

# Mihaly Ethics Case Study

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# 1 INTRODUCTION

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This case study will go through the events of the Mihaly trial with respect to APEGA's regulatory process and their proceedings with Canada's legal systems to gain a better understanding of APEGA's trial environment. Starting in 1999, Mr. Ladislav Mihaly immigrated to Canada and applied to the Association of Professional Engineers and Geoscientists of Alberta (APEGA) to register as a Professional Engineering in Alberta to continue this practice from his home country of Czechoslovakia. After APEGA reviewed his background education, they made the decision to have him not only complete the standard National Professional Practice Exam (NPPE), but pass three confirmatory exams and take a course or pass an equivalent examination in Engineering Economics as well. The problem starts when Mr. Mihaly failed the NPPE exam two times over the course of seven years. The last time registering for the examination, led to APEGA also requiring a requiring him to write a Fundamentals of Engineering Examination (FEE) and to complete a year of Canadian engineering experience after this period of 8 years had passed so far. Mr. Mihaly instead filed a complaint to Alberta Human Rights Commission (AHRC) claiming discrimination by APEGA based on his place of origin that led to this association denying him the title of Professional Engineer right away. In 2014 the AHRC found Mr. Mihaly's case compelling and awarded him with 10,000\$ in general damages along with ordering APEGA to include provisions to reconsider the needed examinations and give support options to help him with these if they still felt the exams were needed. APEGA than Cross appealed both AHRC and Mr. Mihaly. After gathering all documentation and hearings, in 2016 Queen's Bench Justice reversed their first decision to allow such extra provisions to help perverse the public safety and APEGA's fairness in its application process. Another appeal was opened against the Queen's Bench decision but was never followed through. As seen below, this report will be broken down into four sections: Stakeholders, Background, Decision and reasoning behind it and a personal reflection and opinion. Stakeholders will describe the key stakeholders associated in the case and how they are related. This includes not only people involved but governments and accusations acting within the event as well. Next, the background will summarize the full history and processes that took place within the full timeline of the case. Leading into the next section of The Court of Queen's Bench Decision and reasoning after they were also informed of the full background of this trial. Lastly, an opinion and reflection on the events on the decisions made by each Government and association stakeholder will be made. Furthermore, an ethical consideration on the topic of if APEGA should accommodate foreign-trained engineers and geoscientists and how it could be handled better for future cases relating to this event.

## 2 STAKEHOLDERS

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The key stakeholders who played the biggest role in this case are listed below with their association.

- APEGA
  - Association regulating the profession practice of engineers and Geoscientists through the Engineering and Geoscience Professions Act. As stated in their mission statement: “Our main regulatory function is licensing individuals and companies that want to practice engineering and geoscience in Alberta. Applicants and companies that meet APEGA’s standards for ethical, professional, and technical competency earn the right to practice and use reserved titles and designations.” [1]
  - They stood accused of discrimination by place of origin by Mr. Mihaly when they declined him the title of professional engineer unless he meets their given standardized exams and courses.
- The Court of Queen’s Bench
  - Superior Trial Court for interprovincial matters when dealing with civil and criminal cases including appeals from the decisions of the Provincial Court.
  - They were the main court used to make decisions on both appeals, first by AHRC representing Mr. Mihaly and next by APEGA to reverse the first decision.
- Mr. Ladislav Mihaly
  - Immigrant from Czechoslovakia into Canada, accredited in Slovak Technical University for M.Sc. Diploma with a specialization in Technology of Fuels Energy.
  - Claimed Discrimination by APEGA for not recognizing his as a professional engineer based on his place of origin
- Dean David Lynch
  - Dean of the Faculty of Engineering and has a statutory position on APEGA’s board of examiners and Canadian Engineering Accreditation Board (CEAB)
  - Witness on behalf of the respondent APEGA
- Moosa Jiwaji
  - Has MBA and LLB, having chair on the Human Rights Tribunal
  - Filed and presented on behalf of the Tribunal to the decision on the actions of the needed actions of Mr. Mihaly’s appeal and accusation of discrimination
- June Ross
  - Queen’s Bench Justice Judge
  - Judged and made ruling for the APEGA’s appeal

### 3 BACKGROUND

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The full History of this case takes place across sixteen years to finally resolve the issue, this section will summarize this whole process in hopefully much less time. Starting in May 1999, Mr. Mihaly applied to APEGA for registration for the title of Professional Engineering within Alberta, Canada. APEGA followed their usual practice of requesting his transcripts and notified him of having to take the NPPE. In February 2000, APEGA reviewed his materials and found that since his place of origin was not a part of a Mutual Recognition Agreement (MRA) with Canada, that he was also needing to complete three confirmation exams for ensure their standards met with Canada's for his accredited certificated he had in his home country. Additional, Mr. Mihaly would need to take or pass another exam in Engineering Economics to confirm both countries have equivalent education requirements in this field. These extra conditions were advised to him after failing the NPPE a month prior. Later in August, Mr. Mihaly applied again to take the NPPE and this time did not even show up. June 2001 was when APEGA notified him that his application had been withdrawn do to not completing the exams. Another year passed, and Mr. Mihaly requested for APEGA to reactivate his application, which the association promptly did a month later. Again, the NPPE was not passed. A second attempt at this exam happened in January 2003 and met with failure. APEGA Withdrew his application once more for not meeting the specified timeline. Fast-forward 3 years, Mr. Mihaly requests to have his application reactivated. After such a gap in time APEGA requested an updated resume with updated references which he complied with. On August 2007, the board of examiners reviewed the application and now on top of the four exams and economics equivalent, the board also need a required year of Canadian professional engineering experience in a D level or greater. In response, Mr. Mihaly filed a complaint to the AHRC accusing APEGA of discriminating against him based off his place of origin leading to him being denied his requested title. The AHRC pursued this case and brought it the Human Right Tribunals of Alberta (Tribunal). After the Tribunal had analyzed all the facts, they sought to remedy the complainant in 2014 by awarding ten thousand dollars in general damages and ordered the APEGA Board to review transcripts and experience in direct consultation with the Slovak University of Technology and any of his references, use a board of members who all attained an equivalent degree outside of Canada to grant options to assess Mr. Mihaly's academic deficiencies without the use of an exam including the NPPE, match him with a mentor with a similar background to help integrate into the profession here, and lastly direct him to resources to help him network and help with his language barrier. From this, APEGA sought to appeal the decision with the intent to reverse the full outlined order the Tribunal gave to APEGA. Hearings in both December 2014 and July 2015 were held and a decision by The Queen's Bench of Alberta was made in 2016. Judge June Ross ruled that the Tribunal's orders should all be reversed and there was no matter to remit the issue back to the Tribunal. In one last attempt in 2017, Mr. Mihaly tried to appeal the reversal in the Court of Appeal of Alberta but was dropped when he failed to follow up with any issues he had with the Bench's decision.

## 4 THE COURT OF QUEEN'S BENCH DECISION

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By the time the case got to The Court of the Queen's Bench (Bench) a lot needed to be accounted for over the long duration of this case leading up to the decision and a thorough examination of APEGA's standards needed to be questioned as well. To properly describe the Bench's decision and reasoning, insight needs to be added into what the Bench took into from APEGA's Registration Process. They accredit the CEAB assessment process of being an elaborate process noting the detailed material needed from the applicant's institution as well as an in-person inspection for quality checking purposes. Furthermore, the Slovak Technical University has never applied to the CEAB to get an MRA to clear any accredited engineering equivalent degree of having to pass APEGA's exams such as the NPPE. The Bench also found that the CEAB assessed Mr. Mihaly's master's degree to be equivalent to a bachelor's degree according to the Foreign Degree (FD) list which uses publicly available information of that institution to determine their degree equivalents. In addition to being recognized at a bachelor's level, Mr. Mihaly was also found to be closer to a chemical engineer rather than mechanical or petroleum. It was also determined that even though this applicant had a long history in piping design and fabrication, that experience was not at the same complexity and regulatory level as Canada operates on. Lastly, the Bench takes into account that APEGA will waive off examinations if the applicant has an acceptable master's or Ph.D with ten or more years' experience. In Mr. Mihaly's case, although he did request this waiving of exams, the CEAB assessed it as not being to the same technical level but was sent a reconsideration request with update information that could be given to APEGA for further assessment. Mr. Mihaly did not submit one. To summarize, the Bench had a very firm understanding of the immense investigation the CEAB did and the actions APEGA did with this information. From this, a review on the issues that APEGA raised of the AHRC's appeal on behalf of Mr. Mihaly was conducted. There are four issues raised by APEGA that they feel led to a wrong decision reached by the Tribunal's chair Moosa Jiwaji. These are their procedural fairness, jurisdiction, Prima facie discrimination and justification. Procedurally, APEGA claims the Tribunal breached the duty of fairness by not bringing up points for Mr. Mihaly within APEGA's Engineering and Geosciences Professions General Regulation (EGPR) so that APEGA could never address it before the decision was made. Next, APEGA presses that the grounds of their assessment were claimed from Mr. Mihaly's place of origin's academic qualifications, not just the place of origin therefore the AHRC has no jurisdiction over such allegations. However, the Bench found that this interpretation by APEGA to be false and made an example of a more recent trial example that was referred to as the "Moore test" [2] which, within it, outlines that that place of origin should be understood as a blanket term to encompass place of education as well. This Moore test was again used in the next issue relating to the proper use of prima facie discrimination to correlate Mr. Mihaly's place of origin to the Exams APEGA wanted him to pass. This discrimination would need evidence of any assumptions CEAB might have used to judge Mr. Mihaly for the Tribunal to properly claim it. No such evidence was given in this matter and the Bench determined the

discrimination was claimed on unreasonable findings and the Tribunal did not apply the Moore test in relation to the exams advised to Mr. Mihaly. Lastly, Justification was needed on if the Tribunal can claim that the registration requirements given to Mr. Mihaly were unreasonable for him to pass. From the Tribunal's stand point a standardized "one size fits all" [3] test is not reasonable and should be more tailored toward Mr. Mihaly's assessed academic deficiencies. The Bench was quick to point out the logical errors and fact not backed by evidence used by the Tribunal and unreasonably interpreted the EGPR which is clearly shown to be a fair method to find if a candidate meets the entry level competence to preform safe engineering practice. To conclude, it is clear to see that the Bench clearly found the Tribunal's claims to be riddled with logical errors when assessing the fairness of APEGA's registration process.

## 5 REFLECTION AND OPINION

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Now that the full process and final judgement of the trial has been thoroughly explained with the full stance of the Bench, a reflection and personal opinion on this matter can be conducted to give outside perspective. To begin, I'll first point out which of the governing body's decision I argue and disagree with and why, followed by my perspective if APEGA should be any more accommodating to foreign engineers or geoscientists. The one I am most passionate about my opinions with is the AHRC's action to side with Mr. Mihaly. The trial itself did not give enough time and respect to APEGA when the Tribunal was trying to interpret APEGA's EGPR, instead aiming to freely interpret the legal documents themselves without a full clarification from APEGA. This is a scary thing to see happening in the higher court room area and I hope the Tribunal chair, Moosa Jiwaji, has learned from this unethical practice in a trial setting. After assessing the EGPR document incorrectly and making facts for special accommodation that they felt should have been given to MR. Mihaly, the Tribunal decided to remedy Mr. Mihaly with an award of ten thousand dollars also adding that he had "suffered injury to his dignity" [3]. This is absurd for the AHRC to even think about doing. Mr. Mihaly accepted the registration requirements multiple times and failed on his own merit lack of competency, this should be taken as an indication that he should be making a better effort to learn what is to be expected of him and not just handed money. APEGA gave the paper's he would need to request a reconsideration of his experience in engineering, since Mr. Mihaly never followed up on. The AHRC knew of this and still considered him to be not adequately accommodated in the professional engineering registration. It seems to me that the AHRC seems to have very little knowledge on the whole APEGA and CEAB processes and aimed to try to make APEGA exhaust its resources to go way above how they should be doing to help Mr. Mihaly and any other foreign engineer who wants a professional engineering title within Alberta. To do any more would risk public safety, standards and more expenses APEGA would need to be given to restructure itself to fully conform to AHRC. For these reasons I say that all the remedies the AHRC ordered APEGA are wrong, but I find it is acceptable to fully hear foreign work's problems and take it into court until a full explanation of the CEAB examination process can be transparent and truthful to all. For the other two court cases, I have nothing I disagree with on how they handled the trials and final decision. The Bench had a very clear understanding of both sides of the case and since the Tribunal failed on backing up their statements with evidence, it's very clear that they were in the wrong and that the reversal of their orders to APEGA all be reversed. Furthermore, the Court of Appeal Alberta could not get a full appeal record from Mr. Mihaly for his issues with the Bench's decision, so they closed it like they should. Finally, as you could have seen in my thoughts on the AHRC, I do not think APEGA should have to assist foreign engineers and geoscientists any more than they already do right now. If they had to, it would be a waste of their resources that would either slow down their review process or need extra money injected into association to sustain their operations. Not only do I find the logistics of doing such a thing to be wrong, but they have been around for

almost a century now and have enough support evidence to show their examination system in place today works well to ensure the safety of the public as it is professional engineer's privilege to practice their career responsibly for them.



## 6 REFERENCES

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- [1] APEGA, "about APEGA," 2017. [Online].
- [2] T. C. o. Q. B. o. Alberta, "Association of Professional Engineers and Geosceintists of Alberta V. Mihaly," 2016. [Online]. Available: <http://www.apega.ca/assets/PDFs/mihaly-decision.pdf>.
- [3] H. R. T. O. ALBERTA, "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>.
- [4] C. o. A. o. Alberta, "Mihaly V. Association of Professional Engineers and Geoscientists of Alberta," 2017. [Online]. Available: <https://www.apega.ca/assets/news-releases/2017-milhaly-court-decision.pdf>.