

ENGG 513 Winter 2018  
Assignment 1: APEGA vs. Mihaly Case Study  
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## **Introduction**

This report will describe the process involved with Mr. Ladislav Mihaly's attempt to become licensed as a Professional Engineer, his Human Rights complaint, the resulting legal matters, as well as reflect on the situation. Its purpose is to show an understanding of the process involved, and describe the steps taken, and professional requirements to become registered as a Professional Engineer. Most importantly, it will describe the need for a governing body to regulate and uphold the standards of an important profession.

We will start out by describing important stakeholders in the case and how they're impacted by the situation. Next, we cover the background of Mr. Mihaly and his interactions with APEGA before Mr. Mihaly's complaint to the Human Rights Commission. He had a number of applications, but failed to complete the requirements multiple times before filing his complaint. We touch on the specifics of the case being examined and everything that the applicant had to do in order to apply and contest the decision made. After, we examine a detailed explanation of what their decision was and discuss some factors that lead to that decision. We will then examine how the Court's decision affects APEGA and Mr. Mihaly. Finally, there will be a section for our reflections on the Court's decision and the process as a whole. We also discuss whether or not APEGA should actively be trying to accommodate their applicants.

## **Stakeholders**

**The Association of Professional Engineers and Geoscientists (APEGA)-** is the governing body that regulates Alberta's standards for Engineering and Geoscience. It has this authority granted by the Government of Alberta in the Engineering and Geoscience Profession Act. Their purpose is to ensure a standard of knowledge and professionalism for engineers and geoscientists across alberta via licensing individuals and companies. They maintain a standard for ethical, professional and technical competency that applicants are required to meet in order to practice in the province. In this case they were attempting to ensure the professionalism of the engineering field and ensure that the standards set up were applied correctly.

**The Court of Queen's Bench (Court)-** The Court of Queen's Bench is the Superior Trial Court in Alberta. It oversees trials of civil and criminal matters in the province. It also takes appeals for the decision of the Provincial Court. The court holds the power to try any offence under the Criminal Code of Canada and generally only tries the most serious crimes, leaving lesser crimes to the Provincial Court unless the decision of the

provincial court is contested. The Court of Queen's Bench also handles many civil proceedings. In this case they were called in to check that no laws or injustices were committed against any of the parties involved.

**The Alberta Human Rights Commission (Tribunal)-** The Alberta Human Rights commission is an organization created by the Government of Alberta and is responsible to carry out functions within the Alberta Human Rights Act. This act was written to protect Albertans from discrimination. It's goal is to foster equal opportunity for employment and pay, the ability for anyone to find a place to live and ensure services available to the public are provided equally. In this case their stake is to ensure that the rights of Mihaly were not violated due to his background

**Mr. Ladislav Mihaly-** Mr. Mihaly is a Czechoslovakian. He went to school at the Slovak Technical University. Here he got a M.Sc. Diploma with specialization in Technology of Fuels and thermal Energy. He also obtained a Certificate in Corrosion Engineering in Prague from the Institute of Chemical Technology. He immigrated to Canada in 1999 where he then starting applying to get his Profession Engineering certificate. This would allow him to work as an engineer in the province of Alberta. His stake in this case is his ability to get this certificate as well as ensuring his rights are not infringed upon.

**Mihaly's Family-** Mihaly's family is impacted greatly by his ability to get a job, this includes directly via Mihaly's financial status as well as indirectly by his emotional state. If their father fails to get licensed as a Professional Engineer in Alberta, the Mihaly family may need to relocate somewhere Mr. Mihaly can get licensed, or a country with open licensing laws. Not having the engineer's income that Mihaly was getting in his native country may have had an impact on their daily lives, throughout the whole process.

**The General Public-** The general public is every citizen of the province. This group has a stake in this case because many technologies built or maintained by engineers are used everyday. The public needs to be able to trust these technologies, so ensuring that the engineers in charge of these technologies are knowledgeable and have the credibility to be in charge is important. Their actions could affect the lives of many depending on the project at hand, and could even cause death or damage to the public in some cases.

**Licensed Engineers in Alberta-** Engineers currently licensed in Alberta were stakeholders in the APEGA vs. Mihaly case because APEGA has a role of a governing body for all the Engineers. If APEGA lost the case, they would also lose some of their

power in deciding who is fit to be an engineer. For the Albertan Engineer, they may feel as if their profession was weakened by having fewer restrictions on the application process. Without the power of a regulatory body to restrict who can and can't practice, the number of engineers working in Alberta would increase and standards would go down.

**Foreign Engineers in Alberta-** Foreign-trained Engineers also had a stake in this case, due to the fact that if Mihaly wins the case, they might not have to take confirmatory exams. One of Mihaly's major claims was that it was discriminatory for APEGA to make him take confirmatory exams because he was from a foreign place. If the Court of Queen's Bench found that assigning these confirmatory exams were indeed discriminatory, they may have been done away with altogether. This would make it exponentially easier for foreign-trained engineers to obtain a license, especially if the engineer has failed the exams in the past.

## **Background**

In 1999, Mr. Ladislav Mihaly, a Czechoslovakian engineer with work experience applied to APEGA to be registered as a P. Eng. The Board of Engineers let Mihaly know that he needed to pass a professional practice exam and that his transcripts would be reviewed. While his transcripts were reviewed Mihaly took the National Profession Practice exam but failed, which was relayed to him with the results of his review. The review found that he must also complete three confirmatory examinations as well as either a course or test in engineering economics. Mihaly applied to write the NPPE a second time but did not attend the day of the test, thus failing it. In June 2001 The APEGA then withdrew his application for also failing to write the confirmatory examinations in the allotted time.

In 2002, Mihaly asked to reactivate his application and also applied to write the NPPE exam again. APEGA allowed Mihaly to reopen his application. On July 15 2002, he failed the NPPE again. He was told, that he would have to write the three confirmatory examinations as well as the engineering exam or course by May and November respectively. Mr. Mihaly's third attempt to write the NPPE on January 20 2003 also resulted in him failing the test. In August his application was withdrawn again because he had not written the required confirmatory exams or passed the NPPE. On October 3, 2006 Mr. Mihaly asked to reactivate his application for a third time. The file was reactivated and APEGA requested an updated resume and reference list due to the amount of time that passed since his last application. In 2007, APEGA considered the application and told him to pass the professional practice exam, write confirmatory exams and also get at least one year of Canadian engineering experience at a D level

because the job he had worked did not qualify. After hearing this, Mr. Ladislav Mihaly didn't attempt the exams again, instead on August 5 2008, he chose to file a human rights complaint with the Alberta Human Rights Commission.

Mr. Mihaly claimed to have been discriminated against based on place of origin. The Human Rights Tribunal found that Mr. Mihaly's claims had merit and that the APEGA's decision could not be justified under the Alberta Human Rights Act. The Commission ordered APEGA to reconsider his application and pay Mr. Mihaly \$10,000 in damages. APEGA appealed this decision which was cross-appealed by Mr. Mihaly. The Court of Queen's Bench heard the appeal and decided to overturn the decision of the Human Rights Commission for a variety of reasons, explained later.

Mr. Mihaly applied to the Court of Appeal to have the decision reversed. The Court of Appeal refused to allow Mr. Mihaly's appeal to proceed and sided with APEGA.

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

The decision of the Court of Queen's Bench was that the Tribunal failed to effectively prove that the APEGA could have reasonably provided accommodations without undue hardship to themselves. Because of these failures, the outcomes fall outside the range of acceptance and as such should be rescinded. This decision was based on a large number of factors with regards to how the tribunal dealt with the case. The Tribunal used a Legal test as set out in two other cases that can be used to establish justification. The test requires 3 parts: first, that the standard that is applied was created to rationally relate to the function it's a standard for. Second, that the standard was adopted because it was believed to be necessary in order to achieve the goal. Third, that the standard is required to meet the goal it was created for and that accommodations cannot be reasonably made to allow people below the standard to meet it. The court found that the first two parts were applied by the Tribunal correctly but the third part was not. The Tribunal felt that Mr. Mihaly was not properly accommodated. The court found that these were unjustified and outside the tribunal's role and thus unreasonable.

The Tribunal had also found that the requirement to write additional exams to confirm the knowledge of applicants was a form of discrimination unless justified. They claimed these exams were not justified because the exams were not to correct deficiencies in his credentials after his assessment and that standardized tests shouldn't be required over being assessed individually. The court found that this interpretation was unreasonable because APEGA was not trying to correct a perceived academic deficiency but rather confirm required knowledge for the profession. The difference being key in discrimination because assuming academic assistance needs to be

checked is discrimination but testing to ensure a standard of knowledge is absolutely not.

The Tribunal also suggested that APEGA works with other institutions that engineers are coming from in order to determine what level of knowledge was expected for their degrees. The need for this however was not proved nor was it even proved to be a feasible accomplishment. The court found evidence that taking on this role would cost APEGA greatly to their impairment to the extent that demanding this action was unreasonable. Because such an action is beyond the scope of APEGA's ability, they have a basic idea of what knowledge is required from institutions via other sources, and they supplement this lack of knowledge with confirmatory examinations. The intent of these exams is not based on assumed academic deficiencies but simply as an assessment of knowledge.

APEGA has a policy for when they assign confirmatory examinations. This is done when they do not have a measure of competence to reliably reference. The Tribunal however, felt that these standardized tests were ineffective and utilized another case, in which an aerobic standard was used to remove someone from their job, as case law in their claims. The Court found these claims to be flawed. The primary reason for this is because the APEGA has established that if a different standard was utilized potential damage could be caused. The court also showed that these exams showed no evidence that foreign individuals were more likely to fail. It also showed that there was no evidence Mr. Mihaly would have been unable to pass these exams as he did not attempt them in most cases.

The Tribunal accepted that these exams were designed to show a degree of knowledge and not to discriminate against people based on where they obtained their knowledge. It's purpose is to ensure that engineers are competent and can operate with reasonable safe practice. The Court showed other cases where professional regulations used to ensure a base level of knowledge were justified. The Court also showed that for each application, the need for these exams is considered individually and the option to request these exams be waived is provided. However, Mr. Mihaly did not meet the requirements and did not attempt to appeal the decision that his experience be considered unsatisfactory. He also did not provide any evidence that APEGA's analysis was incorrect.

The Court also decided that the decision of how APEGA's must resolve the case to be excessive. The directions of the Tribunal were that APEGA had to do it's best to find Mr. Mihaly a mentor who can provide guidance and provide him resources to assist in his integration into the field. These directions go far beyond the scope of what the APEGA's is about and the financial burden they would undertake if they had to do this for every applicant whose knowledge level was questionable would be insurmountable. This would cause hardship to the organization. In addition it would restrict the function

of the organization away from its intention of being a regulatory role. It also didn't address Mr. Mihaly's lack of attempts on most of the actions APEGA instructed him to do to ensure his knowledge.

For these reasons, the Court decided that the Tribunal's decision be reversed and APEGA should have the right to request examinations for knowledge testing purposes.

### **Reflection and Opinion**

Mr. Mihaly went through a lot with his application to be registered as a Professional Engineer. This case demonstrates just how the policies in place are to ensure no wrongdoings happen, and not to discriminate against foreign workers. It also however, shows how difficult it is sometimes to ensure that a minimum standard is maintained, especially in the case of Engineering. The decision of the Court of Queen's Bench was appealed by Mr. Mihaly but the Court of Appeal dismissed it, siding with the decision of the Court of Queen's Bench. We agree with this decision because the arguments presented were logical and supported with evidence. Place of origin doesn't necessarily mean where you were born, and it was not a case of *prima facie* discrimination against Mr. Mihaly. We also recognize the need for associations in maintaining the high standards for a profession like engineering or geoscience. From the reports of the cases, it's shown that Mr. Mihaly was resistive to the process and expected to just be allowed to work. The fact that he failed the exam three times is substantial enough evidence that he lacked the knowledge deemed required to practice engineering safely. The whole reason we have the exams is to make sure the applicant has the skills required, and based on the evidence presented, Mihaly may not have the skills required to practice in Alberta. APEGA's requirements are shown to be well thought out, and are built to be impartial. There are details unknown to us however, that could have impacted his ability to pass these tests other than lack of knowledge but he never brought it up in any hearing or there did not appear to be evidence of that in the reports.

APEGA's role is to ensure a standard is maintained that has been deemed a minimum to safely practice engineering in Alberta. This is extremely important, since engineers work on many projects that impact the public. Knowing that these technologies are safe to use is required, as any hazards created from a lack of knowledge could impact a sizable portion of people. We also agree with the Court that it is not the responsibility of APEGA to integrate foreign-trained engineers into their jobs. If APEGA was forced to take responsibility for that, they would have to spend less time enforcing the high standards, and more time trying to figure out how to help foreign workers. That is not what they were created for or what their intention is. While APEGA shouldn't have this responsibility, it isn't unreasonable to have some accommodations

provided in order to ensure the individual has been assessed fairly. For example, if the applicant is just learning english, there are things that can be done to combat the language barrier present. In many other cases, it can be APEGA's responsibility to at least redirect the foreign individual to resources they can utilize. The cost of these resources shouldn't be a responsibility of APEGA and should be left to the applicant. The bottom line however, is that it's not up to APEGA to teach foreign engineers how to work in Alberta, but it's up to them to maintain the high standards of the profession.

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