

Mr. Mihaly vs APEGA Case Study

By: Maisha Bhuiyan and Hyunju Kim

For: Dr. Denis Onen

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# Introduction

This report closely examines the case of Mr. Mihaly vs. APEGA. Each country has it’s own regulatory body when it comes to engineers, however in Canada the regulatory body for professional engineer is at a provincial level than at the national level. The governing body for Alberta is APEGA which stands for The Association of Professional Engineers and Geoscientists of Alberta. This report will discuss the case where Mr. Ladislav Mihaly, an internationally trained engineer, filed a complaint with Alberta Human Rights Commission (ARHC) on the basis on discrimination based on place of origin. It will also discuss a second case in which APEGA cross-appeal the decision of ARHC. This case study will allow us to investigate requirements and qualities expected for engineers and role of the regulating body regarding foreign trained engineers.

The report will start by discussing stakeholders such as APEGA, Court of Queen’s Bench, the Alberta Human Rights Commission, Mr. Ladislav Mihaly, Canadian Engineering Accreditation Board, Canadian Engineering Qualification Board and Alberta Court of Appeal. Then the report will give a brief background into Mr. Mihaly’s case, the ARHC decision, and the APEGA appeal. The Court of Queen’s Bench decision will also be discussed in detail to understand the reasoning behind their decision. Lastly the report will end with a reflection and opinion section in which we present the reader with our opinion on the decisions made by ARHC, the court of Queen’s bench, as well as Alberta Court of Appeal. Lastly there will be a recommendation section on what can be done in regard to foreign-trained engineers and geoscientist.

# Stakeholders

## APEGA

APEGA which stands for Association of Professional Engineers and Geoscientist of Alberta, was created in 1920.[[1]](#footnote-1) This association acts as the regulating body on behalf of Alberta government, and it is governed by the Engineering and Geoscience Professions Act.[[2]](#footnote-2) Their main role in Alberta is to license individual and to ensure that all individual meet “standards for ethical, professional, and technical competency”, and “earn the right to practice and use reserved titles and designations.”[[3]](#footnote-3)

## The Court of Queen’s Bench

The purpose of the Court of Queen’s Bench which was constituted by the Court of Queen’s Bench Act, is to “conduct criminal matters, civil proceedings (including family and surrogate proceedings) and the judicial review of government and tribunal action in Alberta.”[[4]](#footnote-4) The mission statement of the court is “to provide an impartial forum for the just and proportional resolution of legal disputes, to preserve the Rule of Law and to protect the rights and dignity of all.”[[5]](#footnote-5) The court consist of a Chief Justice and two Associated Chief Justice, sixty-five justices, and supernumery justice. This court is a “superior court of criminal jurisdiction”, and it deals with very “serious criminal offences, including murder, manslaughter, and drug trafficking, or conspiracy to commit one of these offences”[[6]](#footnote-6)

## The Alberta Human Rights Commission

This commission is regulated by Alberta Human Rights Act and its purpose is to protect individual from discrimination and ensure that all individuals in Alberta are given equal opportunities.[[7]](#footnote-7) This commission is the responsibility of Minister of Justice and Solicitor General. This commission has a “two-fold mandate” which is to “foster equality and to reduce discrimination”.[[8]](#footnote-8) This is achieved by educating the public, taking initiatives in the community, through human rights tribunal and court hearings.[[9]](#footnote-9)

## Mr. Ladislav Mihaly

Mr. Ladislav Mihaly is the main individual regarding this case. He was born in former Czechoslovakia, where he obtained a M.Sc. Diploma in which he specialized in Technology of Fuels and Thermal Energy. He received this degree from Slovak Technical University in Bratislava, and he also has a certificate in Corrosion Engineering from the Institute of Chemical Technology. He immigrated to Canada in May of 1999 with the hopes of working in the oil sands. In 1999 is when he first applied for a professional designation from APEGA, and in August 2005 he filed a human rights complaint with ARHC, which launched this case. [[10]](#footnote-10)

## Canadian Engineering Accreditation Board

The purpose of this board is to accredit undergraduate engineering programs and ensure that these programs are meeting necessary academic standard in order for its graduates to be licensed as a professional engineer in Canada.[[11]](#footnote-11) The board is also responsible for developing “professional practice and qualifications guidelines as it relates to the public interest”, “facilitate international and interprovincial labour mobility” and the board also “owns the official marks on the terms engineer, engineering, professional engineer, P.Eng., consulting engineer, ingenieur, ING., Ingenieur conseil, genie and ingenierie.”[[12]](#footnote-12)

## Canadian Engineering Qualification Board

The qualification board is a committee under the Engineers Canada Board, and the purpose of their existence is to “help the engineering regulatory bodies of Engineers Canada use consistent practices, to make it easier for engineers to work across Canada and to identify new types of engineering practices.[[13]](#footnote-13)

## Alberta Court of Appeal

The role and operation of the Alberta Court of Appeal is hear criminal appeals and civil appeals from both Provincial Court and the Court of Queen’s Bench. The court also hears appeals cases from administrative and board tribunals. The purpose of this court is not to re-try cases but to “determine whether error of law or fact were made in a decision.”[[14]](#footnote-14) In the purpose of the case in review for this project, the Alberta Court of Appeal heard a civil notice of appeal from Mr. Mihaly.

# Background

This case starts with one Mr. Ladislav Mihaly. In May of 1999, Mr. Mihaly immigrated to Canada from his birthplace of former Czechoslovakia with the hopes of working in the Alberta oil sands as an engineer.[[15]](#footnote-15) He obtained his education in Technology of Fuels and Thermal Energy from Slovak Technical University in Bratislava, and then was educated at the Institute of Chemical Technology in Prague where he received a Certificate in Corrosion Engineering.[[16]](#footnote-16) To register as a professional engineer, Mr. Mihaly submitted an application with APEGA in 1999. [[17]](#footnote-17)

On May 13, 1999, APEGA requested his transcripts, and notified Mr. Mihaly that he had to write the National Professional Practice Exam (NPPE) as a requirement with his application.[[18]](#footnote-18) On January 17, 2000 Mr. Mihaly wrote and failed his first attempt at NPPE. With the knowledge of this information APEGA’s Board of Examiners reviewed his file and concluded that to support his application he must complete the following: complete three confirmatory exams, retake and pass the NPPE exam, and lastly, he must take a course or pass an exam in Engineering Economics by May 2001. This advice from APEGA was given in February 2000.[[19]](#footnote-19)

After applying to write the NPPE exam second time in august of 2000, he scheduled this exam to be completed on October 16, 2000. However, he did not attend his exam, thus not completing everything required by the deadline of May 2001 given to him by APEGA. On June 29, 2001 APEGA notified Mr. Mihaly that his application has been withdrawn on the basis that he failed to complete the requirement set out by APEGA.[[20]](#footnote-20)

May 31, 2002, Mr. Mihaly requested his application be reactivation, and wrote the NPPE exam on July 15, 2002 and failed. Mr. Mihaly’s request to reactivate his file was accepted and his application was reinstated on June 3, 2002. APEGA also notified him the deadline of his requirements be met by November 2003. For a fourth time on January 20, 2003 he wrote the NPPE exam and failed.[[21]](#footnote-21) On August 1, 2003 APEGA withdraw his application for a second time for not completing the examinations as asked by APEGA within the period specified.

Three years after on October 3, 2006 Mr. Mihaly asked to reactivate his application with APEGA for a third time, and on October 18, 2006, APEGA complied with his request however asked for an updated resume and reference.[[22]](#footnote-22) On August 10, 2007 the board reconsidered his application and asked Mr. Mihaly for the fourth time “to complete three confirmatory exams, a course or exam in Engineering Economics, or the Fundamentals of Engineering Examinations. The Board also determined that Mr. Mihaly has not acquired the required one year of Canadian professional engineering experience because the place where he worked was not at a D level.”[[23]](#footnote-23)

This led to August 5, 2008 on which “he filed a complaint with the Alberta Human Rights Commission, alleging that APEGA discriminated against him based on his place of origin when it denied him registration as a professional engineer.”[[24]](#footnote-24) On February 16, 2014, the ARHC gave ruling in which it stated that APEGA discriminated against Mr. Mihaly based on place on origin. The tribunal also gave him $10,000 for damages. On February 21, 2014 APEGA appealed the decision of ARHC to the Alberta Court of Queen’s Bench. On January 26, 2016 the Court of Queen’s bench gave ruling in which to reverse to decision made by the tribunal.[[25]](#footnote-25) Following this decision on February 22, 2016 Mr. Mihaly filed a Civil Notice of Appeal at Alberta Court of Appeal to appeal the judge’s decision.[[26]](#footnote-26) In June of 2016 the Court of Appeal notified Mr. Mihaly that his appeal has been struck as he had failed to file the Appeal Record. In December of the same year, Mihaly filed an application to restore the appeal. In beginning of January 2017, the application was reviewed, and the Court of Appeal denied his application to restore the appeal.[[27]](#footnote-27)

# Court of Queen’s Bench Decision

In the Mihaly vs. APEGA case the court of queen’s bench decision was to reverse the decision made by the tribunal. This decision was made by Honorable Madam Justice J.M. Ross.[[28]](#footnote-28) This section of the report will explain the reasoning behind her decision. In this decision the following issues were raised:

* “Procedural fairness: Did the Tribunal breach the rules of procedural fairness when he decided issues that were not raised by or with parties?
* Jurisdiction: Did the Tribunal err when he held that he had jurisdiction to determine whether discrimination based on the place a person receives their education constitutes discrimination based on place of origin?
* Prima facie discrimination: Did the Tribunal rely on the correct legal test, and reasonably apply that test, to determine whether Mr. Mihaly has demonstrated prima facie discrimination?
* Justification: Was the Tribunal’s decision that APEGA registration requirements were unjustified unreasonable?”[[29]](#footnote-29)

In procedural fairness Justice Ross states concludes that the “Appellant has not established a breach of the rules of procedural fairness”[[30]](#footnote-30) and her reasoning for this decision she states “While it would have been prudent for the [Tribunal] to question [or put its interpretation of section 8 of the EGPR] the parties about this issue, I do not consider [his] failure to do so to constitute a breach of the rules of procedural fairness in the circumstances here, particular given the overall basis of the [Tribunal’s] decision. This is not a case where [APEGA] did not have an opportunity to respond to all of the evidence and submissions that were made”[[31]](#footnote-31)

In Jurisdiction Justice Ross concluded “The Appellant has not established that the Tribunal lacked jurisdiction”[[32]](#footnote-32), because the case was about discrimination based on the “place of origin of academic qualification.[[33]](#footnote-33) She concluded that a correct test would be required in Prima facie to demonstrate discrimination. The ARHA used the Moore test to determine if APEGA discriminated against Mr.Mihaly. According to the test ARHA found APEGA discriminated based on “place of origin”. However according to Justice Ross this is an unreasonable conclusion since the requirements laid out for Mr.Mihaly was not discrimination but to ensure he had qualification that met Canadian engineering accreditation standards.[[34]](#footnote-34)

For justification, Justice Ross concluded that ARHA used the correct test. “The test requires the defendant to prove that:

* It adopted the standard for a purpose or goal that is rationally connected to the function being performed;
* It adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and
* The standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship”[[35]](#footnote-35)

Justice Ross decided that there is no issue with the first two point of the test. The tribunal ruled that Mr. Mihaly was discriminated based on the fact that APEGA assigned examination did not fall under the statement “for the purpose of correcting a perceived academic deficiency”.[[36]](#footnote-36) However Justice Ross emphasized that in this conclusion the tribunal failed/ignored the disjunctive “or” because the statement is “the Board of Examiners has required the applicant to complete one or more confirmatory examinations or examinations for the purpose of correcting a perceived academic deficiency”.[[37]](#footnote-37) Thus she concluded that the tribunal made an unreasonable interpretation of this statement.

In the end Justice Ross overruled the ruling of the tribunal because the tribunal failed to consider relevant factors.

# Reflection and Opinion

I agree with the Court of Queen’s Bench’s decision to reverse the decision made by the Tribunal. I believe APEGA accommodated Mihaly by reactivating his application for registration three times and letting him rewrite the test four times.

In the case of Mihaly, by assigning him certain examination APEGA was ensuring that this individual met the standard set by APEGA, and it also ensure that this individual would not be allowed to practice if they deemed this person was unqualified. I believe this is not a basis for discrimination as APEGA is following procedure. Mr. Mihaly was asked to write the NPPE exam, which is an exam that is required for any engineer wishing to obtain P.Eng designation, therefore APEGA was following procedure when they asked him to write this exam. Since Mihaly failed this examination is proves that he is not qualified to become an engineer.

However, APEGA policy states that you are allowed 5 attempts within one year to take the exam and pass[[38]](#footnote-38). Since Mihaly failed his first attempt and did not write his second attempt, and again failed his third and fourth attempt, it further proves that he was not qualified. Thus APEGA required Mr. Mihaly to write three confirmatory exams, and the engineering economics course. Mr. Mihaly’s refusal to write these exams, complete the course in Engineering Economics, or obtain at least one year of Canadian professional engineering experience at D level, makes him unqualified to practice in Canada. I believe his refusal to comply with APEGA is not a cause for discrimination and for this reason I agree with the Court of Queen’s Bench’s decision.

I believe APEGA should accommodate foreign-trained engineers and geoscientist however only if the said foreign-trained engineer meet Canadian standard of being an engineer. APEGA is a regulating body that was created in 1920 to create a standard for practicing engineers in Alberta. Their role as governing bodies is to set the standard for qualification for admission into the profession, set standard of professional practice, and discipline members who fail to meet these standards. Its job is also to prevent misuse of titles and/or the illegal practice of the profession by unqualified individual. APEGA could also enlist professionals to validate the foreign degree and by that I mean APEGA should require the applicant to also submit course outlines from their universities to ensure that what they learn in a foreign institution is similar to what we would learn in a Canadian university. This way, when it comes to individual cases like this, they can check to see why the individual cannot pass an exam that is required for all engineers foreign/non-foreign.

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