

# ENGG 513 - The Court of Queen's Bench of Alberta v. Mihaly

Case Study

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# Introduction

This report outlines the case of The Court of Queen's Bench v. Mihaly by introducing its key stakeholders, summarizing the proceedings, and describing the Court of Queen's Bench decision in detail. Finally, it includes a reflection of the proceedings as well as the decisions taken by the various governing bodies.

The focus of this report is to summarize the proceedings brought forth by Mr. Ladislav Mihaly's allegation that the Association of Professional Engineers and Geoscientists of Alberta (APEGA) had discriminated against him on his application to be registered as a professional engineer when he was asked to complete three assessments to verify his eligibility. He lodged a complaint against APEGA with the Alberta Human Rights Commission (AHRC) which deemed the tests Mr. Mihaly was required to take were indeed discriminatory, and as such APEGA must award \$10,000 to Mr. Mihaly as well as reconsider his application.

This decision was appealed to The Court of Queen's Bench. The details of the ruling regarding this appeal are discussed in more detail below.

## Stakeholders

Seven key stakeholders have been identified in this case: APEGA, The Court of Queen's Bench, The Alberta Human Rights Commission, Mr. Ladislav Mihaly, current registered APEGA members, the Slovak Technical University in Bratislava, and the general public in Canada. A brief overview of each follows:

### APEGA

The Association of Professional Engineers and Geoscientists of Alberta (APEGA) is a regulatory board that regulates the practices of engineering and geoscience in Alberta on behalf of the Government of Alberta <sup>1</sup>. It is the duty of APEGA to uphold and enforce the standards of competence and integrity of those wishing to work as a professional engineer here in Alberta. APEGA reviews the work history of those applying to be registered as an engineer to ensure the work experience progressed in difficulty as the Engineer in Training (EiT) rose in level of responsibility and duties in their job. It is also the job of APEGA to review the education and work history of those who were not

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<sup>1</sup> (n.d.). About APEGA. Retrieved February 10, 2018, from <https://www.apega.ca/about-apega/>

educated in Canada who are looking to have their education and work history recognizes as equivalent to the Canadian counterpart.

## The Alberta Human Rights Commision

The Alberta Human Rights Commision is an independent commision created by the Government of Alberta to carry out functions under the Alberta Human Rights Act. The purpose of the Alberta Human Rights Act, and by extension the Alberta Human Rights Commision 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”<sup>2</sup>. This commision worked directly with Mr. Mihaly in his complaint against APEGA with the Court of the Queen’s Bench.

## The Court of the Queen’s Bench

The Court of Queen’s Bench of Alberta is a superior court of civil and criminal jurisdiction<sup>3</sup>. It holds jury trials for criminal and civil matters. Furthermore, the Court is the primary forum for hearing appeals of certain provincial tribunals<sup>4</sup> - in this case, the Alberta Human Rights Commision tribunal. APEGA disagreed with the decision of the Alberta Human Rights Commision and took the case to the Court of the Queen’s Bench.

## Mr. Ladislav Mihaly

Mr. Mihaly, born and educated in the former Czechoslovakia holds a M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University of Bratislava. He also holds a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague. He is the complainant in this case where he alleged that APEGA had discriminated against him based on his place of origin, in regards to his application to be registered as a professional engineer<sup>5</sup>.

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<sup>2</sup> (2012, October 24). About Us - Alberta Human Rights Commission. Retrieved February 10, 2018, from <https://www.albertahumanrights.ab.ca/about/Pages/about.aspx>

<sup>3</sup> (n.d.). Court of Queen's Bench of Alberta - Alberta Justice. Retrieved February 11, 2018, from [https://www.justice.alberta.ca/programs\\_services/courts/Pages/queen\\_bench.aspx](https://www.justice.alberta.ca/programs_services/courts/Pages/queen_bench.aspx)

<sup>4</sup> (n.d.). Jurisdiction & Governance - Alberta Courts. Retrieved February 11, 2018, from <https://albertacourts.ca/qb/about/jurisdiction-and-governance>

<sup>5</sup> (n.d.). reversed the tribunal's decision - Apega. Retrieved February 10, 2018, from <https://www.apega.ca/assets/PDFs/mihaly-decision.pdf>

## Currently registered APEGA members

Engineers who have met the requirements of APEGA become registered with APEGA and can legally call themselves a professional engineer and gain permission to put PEng after their name. These professional engineers are currently practicing the engineering profession in order to maintain their accreditation. To become registered as an APEGA member one has to have an engineering degree and four years of engineering work experience. These items are reviewed during the application process of those seeking to become registered.

## The Slovak Technical University of Bratislava (STU)

The institution from which Mr. Mihaly obtained his M.Sc Diploma. It is located in Bratislava, Slovak Republic. It is the first university founded in Slovakia, and is currently also the largest university in Slovakia. STU did not and does not currently have an accreditation agreement with Alberta, known as a mutual recognition agreement (MRA). Universities which have an MRA are considered to be equivalent to an accredited Canadian university engineering program.

## The general Canadian public

The general populous has a vested interest in this case as the decision has public safety implications. It is in the public's interest to have individuals who are thoroughly vetted for technical competence and have demonstrated an understanding of ethical standards to bear the title of "Professional Engineer". If it was determined that Mr. Mihaly did not have the required competence to become a registered engineer but a body external to APEGA forced the registration to happen, the Canadian public would have an engineer who isn't qualified for the position designing technologies which impact them. This could potentially damage the reputation of engineers in the eyes of the public.

## Background / Case Summary

Mr. Ladislav Mihaly, an immigrant from Czechoslovakia, applied to APEGA (then known as APEGGA) in May of 1999 for registration as a Professional Engineer. He characterized his educational background by the two Masters degrees he held - one from the Slovak Technical University in Bratislava and one from the Institute of Chemical Technology in Prague. APEGA requested additional information from Mr. Mihaly on acknowledgement of his application and further advised Mr. Mihaly that he was required to write the National Professional Practice Exam (NPPE). This requirement was due to the fact that the former Czechoslovakia had no formal MRA (Mutual Recognition Agreement) with Alberta in regards to its educational institutions. As such, graduates from Czechoslovakia were subject to examinations to verify their academic standards and were not automatically granted admission into APEGA.

APEGA later included that Mr. Mihaly must write three confirmatory examinations as well as take a course or pass an equivalent exam in Engineering Economics. On January 17, 2000 Mr. Mihaly wrote his first attempt at the NPPE which APEGA advised he had failed less than a month later. In October of 2000, Mr. Mihaly applied to write the NPPE again, but failed to attend on the day of the examination due to his claim that he was involved in a serious car accident and was suffering from related health problems. After APEGA withdrew his application in June of 2001, Mr. Mihaly asked to reactivate his application and applied to write the NPPE in July of 2002.

Mr. Mihaly wrote the NPPE and was subsequently notified that he had failed. Following APEGA withdrawing his application in 2003 for the second time due to him not completing the required exams, Mr. Mihaly asked to reactivate his application in 2006. APEGA requested an updated resume due to the time that had passed which Mr. Mihaly submitted nearly a month later. Upon reconsideration of his application, APEGA once again deemed that he must still complete the three confirmatory exams as well as the Engineering Economics examination. Furthermore, APEGA concluded that even though Mr. Mihaly had worked in Calgary, it was not at the level D level and as such he was to obtain one year of engineering experience in North America. After Mr. Mihaly did not attend the examinations, he filed a complaint against APEGA with the Alberta Human Rights Commission on August of 2008 <sup>6</sup>.

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<sup>6</sup> (n.d.). Decision - Apega. Retrieved February 11, 2018, from <https://www.apega.ca/assets/news-releases/2014-ahrc-decision.pdf>

Mr. Mihaly's complaint focused on subsections 4, 7, and 9 of the Alberta Human Rights Act, which in brief prohibits discrimination in providing goods and services (ss. 4), in employment practices (ss. 7), and in trade unions or occupational associations (ss. 9). His claim that he was being discriminated based on his place of origin process was carried forward under subsections 4 and 9. By early February of 2014, the Tribunal deemed that Mr. Mihaly was indeed discriminated against due to the method of assessing his educational background using standardized testing rather than individualized assessment. Pursuant to this decision, the Tribunal further awarded Mr. Mihaly \$10,000 for general damages and ordered APEGA to reconsider his application. Further decisions included possible examination exemptions, mentorship, and directing Mr. Mihaly to networking and language training resources. APEGA appealed this decision in February of 2014 with the Court of Queen's Bench.

In January of 2016, the Court of Queen's Bench reversed the tribunal's decision stating the confirmatory exams that Mr. Mihaly was required to take were "a reasonable and justifiable tool in confirming technical knowledge"<sup>7</sup>. The details and reasoning of this decision is discussed in more detail below.

In February of 2016, Mr. Mihaly filed an appeal against this decision at the Alberta Court of Appeal, however by June the Court advised him that his appeal had been invalidated as he's failed to file the Appeal Record. Mr. Mihaly filed the application to restore the appeal a week before the six month deadline imposed by the Court of Appeal. However, after his application was heard on January 10th of 2017, his application was dismissed on grounds of Mr. Mihaly not meeting the requirements of restoration of his appeal<sup>8</sup>.

## The Court of Queen's Bench Decision

APEGA appealed the Tribunal's decision on four key issues: procedural fairness, jurisdiction, *prima facie* discrimination, and justification, however this report will focus primarily on the discrimination aspect.

APEGA also made the case that the Tribunal had no jurisdiction over Mr. Mihaly's case as the claim that he was discriminated against based on the "place of origin of academic

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<sup>7</sup> (n.d.). backgrounder - Apega. Retrieved February 12, 2018, from <https://www.apega.ca/assets/news-releases/2017-mihaly-backgrounder.pdf>

<sup>8</sup> (2017, January 10). 2017 court decision - Apega. Retrieved February 15, 2018, from <https://www.apega.ca/assets/news-releases/2017-milhaly-court-decision.pdf>

qualifications” was not in fact protected by the Alberta Human Rights Act (AHRA). However, the Bench ruled that discrimination is “not limited to rules or practices that are directly based on the listed grounds in the AHRA”, noting that discrimination will occur when a neutral rule or practice (ie: something that is not explicitly stated in the AHRA) has an adverse impact when (in this case) the place of origin is a factor. Therefore, the Bench concluded that the Tribunal did have the jurisdiction to determine whether Mr. Mihaly had a valid case for discrimination.

*Prima facie* discrimination in short describes the situation where the complainant (in this case Mr. Mihaly) had evidence to prove discrimination before the trial. Essentially, he would prevail in a trial unless evidence to the contrary is provided by the other party (APEGA, in this case) <sup>9</sup>. The Tribunal made the case that Mr. Mihaly was treated as a foreign graduate due to the origin of his educational credentials, which they believed was a valid substitute for discrimination based on place of origin. They alleged that Mr. Mihaly was adversely impacted by APEGA’s demands that he complete the confirmatory exams or the FE (Fundamentals of Engineering) exam quoting “these requirements were not applied to engineering graduates from Canada or countries with which APEGA had MRAs”.

While APEGA notes Mr. Mihaly should not be able to establish an adverse impact as he never wrote the confirmatory exams, the Bench agreed with the Tribunal stating that “having to write examinations is in itself an adverse impact” as time and resources must be spent in order to prepare and write the exams. Furthermore, APEGA challenged the Tribunal’s finding that the APEGA requirements for examinations perpetuated disadvantage as the Tribunal claimed APEGA assumed foreign qualified engineers from countries that APEGA does not have MRAs with do not have qualifications that are on par with Canadian engineering standards. APEGA states they make no assumptions about the qualification of graduates from any institution, Canadian or otherwise, until that institution has satisfied APEGA through an approved accreditation process. As such, the Bench agreed that the Tribunal’s claims were unfounded as there was no evidence to reaffirm their claims.

Furthermore, the Bench found that the requirement to pass the NPPE did not constitute adverse impact discrimination as the examination is required of all applicants. They also noted that even though Mr. Mihaly had indeed failed the NPPE three times, it was not a direct result of his place of origin. The Bench further noted that APEGA’s requirement

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<sup>9</sup> (2017, November 9). *Prima Facie Case of Discrimination* | LegalMatch Law Library. Retrieved February 14, 2018, from <http://www.legalmatch.com/law-library/article/prima-facie-case-of-discrimination.html>

that registered engineers have at least a year of Canadian experience, it did not have an adverse impact on Mihaly based on his place of origin.

Finally, the Bench noted that APEGA does not assign individualized examinations to applicants based on their perceived academic deficiencies. As APEGA has no information about the quality of the education graduates have received from non-MRA countries or non accredited institutions, it assesses the competence of the graduates through their work experience, completion of post-graduate studies, or as in this case confirmatory examinations. The ruled that this policy where confirmatory examinations are are required where competence has not been established is consistent with its “objective of ensuring the competency of professional engineers”.

In summary, the Bench deemed that the methods of assessing applicants that graduated from non-accredited institutions that APEGA employed were reasonable and justifiable as they ensured that they possessed the knowledge “that is the the basis of their profession, as demonstrated by entry level competence on par with graduates of accredited programs”, and that this knowledge is necessary for safe practice as a professional engineer. The Bench also noted that the Tribunal’s order to provide Mr. Mihaly with guidance and mentorship would require APEGA to “fundamentally [alter] its standards” and that it does not expect regulatory bodies to “change their mandate in a fundamental way”.

## Reflection and Opinion

We disagree with the decision the Alberta Human Rights Commission made. If a standardized test is good enough to test someone educated in North America it is good enough to determine the competence of someone from Slovakia. Therefore the fact that the tests were standardized and not individualized for Mr. Mihaly had no bearing on whether or not it was discrimination. It was quite clear from Mr. Mihaly failing the NPPE three times that he did not show the competence required from someone who wishes to become a registered engineer. APEGA claims 85% of applicants pass the exam without any issues, so Mr. Mihaly failing three times in a row showed the knowledge and skill gap he had to bridge first before he should be considered a registered engineer.

We therefore agree with the overall decision of the Court of Queen’s Bench in deeming the standardized confirmatory exams Mr. Mihaly was required to take to be a fair and reasonable method of determining Mr. Mihaly’s competence. We also agree with the decision of the Court of Appeal to dismiss his appeal and subsequent appeal restoration since Mr. Mihay clearly showed a lack of interest and general negligence by not



completing the forms the first time, and by waiting until the last week of his 6 month window of opportunity for his appeal restoration.

The standard which is upheld for becoming a registered member of APEGA is a measure of the respectability and prestige of being registered. If rigorous standards are upheld it is more prestigious to hold the title of PEng. However, if someone with comparatively little training or expertise can become a registered member of APEGA it undermines the worth of holding an APEGA accreditation. Therefore the reputation of APEGA and by extension the people who hold an APEGA registration have a vested interest in this case.

APEGA should accommodate foreign engineering graduates and foreign engineers with work history. However APEGA should maintain very strict policies for determining whether or not the foreign course of study and/or previous work of the foreign parties are at a Canadian level of excellence. It is the duty of APEGA to allow only those with proof of competence and skill to be registered as professional engineers. Mr. Ladislav Mihaly had no business demanding exemption from the vetting process established by APEGA, especially after having failed the NPPE three times in a row. He clearly showed no respect for the bureaucratic process of APEGA by repeatedly failing to write the tests APEGA wanted him to write and not filling out the forms they sent him. It is not discrimination to have standards, rather it is insulting to be too aloof to accept having to write exams to prove the validity of your education, especially when your university was not previously recognized.

## References

[1] (n.d.). About APEGA. Retrieved February 10, 2018, from <https://www.apega.ca/about-apega/>

[2] (2012, October 24). About Us - Alberta Human Rights Commission. Retrieved February 10, 2018, from <https://www.albertahumanrights.ab.ca/about/Pages/about.aspx>

[3] (n.d.). reversed the tribunal's decision - Apega. Retrieved February 14, 2018, from <https://www.apega.ca/assets/PDFs/mihaly-decision.pdf>

[4] (2012, October 24). About Us - Alberta Human Rights Commission. Retrieved February 10, 2018, from <https://www.albertahumanrights.ab.ca/about/Pages/about.aspx>

[5] (n.d.). reversed the tribunal's decision - Apega. Retrieved February 10, 2018, from <https://www.apega.ca/assets/PDFs/mihaly-decision.pdf>

[6] (n.d.). Decision - Apega. Retrieved February 11, 2018, from <https://www.apega.ca/assets/news-releases/2014-ahrc-decision.pdf>

[7] (n.d.). backgrounder - Apega. Retrieved February 12, 2018, from <https://www.apega.ca/assets/news-releases/2017-mihaly-backgrounder.pdf>

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[9] (2017, November 9). Prima Facie Case of Discrimination | LegalMatch Law Library. Retrieved February 14, 2018, from <http://www.legalmatch.com/law-library/article/prima-facie-case-of-discrimination.html>