

# **Mihaly vs. APEGA Case Study Report**

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# 1. Introduction

This case study explores the dispute between Mr. Ladislav Mihaly and the Association of Professional Engineers and Geophysicists of Alberta (APEGA). Included is a list and description of the stakeholders within the dispute, background and summary presenting how the case arose and the main decisions from each trial, and my personal reflections and opinions.

## 2. Stakeholders

### 2.1 APEGA

APEGA “regulates the practices of engineering and geoscience in Alberta” [1].

### 2.2 The Court of Queen’s Bench

APEGA’s appeal of the decision Alberta Human Rights Commission was handled here [2].

### 2.3 The Alberta Human Rights Commission

This is the Commission that took Mr. Mihaly’s complaint about APEGA’s discrimination against foreign engineering graduates [3].

### 2.4 Mr. Ladislav Mihaly

Mr. Mihaly was born in Czechoslovakia; he obtained a M. Sc. in Technology of Fuels and Thermal Energy from the Slovak Technical University in Bratislava and a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague [3].

After coming to Alberta, he attempted to become an accredited professional engineer through APEGA [3].

### 2.5 Tribunal Chair Moosa Jiwaji

Chair Jiwaji was the Alberta Human Rights Commission chair who oversaw the case in the Alberta Human Rights Commission [3].

## 2.6 Madam Justice June Ross

Justice Ross was the judge who oversaw the appealed case in the Court of Queen's Bench [2].

## 2.7 Canadian Council of Professional Engineers

The outcome of this case could drastically alter how the Canadian Council of Professional Engineers operates and how they accredit the engineers of Canada.

# 3. Background and Summary

Mihaly applied to APEGA in 1999 [3]; APEGA informed him that he was to provide them with several documents and he was to pass the National Professional Practice Exam (NPPE) to be recognized as a Professional Engineer (P. Eng) in Alberta. On January 17, 2000, Mihaly failed that exam [3].

After considering his application, APEGA informed Mihaly that he was not qualified for APEGA recognition since he failed the NPPE [3]. APEGA also informed Mihaly that he must first pass the NPPE, three confirmatory exams, and take an engineering economics course by May 2001 in order to be recognized as a P. Eng because the Chemical Engineering degree Mihaly obtained from Bratislava did not meet APEGA academic requirements and the degree is listed on the Canadian Council of Professional Engineers Foreign Degree List (FDL) [3].

Mihaly continued to fail, or not attend, the requisite exams multiple times [3].

After his many failures to complete the APEGA required exams, Mihaly filed a complaint with the Alberta Human Rights Commission (AHRC) in 2008 (paras 26 to 29) [3]. Tribunal Chair Moosa Jiawaji heard the complaint. The primary point of contention is Section 9.c of the Alberta Human Rights Act [4]: “No trade union, employers’ organization or occupational association shall... discriminate against any person or member, because of the... **place of origin** of that person or member [emphasis added].”

Mr. Mihaly claimed that he had been adversely impacted by the examination process instituted by APEGA since only engineering graduates from select foreign

countries listed on the FDL needed to complete the exams [3]; Chair Jiwaji concluded that this was *prima facie* discrimination on the basis of place of origin. So the Commission ruled that APEGA must provide Mihaly \$10,000, a personal mentor, assist Mihaly in multiple ways, and form a committee to re-evaluate Mihaly's application [5].

APEGA appealed the decision made by AHRC at the Court of Queen's Bench in January 2016 [2]; APEGA raised the following issues [2]: procedural fairness, jurisdiction, *prima facie* discrimination, and justification of AHRC's decision.

Madam Justice June Ross concluded that AHRC did not breach anything related to procedural fairness, nor did AHRC operate outside of their jurisdiction [2]. However, Justice Ross did heavily address whether the AHRC properly tested for the *prima facie* discrimination and whether the justification of AHRC's conclusion of the APEGA registration requirements were unreasonable [2].

In the end, Justice Ross concluded that AHRC's finding of *prima facie* discrimination was unjustified as the following have no intrinsic adverse impact from a person's place of origin: writing exams (confirmation or NPPE) or possessing one year of Canadian experience [2]. She also agreed that APEGA's assumption that engineers from foreign countries do not necessarily possess qualifications par with Canadian engineering accreditation standards is fair [2]. And she noted that APEGA does not have the capacity or resources to consult the thousands of engineering programs to be par with Canadian engineering accreditation standards [2].

Through this appeal, Justice Ross concluded that the AHRC had failed to assess relevant factors that contribute to undue hardship. Thus, the AHRC's conclusions of APEGA failing to accommodate Mihaly were unreasonable. And finally, Justice Ross reversed the decision of the AHRC [2].

Mihaly filed an appeal to the Alberta Court of Appeal on February 2016 [6]. However, this case was dropped in June 2016 when Mihaly failed to follow up [6].

## 4. The Court of Queen's Bench Decision

Mihaly successfully argued that APEGA was discriminatory against foreign engineering graduates, on the grounds of place of origin, in 2008 under the AHRC [3]. The AHRC concluded that APEGAs registration requirements for foreign engineering graduates was not justifiable; so, the Chair ordered APEGA to do the following [3]:

- Grant Mihaly the option to challenge specific examinations
- Establish a committee that can assess Mihaly's qualifications that would provide him assistance and guidance in the engineering profession
- Grant Mihaly a mentor who has a similar background to guide him through the profession
- Provide Mihaly with various professional resources

APEGA appealed the decision made by AHRC to the Court of Queen's Bench in January 2016; APEGA raised the following issues: procedural fairness, jurisdiction, *prima facie* discrimination, and justification of AHRC's decision [2].

First, Madam Justice June Ross addressed the procedural fairness of AHRC's decision. She concluded that AHRC operated fairly [2].

Second, Justice Ross addressed the jurisdiction that AHRC operated in. She concluded that the jurisdiction issue should be determined by the legal test of *prima facie* discrimination [2].

Third, Justice Ross addressed the *prima facie* discrimination finding from AHRC. When AHRC established the *prima facie* discrimination on the basis of "place of origin," AHRC justified it through the adverse effects that impacted Mihaly, inflicted by APEGA requirements, because of Mihaly held a foreign degree [3]. However, there was no dispute or appeal in the AHRC hearing about Mihaly's education being tied to his place of origin. So, Justice Ross found that writing the exams was an adverse impact related to Mihaly's place of origin; however, she also found it unreasonable that AHRC's conclusion that engineers with foreign qualifications would meet the qualifications of Canadian engineering accreditation standards [2]. Furthermore, Justice Ross concluded that P. Eng requiring four years of experience, one year being in Canada, had no adverse impact on Mihaly's place of origin [2]. Thus, she concluded that the AHRC's finding of *prima facie* discrimination in relation to those elements was unreasonable [2].

Fourth, Justice Ross addressed the justification of AHRC's decisions. With only writing the exams being related to adverse impact on Mihaly, it was on APEGA to establish a reasonable and justifiable defence [2]. After some discussion, Justice Ross noted that [2] because of the vast number of engineering programs, APEGA could not reasonably negotiate with all of them, and thus must assign examinations to assess the applicants. As such, Justice Ross concluded that there was no evidence that internationally educated graduates with entry-level competence would have any difficulty passing these exams.

After finding many of the issues being in favor of APEGA, Justice Ross evaluated the AHRC's order for APEGA. She found that giving Mihaly a mentor, and establishing a committee of successfully integrated foreign trained engineers was unreasonable for the scope of discriminatory conduct and would require APEGA to operate outside of its standards and regulatory role [2]. Additionally, AHRC did not consider that Mihaly never attempted many of the requisite exams, and thus the ruling that APEGA was to provide several professional resources and challenging of exams was overturned [2].

Justice Ross' final conclusion is that AHRC had failed in the assessment of undue hardship; thus, AHRC's rulings with respect to APEGA not accommodating Mihaly to the point of undue hardship were unreasonable [2]. Furthermore, APEGA reasoned and justified any *prima facie* discrimination to any foreign engineers [2].

All rulings that AHRC ordered were reversed but Justice Ross, and the case was not sent back to AHRC [2].

In February 2016, Mihaly filed an appeal to the Alberta Court of Appeal [6]. However, this case was dropped in June 2016 when Mihaly failed to follow up [6].

## 5. Reflection and Opinion

In conclusion, prospects of the Mihaly vs. APEGA case fall into a grey area. However, my personal biases have me agreeing with the decisions made in by Justice Ross in the Court of Queen's Bench. APEGA doesn't have the reasonable ability to negotiate with every university to have them meet the APEGA standards; so, the best APEGA can do is to examine foreign applicants through standardized tests. I see why Mihaly considers he is being discriminated against, but from his actions of failing and no showing for his APEGA requisite exams, I do not believe that he is qualified to wear the title of P. Eng. Furthermore, I find the decisions made in the AHRC quite bizarre. To have APEGA create an ecosystem tailored to one individual was an interesting punishment. What still puzzles me is the fact that AHRC took Mihaly's side when Mihaly claimed he was "adversely impacted" by the APEGA standardized exams when he never even bothered to show up for most of them.

APEGA should definitely keep accommodating foreign-trained engineers and geoscientists. After looking past the bad apples, many foreign-trained engineers bring diversity and different skill sets which adds value to APEGA as a whole.

Objective fairness is often hard to judge, and possibly harder to implement. In Mihaly's case he suffered from discrimination, through needing to write several exams for P. Eng accreditation, for obtaining his education from a foreign university. Yet, one can argue that it was fair for him to be tested to ensure he met the minimum requirements for a professional engineer. And yet another can argue that fairness is for everyone to be required to write the same exams. So the question arises, which one is really "fair?" I believe that they all cases have an aspect of fairness, but fairness, in my opinion, has little place a professional setting. Once guidelines for a profession are established and a Board of Accreditation with standards is put into place, then those who meet those standards should be recognized, while those who don't shouldn't be. In Mihaly's case, he failed the NPPE once, and then never tried again; I believe that if he could meet the standards of APEGA he would have after having three attempts at the exams. At that point Mihaly could have put enough effort into learning English that he could have passed the exams; yet he didn't, he didn't even attempt them. I believe that the stance that Justice Ross took in this case is the fairness required in the professional setting; APEGA's discrimination against foreign engineering graduates, through having applicants do a series of exams, is reasonable and justified.

Furthermore, it is of great importance to maintain the image and standards of engineers. By recognizing unqualified individuals into a professional association, it will degrade the image of that association. This leads to devaluation of the individuals part of that association, which would be unfair to those who bring value to the association. Furthermore, by recognizing individuals who do things dishonestly or unethically it could lead to massive risks; especially in engineering where these individuals can potentially be in charge of dangerous materials, or large constructions. By not being able to pass the NPPE, I believe that Mihaly shouldn't be able to practice engineering in Canada since it shows that he doesn't meet the ethical and lawful standards set by APEGA. Clearly, maintaining the image and standards of engineers is a great importance.

To Mihaly's credit, he brought the issue of human rights, in the form of discrimination, into the public eye. The barrier, that is the APEGA accreditation, can potentially set back foreign engineers that are completely qualified just because they are uneducated in the English language. In fact, because Mihaly didn't receive APEGA recognition, he potentially lost thousands of dollars in wages; and I would bet, without a shadow of a doubt, that there are hundreds, possibly thousands, of engineers that are in that exact situation. However, I believe that is issue is a concern of how standardized testing works. Until there is a way to objectively judge a person's competence at a



certain skill efficiently, then there is no way to truly eliminate the discrimination that some individuals may face.

## 6. References

- [1] "About APEGA", Apega.ca, 2018. [Online]. Available:  
<https://www.apega.ca/about-apega/>. [Accessed: 16- Feb- 2018].
- [2] Association of Professional Engineers and Geoscientists of Alberta v Mihaly. 2016. [Online]  
Available:<https://www.apega.ca/assets/PDFs/mihaly-decision.pdf> [Accessed 16- Feb- 2018].
- [3] Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta. 2014. [Online] Available:  
<https://www.canlii.org/en/ab/abhrc/doc/2014/2014ahrc1/2014ahrc1.html?search#> [Accessed 16- Feb- 2018].
- [4] Province of Alberta, "Alberta Human Rights Act", Alberta Queen's Printer, Edmonton, 2018. [Online] Available:  
<http://www.qp.alberta.ca/documents/Acts/A25P5.pdf> [Accessed 16- Feb- 2018].
- [5] CBC News, "Alberta engineers fight decision on Czech man's credentials", 2014. [Online] Available:  
<http://www.cbc.ca/news/canada/calgary/alberta-engineers-fight-decision-on-czech-man-s-credentials-1.2557203> [Accessed 16- Feb- 2018].
- [6] Mihaly v. The Association of Professional Engineers and Geoscientists of Alberta. 2017. [Online] Available:  
<https://www.apega.ca/assets/news-releases/2017-milhaly-court-decision.pdf> [Accessed 16- Feb- 2018].