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Mihaly Case study report

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# Introduction

This report is on The Court of Queen’s Bench of Alberta judgement involving APEGA, the Human Rights Commission, and Mr. Ladislav Mihaly. It was created to allow us, the students, to understand what if means to be a professional engineer. By reviewing this case we will get a better understanding of the regulations and responsibilities that are involved with becoming part of APEGA. This report will contain elements, such as stakeholders, background, the decision and my opinion along with a reflection.

This case is an appeal by Mr. Ladislav Mihaly that was issued on Febuary 6, 2014. Mr. Mihaly believed that APEGA discriminated against him when he applied to become a registered professional engineer. The reasoning behind this is, APEGA failed to recognize the education that he received at Slovak Technical University in Bratislava in 1975 as an equivalent of an accredited Canadian University program. They told him that he had to write a test to allow him to practice in Canada to see if he was indeed qualified.

# Stakeholders

## APEGA

They are the regulatory body of all the professional engineers and geoscientists in Alberta. They get their instruction from the “Engineering and Geoscience Professions Act”. It also allows the engineers and geoscience a broader voice when it comes to problems within their profession. There are multiple licences which include professional engineer (P.Eng) and professional geoscientist (P.Geo). These licenses are maintained through complying with the code of ethics that is associated with APEGA.

## The Court of Queen’s Bench

The Court if Queen’s Bench is the court that decides on cases that are appealed from the provincial court. This means that they are a higher level of court that that of the provincial court. As well as civil cases it handles things such as divorce, wills and estates. It has the power to overrule the decisions that were made by the provincial court as well as things like The Alberta Human Rights Commission.

## The Alberta Human Rights Commission

The Alberta Human Rights Commission is an independent from the Alberta Government. This commission is responsible for the reduction of discrimination and the settlement of the same cases. Some of the controversial decisions that have been made are the Mihaly vs APEGA and Lund vs Boissoin.

## Mr. Ladislav Mihaly

Mr. Mihaly is a man that is originally from the former Czechoslovakia and immigrate to Canada in 1999. He has two master’s degrees, one from Slovak University of Technology and the other is from the Institute of Chemical Technology. He applied to APEGA to become a professional engineer and when they forced him to write some test and submit some paperwork he failed the tests and didn’t submit the proper forms. Because of this he accused them of discrimination and took it all the way to The Court of Queen’s Bench.

## The Alberta Court of Appeal

This is the first level of court when it comes to cases. This is also where they see if the case will end up going to The Court of Queen’s Bench. Is also handles small value civil claims. The cases are heard only by the judge and the same judge makes the decision based on what they have heard that day.

# Background

Mr. Mihaly is originally from the former Czechoslovakia and immigrated to Canada in 1999. While still in his place of origin he obtained two masters degrees. One is from the Slovak University of Technology in Bratislava, the other was completed at the Institute of Chemical Technology (ICT) in Prague. His initial appeal was in May of 1999 to become a Professional Engineer with APEGGA. He stated that he received a M.Sc. diploma while in Bratislava with a specialization in Technology of Fuels and Thermal Energy. While attending ICT he received a Certificate in Corrosion Engineering. Along with this information he provided APEGGA some three references from previous jobs that he had in Bratislava. They asked Mr. Mihaly to submit transcripts, immigration forms and write an ethics exam. He did complete the exam but failed two times, and he did not submit the documents that they asked for. On February 11, 200 APEGGA informed him that in addition to the tests he would have to complete an exam in engineering economics. On way 31, 2002 he asked to reactivate his application after not showing up to his last exam date. In august of 2003 he withdrew his application again because he did not complete the requirements within the time period. On October 3, 2006 the application was opened for the third time. On august 10,2007 they reconsidered his application with the same requirements as the prior times. Mr. Mihaly did not write the exams and on august 5,2008 he filed a complaint. There were rulings from Alberta Human Rights Commission, The Court of Queens Bench, ant the Alberta Court of Appeal.

The Alberta Human Rights Commission ruled that APEGA was indeed discriminating against Mr. Mihaly in the form of the tests that they were giving him. This ruling forced them to look at his application as well as compensate him with ten thousand dollars. Along with this they asked APEGA to look over his academic performance and exempt him from exams. If he didn’t have to write the tests they suggested that they provide him with a mentor. The Queens Bench Justice June Ross disagreed with this ruling because “it contained errors and was unreasonable” [1].

The Court of Queens Bench ruled that APEGA did not discriminate against Mr.Mihaly and reversed the prior decision . They also dismissed the cross appeal by Mr.Mihaly. Justice June ross decided that the APEGAs discrimination was “reasonable and justifiable”. The Alberta Court of Appeal also ruled that Mr.Mihaly could not work as a professional engineer in Alberta. And did not believe that APEGA was being discriminatory.

# The Court of Queen’s Bench Decision

The case was based on four issues, the first being procedural fairness, the second is jurisdiction, third being prima face discrimination and justification. Starting with procedural fairness, APEGA states that an applicant bay be required to complete examinations to test the material that they have learned elsewhere. The court decided that the appellant did not break the rules of procedural fairness. APEGA also argued that the Tribunal had no jurisdiction. The reason for this argument is that the ARHA does not have jurisdiction over the “place of origin of academic qualifications”. The court found that the tribunal did indeed lack the jurisdiction to handle this case. When they looked at the problem of prima faced discrimination it falls under the provision of AHRA, s 4, which states “no person shall discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public” [2]. The Court of Queen’s Bench found that the decision made by the tribunals decision unreasonable. The reason for this decision is because they failed to use the Moore test and they had a severe lack of evidence to support that this was actually the case. The decision that the tribunal made was that it was not justifiable based on two things. The first of which is that Mr.Mihaly should not have been required to write extra tests on top of the academic one. The second is that he should have wrote a individualized test to make it more fair because of the language barrier.

Overall the final decision made by The Court of Queen’s Bench was that the tribunals decision should be reversed. This means that APEGA does not have to give him any money of mentor. When it comes the cross appeal made by Mr.Mihaly is depended of finding of discrimination that has yet to be proven by any solid evidence. Because of this it is considered to be unjust, therefore the conclusion on this is that it is dismissed as well.

# Reflection and Opinion

After looking at the three decisions that have been made, the Alberta Human Rights Commission, the Alberta Court of Appeal and the Court of Queen’s Bench I have decided on which one I support. I side with the decisions that have been made by the Court of Queen’s Bench and the Alberta Court of Appeal. The reasoning behind this is that I believe he should have had to take these tests to see if he had all of the information that engineers graduate with from Alberta. If he doesn’t I don’t think that It is fair for him to be able to get his P.eng. Also, APEGA gave him plenty of opportunities to re take the test and even re apply completely. Because of those reasons I do not think that APEGA should allow him to get his p.eng and should not have to compensate him for anything.

However, even though I don’t agree with the decision of the Alberta Court of appeal I think that APEGA should accommodate to foreign trained engineers and geoscientists to an extent. The reason for this is if there is something like a language barrier there is not much they can do to correct that. So they might have to re word some of the questions on the test. But I do not think they should exempt them from tests because of this. The reason for these tests is to prevent unqualified engineers to practice.

# References

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[2] *Association of Professional Engineers and Geo scientists of Alberta v Mihaly, 2016 ABQB 61*. Edmonton: APEGA, 2018.

[3] *Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1*. Edmonton: Alberta Human Rights Commission, 2018.

[4] "Paula Simons: Discrimination against foreign-trained engineer justifiable, Alberta court says", *Edmonton Journal*, 2018. [Online]. Available: http://edmontonjournal.com/storyline/paula-simons-discrimination-against-foreign-trained-engineer-justifiable-alberta-court-says. [Accessed: 17- Feb- 2018].

[5] *APEGA’s Successful Appeal of Alberta Human Rights Commission Tribunal Decision Protects Public*. Edmonton: APEGA, 2016.

[6] "Association of Professional Engineers and Geoscientists of Alberta", *En.wikipedia.org*, 2018. [Online]. Available: https://en.wikipedia.org/wiki/Association\_of\_Professional\_Engineers\_and\_Geoscientists\_of\_Alberta. [Accessed: 17- Feb- 2018].