

# Mihaly Case Study

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## Introduction

Alberta as the most important oil and gas province in Canada, there are over thousand Engineer required and over thousand abroad Engineer coming here around the world. Every individual who wants to become an engineer or claim himself/herself as a professional engineer in Alberta must be qualified by APEGA, which is known as Association of Professional Engineers and Geoscientists of Alberta. APEGA receives its mandate from the Engineering and Geoscience Professions Act, which includes registering, setting practice standards, and determining disciplinary actions, when necessary, for its members. (Foundation, 2018) APEGA has setup processes for no matter graduated engineer students or transcript engineer from different countries. To protect the public safety, APEGA has rigorous process to practice and authenticate the applicants. APEGA's application process is equitable, fair and transparent and the same standards to all applicants for licensure as professional engineers. (Mulder, 2016) This report is a case study of an argument between Mr. Ladislav Mihaly and APEGA about Mr. Mihaly's application as a professional engineer. According to this case, the report will show to audiences what the requirements to become registered professional engineer, and the report also mention APEGA's regulatory process. Furthermore, the legal and quasi-legal environment will be discussed. After read this report, audience can further understand how to become a professional engineer in Alberta and what kind of situation or condition should care about before submit an application. Especial for those applicants who has engineer background in other countries, the report has higher consult value.

## Stakeholders

APEGA: Association of Professional Engineers and Geoscientists of Alberta, which is powered by the Engineering and Geoscience professions Act. It has the right to setting the registering, practice standards and review of academic qualification of applicants. (Foundation, 2018) It used a name as known as the Association of Professional Engineers, Geologists and Geoscientists of Alberta (APEGGA).

The Court of Queen's Bench: The Court of Queen's Bench is the Superior Trial Court for the Province, hearing trials in civil and criminal matters and appeals from decisions of the Provincial Court. The Chief Justice and other Justices of the Court of Queen's Bench are also judges of Surrogate Matters, which has jurisdiction over probate and administration of estate matters. (Courts, 2018)

The Alberta Human Rights Commission/ Tribunal (AHRC or AHRT): In Alberta, the Alberta Human Rights Act protects Albertans from discrimination in certain areas based on specified grounds. The *Alberta Human Rights Act* establishes the Alberta Human Rights Commission to carry out functions under the act. (Alberta, 2018)

Mr. Ladislav Mihaly: Applicant for registration as a Professional Engineer; complainant who failed in application.

The engineers who was educated out of Canada: Those engineers will easier be proved as a Professional Engineer.

Other regulators (medicine, law, geoscience): Those regulators who regulate the different professional field.

Public: people may be affected if any non-qualify individual become a Professional Engineer. Like safety of the building design may be affected.

## **Background**

Mr. Mihaly had two Masters Degrees from Czechoslovakia. One was obtained from the Slovak University of Technology in Bratislava and the other was obtained from the Institute of Chemical Technology (ICT) in Prague. He had applied for registration as a Professional Engineer 3 times from 1999 to 2017. In the first application, APEGA reviewed Mr. Mihaly's file and asked him to write three confirmatory examinations. Mr. Mihaly was failed by reasons. In 2002, Mr. Mihaly asked APEGA to reactivate his file, then this time Mr. Mihaly was noted his academic qualifications was refused to recognize. In 2006, Mr. Mihaly asked to reactivate his application again. Then the application was denied by APEGGA again by multiple reasons. (Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII), 2014)

On August 5 2008 the Alberta Human Rights Commission received a complaint from Mr. Ladislav Mihaly .The file is about he was discriminated against by APEGA when he was denied registration as a Professional Engineer in Canada. (Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII), 2014)The AHRC investigated following the direction of whether the APEGA's decision was contrary to the Alberta Human Rights Act (AHRA).

After the investigation, the Alberta Human Rights Tribunal (AHRT) heard from both side of complainant and respondent, and also three witness from APEGA.

Mr. Mihaly claimed APEGA was contrary the AHRA. He asked APEGA accepted and approved his education and qualification. He also asked APEGA pay his losses in this case.

APEGA rejected Mr.Mihaly's request and insisted its previous decision based on the Engineering and Geoscience Professions Acts (EGPA) and Engineering and Geoscience Professions General Regulation (EGPR).Expert witnesses explained in what situation and who the APEGGA would consider waiving the examinations. In addition, he also explained the people who graduated in those institutions on the Foreign Degree List (FD List) would consider waving the examinations. (Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII), 2014)

AHRT made a conclusion, the court agree APEGA has responsibility to public safety and should set up a stringent rule for registration as a Professional Engineer, but APEGA as the only gatekeeper for qualifying an individual should support more help to applicants and should consider about the different of personal situation and give the support to applicants instead of use simple and uniform exam for all applicants. Especially for those international engineer. At the end of the AHRT ask APEGA to review Mr.Mihaly's file, set up a committee to investigate options and examinations, support more individual support to him. In addition, AHRT awarded Mr.Mihaly \$10000 in general damages and declined his award lost wages. (Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII), 2014)

On 2016, APEGA applied an appeal with Court of Queen's Bench of Alberta to against the decision of the Alberta Human Rights Tribunal. The court investigate with four directions on the case.

First of all, Procedural Fairness, the court concluded that the Appellant has not established a breach of the rules of procedural fairness. (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016)

The second, Jurisdiction, the court gave the conclusion is "the Appellant has not established that the Tribunal lacked jurisdiction." (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016)

The third, Prima facie Discrimination, the court conclude that there was no finding and no evidence that the requirement to pass the NPPE constituted adverse impact discrimination, and also no evidence that the one year Canada professional working experience requirement had an adverse impact on Mr. Mihaly based on his national origin. (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016)

The last, Justification, the court concluded the Tribunal's decision about APEGA set a specific committee is impossible, especially APEGA cannot server each applicant like that in approximately 375 applicants a year.

The summary of the court was the decision of the Tribunal should be reversed. There is no need, in the circumstances, to remit the matter back to the Tribunal. (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016)

On 2017, Mr. Mihaly apply to appeal the decision from the Court of Queen's Bench of Alberta in the Court of Appeal of Alberta. The Court of Appeal of Alberta after considered number of factors and decided that the Mr. Mihaly's application of appeal was dismissed. (Mihaly V Association of Professional Engineers and Geoseincetists of Alberta, 2017)

The case was closed after the final decision was made by Court of Appeal of Alberta.

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

The Court of Queen's Bench Decision consisted of four issues raised by the Appellant, APEGA. These issues were assessed and concluded independently, and became the factors on the decision of the disposition of the appeal as well as the disposition of the cross-appeal. The appellant addressed the four issues as (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016): Procedural fairness, Jurisdiction, Prima face discrimination and Justification.

Procedural fairness was addressed by APEGA on the fact whether the Tribunal was biased and failed to make impartial decisions. The Tribunal stated that the examination requirements were not justified on the purpose of correcting a perceived academic deficiency according to 8(b) (ii) of the Engineering and Geoscience Professions Act [EGPA] regulated by APEGA. However, APEGA declared that they were not given chances to explain its regulation and the Tribunal failed to interpret the regulation correctly, thus led to the violation of procedural fairness. Several important elements of procedural fairness regarding to this case can be concluded as (Canada, 2017): the right to fair and impartial decision-making, the applicant's right to be heard, and the right to reasons. In APEGA's arguments and legal citations, the nature of this issue was focused on that APEGA was not given a fair opportunity to respond. The court cited the precedent case (Pope & Talbot Ltd v British Columbia, 2009) and concluded that the Tribunal has not breached the rules of procedural fairness with the following ratio decidendi (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016): "Tribunals, or courts for that matter, are not required to give parties an opportunity to be heard regarding every point of law that they refer to in deciding a case."

The second issue raised by APEGA was related to the Jurisdiction of the Tribunal. APEGA cited the precedent case (Grover v Alberta (Human Rights Human Rights Commission), 1999) and stated that the Tribunal had no jurisdiction over Mr. Mihaly's complaint (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016) because the Alberta Human Rights Act [AHRA] does not protect against discrimination based upon the "place of origin of academic qualifications". In response, the Tribunal cited the precedent case (Bitoni v British Columbia (Ministry of Health), 1999) and declared that "place of origin" contained much more context and information than "place of birth", therefore APEGA had discriminated against Mr. Mihaly based on his foreign background and place of origin. The court referred to the precedent case (Moore v British Columbia (Education), 2012) and clarified the ratio decidendi (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016): "Discrimination is not limited to rules or practices that are directly based on the listed grounds in the AHRA. Discrimination will also occur where a neutral rule or practice has an adverse impact." Eventually, the Court concluded that the Tribunal did not lack jurisdiction and the case cited by APEGA was no longer good law due to the time frame of that case.

Prima face discrimination was the prime issue and argument raised and debated by both parties. The Tribunal had a proposition that Mr. Mihaly bore prima facie discrimination from APEGA's policy. The Court stated the three prime factors regarding to establishing a prima facie case of discrimination (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016): 1. Complainants must show they have a characteristic that is protected from discrimination. 2. They experienced an adverse impact. 3. The protected characteristic was a factor in the adverse impact. The Tribunal responded that Mr. Mihaly's foreign education background, or simply place of origin was a protected characteristic; that he experienced adverse impact of APEGA's requirements of those confirmatory exams; and his foreign education background was a factor in the adverse impact since Canadian engineering graduates did not have to take the exams according to APEGA's policy. The Court stated that the most important factor in this case was whether the protected characteristic was a factor in the adverse impact, although the Tribunal was lacking evidences to support its arguments. The ratio decidendi was then concluded by the court as (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016): "There was no finding, and no basis for a finding, that the requirement to pass the NPPE constituted adverse impact discrimination. The NPPE is required for *all* applicants, wherever they were educated." And "Further, the evidence does not demonstrate that Mr. Mihaly's national origin was a factor in relation to any disadvantage that he may have experienced as a result of these requirements."

Lastly, justifications and reasons for Tribunal's decision on APEGA's policy were assessed by the Court. The establishment of justification turned out to be whether APEGA reasonably accommodated Mr. Mihaly or not, and the FE exam did not take into account an individual's background. APEGA responded that in fact (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016): "APEGA individually assesses applicants to determine whether examinations may be waived." And "Mr. Mihaly did not meet either of these requirements". The Court finally concluded that the Tribunal's reasons and justifications are lacking of evidences and full of logical errors, therefore, APEGA undoubtedly established "reasonable" and justifiable" defense. Finally, the Court concluded that (Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016):" the decision of the Tribunal should be reversed. There is no need, in the circumstances, to remit the matter back to the Tribunal."

The Court of Queen's Bench decision was appealed to the Court of Appeal of Alberta in 2017, the Court concluded that (Mihaly V Association of Professional Engineers and Geoscientists of Alberta, 2017): ".....the appellant has not met the test for restoration of his appeal, and the application is dismissed." based on the lack of: arguable merit to the appeal; an explanation for the defect or delay which caused the appeal to be taken off the list; reasonable promptness in moving to cure the defect and have appeal restored to the list; intention in time to proceed with the appeal; and lack of prejudice to the respondents.

## Reflection and Option

The successful Appeal of the Tribunal decision on Mr. Mihaly of APEGA brought up interesting questions to the Alberta, or even Canada Engineering Society. To what extent should we embrace human rights over professional regulations? To what extent should we embrace public interest over personal interests? Mr. Mihaly's case was not simply a sole legal case, it was the reflection on how to identify, assess and embrace between public interest and individual human rights in the society. In fact, echoed from APEGA CEO Mark Flint (Flint, 2016), the public interest must be the paramount concern of any self-regulating profession.

Canada is known as an immigration country and the Canadian Human Rights Act stated that (Authorities, 1985): "For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, color, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered." Human rights are the cornerstone in constructing the Canadian Society, but what is the line between human rights and public interests? Mr. Mihaly is not the only one, there are thousands of Mr. Mihaly in this country, but did they actually experience discrimination because of their foreign backgrounds? No, The Court's decision and conclusion on Mr. Mihaly's case clearly reflected that APEGA's regulations are reasoned and justified. But why did the society need such strict regulations and policies? Why professional engineering is needed and practiced?

The collapse of the Quebec City Bridge (Ricketts, 2011) warned the society how important and substantial professional engineering is. The iron ring still reminded the obligations and ethics associated with every Canadian trained engineers' profession today. Because of this APEGA thus had the confirmatory tests, the NPPE, and strict individual assessments to ensure the engineering professionalism of every engineer that would practice in Alberta. On the other hand, APEGA should keep accommodating foreign-trained engineers and geoscientists with strict regulations and policies because foreign-trained engineers would have provided different technology/theory background and the variety of these backgrounds would essentially push the engineering society forward. Nevertheless, the accommodation should still follow regulations and policies, to ensure professional engineering as the public interest is the paramount concern of the engineering society.

## References

- Alberta, G. o. (2018). *about*. Retrieved from Alberta Human Rights Commission:  
<https://www.albertahumanrights.ab.ca/about/Pages/about.aspx>
- Association of Professional Engineers and Geoscientists of Alberta v Mihaly, ABQB 61 (Court of Queen's Bench of Alberta Jan 26, 2016).
- Authorities, N. L. (1985). *Canadian Human Rights Act*. Retrieved from Canadian Human Rights Act:  
<http://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#h-3>
- Bitoni v British Columbia (Ministry of Health), BCHRTD No 60 (BCHRTD 1999).
- Canada, G. o. (2017, 3 31). *Procedural fairness*. Retrieved from Procedural fairness:  
<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/procedural-fairness.html>
- Courts, A. (2018). <https://albertacourts.ca/qb/home>. Retrieved from Court of Queen's Bench of Alberta.
- Flint, M. (2016). *APEGA's Appeal of Mihaly Decision Succeeds*. Retrieved from APEGA's Appeal of Mihaly Decision Succeeds: <https://www.apega.ca/news/appeal-mihaly-decision-succeeds/>
- Foundation, A. (2018). <https://www.apega.ca/about-apega/>. Retrieved from APEGA.
- Grover v Alberta (Human Rights Human Rights Commision), ABCA 240 (Court of Queen's Bench of Alberta 1999).
- Mihaly V Association of Professional Engineers and Geoseincetists of Alberta, ABCA 15 (Court of Appeal of Alberta 2017).
- Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII), S2008/12/0294 (HUMAN RIGHTS TRIBUNALS OF ALBERTA 02 06, 2014).
- Moore v British Columbia (Education), SCC 61 (SCC 2012).
- Mulder, P. (2016). <https://www.apega.ca/assets/news-releases/ahrc-appeal-decision.pdf>. Retrieved from APEGA.
- Pope & Talbot Ltd v British Columbia, BCSC 1715 (British Columbia Supreme Court 2009).
- Ricketts, B. (2011). *The Collapse of the Quebec City Bridge*. Retrieved from The Collapse of the Quebec City Bridge:  
[https://web.archive.org/web/20110714144348/http://www.mysteriesofcanada.com/Quebec/quebec\\_bridge\\_collapse.htm](https://web.archive.org/web/20110714144348/http://www.mysteriesofcanada.com/Quebec/quebec_bridge_collapse.htm)