

**The Court of Queen's Bench of Alberta judgement involving
APEGA, The Human Rights Commission, and Mr. Ladislav Mihaly**

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

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Introduction

Mr. Ladislav Mihaly's report is intended to illustrate that APEGA objectively appraises academic and experience standards of the internationally trained engineers. This report also demonstrates that Mr. Mihaly had shown resistance to accept APEGA's examination process. The report also reflects that the Canadian law system is sensitive to individuals as well as respects the professional standards upheld by APEGA to ensure that professional engineers are qualified to protect the public interest. Mr. Mihaly, (case 2016 ABQB61) born, educated, and certified as engineer in Czechoslovakia moved to Canada and applied to APEGA for registration as P.Eng. in 1999. He was asked to write National Professional Practice Exam (NPPE) and he failed, asked to rewrite but he did not attend the examination, asked to rewrite and he failed again. Mr. Mihaly complained to Human Rights Tribunal that APEGA discriminated against him based on his place of origin. The Human Rights Tribunal awarded \$10,000 as compensation to Mr. Mihaly and asked APEGA to reconsider application as Mr. Mihaly had succeeded in establishing that the examination 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 (AHRC). However, the tribunal refused to pay wage loss compensation to Mr. Mihaly. APEGA and Mr. Mihaly appealed to Alberta Court of Queen's Bench against the Human Rights Commission.

Stakeholders

The key stakeholders in this case study were the people and organizations that were directly involved or affected by Mr. Mihaly and APEGA's conflict. The following list states these stakeholders and a description of their role in this case:

- APEGA: It's the body that regulates the professions of engineering and geoscience in the province of Alberta by administering the Engineering and Geoscience Professions Act (EGPA), the Regulations under the Act, and its own By-Laws. It also tests and licenses new applicants to establish their entry level engineering competence.
- The Court of Queen's Bench: The Queen's Bench reviewed the decision of AHRC and tried to resolve the conflict between APEGA and Mr. Mihaly by giving their decision.
- The Alberta Human Rights Commission: Commission reviewed Mr. Mihaly's complaint against APEGA and gave their decision to ensure that his human rights were protected.
- Mr. Ladislav Mihaly: He complained to AHRC that APEGA discriminated against him based on his place of origin. In addition, he crossed appealed against the AHRC's decision to The Court of Queen's Bench for not awarding him \$1,000,000 for the loss of income. He also demanded non-discriminatory registration with APEGA or alternatively \$2,000,000 as compensation.
- Dr. Dean David Lynch: He appeared as an expert witness for Mr. Mihaly to provide testimony on international agreements and the evaluation of credentials of engineers by APEGA but in this case in particular to the evaluation of the engineers outside of Canada.

- Dr. Gary Faulkner: He appeared as an expert witness for APEGA and his role was to confirm Mr. Mihaly's foreign degree credentials and to appear for confirmatory examinations. As a chairperson of the board of examiners of APEGA he testified that Mr. Mihaly was required to give three confirmatory examinations and also needed to show evidence of four years of professional engineering experience of which one year must be in Canada to get waiver from the exams.
- Mr. Mark Tokarik: He appeared to testify on behalf of APEGA to confirm the role of an individual who wants to be registered as a professional engineer in Alberta which are academic qualifications, experience, good character, English language competency, NPPE and either Canadian citizenship or permanent residency in Canada.

Background (Case Summary)

"In May 1999 after immigrating to Canada, Mr. Mihaly applied to APEGA for registration as a professional engineer [1]." APEGA requested him to submit his credentials and asked him to write the NPPE. He failed NPPE exam in the first attempt. "APEGA's board of examiners reviewed Mr. Mihaly's documents in support of his application [2]." The board of examiners advised Mr. Mihaly to complete three confirmatory examinations and an equivalent examination in engineering economics in addition to passing the NPPE exam. Mr. Mihaly did not attend to write the NPPE exam the second time, so his application was withdrawn. APEGA reactivated his application to write the NPPE exam which he again failed for the third time. He was asked to write three confirmatory examinations and engineering economics exams by November 2003. "Mr. Mihaly again sat for the NPPE exam in January 2003 and failed [3]." APEGA again withdrew Mr. Mihaly's file. For the third time the board of examiners from APEGA reviewed his application and advised him to complete three confirmatory examinations, the Fundamentals of Engineering (FE) examination, and to obtain one-year acceptable D level Canadian engineering experience. "Mr. Mihaly did not write the required examinations. In 2008, he filed a complaint with the AHRC, pursuant to the Alberta Human Rights Act, RSA 2000, CA-25.5 (AHRA), alleging that APEGA discriminated against him based on his place of origin when it denied him registration as a professional engineer [4]."

The tribunal found that APEGA used examinations standard and experience standard to assess Mr. Mihaly's educational credentials and did not do individual assessment and found this is a discrimination and is not justified under AHRA. "The tribunal awarded Mr. Mihaly \$10,000 in general damages [5]." The tribunal also asked APEGA to reconsider his application and to appoint a committee to help Mr. Mihaly to correct his academic deficiencies by providing him different options, support, and examination exemptions combined with various methods of assessment, a guide who could assist him in integrating into the engineering profession, and to help him in networking and language training resources. "The tribunal declined to award lost wages to Mr. Mihaly because 'there are too many uncertainties involved in the licensure and the employment of Mr. Mihaly to find that there was a casual connection between the discrimination and any loss of wages' [6]." Mr. Mihaly and APEGA appealed and cross appealed the decision of the tribunal.

Alberta Court of Appeal conducted a review to ascertain reasonableness that concerns with the existence of justification and transparency and intelligibility within the decision-making

process by following procedural fairness, jurisdiction, prima facie discrimination, and justification. For procedural fairness APEGA gave enough evidence to confirm reasonable justification to support confirmatory examination for the purpose of correcting a perceived academic deficiency of Mr. Mihaly. “APEGA submitted that the tribunal has no jurisdiction over Mr. Mihaly’s complaint because AHRA does not protect against discrimination based upon the place of origin of academic qualifications [7].” The tribunal also found that APEGA has the onus to establish a prima facie case. APEGA established a prima facie test by underlying the examination and the experience requirements for the engineers with qualifications from foreign countries with which APEGA has no MRAs, have qualifications which are not at par with Canadian engineering accreditation standards. Foreign engineering graduates have a barrier they have to overcome before they are granted membership by APEGA. “APEGA in its notice of appeal sought a reversal of decision of the human rights tribunal [8].” The AHRA, in section 37(4), sets out the powers of The Court of Queen’s Bench on appeal of a decision of a human rights tribunal. “(4) – The court may confirm, reverse or vary the order of the human rights tribunal and change any order that the tribunal may make under section 32, remit the matter back to the tribunal with directions [9].”

The Court of Queen’s Bench Decision

Honorable Justice J.M. Ross on behalf of The Court of Queen’s Bench of Alberta gave the final judgement on Mr. Mihaly’s case. APEGA in its notice of appeal sought a reversal of the decision of the human rights tribunal. In her decision Justice Ross upheld the appeal of APEGA. The honorable judge concluded that “the decision of the tribunal should be reversed. There is no need in the circumstance to remit the matter back to the tribunal [10].” The judge gave this decision based on APEGA’s defense to discrimination alleged contravention was reasonable and justifiable in the following circumstances:

1. APEGA’s policy of assigning confirmatory exams where competence has not been otherwise established is consistent with the Engineering and Geoscience Professionals General Regulation, and consistent with its objective of ensuring the competency of professional engineers.
2. No evidence that internationally educated graduates with entry level competence would have any difficulty passing the FE exam.
3. Entry level engineering competence is reasonably necessary to ensure safe practice as a professional engineer, and
4. Accommodation to the point of undue hardship cannot result in fundamentally altered standards and require APEGA to act outside of its regulatory role.

“Mr. Mihaly’s cross appeal relates to remedy only, and it therefore dependent on a finding of prima facie discrimination that has not been justified under section 11 of the AHRA. It follows from my conclusion on the appeal, that the cross appeal is dismissed [11].” The protected characteristic was a factor in the adverse impact though the court agreed that adverse impact arose from being educated in his place of origin however, it was insufficient to establish discrimination because:

1. These exams required of all applicants wherever they were educated.
2. There was no evidence that Mr. Mihaly’s failure of these exams was due to place of origin.

3. Difficulty finding a job was because the firms were reluctant to hire an engineer with more than six years of experience in junior position and not related to his place of origin.

Reflection and Opinion

I fully agree with the decisions of the AHRC, The Court of Queen's Bench, and the Alberta Court of Appeal. All three-granted judgement on the case based on thorough analysis of the overview of APEGA's registration process for assessment of academic credentials and Mr. Mihaly's failure to establish enough evidence against APEGA for discrimination based on the place of origin and not on the basis on perceived deficiency in knowledge. APEGA on the contrary provided reasonable and justifiable evidence for its defense. APEGA has a statutory and public responsibility to satisfy the fitness and competency of applicants especially in the context of foreign engineering graduates who apply for registration.

While I understand the hardships that the internationally qualified engineers face during the immigration process, but APEGA has the role as a regulator to ensure that everyone who is licensed has required education and experience keeping the well-being and safety of the general public. Though internationally trained engineers, after migrating to Canada face various hardships as they have to accept underpaid jobs and not work in their respective fields of expertise and that results in a financial loss, integrity loss, and leads to emotional distress to them and their families. This also causes a loss to the Canadian economy by preventing such people to contribute as per their international education and experience. Though the objective of APEGA is to ensure the competency of professional engineers in Canada but it should have more flexible approach as to verifying the credentials of foreign trained engineers and also it should act more in a supporting role for their transition in Canada. Even though international graduates with fundamental engineering experience and knowledge should not have any difficulty passing the FE exam but still they should be provided help by APEGA in networking, communication skills, and English language proficiency. Foreign trained engineers who seek Canadian employment have also to meet professional requirement of Canadian experience. Since they don't have any prior Canadian experience this often leads to their exploitation. Under pressure to obtain income to provide for their families they end up accepting low paying jobs in engineering firms or elsewhere.

References

[1] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 3

[2] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 3

[3] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 4

[4] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 4

[5] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 4

[6] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 4

[7] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 10

[8] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 26

[9] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 26

[10] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, page 26

[11] Court of Queen's Bench of Alberta, Edmonton, AB: Judicial Centre Of Edmonton, 2016, pages 26 & 27.