

ENGG 513

**Role & Responsibilities of the Professional
Engineer in Society.**

Mihaly Vs. APEGA Case Study

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Introduction:

The Association of Professional Engineers and Geoscientists of Alberta, APEGA, is a regulatory body that sets standards for the practice of engineering and geoscience. The purpose of this case study is to examine and understand the challenges that arise between the licensing procedure of APEGA and internationally educated professionals when institutions become involved during challenging and difficult situations. Mr. Mihaly, a foreign graduate, challenges APEGA due to his belief that the examination is discriminatory to people who have achieved their degrees outside of Canada. For Mr. Mihaly, this is intolerable. Mr. Mihaly files a complaint to the Human Rights Commission against APEGA. The Tribunal agrees with Mr. Mihaly and believes that APEGA should pay Mihaly ten thousand dollars for damages, reevaluate his credentials, and have a more personalized standard for assessing people's skills. APEGA then files an appeal to the Court of Queen's bench against the decisions of the Tribunal. In this appeal, the court decides that the decisions of the tribunal should be reversed. The court believes that APEGA is the gatekeeper for the lawful practice of Engineering and public safety. These examinations are used to ensure that people understand the requirements for practicing. The court also believes that individualized assessment of each applicant to APEGA would cause undue hardship to the institution. Mr. Mihaly then files a complaint to the Court of Appeal and the case is dismissed because Mr. Mihaly does not have the required documents in the preparation for his case. The rest of this document will go into greater detail and analysis of the decisions of the different legislative bodies.

Stakeholders:

APEGA

"The Association of Professional Engineers and Geoscientists of Alberta (APEGA) is a regulatory body that works on behalf of the Government of Alberta to regulate the practices of engineering and geoscience" [1]. It works through the Engineering and Geoscience Professions Act, ensuring that these professions are practiced ethically and up to standards. APEGA's main regulatory task is the licensing of individuals and companies that are hoping to practice engineering and geoscience. Other responsibilities of APEGA include setting practice standards, developing codes of conduct, investigating, and taking necessary action against individuals and organizations that practice without a licence [1].

The Court of Queen's Bench

"The Court of Queen's Bench is the Superior Trial Court for the province" [2]. The hearing of this case took place in this court as the complainant was met with great opposition from the respondent[2].

The Alberta Human Rights Commission

The Alberta Human Rights Commission is required to carry out the functions established by the Alberta Human Rights Act[3]. The objective of the act is to ensure that Albertans are offered equal opportunities and enjoy services available to the public without discrimination[3]. The commission fulfils its main goals, of fostering equality and reducing discrimination, through the resolution of complaints, human rights tribunal and court hearings and through public education and community initiatives [3].

Mr. Ladislav Mihaly

Mr. Mihaly was born in Czechoslovakia [4]. He immigrated to Canada in 1999 and applied to APEGA to be registered as a professional engineer [4]. His application was acknowledged by APEGA and he was required to write the National Professional Practice Exam (NPPE)[4]. He failed the exam on his first attempt and re registered to write it again several months later[4]. On the second attempt, he did not attend to write the test. Later, Mihaly's application was withdrawn since he had failed to write the test by the given date. He then asked APEGA to reactivate his application so he can write the exam and obtain his license; he failed again[4]. This pattern of failing to obtain his license, whether due to failing the exam or not attending to write it, repeated itself once again in the early 2000s. In 2006, he asked APEGA to reactivate his file and again, he was required to write a few exams and obtain one year of acceptable D level Canadian Engineering Experience[4]. Mr. Mihaly did not write the examinations and instead, in 2008, filed a complaint with the Alberta Human Rights Commission claiming that APEGA discriminated against him based on his place of origin [4].

CEAB

Canadian Engineering Accreditation Board (CEAB) accredited undergraduate programs within Canada. It sets national standards and ensures that the engineering education system, remains one of the best in the world [5]. One of the roles of the CEAB is to develop Mutual Recognition Agreements (MRAs) with other countries on behalf of Engineers Canada. It does this by visiting countries that have demonstrated interest in developing an MRA and assessing their accreditation processes. If the CEAB is satisfied with the foreign country's education and accreditation process, it then recommends Engineers Canada to enter into an MRA with that country.

Court of Appeal

The Court of Appeal is the highest appeal court in Alberta. Typically after the decision of the Court of Queen's Bench, the next stage is the Court of Appeal. When a file reaches the Court of Appeal, the applicant needs to ensure that the appeal documents are filed properly. "The Justice of the Court of Appeal is nominated by the federal government" [7].

Board of Examiners

The Board of Examiners creates the required examinations to be qualified as a Professional Engineer. The examination "questions an individual's knowledge of law, ethics, professionalism, and professional practice" [8]. This is important in deciding whether or not an individual can be part of APEGA and practice engineering in a professional manner.

Background:

Mr. Ladislav Mihaly is a well educated man from Czechoslovakia who had obtained two Masters degrees [8,3]; one of them which is from "Slovak University of Technology [8, 5], and another from the "Institute of Chemical Technology (ICT) in Prague [8, 6]. He has a "M.Sc Diploma [8,5]" in the "Technology of Fuels [8,5]" and also a "Certificate in Corrosion Engineering [8,6]." To work as a Professional Engineer in Alberta, Mr. Mihaly was informed by APEGA in February 11, 2000, that he must pass the NPPE exam and "complete three confirmatory exams [8,10]", and "take a course or pass an equivalent exam in Engineering Economics by May 2001 [8,10]". Mr. Mihaly fails the NPPE exam three times [8], and does not meet the requirements to be registered as a Professional Engineer in Alberta. From this, Mr. Mihaly believed that he was being discriminated against [8], by APEGA. He believed that his experience and degrees were not being considered in his registration to become a Professional Engineer. He believes that APEGA is treating him as a foreign graduate because of the origin of his credentials [8]. Mr. Mihaly believes he is being discriminated against based upon his "place of origin [8,45]." According to the Alberta Human Rights Act Section 9 (c) [8], that is against the law. From this maltreatment, Mr. Mihaly files a complaint to the, "Alberta Human Rights Commission on August 5, 2008 [8, 1]". Mr. Mihaly's "complaint is about whether the requirements imposed upon" him "by APEGA for registration as a Professional Engineer are contrary to the Alberta Human Rights Act [8,1]". This summary will view the decisions of The Alberta Human Rights Commission, The Court of Queen's Bench, and the Alberta Court of Appeal on Mr. Ladislav Mihaly's case.

The Alberta Human Rights Commission was the first step of the process in the analysis of Mr. Ladislav Mihaly's Case Vs APEGA. The Human Rights Commission mentions that it is "cognizant of the statutory framework of APEGA and its statutory and public responsibility to satisfy itself as to the fitness and competency of applicants especially in the context of foreign engineering graduates who apply for registration [8, 241]". APEGA utilizes the FE and the NPPE examinations to figure out who can practice as a Professional Engineer upon completion of these exams [8]. APEGA has a Foreign Degree (FD) List and this contains a list of countries which are known by APEGA to teach Engineering. Students whose institution appears on the FD list are required by law to complete the NPPE examination, the FE examination, and to have a minimum of four years engineering experience which one year has to be Canadian experience to practice as a professional Engineer [8]. Mr. Mihaly claimed that he had ten years of experience working as an engineer [8]. However the Board of Examiners determined that Mr. Mihaly's "experience is long but narrow and that the references were from supervisors with short exposure [8,9]". The Board of examiners didn't feel confident about Mihaly's references and informed him to take the examinations. Mr. Mihaly faced difficulty writing the examinations and finding one year of Canadian experience [8]. Most employers did not want to hire people who are not Professional Engineers. It was determined that Mihaly has faced these adverse effects since coming to Canada. The tribunal came to the decision that although APEGA is responsible to safeguard the Engineering Profession, it "must take into consideration the effects of the processes and standards on new immigrants who come to Canada with [...] hope and promise" [8,241] since the requirements inflicted by the professional bodies are unattainable by most new immigrants. The Tribunal comes to the conclusion that "the process which was used did not appropriately individually assess Mr. Mihaly's qualifications [8,246]." That during all these years of complaint, not one person from APEGA bothered to contact Mr. Mihaly's university to validate his credentials. There were no meaningful evaluations of Mr. Mihaly's credentials [8]. Many factors have been taken into consideration and by the end of it Mr. Mihaly is awarded "general damages" [8,247], totalling \$10000. In the decision it is also mentioned that APEGA should directly consult with Mr. Mihaly's universities about his education. To provide a mentor for Mr. Mihaly who can supervise him and guide him so that he can gain Canadian experience. And, to provide Mr. Mihaly with community resources to help him increase his ability to communicate in English. The final statement is: "it cannot be in anyone's interest to continue to accept into this country some of the best and brightest individuals from around the world and to then make it virtually impossible for them to use the skills that they bring with them [8,250]". Clearly from the perspective of the Human Rights Commission Mr. Mihaly and many

others have been discriminated against by institutions like APEGA; that APEGA should accommodate Mr. Mihaly to pursue his profession.

Mr. Mihaly's case reaches the Court of Queen's Bench on November 20, 2014 by an appeal from APEGA against "the decision of the Alberta Human Tribunal [4,1]." The Court reviews the decision of the Tribunal and concludes that it "should be reversed"[4,153]." The court believes that there are many logical errors in this case [4]. Although Mr. Mihaly believes he is being discriminated against by the examinations based on his "place of origin [8]", which is agreed by the Tribunal. It is discussed that APEGA does not give examinations to people like Mr. Mihaly's based on academic deficiencies, but rather to understand the quality of institutions engineering programs [4]. The tribunal assumed that the FE exams would have disproportionate impact on foreign educated applicants but yet they hold no evidence to prove this [4]. According to APEGA, the FE exam has a pass rate of 85%, and, such a high pass rate on the examinations does not show that APEGA is being discriminatory to foreign graduates [4]. Instead, it is a means to see if the applicant's knowledge is up to par with the Canadian Standards of Professional Engineering. It is against the Law for people to practice engineering or call themselves an engineer without the knowledge of the practices which are followed. It is also further explored that "standardized tests are widely used in the professional regulatory environment to provide an objective assessment of qualifications, skills, knowledge and other matters, including language proficiency [4, 138]". This brings forth the idea that these examinations are purely designed to ensure engineers' ability to work skillfully and proficiently in a professional environment. Another decision enforced by the Tribunal was for APEGA to do individualized assessment. Individualized assessment may be considered if it does not cause undue hardship for the employer [4]. The Court suggests that individualized assessment would cause undue hardship on APEGA as they would have to provide a lot of resources, to accommodate for the 375 applicants a year [4]. And, therefore the Court of Queen's Bench decides that the decisions of the Tribunal should be reversed [4].

Mr. Mihaley then files an appeal to the Alberta Court of Appeal after the decision of the Court of Queens Bench had reverted the Tribunal's decision. Court of Appeal mentions that Mr. Mihaly did was not able to provide the necessary documents for his appeal and failed to follow up [6]. Hence causing his appeal to be dismissed [6]. Mr. Mihaley in response to this mentions that the Court of Queen's Bench did not allow Mr. Mihaly to file documents in support of his application [6]. The Court of Appeal in response mentions that "it was not an error... to refuse to reconsider the decision once the appeal was commenced", "because the decisions "of trial Courts are generally final [6,5]." The

decision is that Mr. Mihaly failed to follow through “with the next three criteria for restoring an appeal [6,8]” and has not explained why he delayed the process[. Mr. Mihaly also did “nothing to perfect the appeal[6,8].” And, he has still not ordered his “foreign credentials [6,8]” or “prepared the Appeal Record[6,8]”. As it can be seen, Mr. Mihaly shows a lack of preparation and ambition in the preparation for his appeal so the case is dismissed.

The Court of Queen’s Bench Decision:

Although the case appeared to be promising when reviewed in the perspective of Alberta Human Rights Commission, it was met with great opposition at the Court of Queen’s Bench. There were many reasons associated with the dismissal of the case. Many of those reasons centered around the fact that many of the claims and references made by the Tribunal were unreasonable.

One of the main unreasonable misconceptions of the Tribunal was that the FE examination disproportionately excludes foreign trained engineers from being registered with APEGA [4]. There was no evidence to this. APEGA mentions that these examinations are not designed to be in any way discriminatory against foreign graduates [4]. And in fact it is show that the examination have a pass rate of 85% [4]. With such a high pass rate of the examination there is “no evidence” that proves that impact of the examination on foreign trained graduates [4]. The FE Exam is designed to make sure that engineers are competent [4]. These examinations are the only means to regulate the Professional Engineering industry. And make sure all who practice are aware of its fundamentals and the safety of the public. It is mentioned that “standardized tests are widely used in the professional regulatory environment to provide and objective assessment of qualifications, skills knowledge and other matters, including language proficiency [4,138]. Therefore it is clear that the FE examination is required in our society to look after the best interest of the public. It is against the law to practice Professional Engineering without a license. Thus the decision of the Court is to reverse the decision of the Tribunal.

Another decision enforced by the Tribunal was for APEGA to do individualized assessment. The Court believes that individualized assessment would cause undue hardship on APEGA[4]. This APEGA would be required to utilize a significant pool of resources, to accommodate for the 375 applicants a year [4]. This would be unfair to APEGA[4]. The law also states that an institution does not have to change the way of its policies to accommodate people in gaining their recognition with APEGA [4]. As this would lead to undue hardship for APEGA. APEGA does not have the resources and

would have to spend lots of money and time in order to provide the many applicant every year to contact universities and applicants and individually assess if they are fit to be a Professional Engineer. Thus the decision of the court is to revert the decision of the Tribunal.

There were other factors involved that ultimately resulted in the case being dismissed. Many of the claims were simply unreasonable and unjustifiable. A great example of this appeared when the tribunal claimed that APEGA follows a “one size fits all [8] approach. In other words, APEGA sets unnecessary standards for international engineers that may not utilize their unique skills and abilities. The tribunal then used the example of the case involving a firefighter not being able to complete a standard aerobic test and implying that APEGA’s process is essentially the same [4]. The use of this example was seen as flawed by the court as the tribunal had failed to recognize and distinguish important differences [4]. The standard set by the firefighting department is truly unreasonable as it was not proved to interfere with the safety and performance of the firefighter[4]. However, APEGA’s standard procedure and tests are fundamental to their main goal and mission, which is to ensure that all the engineers licensed have the required understanding of the profession and are practicing in the best interest of the public [4]. In other words, it is not a “one size fits all” approach, rather it is the standard knowledge that every engineer licensed should have in Canada [4]. Changing this standard or individualizing the procedure, as the court stated, would eventually undermine the fundamentals of APEGA and its main purpose. The firefighter example was also proved to be inappropriate because many of the women were not able to perform up to the standards, so a change was reasonable [4]. In terms of APEGA, there was no evidence that internationally graduated engineers had significant difficulties with the tests and procedures.

Other factors that eventually resulted in the dismissal of the case were because of the suggestions that were simply unreasonable given the resources available to APEGA. An example of this is when tribunal commented that APEGA should provide resources such as potential mentors, interviews and individualized tests [4]. The court responded in opposition stating that these “directions go beyond the scope of any discriminatory conduct found or even alleged [4,146] ” and are not justifiable given the resources available to APEGA [4]. In other words, considering the number of international applicants to APEGA, the cost to provide such services would not be reasonable. Another example of a suggestion that was unreasonable was when the Tribunal suggested that APEGA should “become proactive and discuss and negotiate agreements with other institutions (and to the extent it is able, other countries)...[4,121]” .Essentially, the tribunal was suggesting a more detailed evaluation of each individual countries in for example the European Union. This suggestion was proved to be

unjustifiable, by the court, as it would require APEGA to have substantial amount of resources available to perform such assessments. The court also mentioned how “one of the reasons that APEGA relies on work done by CEAB and other national and international organization [4,121]”, is because of the complexities of such programs and creation of measures such as the FD List.

Reflection and Opinion

Before one can form an opinion on the decisions that have been made, it is critical to evaluate the principles and fundamentals that shape each institution. For instance, The Alberta Human Right Commission has a mission to ensure that Albertans have equal opportunities and are not discriminated against. It is also crucial to consider the limitations faced by each institution. For example, APEGA, potentially wants a program that is more convenient for all international engineers, however, its resources are limited.

After thorough examination, the Alberta Human Rights Commission came to a conclusion that there was a case of discrimination against Mr. Mihaly. This happened as the complainant was able to form a case, based on the definition of discrimination and the respondent, was unable to justify. More Specifically, the tribunal stated that “Mr. Mihaly has succeeded in establishing that the Examination Standard and the Experience Standard used by APEGA to assess his educational credentials, without more individualized assessment or exploration of other options, constitutes discrimination which cannot be justified under the Act [4, 242]”. I don’t agree with the decision of Alberta Human Right Commision.

The case developed by the Alberta Human Rights Commission was then taken to the Alberta Court of Appeal for hearing. After a tedious process of examining the complainant’s case, the court decided that discrimination against Mr. Mihaly had not taken place and the case was dismissed. Also, as mentioned previously, many of the comments and suggestions made by the complainants about APEGA and their licensing process was ruled to be unreasonable and unjustifiable. I personally agree with the decision of the Court of Queen’s Bench. The main reason why I agree with the decision is the importance of the standardized test. In my opinion, for APEGA to uphold its fundamentals and its main mission to “protect the public” and ensure that engineers licensed, have the required understanding of the profession, it is important to have standardized tests for international graduates.

Dr. Lynch, an expert witness for the respondent in the Alberta Human Right Commission case, mentions that “there is quite a variation in the level of quality in other institutions [4,75]” referring to institutions in India. As an immigrant from Iran, I can confirm that a similar situation occurs in Iran and it is unlike Canada, in which all the universities that offer engineering, specially if approved by the CEAB, are at the same level. For this reason, it is critical for APEGA to test the accreditations of internationally graduated engineers. One can argue, such as Mr. Mihaly, that APEGA can accomplish its mission by “individualized” and more “personal assessment”, but such processes, in my perspective, are unjustifiably costly.

The Alberta Court of Appeal also rejected Mr. Mihaly’s case. “A number of factors are considered in deciding whether to restore an appeal [4]” and Mr. Mihaly’s appeal failed to meet the criteria. I agree with the decision of the Alberta Court of Appeal. The reason is that he did not provide sufficient and strong reason as to why his case should be reconsidered.

Although the case of Mr. Mihaly demonstrates the challenges involved with the licensing of foreign trained engineers, APEGA should accommodate internationally graduated engineers and geoscientists. The reason for this is that diversity and internationally graduated individuals bring value to this country. One of the main reasons of prosperity in Canada, in my perspective, is its immense diversity.

I believe the current process of assessment is fair and justifiable. The using of the FE exams provide an efficient method of testing and examination. Efficient and justifiable because it does not use an unnecessary amount of resources to employ and it fulfills the main goals and missions of APEGA as a regulatory body. However, modifications could be implemented, not in the APEGA, but in the immigration process. In my perspective, the immigration process to Alberta could be modified so that individuals, specifically engineers and geoscientists, have a clear understanding of APEGA’s expectations before they immigrate. Note that I am not suggesting costly modifications and changes to the immigration system, rather a small change in the forms applicants use. The forms for immigration could potentially refer to the APEGA’s website and the engineering standards used in Canada. This way, an applicant applying to immigrate to Alberta, can decide whether he/she is satisfied with the assessment used by APEGA and have a clear understanding of the expectations before migrating.

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