

Schulich School of Engineering  
University of Calgary, Calgary, Alberta

The Role and Responsibilities of the Professional Engineer in Society  
ENGG 513

Report 1  
Mihaly vs APEGA

As a submission to:  
Course Instructor – Denis Onen

Prepared by:  
Kelly Harke 10171912  
Jamie Horrelt 30008545

Schulich School of Engineering  
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## Introduction

The process to become registered as a professional engineer with the Association of Professional Engineers, Geologists and Geoscientists of Alberta (APEGA) requires individuals to meet several criteria. These criteria include a university degree from an accredited program, related work experience, knowledge of local practices, competency in English, Canadian citizenship or permanent resident status, passing the National Professional Practice Exam (NPPE), and a good character [1]. Mr. Ladislav Mihaly, a Czechoslovakia engineering graduate, was denied registration by APEGA after failing the NPPE exam twice. He filed a complaint with the Alberta Human Rights Commission in 2014 with the claims of discrimination from APEGA. Following this case, APEGA then appealed the 2014 judgement to the Alberta Court of Queen's Bench in 2016. This court ruled in favour of APEGA, and in 2017, Mr. Mihaly filed an appeal to the Court of Appeal of Alberta. Outlined below, is a summary of the cases as well as an explanation and analysis of the decisions made by the Court of Queen's Bench.

## Stakeholders

The following are key stakeholders associated with the case, these people and organizations are directly involved and/or affected by the outcome of the issue.

### **Association of Professional Engineers, Geologists and Geoscientists of Alberta (APEGA):**

An association to “regulate the practices of engineering and geoscience to serve the public interest in Alberta” [1]. APEGA is the defendant in the Alberta Human Rights Tribunal and then appealed for a case to the Alberta Court of Queen's Bench

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

The superior court of Alberta that hears trials in civil and criminal matters and appeals from the Provincial Court [2]. This was the court involved in making the judgement from APEGA's appeal against the Human Rights Tribunal (Tribunal).

**The Alberta Human Rights Commission (AHRC):**

An independent commission of the Government of Alberta that's mandate is to promote equality for all Albertans and decrease discrimination [3]. The Commission complies with the Alberta Human Rights Act (AHRA), handles the administrative tasks related to the complaints made under the Act and educates the public of their rights established in the Act [3].

**The Alberta Human Rights Tribunal (AHRT):**

A quasi-judicial tribunal of the AHRC. A member of the Commission is appointed to decide on and resolve complaints presented to the tribunal from the AHRC. This is done following the AHRA, to ensure the mitigation of discrimination and human rights issues [4].

**Mr. Ladislav Mihaly:**

A Czechoslovakia educated worker that filed claims against APEGA claiming that he was discriminated against when denied registration as a professional engineer [5]. In the Alberta Court of Queen's Bench, he was the respondent to APEGA's allegations against the decision made by the Tribunal.

**Canadian Engineering Accreditation Board:**

Accredits engineering programs to fulfill the academic requirement for a licence with Canada's engineering regulators [6]. This board was under inspection in the Tribunal and Court of Queen's Bench cases when the regulations for accreditation were questioned.

**Court of Appeal of Alberta:**

The highest court in Alberta and hears appeals from the Court of Queen's Bench [7]. This court was involved in Mr. Mihaly's application to restore appeal following the decision of the Court of Queen's Bench.

## **Background**

In 2014 Mr. Ladislav Mihaly filed a complaint against the Association of Professional Engineers, Geologists and Geoscientists of Alberta to the Alberta Human Rights Commission. He claimed APEGA denied his registration; discriminating against him and failing to recognize his education

[5]. Mr. Mihaly filed complaints under sections 4, 7 and 9 of the AHRA, claiming discrimination to the services being provided by APEGA (to obtain a licence to practice engineering in Alberta) and the exclusion from an “occupational association” [5].

Mr. Mihaly came to Canada with two master’s degrees in Engineering from Czechoslovakia. He was denied registration by APEGA after failing to complete the National Professional Practice Exam, required to practice Engineering in Canada [5]. The AHRT found that under the Alberta Human Rights Act (AHRA), the standards used by APEGA to assess Mr. Mihaly’s education and experience instituted discrimination. APEGA could not prove that they explored different options for Examination Standards used to assess foreign engineers. While the Experience Standard was not justified, as APEGA required one of four years experience to be completed in Canada, and the Engineering and Geosciences Professions General Regulation (EGPR) only stated four years of experience was required [5]. AHRT ruled in favor of Mr. Mihaly awarding damages of \$10,000. The Tribunal also ruled that APEGA must review Mr. Mihaly’s academic qualifications, allowing him the opportunity to challenge exams set forth by APEGA, as well as review his experience as a practicing engineer [5].

In 2016, APEGA appealed this decision to the Alberta Court of Queen’s Bench, claiming the AHRT was unfair in their decision, did not have the authority and did not provided efficient evidence [8]. APEGA argued that the decision was based on sections of the EGPR which were not raised by Mr. Mihaly, therefore they were not given the chance to address these issues. APEGA also claimed AHRT did not have the authority to decide on whether the discrimination of where education was obtained establishes discriminations based on place of origin [8]. The Alberta Court of the Queen’s Bench sided with APEGA, reversing the decision made by the AHRT, allowing for appeal by Mr. Mihaly.

Mr. Mihaly filed for appeal on time but neglected to further the appeal. Therefore, the appeal was struck after four months, in June 2016, due to no Appeal Recorded from the appellant (Mihaly) [9]. The appellant motioned to reopen the appeal in December 2016, but the requested was dismissed. The appellant was able to bring forward evidence in his favor, in the form of documentation from the Canadian Engineering Accreditation Board considering his degrees equivalent to a Canadian bachelor’s degree. However, the appeal was denied as the appellant failed

to comply with the list of factors for reconsideration of the appeal. The decision set out by The Honourable Mr. Justice Frans Slatter was due to the lack of reasoning for the delay and the failure to provide proper transcripts and records for the appeal to move forward [9].

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

The appellant (APEGA) in the 2016 trial at the Alberta Court of Queen's Bench brought forth issues regarding procedural fairness, jurisdiction, prima facie discrimination, and justification [8]. The final court decision was based on the issues raised in this appeal.

APEGA raised an issue of procedural fairness occurring at the Alberta Human Rights Tribunal because the Tribunal based the decision based on Section 8 of the EGPR which had not been raised by Mr. Mihaly or the Tribunal previously. APEGA raises the case of *Amacon Property Management Services Inc. v. Dutt* where a reviewing case determined that all parties involved in the case be given the prospect to respond to "any new ground" [8]. This case ruled in the favor of APEGA as the judge ruled the not allowing response on new ground was not just or fair. However, in this case the Alberta Court of Queen's Bench highlighted that Tribunals are not required to give parties the opportunity to respond. Therefore, the EGPR was used as reasoning to lead to the conclusion that prima facie discrimination had not been justified [8]. The judge concluded that this case is similar to *Pope & Talbot Ltd. V. British Columbia (Forest Appeals commission)* and stated that the Tribunal does not infringe upon the rules of procedural fairness.

Another issue raised by the appellant was whether "the Tribunal err when he held that he had jurisdiction to determine whether discrimination based on the place a person receives their education constitutes discrimination based on place of origin?" [8]. Mr. Mihaly declared that he was discriminated against based upon his place of origin which the Tribunal agreed could not be justified under the Alberta Human Rights Act. The Appellant held the claim that the AHRT had no authority over Mr. Mihaly's complaint of discrimination based on a previous case *Grover v. Alberta (Human Rights Commission)*. The Grover case revolved around discrimination based on the place of origin and place of academic qualifications. In this case, the Alberta Human Rights

Act did not protect Grover against the discrimination [8]. However, there was no connection between Grover's place of origin and place of education, therefore, there is no adverse effect on discrimination as there is in Mihaly's case. As a result, the judge held that the Tribunal in Mr. Mihaly's case did have jurisdiction over the discrimination complaint, therefore, dismissing the Appellants' raised issue. The judge ruled that the issue of jurisdiction is more suited to the "legal test for prima facie discrimination" [8].

APEGA raised the issue of whether the Tribunal used and applied the correct legal test to determine whether Mr. Mihaly had validated prima facie discrimination. The Tribunal had used a Moore test as established by the Supreme Court of Canada. The test required Mr. Mihaly to "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." [8]. The Tribunal had established that Mr. Mihaly was adversely impacted by APEGA's requirements to complete the confirmatory exam due to his place of origin. The Court of Queen's Bench noted that the Moore test was not applied correctly and there was no reference to evidence found regarding the discrimination of APEGA's policies [8]. APEGA has no prima facie discrimination with respect to the NPPE or the Canadian experience requirement because these are required for all applicants, regardless of the place of education. Mr. Mihaly stated that it was difficult to find work as a professional engineer and the Tribunal decided that this point of argument was not connected to discrimination because there are "too many uncertainties involved in the licensure and then employment of Mr. Mihaly" [8]. Therefore, the Tribunal's ruling due to prima facie discrimination in relation to the NPPE and Canadian experience requirements was judged to be unreasonable due to the lack of evidence.

The Court of Queen's Bench then went on to examine whether the registration requirements for APEGA were unreasonable. The Tribunal raised three points for APEGA to establish a justifiable defense:

- they must prove that the standard is associated with the function performed
- the standard is necessary for the purpose to be completed
- the standard is necessary to accomplish the purpose [8].

The first two points were not disputed by the judge, however, the Tribunal found that the condition to write exams was prima facie discrimination. The judge claimed the Tribunal justifications that Mr. Mihaly should be examined on his academic deficiencies following an individual assessment was a misinterpretation of the EGPR [8]. The judge concluded that the Tribunal was not familiar with the EPGR; APEGA must assign examinations on the basis to assess quality of engineering programs because they do not have the resources to negotiate agreements with every program [8]. It is noted that APEGA does have the possibility to waive examinations for individuals with “undue hardships” when assessing applicants, however, Mr. Mihaly did not meet the requirements for a waiver [8]. It was ruled that the AHRT decision that APEGA failed to accommodate Mr. Mihaly was unreasonable, and that APEGA’s evidence was “reasonable and justifiable” [8].

Due to the reasons stated above, the Court of Queen’s Bench decision was to reverse the Human Rights Tribunal rulings with no need to remit the issue back to the Tribunal, allowing for appeal by Mr. Mihaly.

## **Reflection and Opinion**

Since Mr. Mihaly first filed his complaint against APEGA to the AHRC in 2008 the case has gone through three levels of judgement. In 2014 the Alberta Human Rights Tribunals ruled in favor of Mr. Mihaly, concluding there was discrimination due to Mr. Mihaly’s place of education or origin [5]. This decision was then appealed by APEGA to the Alberta Court of Queens Bench in 2015. In 2016 the decision made by the AHRT was overturned, finding the methods in which APEGA accommodated Mr. Mihaly as a foreign-trained engineer fair [8]. Mr. Mihaly then appealed this decision to the Alberta Court of Appeal. However, due to failure to comply with requirements of appeal, the appeal was denied in 2017, after almost 10 years of legal battles.

The decision made by the Alberta Human Right Tribunal was flawed with errors and lack of knowledge on the testing and regulations for practicing engineers in Canada. The Tribunal’s decision was formulated on a lack of evidence and misunderstanding of the regulations set forth in the EGPR [8]. The Alberta Court of Queens Bench made the right decision to reverse the

Tribunals decision. The Tribunal's decision to have APEGA modify their regulations for Mr. Mihaly could have had a very adverse effect on the standards of engineering set forth by APEGA, which are set in the best interest of the general public. As stated by Carol Moen, P.Eng : "the decision [of the Court of Queens Bench] confirms the fact that APEGA's application process is fair, equitable, and transparent and that the same rigorous standards should apply to all applicants for licensure as professional engineers" [10].

The regulations set by APEGA are in place to ensure the quality of engineering and engineers practicing in Alberta. The regulations put in place are fair; all Canadian institutions have to establish the "equivalency of their programs" and the same regulations apply to Canadians who obtained their degree out of the country as foreign-trained engineers wishing to practice in Canada [9]. Due to the fact that Mr. Mihaly failed two of the exams set forth by APEGA, as well as a Canadian ethics exam, and refused to complete the rest of the examinations, the decision of the Tribunal was unjust [10]. Even if Mr. Mihaly's degrees were considered equivalent, that should not exempt him from the examinations as his degrees were obtained in the 1970s, almost 40 years before applying to practice engineering in Alberta [5]. Although the material may not be as fresh for engineers who have been practicing for a long period of time, knowledge of experience should aide in the examination process.

The decision made by the Alberta Court of Appeal confirms the lack of effort put for by Mr. Mihaly to meet and comply with regulations. Mr. Mihaly's negligence to meet required appeal deadlines and provide the proper documentation speak to the potential effort made to prepare for and meet requirements set by APEGA.

All engineers, foreign-trained or Canadian-trained, should have to meet standards for practicing engineers in Canada. This ensures the quality and safety of the work done by engineers. There should not be specific exemptions set for foreign-trained engineers. However, they should have the opportunity to challenge certain examinations based on experience. In saying that, an exam should only be challenged when the challenger can provide proof of adequate experience and knowledge in the subject area. In the case of Mr. Mihaly, he could not provide sufficient references for work or experience he had over seas [5]. Therefore, the requirements set by APEGA should not have been modified in this situation. After the Tribunals decision, APEGA was ordered to



provide Mr. Mihaly with a mentor who has faced similar challenges as a practicing foreign engineer in Alberta [10]. This is a good way for APEGA to accommodate foreign engineers struggling with language barriers or requirements and regulations for practicing engineering in a new country.

It was concluded that the final ruling on the case, in the Alberta Court of Appeal, on the case *Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta*, was the correct and just decision. All engineers practicing in Alberta should have to meet and oblige with the regulations set forth by APEGA to ensure safety and quality of work.

## References

- [1] APEGA | APEGA. *Apega*. Available at: <https://www.apega.ca/>. [Accessed February 8, 2018.]
- [2] “Court of Queen's Bench of Alberta.” *Albertacourtsca*. Available at: <https://albertacourts.ca/qb/home>. [Accessed February 8, 2018.]
- [3] “About the Commission,” Alberta Human Rights Commission. October 24, 2012. [Online] <https://www.albertahumanrights.ab.ca/about/Pages/about.aspx> [Accessed: Feb 8, 2018]
- [4] “Tribunal process,” Alberta Human Rights Commission. November 14, 2012. [Online] [https://www.albertahumanrights.ab.ca/tribunal\\_process/Pages/tribunal\\_process.aspx](https://www.albertahumanrights.ab.ca/tribunal_process/Pages/tribunal_process.aspx). [Accessed: Feb 8, 2018]
- [5] *Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta*, (2014) AHRC 1
- [6] “About Accreditation.” *Engineers Canada*. Available at: <https://engineerscanada.ca/accreditation/about-accreditation>. [Accessed February 8, 2018.]
- [7] “Role and Operation of the Court of Appeal of Alberta.” *Albertacourtsca*. Available at: <https://www.albertacourts.ca/ca/about/role-and-operation>. [Accessed February 8, 2018.]
- [8] *Association of Professional Engineers and Geoscientists of Alberta v Mihaly*, (2016) ABQB 61
- [9] *Mihaly v. Association of Professional Engineers and Geoscientist of Alberta*, (2017) ABCA 15. “Reasons for Decision”. Available at: <https://www.apega.ca/assets/news-releases/2017-milhaly-court-decision.pdf> [Accessed Feb 8, 2018]
- [10] “Alberta court rules that engineering association did not discriminate.” *Canadian Consulting Engineer*. Available at: <https://www.canadianconsultingengineer.com/business-professional/alberta-court-rules-that-engineering-association-had-not-discriminated/1003401788/>. [Accessed Feb 8, 2018]