



# ENGG 513 Roles and Responsibilities of the Professional Engineer in Society

## Case Study Report: Mr. Mihaly vs APEGA

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## 1.0 Introduction

The case study of Mr. Mihaly versus the Association of Professional Engineers and Geoscientists of Alberta (APEGA) highlights the requirements to become a professional engineer, APEGA's regulatory process, and the legal environment of how APEGA operates.

Mr. Mihaly filed a complaint with the Alberta Human Rights Commission (Commission) that APEGA had denied his application to be a registered professional engineer. Mr. Mihaly claimed APEGA denied his application because of his country of origin. The Commission reviewed the complaint and found Mr. Mihaly succeeded in establishing that the "Examinations Standard and Experience Standard 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" [1]. The Commission awarded Mr. Mihaly \$10,000 and ordered APEGA to re-evaluate his application. Both parties appealed the Commission's decision to Alberta's Court of Queen's Bench (Court). The Court found that the Examination and Experience standards used by APEGA were reasonable and justifiable to ensure Mr. Mihaly, and for that matter any other individual educated outside of Canada, is competent to carry out the engineering profession - responsible for protecting life, health, safety, and welfare of the public. Mr. Mihaly applied to the Alberta Court of Appeal to restore his appeal. Mr. Mihaly failed to meet the test for restoration of the appeal and the application was dismissed.

## 2.0 Stakeholders

The following is a list of individuals and organizations that had an interest in the Mr. Mihaly versus APEGA case.

- **Mr. Ladislav Mihaly** is a foreign-educated engineer from former Czechoslovakia. He earned a Masters of Science Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University in Bratislava as well as a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague. Mr. Mihaly worked as a professional engineer in Czechoslovakia for 25 years, holding various senior and lead engineering positions. He decided to immigrate to Canada with his family in May of 1999, hoping that his education and experience would allow him to become a registered professional engineer with APEGA and work in Alberta's oil and gas industry.
- **APEGA** is the regulatory body for the professional practice of engineering and geoscience in Alberta. The Association derives its authority from the provincial *Engineering and Geoscience Professions Act*. The responsibilities of APEGA includes setting practice standards, developing and enforcing a code of conduct for it's members, investigating complaints of members, discipline members accordingly if necessary, and protecting the use of titles. In relation to this specific case study, APEGA sets and enforces standards and guidelines for becoming a registered professional; including setting and enforcing examination and experience standards.

- **The Alberta Humans Right Commission** is an independent commission created by the Government of Alberta deriving its authority through the *Alberta Human Rights Act* [2]. The purpose of the Commission is to promote equality and reduce discrimination. The Commission receives complaints about discrimination and investigates them. If the Commission determines the complaint falls under discrimination a Tribunal is appointed to settle the matter. In the case of Mr. Mihaly versus APEGA, the Commission appointed a Tribunal.
- **The Court of Queen's Bench** is the Superior Trial Court for the province of Alberta [3]. If either party appeals the decision of the Human Rights Tribunal within a period of 30 days, the complaint is sent to the Court to either confirm, reverse or vary the decision. In the case of Mr. Mihaly versus APEGA, APEGA filed an appeal with the Court to reverse the decision of the Tribunal.
- **Dr. David Lynch** was the Dean of the Faculty of Engineering at the University of Alberta at the time of the Tribunal's investigation into the Mr. Mihaly complaint. His educational background was a Ph.D. in Chemical Engineering from the University of Alberta. At the time of the complaint he also held a statutory position on APEGA's Board of Examiners and the Canadian Engineering Accreditation Board (CEAB). His responsibilities as part of the Board of Examiners was to assess the educational and experience of all registration applicants. His responsibilities as part of the CEAB was to assess engineering programs outside of Canada to determine whether their educational standards were on par with Canada's. In the Tribunal's investigation, Dr. Lynch served as an expert witness to provide information on APEGA's international agreements and evaluation criteria of engineers educated outside of Canada.
- **Dr. Gary Faulkner** was the Chair of APEGA Board of Examiners at the time of the Tribunal's investigation into the Mr. Mihaly complaint. His educational background was a Ph.D. in Applied Mechanics from the University of California. At the time of the complaint he also served as board member on the Canadian Engineering Qualification Board (CEQB), a parallel board to the CEAB. In the Tribunal's investigation, Dr. Faulkner served as the second expert witness to provide an overview of how the Board of Examiners assesses both the educational and experience qualifications of engineers educated outside of Canada.
- **Mr. Mark Tokarik** was the Deputy Registrar, and formerly acted as the Director of Registration for APEGA at the time of the Tribunal's investigation into the Mr. Mihaly complaint. His educational background was Bachelor of Science in Engineering and Bachelor of Law degree. At the time of the complaint he also served as a member on the Engineers Canada's Foreign Engineering Qualifications Committee (FEQC). His responsibilities as part of the FEQC was to maintain the Foreign Degree (FD) list. In the Tribunal's investigation, Mr. Tokarik served as an expert witness to outline the requirements an individual must meet to become a registered professional engineer with APEGA.
- **The Honourable Mr. Justice Frans Slatter** is currently a judge for the Alberta Court of Appeal. He was appointed to this position by Stephen Harper in 2006. In the Mr. Mihaly versus APEGA case, Mr. Slatter ruled on Mr. Mihaly's application to restore his appeal to the Court of Queen's Bench.

## 3.0 Case Summary

### 3.1 Application

Upon immigrating to Canada in May of 1999, Mr. Mihaly applied to APEGA to become a registered professional engineer. Included in his application to APEGA, Mr. Mihaly provided documentation describing his educational qualifications; his M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University in Bratislava as well as a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague. He also provided references for APEGA to contact and assess the nature of his work experience. APEGA recognized they had received his application via letter and informed him that he had to write the National Practice Exam (NPPE).

In January of 2000, APEGA's Board of Examiners reviewed Mr. Mihaly's educational qualifications and his work experience references. They determined his education was similar to the chemical engineering discipline and his experience was long but not of a nature that is sufficient to prove competency. Since his degrees were on the Canadian Council of Professional Engineers Foreign Degree List (FDL), Mr. Mihaly was prescribed three confirmatory exams and take a course or pass an equivalent exam in Engineering Economics with a deadline of completion by May 2001. The confirmatory exams were to confirm that the degrees he obtained from the Slovak Technical University and the Institute of Chemical Technology met the APEGA educational standards.

In February 2000, APEGA received notice that Mr. Mihaly failed his first attempt of the NPPE. He applied to write the exam for a second time in October but failed to attend the day of the test. In June 2001, APEGA made Mr. Mihaly aware that they had withdrawn his application for registration as he had failed to write the three confirmatory examinations by the May 2001 deadline.

### 3.2 First Reactivation

In May 2002, Mr. Mihaly asked APEGA to reactivate his application for registration. APEGA reactivated his application and informed him that he would have to pass the NPPE, write the three confirmatory exams plus the Engineering Economics Exam. Mr. Mihaly failed the NPPE for a second time as well as failed to write the required confirmatory examinations within the specified deadline. In August 2003, APEGA notified Mr. Mihaly that they had withdrawn his application for registration for a second time.

### 3.3 Second Reactivation

In October 2006, Mr. Mihaly asked APEGA to reactivate his application for registration for a third time. Mr. Mihaly included an updated list of references from a gas company he had been working for in Calgary for the past year. The Board of examiners re-evaluated his educational and work experience credentials. They determined once again he had to write three confirmatory exams as well as complete a course/exam in either Engineering Economics or the Fundamentals of

Engineering Exam. The Board determined that his work experience did not fulfill the requirement of at least one year of D level Canadian experience. Therefore, the Board also required him to gain one year of satisfactory Canadian engineering experience at a D level to become familiar with Canadian laws, practices, standards, customs, codes, conditions, and climates. Mr. Mihaly for a second time failed fulfill the requirements for registration.

### 3.4 Alberta Human Rights Commission

In August 2005, Mr. Mihaly filed a complaint with the Alberta Human Rights Commission. In the complaint he claimed that the confirmatory examinations prescribed to him by APEGA constituted discrimination based on his country of origin. The Commission appointed a Tribunal to investigate the claim and settle the matter. The Tribunal interviewed 3 expert witnesses on behalf of APEGA; Dr. Lynch, Dr. Faulkner, and Mr. Tokarik. The interviews were conducted to gain an understanding of APEGA's strict registration standards; accreditation granted to Canadian programs that meets educational standards; maintenance of the Foreign Degree lists to assist the Board of Examiner in assessing programs outside of Canada; and the role of the prescribed confirmatory exams to ensure applicant's competence. Following the interviews, the Tribunal determined that the complaint had merit; saying that the examination and experience requirements prescribed by APEGA were based on the discriminatory assumption that engineers educated in foreign countries are not as qualified as engineers with Canadian engineering accreditation standards [1]. The Tribunal awarded Mr. Mihaly \$10,000 for general damages and ordered APEGA to reconsider his application for registration with more of an individual assessment to help Mr. Mihaly correct any perceived educational or experience deficiencies.

### 3.5 Court of Queen's Bench

Both parties appealed the Tribunal's decisions to the Court of Queen's Bench. APEGA sought a reversal of the decision saying that it was "rife with logical errors, findings of fact that are not suppose to be evidence, and failures to take into account relevant considerations" [4] . Mr. Mihaly sought a financial award to compensate for loss of income; requesting an award of \$1,000,000.00 and registration with APEGA as a professional engineer or \$2,000,000.00 if not registered as a professional engineer with APEGA. After reviewing the evidence provided by both parties, the Court overturned the Tribunal's decision claiming that APEGA's registration standard were reasonable and justifiable in all circumstances. The Court found that that the examination and experience requirements prescribed by APEGA were based on knowledge of foreign engineering education standards and not the discriminatory assumption that foreign engineers are not as qualified as Canadian engineers. More description into the reasoning behind the Court's decision is explained in the following section.

### 3.6 Alberta Court of Appeal

In February 2016, Mr. Mihaly filed an application with the Alberta Court of Appeal to restore his appeal. Mr. Mihaly felt that the Court of the Queen's Bench dismissed material he tried to file in support of his application to become a registered professional engineer. The Honourable Mr. Justice Frans Slatter of the Alberta court of Appeal found that there was no merit to the appeal saying that "even Canadian educational institutions must demonstrate the equivalency of their programs, and Canadians who receive foreign training must also demonstrate equivalency" [4]. The Honourable Mr. Slatter dropped the application in June 2016 when Mr. Mihaly failed to comply with the criteria to restore the appeal. The Mr. Mihaly complaint is now considered to be closed.

## 4.0 The Court of Queen's Bench Decision

The Tribunal's verdict that APEGA's examination and experience standards used to assess Mr. Mihaly's credentials constituted discrimination was overturned by the Court of Queen's Bench (Court). The Court overturned the verdict on the basis of two fundamental errors with the Tribunal's verdict. First, the Tribunal "made no reference to the evidence" that APEGA's examination and experience standards were based on discriminatory assumptions. Second, the examination and experience policies were not based on discriminatory assumptions of inferior foreign education programs, but rather knowledge.

The Court defined three areas of a prima facie test in which Mr. Mihaly must establish proof to constitute discrimination:

1. Establish he has a characteristic that is protected from discrimination by the *Alberta Humans Rights Act*.
2. Establish that he experienced an adverse impact.
3. Establish that the adverse impact was a result of his protected characteristic.

The Court agreed that Mr. Mihaly established he had a characteristic that was protected from discrimination. In this case, the protected characteristics was his place of origin. Place of origin is explicitly defined as a prohibited ground of discrimination in the *Alberta Human Rights Act*.

The Court also agreed that Mr. Mihaly experienced an adverse impact in the form of the confirmatory examinations prescribed to him by APEGA's Board of Examiners. APEGA argued that since Mr. Mihaly never wrote the confirmatory examinations or the Fundamental Engineering exam there was no adverse impact. However, the Court ruled that being required to write the confirmatory examinations in and of itself is enough grounds to establish an adverse impact.

The Court also agreed that the adverse impact he experienced was a result of his protected characteristic. Because Mr. Mihaly was foreign-educated he was required by APEGA to write the confirmatory examinations. However, the Court disagreed that this was sufficient to constitute discrimination. They found that the examination and experience standards used to assess Mr.

Mihaly's credentials was supported by section 11 of the *Alberta Human Rights Act* which states that "a contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in all circumstances" [5]. APEGA was able to demonstrate that their standards were reasonable and justifiable because they were aimed to ensure that the engineering professional practice serves the well-being of the public.

The Court reversed the Tribunal's decision and dismissed Mr. Mihaly's appeal to seek a financial award to compensate for the adverse impact he experienced. Mr. Mihaly felt that the Court's ruling was based on errors and was unreasonable.

## 5.0 Reflection and Opinion

### 5.1 Overview

As a self-regulating professional body, APEGA is responsible for protecting life, health, safety, and welfare of the public. One way that APEGA ensures their professional members are able to meet these responsibilities is to set high standards of education and experience. APEGA has the authority and the responsibility to assess the educational and experience credentials of all applicants, regardless of their place of origin. Lowering these standards to accommodate an applicant educated in a foreign country causes "undue hardship" by putting the public at an increased risk and ultimately undermines APEGA in the regulation of professional engineering and geoscience.

### 5.2 Alberta Human Rights Commission

I disagree with the Alberta Human Rights Commission decision that the confirmatory examinations prescribed by APEGA's Board of Examiners were based on the the discriminatory assumption of place of origin. The Commission's decision ignored the responsibility and authority that APEGA has been given by the provincial *Engineering and Geoscience Professions Act*.

The Commission ordered APEGA to reconsider Mr. Mihaly's application with a more individualized assessment based on his education and experience credentials. They claimed that without a more flexible assessment, immigrants like Mr. Mihaly are restricted to pursue work in their professions and forced to taking low-paying jobs in other fields [6]. However, a more individualized assessment calls for the the lowering of APEGA's educational and experience standards which could potentially put the public at an increased risk.

### 5.3 Court of Queen's Bench

I agree with the Court of the Queen's Bench decision to reverse the decision of the Alberta Human Right's Commission. By reversing the decision of the Commission, the Court reinforced the responsibility and authority that APEGA has been given by the provincial *Engineering and Geoscience Professions Act*.

The Court correctly recognized the role and responsibility that APEGA has to the public. They properly identified that the confirmatory examinations prescribed to Mr. Mihaly was not because of an assumption that his education was sub-par to Canadian credentials, but rather because of knowledge that his foreign-education was lacking in comparison to Canadian engineering programs.

### 5.4 Court of Queen's Bench

I agree with the Alberta Court of Appeal decision to dismiss Mr. Mihaly's application to restore his appeal. The application held no merit and Mr. Mihaly failed to take the appropriate actions himself in order to comply with the criteria to restore the appeal.



## 6.0 Bibliography

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