

ENGG 513 Assignment 1

Mihaly Case Study

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# Introduction

The purpose of this report is to study and gain a greater understanding of the requirements of becoming a registered professional engineer, APEGA's regulatory process, and the legal and quasi-legal environment operated by APEGA by analyzing a special case.

In this case study, an argument of AGEPA versus Mr. Mihaly, or to be better described as the conflict between the engineering professional rules versus international engineer's human right are to be introduced in this report. There are four major stakeholders related in this issue, Mr. Mihaly, APEGA, The Alberta Human Right Commission, and The Court of Queen's Bench. The background and related issues of each party are separately introduced in the first component in the report. Then, the history of this case and the process it followed to end up at Alberta Humane Rights Commission, The Court of Queen's Bench, and the Alberta Court of Appeal are discussed in the background component, along with the decisions of these three bodies. After that, the motivations and decisions are discussed in detail in the following component. At the end of the report, the reflection and opinion are provided in this report.

## Stakeholders

### APEGA

APEGA (the Association of Professional Engineers, Geologists, and Geoscientists of Alberta) is the largest self-regulating professional association in western Canada, and now there are more than 70,000 members. The APEGA reviews each application and has the power to either approve or deny the registration until particular requirements are met. Their annual application has skyrocketed over the last few years up to more than 9,000 each year [1]. Those applicants are from across Canada and around the world. In this special case, the Alberta Human Rights Commission tribunal found that APEGA had discriminated against a foreign trained applicant, Mr. Mihaly, based on his country of origin and was ordered to re-consider Mr. Mihaly's application. APEGA disagreed with the judgement made by the tribunal and appealed to Alberta Court of Queen's Bench.

## The Court of Queen's Bench

The Court of Queen's Bench is the Superior Trial Court in Alberta, hearing trials in civil and criminal matters and appeals from decisions of the Provincial Court. The Chief Justice and other Justices of the Court of Queen's Bench are also judges of Surrogate Matters, which has jurisdiction over probate and administration of estate matters.[2] In this case, the Court of Queen's Bench has supported APEGA's appeal of the Alberta Human Rights Commission tribunal decision[3], which mean the court of Queen's Bench believe that the evaluation system APEGA has being using is proper and is not designed based on any discrimination of place of origin.

## The Alberta Human Right Commission

The Alberta Human Rights Act protects Albertans from discrimination in certain areas based on specified grounds. The purpose of the Alberta Human Rights Act is to ensure that all Albertans are offered an equal opportunity to earn a living, find a place to live, and enjoy services customarily available to the public without discrimination [4]. In this event, with the complaint of Mr. Mihaly that APEGA discriminated against him based on his place of origin, the Alberta Human Right Commission took the responsibility and ordered the APEGA to re-consider Mr. Mihaly's application.

## Mr. Ladislav Mihaly

Mr. Mihaly was born in Czechoslovakia and has two Masters degrees. Prior to immigrating to Canada, Mihaly had worked for 25 years in Czechoslovakia as a professional engineer. Then, he made a decision to move to Canada, and specifically Alberta because his specialization in petroleum engineering field. However, he could not pass the exams that APEGA required him to be a registered engineer in Alberta. With many years of unemployment, he complained to the Alberta Human Right to seek for help. There are many internationally educated engineers who successfully registered in APEGA, yet there is also a big amount of people like Mr. Mihaly who face the difficulties of passing the evaluation of APEGA to be professional engineer from outside of Canada.

## Court of Appeal of Alberta

This court is the highest court in Alberta. It hears appeals from the Alberta Court of Queen's Bench, the Provincial Court of Alberta, and administrative boards and tribunals. Unlike the Court of Queen's Bench, the Court of Appeal has no inherent jurisdiction and therefore requires a statute to grant it power to hear a matter before a

panel is convened [5]. In this case, Mr. Mihaly applied to the Court of Appeal to restore the appeal but the Court of Appeal refused to allow the appeal to be proceed.

## **Engineers Canada**

Engineers Canada is a Self-regulation institute of the engineering profession protects and enhances public health, safety, welfare, and the environment for all Canadians. Engineers Canada is working with engineering regulators to build a framework for engineering regulation to harmonize requirements and practices in admissions, licensing, practice review, and discipline and enforcement procedures to ensure only qualified individuals are permitted to practise engineering in Canada, make it easier for applicants to understand what information must be submitted through the development of specific criteria, and allow assessors to make objective decisions on whether an applicant has met the requirement[8]. By these definition of Engineers Canada, this institute should take some responsibility in making sure that Mr. Mihaly fully understand why he cannot become a qualified engineer in Canada.

## **Foreign Trained Engineers**

There are many internationally trained engineers coming to Canada every year and try to register as a professional engineer in Canada's system. A proportion of them can easily meet all the requirements to be register but some of them would face a lot of difficulty. There are some talented engineers who cannot be adapted to the Canada's system. Being unemployed is not only a hardship for them, but is also a loss of Canadian's society.

## **Background**

Mr. Mihaly was born and educated as a certified engineer in Czechoslovakia, and he decided to move to Alberta, Canada and wished to find a job in petroleum engineering. For him to be considered as a qualified engineer in Alberta, he must first pass the APEGA as stated by the local law. Between May 1999 and November 2006, Mr. Mihaly tried to acquire approved from APEGA to be considered as an engineer. During this period, he was requested to write a number of exams (national professional practice exam and three confirmatory exams) and take courses in engineering before his application would be considered. However, he failed the NPPE and did not attended to the re-write examination as he was asked, and he also failed again. As consequence, his application and attempts at becoming registered with APEGA were repeatedly

denied.

Been un-employed for years in Canada, Mr. Mihaly complained to Human Rights Tribunal (Alberta Human Right Commission) in 2014 that the APEGA discriminated against him based on his place of origin. After years, it was determined through AHRC that Mihaly did in fact establish a discrimination case towards APEGA based on place of origin as he was treated as a foreign graduate based on where he completed his post-secondary education. As stated by the Tribunal 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 [Alberta Human Rights Act]”[10]. This implies that APEGA did not provide Mihaly with an “individualized” or “meaningful” assessment of his qualifications and his post-secondary education. On February 6<sup>th</sup>, 2014, Ladislav Mihaly was awarded \$10,000 in general damages through his efforts with the Human Rights Commission of Alberta. And APEGA was ordered to reconsider Mihaly’s application, and to do a series of things:

1. To review his transcripts and post-secondary qualifications directly with the universities.
2. To talk to potential references.
3. To provide Mihaly a mentor.

In 2015, the decision made by the Human Rights Tribunal was appealed by APEGA to Court of Queen’s Bench. The decision of Court of Queen’s Bench over-turned Human Rights Tribunal decision as the court concluded that decision made by tribunal was “rife with logical errors,” “findings of fact unsupported by the evidence.” and “unreasonable interpretations”. [6]

In 2016, Mr. Mihaly appealed to the Court of Appeal of Alberta but failed to take the required steps to advance the appeal, in which case, the appeal was struck. Then, Mr. Mihaly applied to the Court of Appeal to restore the appeal but the Court of Appeal refused to allow the appeal to be proceed.

To date, Mr. Mihaly is still not a registered professional engineer in Alberta as his appeal was not favored by neither the Queen’s Bench nor the Alberta Court of Appeal.

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

The Human Rights Tribunal found that APEGA’s system for evaluating Mihaly’s credential constitutes systemic discrimination because they found that the APEGA’s policies were based on a discriminatory assumption that engineers with qualifications from foreign countries are not at par with Canadian engineering accreditation

standards[10]. The tribunal had also found a fact that APEGA made discriminatory assumptions by waiving examination requirements for international applicants from countries with which APEGA had a Mutual Recognition Agreement for applicants from other countries[7].

However, the court held that those conclusion from the tribunal based on the argument that the discriminatory assumptions are not supported by sufficient evidence. First of all, even the court agrees that the adverse impact for Mr. Mihaly arose from being educated in his place of origin, it was insufficient to establish discrimination because there were no evidence that Mr. Mihaly's failure of these exams was caused by his place of origin. And there are, in fact, no evidence that any international educated graduate with entry level competence would have any difficulty passing the FE exam (More than 25% of APEGA's current professional members are internationally educated graduates). Secondly, the distinctions between Mutual Recognition Agreement and non-Mutual Recognition Agreement countries were based on knowledge of programs which have been proved to be working for multiple time rather than discriminatory assumptions. Furthermore, the APEGA's system is not based on assumption that engineers with qualifications from foreign countries are not at par with Canadian engineering accreditation standard. In fact, it is also based on the knowledge about programs.[7]

Moreover, it is stated in the human right law that the international applicant has a reciprocal duty to assist the regulator in finding accommodation[7]. Under human rights legislation, those seeking an "accommodation" based on human rights legislation have a duty of cooperation. The Court found that Mr. Mihaly failed in his duty of cooperation by refusing to even attempt the FE examination[8].

Queen's Bench Justice June Ross said the tribunal's ruling contained errors and was unreasonable. "The tribunal's reasons leading to (the chairman's) conclusion that APEGA could have accommodated Mr. Mihaly and others sharing his characteristics are rife with logical errors, findings of fact that are not supported by evidence and failures to take into account relevant considerations," she wrote. "I conclude that the decision of the tribunal should be reversed." [8]

The APEGA's CEO, Mark Flint, said the judge's ruling will help protect public safety and confirms its application process is fair. Flint said if the ruling had been upheld it would have negatively affected the ability of professions that regulate themselves including engineering, medicine, law, dentistry and accounting. [8]

## Reflection and Opinion

As to date, the Court of Appeal still refuses to allow the appeal from Mr. Mihaly to proceed. APEGA is entitled to have some finality to proceeding which questions its procedures for evaluating foreign credentials. As for the merits of the potential appeal, Court finds that Mihaly did not point to any patent error in the Queen's Bench decision[9].

In my opinion, I agree with the decision made by the Alberta Court of Appeal and the Court of Queen's Bench. The tests and other requirements by APEGA to become a professional engineer are the insurances of public safety. If APEGA accepted tribunal's orders to change the way the system works and allow those who do not process the basic knowledge to be registered, then, APEGA would not be doing the right job to distinguish the qualified engineering from any others. Everyone (for the applicant, the system and the public) benefits by ensuring that internationally educated professionals have access to individualized, timely and in a fair designed assessment processes that focus on whether the applicant has the entry-level competence expected in Canadian professional practice.

APEGA's system to assess the qualification of internationally educated graduates is fairly similar to all those used across Canada. The system is designed to be fair to the applicants, but also to ensure that APEGA serves public interest. In order to do this, the APEGA need to ensure that the applicants have appropriate credentials before being licensed. Huge impact on diversity and tremendous amount value are brought into the province. While there is always room for continuous improvement. Based on all those numbers and all the engineering achievements from APEGA, it is reasonable to believe that the system is work in the right way. It is stated by APEGA that: "We welcome applicants from around the world. We have an individualized, fair, cost-effective and accessible assessment process for internationally educated graduates that determines in a rigorous way if the applicant possesses the entry level competencies required to practice in our province. In this way, we fulfill our statutory obligation of protecting the public by ensuring that all applicants possess entry-level competency while also providing a fair opportunity to internationally educated applicants to be registered in our jurisdiction." [1]

In another aspect, APGEA should also take the responsibility to accommodate foreign-trained engineers and geoscientists in some extents like to recommend (and only recommend) them to take relative courses to be adapted to the engineering system in Alberta, or sign a partnership with universities to help those engineers, which

consequently helps the foreign trained engineers to be able to pass the evaluating exams. The reason that APEGA should do this to help the foreign trained engineers is that some of the engineers are talented and they have some potentials to contribute to the society. It is a shame if they could not hunt for an engineering work to contribute only because they cannot be adapted to the system. Also, some foreign trained engineers could not be registered because their professional knowledge and skills are only slightly below the entry level, which can be educated to a higher level with only a 6-month course. By providing some recommended courses, most foreign trained engineers would have a chance to be registered in Canada, in which case, would benefit both the public and the new-immigrants. Still, it must be mentioned that the duty to accommodate does not require the regulator to fundamentally alter its system. Tribunal ordered APEGA to establish a committee to develop alternative approaches for Mr. Mihaly such as exemptions from examinations, and providing assistance and mentorship to help him progress and integrate into the engineering profession is not and should never be the duty of APEGA. That is the reason why Court held that such orders are inappropriate since those orders required APEGA to fundamentally alter its standards.



## Reference

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