

- Course Name: ENGG513 L01
- Report Title: Assignment 1, Mihaly Vs APEGA  
Report
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## Assignment 1: Mihaly Vs APEGA Report

The following report stands to demonstrate the responsibilities of APEGA, *The Association of Professional Engineers and Geoscientists of Alberta*, as a self-regulated organization to regulate the practices of engineering and geoscience in Alberta on behalf of the Government of Alberta through the *Engineering and Geoscience Professions Act*. Using the case of Mr. Ladislav Mihaly and The Alberta Human Right Commission vs The Association of Professional Engineers and Geoscientists of Alberta, this case exhibits an in depth cross examination of the application made by Mr. Ladislav Mihaly to obtain the right to be a member of APEGA and practice engineering as a profession in Alberta. All applicants must meet the requirement and standards that are enforced by APEGA to ensure the safety and well-being of the public. The evidence presented to The Court of Queen's Bench of Alberta, explains the APEGA's registration process in great details. The registration process is to ensure fairness for all applicants regardless of their origin, race, colour, beliefs and ethnic origin.

### Stakeholders:

APEGA, *The Association of Professional Engineers and Geoscientists of Alberta*, is a self-regulated organization that serves the public's interest in regulating the practices of engineering and geoscientist on behalf of the Government of Alberta. Also, the Main function of APEGA is to license individuals and companies in Alberta.

The Court of Queen's Bench is the Superior Trial Court of the Province of Alberta hearing trials in civil and criminal matters and appeals from decisions of the Provincial Court. It holds trials by judge alone and jury trials for criminal and civil matters. The federal government appoints justices to the Court of Queen's Bench. The Chief Justice and other Justices of the Court of Queen's Bench are also judges of Surrogate Matters.

The Alberta Human Rights Commission has the role of pursuing equality and fairness without discrimination through public education and community initiatives. All discriminatory complaints are resolved through resolution, settlement and human rights tribunal and court hearings.

Mr. Ladislav Mihaly is from Czechoslovakia had first applied to APEGA to be registered as a Professional Engineer in May 1999. In his application, he described his qualification and work experiences from the Slovak Technical University in Bratislava as a M.Sc. He attended this institution from 1970 to 1975 and graduated with a specialization in Technology of Fuels and Thermal Energy. The other qualification was from the Institute of Chemical Technology (ICT) in Prague as a Certificate in Corrosion Engineering. He attended the ICT from 1977 to 1979 and graduated in 1981.

The Law Society of Alberta regulates the legal profession in the public interest by promoting and enforcing a high standard of professional and ethical conduct by Alberta lawyers. The Law Society of Alberta develop their authority from the *Legal Profession Act* of Alberta and set out the standards through a Code of conduct and the Rules of The Law Society of Alberta. As the regulator, they actively work with members of the justice system to improve the administration of justice for all Albertans.

Canadian Engineering Accreditation Board is a board part of the Engineers Canada which is the national organization of the provincial and territorial associations that regulate the practice of engineering in Canada and license. The Canadian Engineering Accreditation Board accredits undergraduate engineering programs. These programs provide the academic requirements for licensure as a professional engineer in Canada.

Canadian Engineering Qualification Board is a board part of the Engineers Canada which is the national organization of the provincial and territorial associations that regulate the practice of engineering in Canada and license. Canadian Engineering Qualification Board develops national guidelines that provide advice on regulatory practices for professional engineer's entry to practice, ethics and practice code of conduct

National Council of Examiners for Engineering and Surveying, NCEES is a national nonprofit organization designed to improve the professional licensure for engineers and surveyors. The NCEES develops, administers, and scores the examinations used for engineering and surveying licensure internationally.

*The case of Mr. Ladislav Mihaly and Alberta Human Right Commission Vs.  
The Association of Professional Engineers and Geoscientists of Alberta*

In May 1999, Mr. Ladislav Mihaly applied to APEGA for registration as a Professional Engineer. Following his application request, APEGA reached out to Mr. Mihaly on May 13, 1999 approving his application. The Association of Professional Engineers and Geoscientists of Alberta requested some information such as transcripts, visa and landed immigration form. Also Mr. Mihaly was advised that he was required to write the National Professional Practice Exam (NPPE). After the Board of Examination considered Mr. Mihaly transcripts, reference questionnaires and experience. The Board of Examination categorized his education was insufficient and his experience under previous supervisor did not qualify. He was required to pass the National Profession Patrice Exam in addition of three confirmatory examinations and take a course or pass an equivalent exam in Engineering Economics. Following these recommendations, Mr. Mihaly applied for the NPPE exam and failed his first attempt on January 17, 2000. Few months later, on August 1, 2000, Mr. Mihaly re-applied for the second test on October

16, 2000 but did not attend. Subsequently, APEGA withdraw his application on June 29, 2001 because he failed to write the required confirmatory exams by May 2001.

Mr. Mihaly was in contact via email and over the phone with APEGA. He mainly maintained contact with Mr. Mark Tokarik, who is a member of APEGA, he joined APEGA in 1999 as an Assistant Director of Registration, who later on became the Director of Registration. In a statement, Mr. Tokarik clearly explained the steps and the procedures required from Mr. Mihaly on how to become a registered professional engineer in Alberta. After another attempt for the NPPE exam by Mr. Mihaly which, he failed on July 15, 2002, his application was withdrawn for the second time. Mr. Tokarik sent a reconsideration and appeal form to Mr. Mihaly, if he wished to appeal the decision made in regards of his application. Mr. Mihaly did not file an appeal.

Mr. Mihaly asked APEGA for the third time to reactivate his application. APEGA then, again made a request to update his resume and that he had to complete the three confirmatory exams plus an exam in Engineering Economics or the Fundamentals of Engineering Examination. In addition, the experience that Mr. Mihaly acquired in Calgary was not satisfactory with North American engineering experience as D level was required. Furthermore, Mr. Mihaly did not complete the prerequisites examinations required by APEGA.

Mr. Mihaly took the matter to his hand and filed a complaint with The Alberta Human Rights Commission on August 5, 2008. Mr. Ladislav Mihaly claimed that APEGA discriminated him because of his origin under section 4, 7 and 9 *The Alberta Human Act*. Therefore, he filed a complaint with the Alberta Human Right Commission against APEGA's assessment to grant him the right to be a member of APEGA and practice engineering as a profession in Alberta. On February 6, 2014, The Alberta Human Right Commission rules in favor of Mr. Mihaly. In addition, APEGA must pay Mr. Mihaly \$10,000, provide him with a personal mentor and form a committee to re-evaluate his credentials.

APEGA, *The Association of Professional Engineers and Geoscientists of Alberta*, filed an appeal on November 20, 2014 for the case of Mihaly vs. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII) to the Alberta Court of Appeal in regard of the Tribunal decision. The issues of the appeal stated by APEGA were towards the procedural fairness, jurisdiction, discrimination and justification of APEGA's registration requirements.

The decision by The Court of Queen's Bench reversed The Human Rights Commission's decision that APEGA had discriminated against Mr. Ladislav Mihaly based on his country of origin. APEGA applies a procedure of fairness, section 8 of the EGPR, *The Engineering and Geoscience Professions General Regulation*, is not about correcting a perceived academic deficiency but the Board of Examination has required the applicant, Mr. Mihaly to complete a confirmatory examination for the purpose of demonstrating a fundamental understanding of a rolls and obligations of an engineer in Alberta. Mr. Mihaly did not advance or pass any examination assigned by the Board of Examination. The APEGA has the reserved jurisdiction to accept or reject the applicant degree of education. The Human Right Act does not protect against discrimination based upon the "place of origin of academic qualifications". Mr. Mihaly academic qualification was not adequate to meet APEGA's academic requirement and a confirmatory examinations assessment is the standard assessment in such cases. APEGA, also justified the use of the Fundamentals of Engineering exam FE that was required to be written by Mr. Mihaly. The confirmatory examinations and the FE Exam are designed to assert the capability of a professional engineers. The FE Exam is recognized by institutes of education in Canada, it is developed by individuals at the University of Alberta and the University of Calgary. This exam covers subject matters that APEGA would expect an individual that graduated from a Canadian-accredited program to know. If Mr. Mihaly decided to take these exams, APEGA would have assigned him exams in his field of chemical engineering, his area of specialization. The

test is broken into two sessions, the morning session would cover the common fundamentals that an engineer would learn in the first two years of a Canadian engineering program and the second session, takes place in the afternoon which will cover the type of material that a Canadian student would learn in the third and fourth year in their field of specialization. Finally, The Court of Queen's Bench reversing The Human Rights Commission's decision is a verdict that will shed some insight in the future on the process of an applicant who wants to be a registered engineer or geoscientist in Alberta.

The decision of The Court of Queen's Bench was appealed to the Alberta Court of Appeal was a well processed verdict. I agree that The Court of Queen's Bench considered all the aspect of fairness and limitation of jurisdiction. This case was a demonstration that APEGA as a self-regulated organization is to provide a fair and justifiable reasons to certify an individual or a company to practice engineering or geoscience in Alberta. In this particular case with Mr. Mihaly, if The Court of Queen's Bench found that the Tribunal decision toward Mr. Mihaly acceptable. This case would cause predicaments to the future for APEGA. Every foreign applicant would challenge the decision of the APEGA in granting them a certificate, which makes the profession of an engineer and geoscientist questionable among ethical practice. The Human Rights Commission did not take in consideration the social benefit of the public. If Mr. Mihaly was granted the accreditations and in his future career in Alberta as an engineer led a mistake and oversight of an inaccuracy on his behalf. In which case, human lives were at stake, the APEGA would be held in partial responsible by the Court of granting him the accreditation.

I understand that some of the immigrant applicants have the qualifications and experience. Nonetheless, the language barrier and ethical practices in most cases is the biggest challenges. If APEGA decides to accommodate foreign-trained engineers and Geoscientists in the future, I think this would be a great resource for any foreign applicants. However, as great as it sounds, these resources would come with great cost of operation, which makes is unfeasible to implement. APEGA has great support

materials on their website to help any applicant with their transition. Nonetheless, the material on APEGA's website is insufficient if you take in consideration an applicant who have been outside of an education system for years. Which is some cases some his known experience and standers of development have changed drastically in comparison of his previous experiences. APEGA could develop more specific courses in conjuncture with known educational institute such University of Alberta and University of Calgary to aide with the transition for the foreign-trained engineers and geoscientists. These courses could mainly be focus on the rolls and ethical practices of an engineer and geoscientist in Alberta, and on their respected field of specialization. These courses could be offered at a cost which estimated by the institute of education that they choose to attend. The Board of Examination could also supervise and help developing the examination process for these courses.



## References:

“Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016 ABQB 61 (CanLII)”,

File number: 1403 02684

<<http://canlii.ca/t/gn3bs>>, retrieved on 2018-02-14

“Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII)”,

File number: S2008/12/0294

<<http://canlii.ca/t/g3051>>, retrieved on 2018-02-14

“Engineering and Geoscience Professions Act, RSA 2000, c E-11”,

<<http://canlii.ca/t/823d>> retrieved on 2018-02-14

This statute is current to 2015-04-30 according to the Alberta Queen's printer

“Engineering and Geoscience Professions General Regulation, Alta Reg 150/1999”,

<<http://canlii.ca/t/529br>> retrieved on 2018-02-15

Last updated from the Alberta Queen's printer on 2018-02-13

“APEGA’s Appeal of Mihaly Decision Succeeds | APEGA”

Apega.ca

<<https://www.apega.ca/news/appeal-mihaly-decision-succeeds>>retrieved on 2018-02-12

The Surveying, “The National Council of Examiners for Engineering and Surveying”

NCEES

<<https://ncees.org/about/>> retrieved on 2018-02-12

“Canadian Engineering Qualifications Board”

Engineers Canada

<<https://engineerscanada.ca/about/committees/board/qualifications-board>> retrieved on  
2018-02-12

“Canadian Engineering Accreditation Board”

Engineers Canada

< <https://engineerscanada.ca/accreditation/accreditation-board> > retrieved on 2018-02-12