

# ENGG513 – Assignment 1 Mihaly vs APEGA case Study

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## Introduction

Engineering is a self-regulated profession in Canada. Engineering association like the Association of Professional Engineer and Geoscientist of Alberta (APEGA) takes care to regulate the profession through delivering licenses to practice. For an engineer to obtain a license it involves an examination of competency and experiences.

Mihaly vs APEGA case is an important ruling regarding engineering regulation in Canada. It reflects the necessity of ensuring adequate education for foreign engineers wanting to be accredited in Canada. This usually involves some examinations can be felt as a discrimination by some like Mr. Mihaly. In this document the Stakeholders are first presented followed by the background of the case. The Court of Queen's Bench decision is then analyzed and my Reflection and Opinion concludes this document.

## Stakeholders

### APEGA

Engineers and Geoscientists are allowed to practice engineering or geoscience in Canada when registered by one of the provincial (or territorial) associations. APEGA is the regulator for Alberta and has the duty to ensure that the engineers and geoscientists they register meet ethical and professional standards, and technical competency. This is done to guarantee public safety and well-being in general. APEGA has a specific process to ensure candidates meet their requirements [1]. Having a justice ruling that disapproves APEGA's registration process would have severe consequences as it is likely that many other applicants would use this case to appeal past or future conditions for registrations.

### Mr. Ladislav Mihaly

Mr. Ladislav Mihaly is a Czechoslovakian origin who obtained his M.Sc. Diploma from the Technical University in Bratislava in 1975. He also completed a certificate in corrosion engineering from the Institute of Chemical Technology in Prague in 1981. He immigrated to Canada and applied to be registered as a professional engineer in Alberta through APEGA in 1999 [2]. Mr. Mihaly genuinely believed that his engineering education was equivalent to Canadian University. The fact that APEGA asks him to pass additional examination to confirm his qualification was very offending to him.

### The Alberta Human Rights Commission (AHRC)

*In Alberta, the Alberta Human Rights Act protects Albertans from discrimination in certain areas based on specified grounds. The purpose of the Alberta Human Rights Act is to ensure that all Albertans are offered an equal opportunity to earn a living, find a place to live, and enjoy services customarily available to the public without discrimination. [4]* As per Mr. Mihaly's perspective APEGA limited his opportunity to work in Alberta and therefore the AHRC is technically legitimate for such a case. AHRC ruled in favor of Mr. Mihaly.

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

The Court of Queen's Bench is the Superior Trial Court for the Province [2]. Generally only tries the most serious criminal offences (eg. Murder, drug trafficking) but also hears civil proceedings, including commercial matters, personal injury, bankruptcy and insolvency cases, etc. As the Superior Trial Court of Alberta it hears appeals from decisions of the Provincial Court [3]. In this case it had to render judgement on appeal by APEGA on the AHRC decision.

## **The 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. In addition, the Court of Appeal may be asked to provide an opinion on questions referred to it by the Lieutenant Governor in Council under the Judicature Act. The Court of Appeal does not re-try cases. Rather, the Court of Appeal reviews the record to determine whether errors of law or fact were made in a decision.* [6] Mr. Mihaly appealed the decision of the Court of Queen's Bench. The Court of Appeal confirmed that there was no error of law in the Court of Queen's Bench decision.

## **Mark Flint, APEGA CEO**

At the time of the decision of the Court of Queen's Bench, Mark Flint was the APEGA's CEO. In a case like this a CEO would have felt a tremendous pressure on the issue of this case. As CEO he would be considered ultimately responsible of errors in the assessment process.

## **Witnesses during Court of Queen's Bench trial**

During the trials three witnesses testified on the examination process used by APEGA. First Dr. David Lynch, as Dean of the Faculty of Engineering at the University of Alberta, held a statutory position on the Board of Examiners. Second, Dr. Gary Faulkner, who was the chair of the APEGA Board of Examiners and thirdly Mr. Mark Tokarik, Deputy Registrar for APEGA. These three individuals were significantly related to the examination process that was performed on Mr. Mihaly application. Therefore the AHRC decision was ensuing that they did not perform their duty in an impartial manner for Mr. Mihaly.

## **Other regulatory board across the country**

If in fact the AHRC decision would have been confirmed by the Court of Queen's Bench the repercussion could have been far reaching across the country. Therefore all the other regulatory bodies across Canada would have been impacted as much as APEGA.

## **Background**

This section is based on [2] and [7].

Mr Ladislave Mihaly applied to become a professional engineer in Alberta through APEGA in 1999. After reviewing his file the board of examiner concluded that his engineering degree obtained in 1975 in Czechoslovakia was not equivalent to the level of engineering education expected in Canada. It is important to note that Engineering programs in Canada have to be

accredited by the Canadian Engineering Accreditation Board (CEAB). This accreditation is substantial and ensure sufficient education level for Engineer in Canada. A Mutual Recognition Agreement (MRA) exist between countries with equivalent examination practice however Slovakia does not have one (Note that Czechoslovakia separated in 1993 between the Czech Republic and Slovakia). Therefore Mr. Mihaly's degree was listed as a Foreign Degree which are not automatically recognise by APEGA.

In order to confirm his level APEGA requested Mr. Mihaly to take three confirmation examinations and take a course in Engineering Economics. He was also asked to write the National Professional Practice Exam (NPPE), which is standard for all applicants.

Mr. Mihaly seemed to have been quite surprised that his degree was not directly recognised because his country did not have MRA with Canada. To add to his frustration he found out that other European Countries (like France and the UK) where recognised.

Alternatively 10 years of experience could waive the examination requirement which Mr. Mihaly was hoping for it seems. However the APEGA board of examination did not find his experience at a satisfactory level. He could have ask for an appeal and reconsideration on this but he did not pursue this route.

Mr. Mihaly failed the NPPE Exam in 2000, register again 10 month later but did not attempt the exam. He never made any attempt to the confirmation examination nor the Engineering Economics course. Given that he did not fulfil any of the required examination, APEGA withdrawn is application in June 2001.

Mr. Mihaly asked APEGA to reactivate his application one year later (June 2002). APEGA put the same examination requirement as for the original application. Mr. Mihaly attempted the NPPE shortly after but failed. He attempted later for a third time but failed again. In August 2003 APEGA withdraw his application again as it he did not fulfil the requirement of taking the three examinations, the NPPE exam and the Engineering Economics Course.

In October 2006 Mr. Mihaly's application was reactivated by APEGA on his demand. This time APEGA requested updated resume and references which he provided promptly. APEGA re-instated the necessity to take the three examination and the additional course, or taking the Fundamental in Engineering Exam (FE Exam). They also did not count his credit of the one year Canadian experience which was not a level D. In General terms, level D involve more responsibility, working independently and usually includes directing the work of other engineers [7].

Mr. Mihaly did not take any action on this but instead filed a complained with the AHRC under the Alberta Human Rights Act (AHRA), alleging APEGA discriminated him based on his place of origin. The tribunal agreed that APEGA's method did discriminate him as no alternative method of evaluation was given to him. Especially not looking at the individual himself.

On February 6 2014, he AHRC found that APEGA discriminated Mr. Mihaly based on his place of origin by not recognising his education. The AHRC found that APEGA should have taken steps to look into the details of Mr. Mihaly's education and provide a more personalised

approach. It also granted a \$10'000 for prejudice to Mr. Mihaly. However the tribunal denied his claim of compensation amounting \$1M and APEGA registration and \$2M without registration.

The court of Queen's Bench reversed the tribunal decision on ground that the AHRC had unreasonably interpreted the law, made logical error and had unrealistic request for APEGA to provide personalised approach to each foreign candidate.

Mr. Mihaly appealed the decision of the Court of Queen's Bench but the Court of Appeal did not find any error of law in the judgement. [9]

## The Court of Queen's Bench Decision

This section is based on [2] and [10]

One of the main argument of Mr. Mihaly is that APEGA discriminated him based on his 'place of origin' as his degree was not accepted because it was from a Slovakia. While degrees from France are accepted. APEGA disputed the notion that 'place of origin' is not equal to 'place of higher education' however the Court dismissed this argument. However it found that it was not discriminatory to not require additional examination for degree from certain country when it is based on actual facts such as not having an MRA in place or knowledge of the education curriculum.

The Court found that requiring certain competency for foreign engineer, such as a Canadian work experience or standard exam, cannot be seen as being discriminatory. Evidence from other internationally educated engineer demonstrate that APEGA's process cannot be seen as discriminatory given that 60% register without issue, 15% are found to have enough experience to waive examination and only 25% do have to proceed with the FE exam. The Court also note that the FE exam, adopted by APEGA was a standardized exam (from the United States) that provide with valid measure of competency. The FE exam was given as an option to Mr. Mihaly.

The court also acknowledge the requirement for APEGA to ensure public safety. Asking for additional examination when education is deemed insufficient is therefore a necessity.

On the direction from the AHRC that APEGA should provide a more personalised approach for applicant, such as providing mentor, networking opportunity and assistance for English courses. The Court found this point to be 'beyond the scope of any discriminatory conduct' and was not valid. Also individual assistance would be an unreasonable allocation of resources and more importantly it could have the detrimental effect altering the standard for granting a license. However the Court emphasis that APEGA do conduct an individualised ASSESSMENT in which the history (experience) of the applicant is considered to define if additional examinations are necessary or not.

The last point made by the Court regards the obligation of Mr. Mihaly to actively help in finding possible accommodations, which he has not done. The Court raised the fact that Mr. Mihaly did not make any attempt to proceed with any of the examination option given to him, such as the three additional examination or the FE Exam.

In conclusion the Court found that the reasons put forward by the AHRC are 'rife with logical errors, findings of fact that are not supported by the evidence, and failures to take into account relevant consideration'. Therefore the Court overturned the AHRC verdict.

## Reflection and Opinion

As an international graduate applying to be registered with APEGA I can relate in many ways to this case.

I understand and totally agree with the need of proper regulation of the profession and making sure every engineer practicing in Canada have the proper competency. As APEGA recognises, it is difficult to have a clear evaluation on the education for international graduates when their country does not have an MRA with Canada on engineering accreditation. In my case I have an engineering degree from a well-established and recognised institution in Switzerland (University of Applied Sciences). Unfortunately Switzerland does not have an MRA with Canada and my engineering program is in a 3 year length. Therefore APEGA is likely going to ask me to pass further examination, unless my master degree here in Canada is deemed sufficient.

As France as an MRA in place with Canada this can be a bit frustrating as a Swiss engineering degree is equivalent to a French degree and a French degree is equivalent to a Canadian degree... logically one would think Canada should recognise the degrees recognised by France. This was one of the argument of Mr. Mihaly and I can understand it.

Additionally the engineering degree is one part of the qualification. In my case in order to access my engineering program I had to spent 4 years in becoming an electronic technologist, therefore spending a total of 7 years in studying electronic and electrical engineering. Reasonably I can say that my '3 years' degree is equivalent to a 4 years degree. In my opinion APEGA could look more in details in the education system where the applicant is from. Maybe they do but it is hard to know how far they go in their investigation.

While I can understand Mr. Mihaly reasoning I believe that the finding from the Court of Queen's Bench, noting is lack of effort in trying to accommodate the situation, talks a lot about Mr. Mihaly state of mind. When an individual cannot pass the NPPE exam 3 times and did not even show up for another exam is was registred for, it shows the lack of willingness to get recognised and a bit of laziness. Especially when Mr. Mihaly spent about 3 years unemployed showing that he would have had enough time to study properly for the NPPE and other exams like the FE Exam. Going to the AHRC in his case does not sit right with me. I acknowledge that this judgement is very subjective from my part...

In term of the AHRC ruling I do not support their conclusion as what is in question is APEGA's assessment methodology but not a voluntary targeted decision based on Mr. Mihaly place of origin. As it is mentioned in [10] I certainly agree that the AHRC decision was emotionally driven more than based on facts.

The Court of Queen's Bench set the fact strait and when reading the reason of judgement I could see a hint of frustration from the AHRC ruling. I fully agree with the Court decision as it makes sense to me.

That said I trust APEGA could revisit the way they assess degrees. I find that having only three scenarios such as, country has MRA, program is on the FD list and program is not on the FD list, is somewhat fairly narrow. I understand this is a tricky issue as the CEAB does a very thorough evaluation of engineering programs. Therefore it is somewhat legitimate that they require similar evaluation to trust other countries' engineering programs. In that sense Engineering Canada could maybe increase the number of MRAs as having only a handful of countries [11] linked with such agreements comes a little bit as a surprise to me. Especially as Canada is seeking immigration of high qualified workers. Back to my example of Switzerland if a candidate graduated from the Swiss Federal Institute of Technology in Zurich (ETH Zurich) he would be asked to take additional exams, such as the FE exam. ETH is ranked number #5 for top Engineering and Technology by QS [12], one would wonder if this makes a lot of sense or not.

To synthesize, I think APEGA does a decent job at assessing people's qualifications. They have a process to evaluate degrees that may not be ideal to my view but at least it is systematic and the rules are known. I believe it is more the role of Engineering Canada to put in place MRAs with more countries.

## References

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