning the people there. In some other professions, incompetence may result in inconvenience or annoyance. In engineering, people's lives are dependent on you being able to do your job. Because Mihaly didn't pass the National Protective Practice Exam, it goes to reason he was incompetent.

Another reason we agree with the Court of Queen's Bench is due to the character of the Mihaly. It is expected for an engineer to be of good character. One of the requirements for good character is punctuality. After Mihaly failed his first attempt at the NPPE, he applied to write the test a second time. However when he was required to write the test, he wasn't there. He was required to either pass an Engineering Economics course or to take three smaller examinations and a course. In all the times he had applied, he never wrote the three confirmatory examinations required.

Mahaly also ended up writing and failing the NPPE several times. For someone who had claimed to have been practicing engineering for more than 10 years, Mahaly consistently failed an exam expected to be doable for a competent engineer. While some may argue Mahaly's experience should have overruled the NPPE exams, the fact that he failed it several times and did not once pass it should be a red flag. While he may have had much experience, there is no reason to think his work experience was at a level capable of matching APEGA engineering standards.

To further the point about his character, after failing the NPPE several times and not doing the necessary confirmatory examinations, Mahaly filed a complaint against APEGA, claiming they were discriminating against him. Instead of correcting the



mistakes he was making to pass the exam and become a licensed professional engineer, Mahaly instead blamed his not obtaining his licence on his originating from Czechoslovakia. He didn't support this claim with evidence. He then demanded money for the "damages" he obtained from the "discrimination".

While we agree APEGA should accommodate foreign-trained engineers, we believe the accomodation should only take the form of having ESL courses to ensure the immigrant is competent with english before taking the required steps to license normally. APEGA has high standards because engineering needs high standards to avoid risks. The engineering standards should not be lowered for immigrants because this puts those around their designs at risk. If we were to change the rules for licensing in APEGA, we would remove the education systems that allow for foreign engineers to skip the NPPE to be certified.

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