

ENGG 513  
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# Case Study: Mihaly v. APEGA

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## **Introduction:**

This report reflects the study of a legal case regarding Ladislav Mihaly and his claims of being discriminated against due to his place of origin by the Association of Professional Engineers and Geoscientists of Alberta (APEGA). This case is prime example of APEGA's regulatory process, and the legal and quasi-legal environment in which APEGA operates, as well as providing insight into the requirements to become registered as a professional engineer. [1] This report will investigate the background of the case, including describing some key stakeholders, describe the Court of Queen's Bench's final decision to the case and the reasoning behind it, as well as provide an opinionated reflection on the outcome of this case from the writers' point of view.

## **Stakeholders:**

### **APEGA:**

The Association of Professional Engineers and Geoscientists of Alberta (APEGA) is a regulator of the practices of engineering and geoscience in Alberta on behalf of the Government of Alberta through the Engineering and Geoscience Professions Act. [2] APEGA's main regulatory function is to license 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. [2] They handled Mr. Mihaly's application to become a licensed Professional Engineer (P. Eng) in Canada in 1999.

### **Ladislav Mihaly:**

Ladislav Mihaly is a Czechoslovakian immigrant to Canada with two Czechoslovakian engineering Master's degrees who applied to become an accredited P. Eng in Alberta in 1999. After being unsuccessful multiple times, he figured something was up. In 2008 he filed a complaint to the Alberta Human Rights Commission alleging that he was discriminated against by APEGA due to his place of origin.

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

The Alberta Human Rights Commission is a regulatory body on human rights issues in Alberta. It is responsible for the reduction of discrimination through the resolution and settlement of complaints of discrimination, and through human rights tribunal and court hearings. [4] Mr. Mihaly initially took his discriminatory complaints against APEGA here.

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

The Court of Queen's Bench is the Superior Trial Court for a province, hearing trials in civil and criminal matters and appeals from decisions of a Provincial Court. [3] Amongst their duties are the dealing with criminal and civil cases. In this case, both Mr. Mihaly and APEGA appealed to the Alberta version of the Court of Queen's Bench to re-hear both sides of the story after the result of the tribunal under the Alberta Human Rights Commission proved unfavourable for both parties.

### *Alberta Court of Appeal:*

The Court of Appeal hears criminal appeals from the Provincial Court and both criminal and civil appeals from the Court of Queen's Bench. It also hears appeals from administrative and board tribunals. Specifically, appeals from Queen's Bench Civil go to the Court of Appeal. [18] In this case, the Alberta Court of Appeal was brought into play after Mr. Mihaly still did not receive a legal decision that was to his liking in the Court of Queen's Bench.

### *Alberta Residents:*

The residents of Alberta are stakeholders in this case since the work engineers do directly impacts the public. The residents of Alberta have an interest in this case since it involves a matter of knowledge and competency in the field of engineering. APEGA has guidelines and rules for licensing engineers to practice and this safeguards the public. APEGA has an obligation to the public to regulate the profession and maintain standards.

### *Government of Alberta:*

The Government of Alberta has an interest in the case of Mihaly and APEGA since APEGA makes decisions on behalf of the Government of Alberta in terms of licensing and regulating engineers. The outcome of these decisions reflects on the Government whether positive or negative. The Government of Alberta funds and performs public work projects involving engineers and has an interest in the evaluation methods used to determine the competency and safety of those licensed engineers. The Government may also alter the Act that grants APEGA the power to regulate the profession.

## Background:

Way back in May 1999, Ladislav Mihaly, a Czechoslovakian immigrant, applies to APEGA to be registered as a licensed professional engineer in Alberta. APEGA acknowledged his application and requested the usual information: education and experience, visa, Landed Immigration form, and references. Mr. Mihaly happily obliged.

Mr. Mihaly's post-secondary education consisted of: a Master's in Technology of Fuels and Thermal Energy, from the Slovak Technical University in Bratislava which Mr. Mihaly attended from 1970-75, and a Master's in Corrosion Engineering from the Institute of Chemical Technology in Prague which Mr. Mihaly attended from 1977-81. [5] Mr. Mihaly's previous engineering career of over 25 years in Czechoslovakia included working for such international companies and firms as: Fluor Daniel, Mitsubishi Heavy Industry, Bureau Veritas, Raytheon Engineering, and Japan Gas Company. He had also worked on patents while in Czechoslovakia and on many other projects such as the construction of an international airport in Baghdad. [6] Three references selected from this trove of experience were submitted in Mr. Mihaly's application for APEGA to question. Even after the breakup of Czechoslovakia, Mr. Mihaly's life was chugging along pretty well in the old country, he could work freely in any nation in the European Union without any requalification, and he and his family were living comfortably. However, the development of new and high level standards in a mysterious country called Canada poked Mr. Mihaly's interest. Mr. Mihaly had chosen Alberta specifically because his own speciality was in oil and gas, and we know there is no shortage of that here! Mr. Mihaly had anticipated that his skills and education would be accepted in Alberta and where he could make a significant contribution to the engineering profession. [6]

By early 2000, APEGA had considered Mr. Mihaly's given info and were impressed with his educational experience and his long pre-Canada career, but were more troubled by his narrow field of work experience and that his references were from work supervisors who had only known Mr. Mihaly for an extremely brief time period. So, as a result APEGA decided that the best course of action would be subject Mr. Mihaly to four technical exams and one ethics exam, the National Professional Practice Exam (NPPE), that must be completed by May 2001. [7] This subjectation is standard for APEGA's licensing process for internationally educated engineers. [8]

Throughout this ordeal, Mr. Mihaly refused to write any technical exam because, as far as he was concerned, his education was equal to or better than Canadian education standards. But at no point did APEGA recognize Mr. Mihaly's Education as

adequate, and frequently informed him of this. [9] The NPPE was completed by Mr. Mihaly in early 2000, with a failing grade. APEGA allowed him to retake the NPPE in late 2000. Mr. Mihaly, however, failed to attend the second NPPE assigned to him on Oct. 16, 2000. So by the time the May 2001 deadline passed, Mr. Mihaly ended up with a grand total of zero tests passed. APEGA, understandably, withdrew his application. [10] In 2002 and 2006, Mr. Mihaly repeated the P. Eng. applicational process, to the same end both times. A refusal to complete technical exams, and failing grade on the NPPE, leading to the passing of the deadline, and the withdrawal of his application. By this time, Mr. Mihaly was getting a bit fed up with this rigmarole, and officially filed a complaint to the Alberta Human Rights Commission on Aug. 5, 2008. [11]

Mr. Mihaly's complaint was acknowledged though sections 4 and 9 in the Alberta Human Rights Act, stating in section 4 that no person shall...discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public, because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons, [12] and in section 9 that no trade union, employers' organization or occupational association shall...discriminate against any person or member, because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or member. [13] During the tribunal, various legal banter went back and forth, eventually culminating to the decision that Mr. Mihaly has succeeded in establishing that the examination standards and the experience standards 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. [14] In the end, it was decided that APEGA must pay \$10000 to Mr. Mihaly, and provide him with a personal mentor, as well as to re-evaluate their credentials and procedure in licensing foreign engineers. [15]

Years passed, the \$10000 was not willing to be paid by APEGA, and by Mr. Mihaly's standards, the re-evaluation was not up to snuff. Nobody was too happy. APEGA filed an appeal brief to the Alberta Court of Queen's Bench on Nov. 20, 2014, and Mr. Mihaly filed an appeal later that same day. Throughout 2015, legal hearings proceeded. [16] To prove Mr. Mihaly's case, he must establish three things: that he has a characteristic that is protected from discrimination, that he experienced an adverse

impact, and that the protected characteristic was a factor in the adverse impact. [14] The first two things were established without a hitch, however, the third was not. So because of this, on Jan. 27, 2016, the Alberta Court of Queen's Bench repealed Mr. Mihaly's appeal, and accepted APEGA's appeal, to reverse the Alberta Human Rights Commission's decision, saying the ruling was based on errors and was unreasonable. [17] Later, Mr. Mihaly finally filed another appeal to the repeal of his original appeal, this time appealing to the Alberta Court of Appeal. This appeal fell on deaf ears, however, and this appeal was dismissed on Jan. 12, 2017. [17] This dismissal, as of now, has effectively put an end to this long and arduous case.

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

The Alberta Court of Queen's Bench tasked Mr. Mihaly with three things to prove his case: the fact that he has a characteristic that is protected from discrimination, the fact that he experienced an adverse impact, and the fact that protected characteristic was a factor in the adverse impact. [14] The first fact was easy to prove; of course someone can be discriminated against due to their place of origin. And an engineer coming from a former communist nation, understandably, would raise a few eyebrows. The Court of Queen's Bench agreed with the tribunal in this regard. The second fact also went Mr. Mihaly's way without a hitch; of course the writing of multiple exams in a short period of time would an adverse impact on anyone. Who is going to enjoy that? The Court of Queen's Bench agreed with the tribunal in this regard as well.

But the third fact was a tad tougher to pin down. The fact that one can discriminate against someone else based on their place of origin did not directly play a factor in the adverse impact faced by Mr. Mihaly. The examinations required of Mr. Mihaly were not specifically just for him, a Czechoslovakian. Any foreign trained engineer is subject to these examination as per APEGA's standards. The fact that Mr. Mihaly did not finish these exams with a passing grade was definitely not due to the fact that was from Czechoslovakia, it was a simpler answer. Refusing to take a test or not showing up to a test is absolutely not going to earn anyone a passing grade, regardless of they are from Czechoslovakia or not. And the tests Mr. Mihaly did write, the NPPE multiple times, were consistently genuinely failed. [19] Mr. Mihaly's inability to find work in Canada due to his lack of P. Eng. designation stemmed from the fact that he had been applying to junior engineering positions. It is expected of junior engineers to not have a P. Eng designation yet, it is not something one receives along with the iron ring at graduation. However is it not expected of a junior engineer to have over six years' experience in the engineering field already. Junior engineers are

supposed to have little experience in order to be able to be moulded by the company they work for to fit their procedures and methods to doing things. Someone like Mr. Mihaly with more engineering experience would generally be steered away from by these companies because an engineer with more experience would be more set in their own ways of doing things that may not be up to par with the company's ways. This difficulty, while unfortunate, is not related to Mr. Mihaly's Czechoslovakian origin. [20]

The fact that all three of these facts were not proven was enough for the court to justify its decision along with the following reasons. The Court stated that APEGA was remaining consistent in its policy of assigning examinations when competence hasn't been confirmed, this is to ensure that professional engineers are competent and safe in practice. [26] The Court also decided that the technical exams assigned to Mr. Mihaly were reasonable requests since there was no evidence that internationally educated engineers would struggle with passing this exam (the pass rate was 85%), and that it is unknown that Mr. Mihaly would have been a part of that 85% or not, since he refused to write them. [21] The confirmatory technical exams assigned are offered in six engineering disciplines, and therefore Mr. Mihaly likely would have been tested for Chemical Engineering, and would cover the material expected from a Canadian-accredited university engineering program. [21] These reasons, among others, lead the Alberta Court of Queen's Bench to reverse the Alberta Human Rights Commission tribunal's decision, and so Ladislav Mihaly was still not a licensed professional engineer in Alberta.

## **Reflection & Opinion:**

The decisions made by the Alberta Human Rights Commission and the two courts that oversaw this case; the Alberta Court of Queen's Bench and the Alberta Court of Appeal, were different. The Human Rights Commission believed that Mr. Mihaly was in fact discriminated against due to his place of origin. On the other hand the Court of Queen's Bench determined that this was not this case. The reasons for their decision were stated above. We agree with the decision made by the Court of Queen's Bench. Mr. Mihaly had ample opportunity to become licensed within the province of Alberta, however, due to the fact that he failed required exams multiple times and missed others altogether indicated a level of incompetence and lack of knowledge in the field of engineering. It would be irresponsible for the courts to allow APEGA to license an applicant incapable of meeting the requirements in place to safeguard the public. In terms of discrimination against Mr. Mihaly's place of origin, we believe that this was not a factor in the decisions made to not license him. International applicants apply for their professional engineering license like everyone else, some fail

to meet the requirements and others get licensed. APEGA simply used the available information to determine his qualifications and given the many unknowns, proceeded to request examinations to ensure the proper policies were followed. APEGA does not have the resources to thoroughly evaluate each and every institution that provides an engineering degree or equivalent, they make decisions based on prior knowledge of the program and the Czechoslovakian institutions aren't the only ones that require this course of action.

We believe that APEGA should not accommodate foreign-trained engineers in regards to examinations pertaining to knowledge and competency. APEGA's objective is to ensure the competency of professional engineers in Alberta. The requirements for licensure with APEGA are fair, they ensure that we don't have unqualified people performing tasks that have major impacts on the public. The examinations required already accommodate people that specialize in different areas of engineering. Standardization is common when testing qualifications, skills, and knowledge of applicants in other professions, and should be no different in engineering where loss of life is a possibility.[25]

APEGA should provide accommodation for work experience in cases where the applicant has many years of experience as an engineer. It is difficult for engineers with so many years of experience to obtain entry level engineering positions, because companies rarely hire such overqualified people for junior positions. [23] In terms of work experience we believe that it should be relevant and diverse. The work experience Mr. Mihaly provided was relevant and long, however, the work Mr. Mihaly performed did not increase in responsibility or complexity, this implies a lack of diversity. [24] Having diversity is important to ensure that the engineer is constantly learning and acquiring new responsibilities and skills.

That being said, if accommodating foreign applicants means performing individualized assessments of their qualifications, work experience, and post-secondary education, we believe that this would potentially impose undue hardship on APEGA. Individualized assessments require lots of resources and time, and this would potentially reduce APEGA ability to perform its other duties as a regulating body for professional engineers and geoscientists.



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