

# Mihaly Case Study Report

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## Introduction

This report is being written to provide a perspective on the various rules and regulations behind the APEGA regulatory processes. In particular it will be looking into the Mihaly and Human Rights Commission vs APEGA case. Many areas of the legal environment in which APEGA works within tend to have substantial gray areas that may require a certain amount of judgement on the part of the APEGA board members. This is especially the case when accepting international engineers into the association to work as professional engineers within Canada. Since there is no global standard for engineering programs APEGA, which is the body within Alberta that regulates and governs the practice of engineers working inside of the province, must ensure that immigrating engineers meet a requisite level of education and will adhere to safe and ethical work practices. In this particular case Mr. Mihaly applied to APEGA as an international engineer from the Czech Republic for certification as a professional engineer and failed to meet APEGA's academic standards which Mihaly believed were discriminatory against him. This report is aimed to understand why the court made its decision as well as provide an opinion on whether that decision was justified.

## Stakeholders

- **APEGA** – The body that governs how engineering is to be practiced within Alberta. This organization certifies who can use the title of professional engineer and under which circumstances that they can use this title.
- **The Court of Queens Bench** – Is the Superior trial court within the province of Alberta and they govern over civil and criminal matters as well as any appeals from provincial court decisions.
- **The Alberta Human Rights Commission** – The body which aids in upholding the Alberta Human Rights Act. This commission was established to reduce discrimination and aid in fostering equal and fair practices among people and businesses operating within Alberta.
- **Mr. Ladislav Mihaly** – An engineer that immigrated to Canada from Czechoslovakia in the late 1990's who has repeatedly applied to be recognized as a professional engineer. He did not meet the requirements of APEGA in terms of their educational standards and was required to write equivalency tests as well as take an engineering economics course before being certified to work as a professional engineer within Alberta.
- **Canadian Engineering Accreditation Board (CEAB)** – This is the board that verifies that engineering programs offered within Canada meet the required educational standards. They ensure that the graduates of these programs will be able to function and work as

engineers in training and eventually be certified as professional engineers by the provincial governing bodies.

- **Engineers Working Within Alberta** – This case may affect engineers working within Alberta as procedures and certification standards for becoming professional engineers was brought into question.
- **International Engineers** – Similar to the engineers working within Alberta this case this may affect how international engineers are able to obtain certification to work within Alberta as professional engineers.

## Background

This case started when Mr. Mihaly applied to APEGA in May 1999 to be certified as a professional engineer. Mr. Mihaly was originally from Czechoslovakia where he obtained an education as a Corrosion Engineer. As the university he attended in Czechoslovakia/ The Czech Republic has not applied to the CEAB to be considered for any of the equivalency initiatives or programs that CEAB has put in place to promote equivalent engineering education standers with other countries he was requested by APEGA to write NPPE equivalency exam, three confirmatory exams and take an engineering economics course.

Mr. Mihaly took his first attempt at the NPPE exam on January 17, 2000 and did not achieve a passing grade, later that year he the applied to write the exam on October 16, 2000 and when the date arrived he did not attend the examination. Since Mihaly did not write and pass all the required examinations by the agreed upon deadline APEGA informed him that his application was going to be withdrawn.

On May 31, 2002 a request was made by Mr. Mihaly for APEGA to reactivate his application to be a registered professional engineer. On June 3, 2002 APEGA reactivated his application and advised him that the same conditions were in place as before and the exams must be completed by May of 2003 and the engineering economics course was to be completed by November 2003. In July of that year he made another attempt on the NPPE exam which he failed. Subsequently he made another attempt at the NPPE in January 2003 and again did not receive a passing grade. On August 1, 2003, since Mihaly did not provide evidence of himself passing all the required examinations APEGA proceeded to withdraw his application to be registered as a professional engineer.

Mihaly applied once again on October 3, 2006 to reactivate his application. APEGA agreed to reactivate his application and requested that Mihaly send in an update of his employment and references which he sent in on November 16, 2006.

APEGA, after reviewing the provided information gave Mihaly the option of writing the three confirmatory exams and taking an engineering economics course or to write the

Fundamentals of Engineering exam (FE exam). APEGA also stated that he would have to additionally obtain 1 year of D-level Canadian engineering work experience.

On August 5, 2008 Mihaly filed a complaint to the Alberta Human Rights commission, stating that he believed that APEGA was discriminating against him.

The human rights tribunal made their decision on February 6, 2014. The decision was to have APEGA establish a committee to preform a more individualized assessment of Mr. Mihaly's engineering skills and experience with a view to correct any academic deficiencies and provide possible examination exemptions based on this more individualized review, pay out \$10 000 in damages to Mr. Mihaly, provide Mihaly with an engineering mentor to help him integrate into Alberta's engineering profession and direct Mr. Mihaly to networking and language resources.

No lost wages were to be paid out to Mr. Mihaly as there are too many uncertainties involved in doing so.

The tribunal's decision was put under cross appeal by both APEGA and Mr. Mihaly.

This went to the court of queen's bench which ordered the court to either reverse the tribunals decision or remit the matter back to the tribunal with directions.

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

The Court of Queen's Bench ordered the human rights tribunal to reverse or vary its decision or to remit the case back to the tribunal with directions.

Looking into how the court justified this we will start off by taking a closer look at the sections of the human's rights act that were being referenced in the human rights case filed by Mihaly which are section 4, section 7 and section 9 of the *Alberta human rights act*.

Section 4 of the act states that no person shall deny or discriminate against any person with respect to any goods, services, accommodation or facilities customarily available to the public on a basis of race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.<sup>(1)</sup>

Section 7 of the act states that no employer shall discriminate against, refuse to employ or continue to employ any person on a basis of race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.

Section 9 of the act states that no trade union, employers' organization or occupational association shall exclude, suspend or discriminate against any person on a basis of race,

religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.

Section 4 and section 7 do not appear to apply to this case as it states that no person or employer shall discriminate, and this case was brought up against APEGA as an organization not as an individual or employer. Additionally, APEGA is not an employer they are a regulatory body that governs over engineering practices within Alberta which in and of itself needs to be discriminatory in its practices since having underqualified people working as professional engineers can lead to major ethical and safety issues.

In terms of the supposed violation of section 9 of the human rights act, the court believed that APEGA was indeed discriminating against Mr. Mihaly, however, the discrimination that APEGA was using in this case was indeed justified and not in violation of this act as writing an NPPE and FE exam to show qualification in engineering skills should not be considered as discrimination against someone's origin as these skills are not based on a persons origin but instead based on a persons actual engineering skills.

Looking even further into it the fact that Mihaly failed the NPPE exam over 3 times indicates that his degree or at least he himself is not qualified to be a professional engineer within Alberta and if he desires to be considered as a professional engineer in Alberta he needs to improve his basic engineering skills as well as his understanding of what the requirements for being an engineer in Alberta are.

The court also found that giving Mr. Mihaly exemptions for exams when he did not even attempt any of the three confirmatory exams or the FE exam was unjustified.

The court also stated that the tribunal was reasonable in concluding that APEGA had discriminated against Mihaly, but Mihaly's conclusion that the discrimination was unjustified was not reasonable as APEGA had clearly submitted evidence that met the requirements for a reasonable and justifiable defence.

## **Reflections and Opinions**

This section of the report is portraying my opinions on the case and whether I believe that the human rights tribunal and the court of queen's bench decision was correct and justified.

I find that the decision of the human rights tribunal was flawed as it was calling into question the need for people with foreign engineering degrees to prove that their education and skills meet the requirements set in place by CEAB and APEGA for any engineers to work as professional engineers within Canada. While requesting that someone writes an equivalency exam is indeed discriminating against their education it is not an unreasonable thing to expect of someone who claims to be experienced within a profession if you do not have an in-depth knowledge of what their skills actually are. On this basis I can not agree

with the tribunal that APEGA needs to make the engineering profession more accommodating for foreign engineers as this has the possibility of leading to underqualified or incompetent engineers who may not have the requisite basic engineering skills to perform and work in a safe ethical manner.

In this case I completely agree with the court of queen's bench's decision since it was very apparent that Mihaly did not possess the requisite skills and education to work competently as a professional engineer in Alberta and if he wants to work as a professional engineer he should have to fix any deficiencies in his education and pass the equivalency exam as proof of this.

I strongly believe that for anyone to work ethically and safely as a professional engineer in Canada they must meet a basic engineering skill requirement equal to that of what is accepted within the Canadian engineering education system. I do not believe that APEGA should be required to be more lenient towards foreign engineers as the strict standards they place upon engineers working within Alberta helps to ensure a higher quality of engineering practices. Reducing the requirements of foreign engineers can lead to underqualified people working in the engineering field and as a result may have a substantial negative effect on engineering practices in Alberta.

## References

- 1) Court of Queen's Bench of Alberta (2016) *The Association of Professional Engineers and Geoscientists of Alberta Appeal*, Edmonton, Alberta: Court of Queen's Bench of Alberta.
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- 3) Court of Queen's Bench of Alberta (2018) *Court of Queen's Bench of Alberta Website*, Available at: <https://albertacourts.ca/qb/home> (Accessed: February 6 ,2018).
- 4) Alberta Human Rights Commission (2018) *Alberta Human Rights Commission Website*, Available at: <https://www.albertahumanrights.ab.ca/about/Pages/about.aspx> (Accessed: February 6 ,2018).
- 5) Linda McKay-Panos (2016) *Alberta Court of Queen's Bench Overturns Discrimination Decision on Foreign Trained Engineer*, Available at: <https://ablawg.ca/2016/03/23/alberta-court-of-queens-bench-overturns-discrimination-decision-on-foreign-trained-engineer/> (Accessed: February 9 ,2018).