

INTE 513

The Role and Responsibilities of the Professional Engineer in  
Society

Report 1 – Mihaly vs APEGA

Andrew Wong

February 6<sup>th</sup>, 2018

Instructor: Denis Onen

## **Introduction:**

The purpose of this report is to gain a greater understanding of an engineer's journey through licensure, the registration conditions required by the governing association APEGA, their administrative procedures, their handling of due process by the legal system when faced with an internal complainant, and therefore the realm of ambiguous justification of rights and jurisdiction in a professional engineer's environment.

In the case of Mihaly v. APEGA, a Corrosion Engineer originally educated in the former country of Czechoslovakia had immigrated to Canada and applied to APEGA as a professional engineer. After feeling that his application was being delayed through discrimination based on his place of origin, Mihaly filed a complaint in 2014 against the Alberta Human Rights Commission (AHRC), which agreed with his predicament. Years after in 2016, the case was brought forth to the Alberta Court of Queen's Bench by APEGA who defends their actions in this case, which then determined (by judge) that the decision by the Tribunal of the AHRC should be reversed.

## **Stakeholders:**

### **APEGA:**

The Association of Professional Engineers and Geoscientists of Alberta (APEGA), or Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA) until 2012, is the governing licensing body in Alberta. In this court case, APEGA is the respondent to allegations of discrimination by Ladislav Mihaly in the Alberta Human Rights Commission case (AHRC).

Afterwards, APEGA cross-appealed the Mihaly/AHRC decision through the Alberta Court of Queen's Bench. In both cases, APEGA is represented by James T Casey, QC, Field Law LLP.

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

The Court of Queen's Bench of Alberta is the superior provincial court in Alberta. On January 26<sup>th</sup>, 2016, the Court of Queen's Bench finalizes its review of APEGA's application to overturn the early findings and decision by Mihaly and the Alberta Human Rights Commission (AHRC) in 2014, just over fourteen months after the case was initially presented by APEGA to the courts, or 23 months after the AHRC ruling. The Judge who sees the case is Honourable Madam Justice J.M. Ross in the Judicial Centre of Edmonton. The court case Justice J.M. Ross lists APEGA as the Applicant (respondent on the cross-appeal), both Ladislav Mihaly and the AHRC as the Respondents (applicants on the cross-appeal), and the Law Society of Alberta as the Intervener.

### **The Alberta Human Rights Commission:**

The Alberta Human Rights Commission (AHRC) is a semi-judicial human rights body that uses a tribunal to hear and resolve complaints that involve human rights complaints such as discrimination. In the case of Mihaly v. APEGA, the AHRC plays the initial role of bringing forth their ruling on the case that APEGA wishes to appeal in the Alberta Superior Court. Their original case, between Complainant Ladislav Mihaly and Respondent APEGA (formerly APEGGA) in 2014 took place on February 6<sup>th</sup>, 2014 with Tribunal Chairman Moosa Jiwaji, MBA, LL.B in Edmonton, four years after the complaint was initially brought forth by Mihaly. The AHRC found that Mihaly was in fact discriminated by APEGGA and awarded general monetary damages to the complainant.

Mr. Ladislav Mihaly:

Mr. Ladislav Mihaly is a Czechoslovakian-born immigrant, who had obtained a M.Sc. Diploma with Technology of Fuels and Thermal Energy specialization from the Slovak Technical University in Bratislava (UBS) in 1975, and a Corrosion Engineering certificate from the Institute of Chemical Technology (ICT) in Prague in 1981. In May of 1999, Mihaly sought accreditation with APEGA to become a Professional Engineer, who was then issued a list of requirements such as writing (and passing) the National Professional Practice Exam (NPPE); this of which he failed a total of three times and had not attended one. After having his application withdrawn and rejected on multiple occasions over a period of eight years, Mihaly filed a complaint with the AHRC on the grounds of APEGA discriminating against him and his application, most prominently the lack of recognition of his degrees.

Dr. David Lynch:

Dr. David Lynch is the Dean of the Faculty of Engineering at the University of Alberta. Working originally as an Assistant Professor starting in 1981 and graduating with a Ph.D. in Chemical Engineering in 1982, he continued to climb the ranks, becoming a Professor in 1988 and Acting Dean in 1994 to his current position in 1995. Dean David Lynch appeared as an expert witness within the Human Rights Tribunal for Mihaly v. APEGGA (APEGA) since he has a statutory position on APEGGA's Board of Examiners. This board screens all applicants and either approves or declines them based on their ability to match requirements by APEGGA those under the Engineering and Geosciences Professions Act (EGPA). Dr. Lynch also serves on the Canadian Engineering Accreditation Board (CEAB), an advisory body which also assesses qualifications of engineering programs outside of Canada.

Dr. Gary Faulkner:

Dr. Gary Faulkner is the current Chair of the APEGGA Board of Examiners since 1995. In 1969, Dr. Faulkner obtained a Ph.D. in Applied Mechanics from the University of California, returning to the University of Alberta under the Department of Mechanical Engineering. Over the years, he became Chair of that Department, as well as becoming a member of the APEGGA Board of Examiners in 1988 before reaching his current position. Dr. Faulkner was listed as the second witness for APEGGA in the Human Rights Tribunal for Mihaly v. APEGGA as he is the Chair of the association being served the complaint. Dr. Faulkner defends the reasoning behind forcing Mihaly in taking the National Professional Practice Exam (NPPE); due to the fact that the Slovak Technical University of Bratislava is not on the CEAB Substantially Equivalent Program, the regular process is to use the Fundamental of Engineering (FE) Exam to determine the skill level of prospective members, even if listed on the Foreign Degree (FD) List.

Mr. Mark Tokarik:

Mark Tokarik is APEGGA's Director of Registration, with a background of Bachelor of Science in Engineering (1981) and a Bachelor of Law (1989). After joining APEGGA as Assistant Director of Registration in 1999, Tokarik moved up and became the official director. Mark Tokarik was also therefore a member of the National Engineering Admission Officials Group, a group of all the Directors of Registration from all provinces. Starting in 2006, Mr. Tokarik was also a member of Engineer Canada's Foreign Engineering Qualifications Committee (FEQC), a committee within Engineering Canada that maintains institutions listed in the FD List. Testifying for APEGGA in the Human Rights Tribunal for Mihaly v. APEGGA, Tokarik defends APEGGA's actions by providing reasons why Mihaly must take the NPPE; it is not a technical exam but an exam to test the individual's knowledge of

law, ethics, professionalism, etc., and that the FE Exam is a standard exam procured by the US-based organization the National Council of Examiners for Engineering and Surveying (NCEES) used to test fundamentals from materials found in the Canadian engineering program.

### **Background:**

Ladislav Mihaly, a citizen born in the former country of Czechoslovakia, achieved a M.Sc Diploma with a Technology of Fuels and Thermal Energy specialization from the Slovak Technical University in Bratislava (UBS) in 1975, as well as a Certificate in Corrosion Engineering from the Institute of Chemical Technology (ICT) in Prague in 1981.

In May of 1999, Mihaly had already immigrated to Canada and applied to APEGA (formerly APEGGA) to become an accredited Professional Engineer in Alberta. APEGA, recognizing his application on a letter that was dated May 13<sup>th</sup>, 1999, then requested transcripts, visa, and his Landed Immigration Form. APEGA also informed Mihaly that he was required to write the National Professional Practice Exam (NPPE). APEGA's Board of Examiners then reviewed his presented material in support of his application; their findings were given to Mihaly on February 11<sup>th</sup>, 2000, where he would also be required to write three additional confirmatory examinations and to take a course or pass an equivalent examination in Engineering Economics. The deadline for these was two years from his application, May 2001. Mihaly was also informed that he had failed his first attempt to write the NPPE on January 17<sup>th</sup>, 2000. On August 1<sup>st</sup>, 2000, Mihaly applied to rewrite the NPPE on October 16<sup>th</sup>, 2000 but did not attend. However, Mihaly was given a document sent by APEGA Exam Coordinator Betty Lewis, saying he passed the exam even though he was not present; this was dismissed to be erroneous. On June 29<sup>th</sup>, 2001, APEGA informed Mihaly that his application was withdrawn since he did not complete the requirements before the expiry date.

On May 31<sup>st</sup>, 2002, Mihaly asked APEGA to reactivate his registration application, and applied to write the NPPE on July 15<sup>th</sup> 2002. APEGA reactivated his file on June 3<sup>rd</sup>, 2002, and once again informed Mihaly that he must write the three confirmatory examinations by May 2003 and the Engineering Economics exam by November 2003. One of the more notable communications by email between Mihaly and APEGA administration was one dated on June 19<sup>th</sup>, 2002, where Mihaly stated "I am ready to pass any exam in case if need to be done..."; Mihaly failed this exam for a second time; this was the third time he had applied to write the NPPE. Mihaly applied to write the NPPE on January 20<sup>th</sup>, 2003, failing a third time on his fourth application. On August 1<sup>st</sup>, 2003, APEGA withdrew his application a second time due to expiry.

Years later in August of 2006, Mihaly complained to the APEGA Director of Professional Practice Ray Chopiuk over APEGA's refusal to recognize his academic qualifications in the first place. Ray Chopiuk referred Mihaly over to Mark Tokarik, Director of Registration. On October 3<sup>rd</sup>, 2006, Mihaly asked APEGA to reactivate his application a third time (second *re*activation). On October 18<sup>th</sup>, 2006, APEGA responded and asked for, given the passage of time, an updated resume and list of references, which was provided by Mihaly on November 16<sup>th</sup>, 2006. On August 10<sup>th</sup>, 2007, the APEGA Board of Examiners reconsidered Mihaly's application and confirmed the same findings: three confirmatory exams plus either an exam in Engineering Economics *or* the Fundamentals of Engineering (FE) Exam, a slight change to options over time starting in 2005. The board also ruled that his Canadian work experience to-date was only at a C-level (i.e. technician level), whereas the requirements are a one year D-level North American engineering experience (i.e. work expected from a Professional Engineer). Mihaly did

not apply to write the NPPE, and instead filed a complaint with the Alberta Human Rights Commission on the grounds of APEGA discriminating against his place of origin upon his attempted registration to become a Professional Engineer, most notably under Alberta Human Rights Act, RSA 2000, c A-25.5 [AHRA] ss. 4, 7, and 9; the Tribunal agreed that s 7 did not in fact apply in Mihaly's case since APEGA was not by any stretch his current or future employer, but continued on with ss. 4 and 9.

On February 6<sup>th</sup>, 2014, the AHRC Tribunal found enough evidence in support of Mihaly's claim, citing "... the FE exam for all examination candidates is ... a one size fits all approach" (para 211), "Mihaly ... suffered injury to his dignity" and "the process that was used did not appropriately individually assess Mr. Mihaly's qualifications" (para 246), and "during all of this time, no one at APEGGA (APEGA) reviewed his application in direct contact with the universities from which Mr. Mihaly had a degree. No one at APEGGA offered any meaningful assistance to Mr. Mihaly in order that he would be better able to meet their qualifications" (para 247). In light of the evidence, the Tribunal decided to award Mihaly \$10000.<sup>00</sup> in general damages, as well as a list of Remedial Orders towards APEGA. Mihaly was not awarded any lost wages due to not having a Professional Engineering license since the uncertainties involved in future or speculated employment were large. Mihaly's claim on APEGA retaliation against his complaint to the AHRC by not granting him registration was also dismissed.

On November 20<sup>th</sup>, 2014, APEGA filed as Applicant for an appeal, and Mihaly, self-represented like in the AHRC Tribunal, filed as Respondent the same day as cross-appeal applicant. The Law Society of Alberta filed a brief as Intervener on November 21<sup>st</sup>, 2014, and the Alberta Human Rights Tribunal filed limited submissions days later on November 28<sup>th</sup>, 2014. Included under the Appellant's issues for appeal was AHRC jurisdiction over place of origin versus place of education, proper classification of *prima facie* discrimination, and justification on the Tribunal's findings on the unjustifiable APEGA registration requirements. The final Disposition for the Appeal concluded that the decision of the Tribunal should be reversed, and the Disposition for the Cross-Appeal regarding *prima facie* discrimination was not justified and that the cross-appeal was to be dismissed.

On February 22<sup>nd</sup>, 2016, Mihaly filed for an appeal of the ***Association of Professional Engineers and Geoscientists of Alberta v Mihaly*** [2016] decision as he, in essence, did not agree with the court finding that "the tribunal's decision was 'rife with logical errors, findings of fact that are not supported by the evidence, and failures to take into account relevant considerations'." (para 2). However, his first appeal was struck down on June 23, 2016, as he did not file an Appeal Record. On December 15<sup>th</sup>, 2016, (Appellant) Mihaly brought the appeal from restoration. Honourable Mr. Justice Frans Slatter, who presides over this application, notes that Mihaly, argues over the Foreign Degree (FD) List, but uses the wrong revision in his assessment (document labelled 2010 instead of 2000-2006). Since no changes were made to the Czech or Slovak Republics in this period of time, Justice Slatter continues with the appeal application. Secondly, neither the *Agreement for Cooperation in Higher Education and Training* between Canada and the European Union nor the 1979 UNESCO *Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region* reference any requirements by Canadian institutions to recognize European credentials as equivalent. Finally, when deciding whether or not to restore an appeal, considerations such as "reasonable promptness in moving to cure the defect and have the appeal restored to the list; intention in time to proceed with the appeal; lack of prejudice to the respondents (including length of delay)" must be taken into account (para 4). In Mihaly's case, his untimely response was not justified or explained, and the total length of time between first complaint and the current appeal was rounding to 9 years, with

the AHRC being involved from the beginning and being one of the Respondents in the court case. Therefore, Justice Slatter rules that Appellant Mihaly did not meet the requirements for restoring his appeal, and the application was dismissed.

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

Honourable Madam Justice J.M. Ross presided over the APEGA v Mihaly (2016) case involving appearances of APEGA representative James T Casey, QC, Field Law LLP, Applicant (Cross-Appeal Respondent), Ladislav Mihaly, self-represented, Respondent (Cross-Appeal Applicant), Ritu Khullar, QC, Chivers Carpenter, for the Alberta Human Rights Commission, and David Philip Jones, QC, de Villars Jones, for the Intervener The Law Society of Alberta.

During this case, Mihaly's background was provided along with the complaint and AHRC Tribunal decision against APEGA's Legislative Framework such as terms for application approval and process for registration. In the reasons for judgment, four issues on the Appeal were brought forth by APEGA: procedural fairness in concluding decisions not raised by or with either party, jurisdiction over discrimination based on place a person receives their education versus discrimination based on place of origin, *prima facie* discrimination and the correct identification of presence through legal testing, and justification on the Tribunal's decision that APEGA's registration requirements were unreasonable.

Under the issue of Procedural Fairness, APEGA disputed that the Tribunal interpreted them to have required Mihaly to write the confirmatory exams "for the purpose of correcting a perceived academic deficiency" (para 55), for which APEGA could not perceive a deficiency before testing Mihaly. This was incorrect, as this excerpt from the Section 8 of the Engineering and Geosciences Professions General Regulation (EGPR), regarding who may be applicable for becoming an examination candidate, has a disjunctive "or" before this statement. The correct statement reads "... the Board of Examiners has required the applicant to complete one or more confirmatory examinations **or** examinations for the purpose of correcting a perceived academic deficiency." This directly nullifies the points from the AHRC Decision paras 212, 215, and 218 (as stated in APEGA v Mihaly, para 55). Continuing on by citing *Amacon Property Management Services Inc. v Dutt* [2008], APEGA stated that "the arbitrator found that a landlord had not breached tenancy agreements as alleged, but was liable in negligence to the tenants. The question of negligence had not been addressed at the hearing before the arbitrator. The reviewing Court observed that the duty of fairness requires that parties be given the opportunity to respond to 'any new ground' of decision that arises in the processed of a tribunal's consultations or considerations: *Amacon* at para 33, citing *IWA, Local 2-69 v Consolidated Bathurst Packaging Ltd.*, [1990]" (para 56). This means that any points not brought forth by the Complainant in the AHRC Tribunal should not have been taken into account, such as that by incorrectly interpreting s 8 of the EGPR as *prima facie* discrimination. However, Justice Ross stated that this only applies to new "grounds" for decision, and that a Tribunal (or courts) are not required to give parties the opportunity to hear every point of law that is referred to when deciding a case. Therefore, the Appellant's issue on procedural fairness was rejected as no breach was determined.

On the point of Jurisdiction, APEGA claimed that the AHRA does not protect against discrimination based on place of origin of academic qualifications, citing *Grover v Alberta (Human Rights Human Rights Commission)* [1997] (para 60). In this case, Dr. Grover claimed that the University of Alberta had discriminated himself with a Canadian-trained PhD in comparison to US-trained PhDs. The AHRC declined to hold a hearing, but Grover "asked the Court to quash the Commission's decision, arguing

that ‘place of origin’ did not mean ‘place of birth’ but ‘where you came from’” (para 61). Justice Ross also stated that this case does not correctly represent the current situation, as *prima facie* discrimination may have played a role regardless of jurisdiction. Furthermore, Mihaly alleged that there may have been “adverse effect discrimination based on his place of origin”, and that **Grover** is almost two decades old. To test for *prima facie*, the case of **Moore v British Columbia (Education)** [2012] is used to assess Mihaly’s theory, where the Complainants must “show that they have a characteristic that is protected from discrimination; that they experienced an adverse impact; and that the protected characteristic was a factor in the adverse impact” (para 67). As brought forth by the justice, the **Moore** test does not required that “place of origin” be interpreted as including “place of education” ; discrimination is not limited to rules or practices that are directly based on the listed grounds in the AHRA. Justice Ross also agrees with the Tribunal that **Grover** was intended to be limited to its specific facts and is no longer good law, and that there is no connection between the Complainant’s place of origin and where Grover had obtained her degree. Therefore, the Appellant’s issue on the AHRA’s lack of jurisdiction was not proven to be true.

On the issue of *prima facie* discrimination and referring to AHRA, s 4, Mihaly’s case falls under discrimination “against any person or class of persons *with respect to any ... services, that are customarily available to the public,*” where APEGA is providing a service. The AHRC Tribunal notes that “place of origin” is a prohibited ground of discrimination, and that there was no doubt Mihaly was “treated as a foreign graduate because of the origin of his education credentials”, a “proxy for place of origin” (para 77). Mihaly was indeed adversely impacted by the APEGA requirement to write the three confirmatory, the FE, and the NPPE examinations in addition to one year D-level Canadian experience, all of which perpetuated disadvantage. However, this claim implies that APEGA’s policies are based on discriminatory assumptions, where the AHRC assumes APEGA believes “‘engineers with qualifications from foreign countries with which [APEGA] has no MRAs, have qualifications which are not at par with Canadian engineering accreditation standards’ ... On the contrary, APEGA asserts that the totality of the evidence demonstrated that APEGA makes no assumptions about the qualifications of any institutions’ graduates, Canadian or otherwise, until the institution has satisfied APEGA, through the knowledge-based CEAB accreditation process or a substantially similar process, that its graduates meet the required academic standard” (para 84). Justice Ross agrees with APEGA’s challenge, noting that accrediting of an external institution involves cooperation and significant investment of resources by *both* sides, not just APEGA. The Tribunal made no reference to evidence when it found that APEGA’s policies were supposedly based on discriminatory assumptions, as well as no reference to evidence that a correct legal test was applied in the Mihaly case regarding if arbitrariness or stereotypical treatment were present, and was therefore considered an unreasonable finding. APEGA also cites the cases of **Gersten v College of Physicians and Surgeons of Alberta** [2004], **Agduma-Silongan v University of British Columbia** [2003], **Keita v Qualification Evaluation Council of Ontario** [2014], and **Abi-Mansour v Chief Executive Officer of Passport Canada** [2014]. In each of these cases, either the tribunals or courts found that the treatment complained of was not related to the Complainant’s place of education, but rather not having obtained specialist certification (**Gersten**), specific on program of study (**Agduma-Silongan**), grades (**Keita**), or internal appointment processes (**Abi-Mansour**). *Prima facie* discrimination was found, however, in **Bitonti**, where a College of Physicians and Surgeons classified foreign-trained doctors as “Category II” physicians, whereas “Category I” was limited to graduates of medical schools in Canada, the United States, Great Britain, Ireland, Australia, New Zealand, and South Africa, where “it can be concluded that a very high degree of correlation exists between place of origin and place of education among Category I and II countries” (para 98). Although there was no statistical

evidence connecting place of (engineering) education with place of origin, there is “no dispute regarding the Tribunal’s finding that Mr. Mihaly’s place of education was ‘inextricably linked’ to his place of origin” (para 100). However, Mihaly had no way of avoiding the adverse impact of having to write the confirmatory or FE exams other than leaving his place of origin to pursue his education elsewhere; therefore, Mihaly’s place of origin was a factor in the adverse impact. This point, on the other hand, does not apply to *prima facie* discrimination, as the Tribunal incorrectly applied the **Moore** test to Mihaly’s adverse impact of having to write the confirmatory and FE exam was *because* of his place of origin. As stated, the AHRC’s finding of “substantive discrimination” relating to the third area of the **Moore** test may be relevant, but is not sufficient to institute grounds of discrimination. As well, the **Moore** test was not applied to the NPPE or the Canadian experience requirement; neither of these was found by Justice Ross to have evidence of discrimination in any case as *all* applicants are required to have these prerequisites. Therefore, the AHRC ruling on discrimination was deemed to have no backing evidence.

Finally, regarding justification, it was found that the Tribunal *did* apply the correct legal test of **Moore**. Therefore, the issue on this appeal relates to APEGA not reasonably accommodating Mihaly throughout the application process, which they did not in the Tribunal’s ruling. However, “APEGA does not assign examinations to applicants in Mr. Mihaly’s circumstances based on perceived academic deficiencies” (para 122). Justice Ross agrees with APEGA, as “there was no evidence that internationally educated graduated with entry level competence would have any difficulty passing the FE Exam” (para 130), rejecting the Tribunal’s assessment that it is “‘quite difficult for most foreign engineering because when they come to Canada they usually come early in their careers’. This finding was not supported by the evidence, as Mihaly had more than ten years of experience, but not the quality APEGA was necessarily looking for (para 141). Furthermore, Justice Ross analyzes the Remedial Orders given to APEGA; these were deemed to be excessive in resource dedication and beyond the scope of assistance that APEGA should provide, and the demand that Mihaly should be granted “‘the option to challenge specific examinations in areas where he is not granted an exemption by [APEGA]’ (para 249)” fails to realize that Mihaly did not attempt to even write any of the three confirmatory examinations nor the FE Exam.

In conclusion, although the AHRC Tribunal concluded that Mihaly experienced *prima facie* discrimination through APEGA’s exam requirements, the lack of justification of APEGA’s requirements under s 11 of the AHRA was unreasonable. Therefore, Justice Ross concluded that the decision of the Tribunal should be reversed, and that APEGA’s appeal is acknowledged, whereas Mihaly’s Cross-appeal is dismissed by the fact that *prima facie* discrimination was not justified under s 11 of the AHRA.

### **Reflection and Opinion:**

Initially without reading the file(s), I had believed under the pretence that the final ruling was correct, the appeal of the Human Rights decision by APEGA would be the decision I would agree with. Reading through the entire decision for **Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1**, at first glance it appeared that Ladislav Mihaly’s filing of a complaint against APEGA would not withstand questioning and reasoning within the Tribunal. My theory was hardened by the fact that Mihaly was given a list of requirements (namely writing the NPPE, three confirmatory exams, and later the FE Exam), but either did not attempt them or in fact failing them. However, Tribunal Chair Moosa Jiwaji also referenced Mihaly’s difficulty in attempting to apply for a Professional Engineering license through his hardships with a motor vehicle accident and his family’s low income status (paras 14, 68). This does not affect the court (or tribunal case), but it may



have played a role in the Tribunal's decision through *pathos*. In my belief, Mihaly was not discriminated by place of origin (or rather place of education), but the fact that he had problems over an abnormally large time period with registration raises a red flag in the Tribunal's mind, which may have been compounded or complicated by the fact that Czechoslovakia was dissolved in 1992. As neither the Slovak Technical University in Bratislava (UBS) nor the Institute of Technology (ICT) in Prague were listed as institutions in the Canadian Engineering Accreditation Board (CEAB) Substantially Equivalent Program, the regular process is to assign prospective engineers the three confirmatory examinations plus the NPPE as standard procedure, even if the institutions are listed in the Foreign Degree (FD) List. The fact that Mihaly did not even attempt to write these confirmatory examinations does not support his discriminatory claims, as the process is assigned to everyone in the same category as him, and he did not experience the difficulty of writing those exams. I was surprised that under the evidence presented in the Tribunal it was ruled in favour of Mihaly, as well as the Remedial Orders presented to APEGA. I believed these orders were too specific in preferential treatment towards one individual and goes beyond the regular "expanse" (and expense) required by APEGA. The Tribunal was right, however, not to award missing wages to Mihaly and to not recognize his claim of APEGA retaliating against his complaint by not granting him registration.

As for the Court of Queen's Bench decision, some of the issues brought forth by Applicant/Cross-Appeal Respondent APEGA I thought would be accepted were dismissed by Justice Ross, namely "Procedural fairness" and "Jurisdiction"; however, when reading the judge's explanation, it was very clearly explained with previous court ruling references. For example, although the AHRC may have misinterpreted EGPR, s 8, the court still had the ability to dismiss this issue as *prima facie* discrimination could be applied elsewhere, not just s 8 of the EGPR. As well, the argument over "place of education" versus "place of origin" is nullified by the fact that discrimination under any pretence of protected characteristic is still prohibited. As stated, "the Tribunal's reasons ... are rife with logical errors, findings of fact that are not supported by the evidence, and failures to take into account relevant considerations" (para 149); a statement I completely agree with.

As for the Alberta Court of Appeal, Justice Slatter was right to deny the restoration of Mihaly's appeal, as following the factors of whether or not to restore an appeal from para 4, Mihaly provided invalid arguments for restoration (a), did not provide any explanation in the delay for restoration and therefore reasonable promptness for having it restored (b, c, d), and was not impartial to Respondent the AHRC Tribunal being strung along for over 8 years (e). Agreeing with this decision, Justice Slatter dismissed Appellant Mihaly's application for appeal restoration.

In regards to whether APEGA should accommodate foreign-trained engineers, it is ambiguous to the degree APEGA should provide assistance. For example, what would be the boundaries for assistance APEGA should provide; support programs, subsidized classes, fee waivers? Would there need to be an external body that manages and individually reads every external applicants' criteria and shortcomings in order to prevent new biases or discrimination in exemptions, which is what the AHRC was trying to avoid? How much effort would need to be provided in order to receive observable improvements? In my opinion, I believe the current FD List and CAEB Substantially Equivalent programs method is already an appropriate method; Mihaly's case was very distinct and an outlier. An even playing ground is provided to all immigrants applying for licensure regardless of background, and if arguing that locally-educated individuals have a leg up over immigrants, remember that they have countries of their own that may not play as fairly as ours to non-native citizens.

**References:**

*Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta* [2014] AHRC 1 (Human Rights Tribunals of Alberta).

*Association of Professional Engineers and Geoscientists of Alberta v Mihaly* [2016] ABQB 61 (Court of Queen's Bench of Alberta).

*Mihaly v Association of Professional Engineers and Geoscientists of Alberta* [2017] ABCA 15 (Court of Appeal of Alberta).