**Report Title: ASSOCIATAION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF ALBERTA VS MIHALY, 2016**

**Course Name: ENGG 513**

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**Introduction:**

The purpose of this report is to explore the fundamental requirements to be registered as a professional engineer in Canada. We will explore this matter by a case study based on the legal battle of an immigrant engineer named Mr. Ladislav Mihaly from Czechoslovakia who challenges the required regulatory process of becoming a licensed engineer. This involved The Alberta Professional Engineers and Geoscientists of Alberta (APEGA) which has a statutory mandate to regulate the engineering profession in the interest of public safety and professionalism. He failed to comply with necessary requirements required by APEGA in order for him to attain The Professional Engineering Licence (P.Eng). He then took this matter to the Alberta Human Rights Commission (AHRC) where the tribunal gave its decision in his favour. Thereafter APEGA appealed the tribunal’s decision in the Court of Queen’s Bench of Alberta and the judgment of AHRC was subsequently reversed. Thereafter, Mr. Mihaly re-appeals to The Alberta Court of Appeals to reconsider but this case was closed due to his failures to establish the necessary requirements for restoring his appeal.

**Stakeholders:**

* APEGA: This is the main regulatory body in Alberta, to whom the AHRC ruled against on discriminatory grounds. The court’s judgment in this case would have a fundamental effect on the procedures and requirements that APEGA requires foreign engineers to gain credentials to work as a professional engineer in Canada.
* The Court of Queen’s Bench of Alberta: This court has the powers to hear appeals and enforce or reverse the judgments passed by the AHRC. Its responsibility is to discern between APEGA, Alberta Human Rights Commission and Mr. Mihaly’s respective viewpoints and confirm their validity or invalidity according to the law.
* The Alberta Human Rights Commission: This statutory body is responsible to hear complaints of discrimination that violates human rights and provides the necessary justice. Mr. Mihaly initially brought his case to this Commission and therefore its decision became the main focus of APEGA’s appeal in The Court of Queen’s Bench of Alberta.
* Mr. Ladislav Mihaly: He is the focal point of this case as he filled the law suit alleging discrimination by APEGA for not providing him the necessary designation.
* Immigrant Engineers: The outcome of this judgment given by The Court of Queen’s Bench of Alberta or Court of Appeals of Alberta will directly affect how immigrant engineers are recognized as professional engineers in Canada.
* Public: The outcome of this decision in favour or against APEGA will ultimately have effects on the standards and quality of Professional Engineers of Alberta.
* Canadian Graduates: Any changes made in how foreign engineers are recognized affects domestic graduates especially, if a significant reduction in regulatory barriers are removed therefore putting more pressures on the job market.
* Court of Appeal of Alberta: This court has the power to uphold or reverse the judgment made by Court of Queen’s Bench of Alberta.

**Background:**

The seedlings of the case began after the arrival of Mr. Mihaly from Czechoslovakia in May 1999 when he first applied to be a recognized as a professional engineer by APEGA [1]. APEGA initially stipulates that the National Professional Practice Exam (NPPE) will be required [1]. However, on January 17, 2000 he attempts the NPPE unsuccessfully and around a month later on 11th February 2000, APEGA reviews his application and this time requires him to pass the NPPE in addition to “three confirmatory examination and take a course or pass an equivalent examination on engineering economics, by May 2001[1]”. However, for the second attempt which was to be taken on 16th of October 2000, Mr. Mihaly did not appear for the test [1]. For this reason, APEGA withdrew his application on 29th of June 2001 [1]. Further on Mr. Mihaly again submitted a request to reactivate his application and subsequently appeared to write NPPE again on July 15, 2002 and failed for the second time [1]. For a third time Mr. Mihaly attempted to write NPPE on January 20, 2003 and failed yet again [1].

After a period of three years of inactivity Mr. Mihaly reappears on October 3, 2006 and again requested that his file be reactivated for which APEGA complied and requested he provide his updated information [1]. After reviewing his file, APEGA again provides the same requirement as they did earlier in February 2000 except that this time the Fundamental of Engineering (FE) examination was an alternative option to satisfy the Board of Examiners at APEGA [1]. On August 5, 2008 Mr. Mihaly decided to take this matter to the AHRC and alleged APEGA for discrimination “based on his place of origin when it denied him registration as a professional engineer [1].”

After around six years of deliberation the Alberta Human Rights Commission on February 6, 2014 passed its verdict that APEGAs examination standards and experience standard constitutes discrimination [3]. It does not offer a more individualized assessment of the candidate and cannot be justified under Alberta Human Rights Act [3]. It advised APEGA to take a more individualized approach and assess Mr. Mihaly differently to correct “any perceived academic deficiencies [3]”. It also awarded Mr. Mihaly 10,000 dollars in damages yet did not award the damages sort by Mr. Mihaly [1].

APEGA appealed this decision to the Court of Queen’s Bench of Alberta on November 20, 2014 [1]. APEGA presented its defence as the Appellant while Mr. Mihaly and the Alberta Human Rights Commission presented their responses as the Respondents. On the 26th of January 2016, the judge ruled that the Commission’s decision “should be reversed” and found APEGA’s policies reasonable in providing foreign engineers with professional licences in the interest of public safety [1].

Mr. Mihaly then took this decision and appealed to the Alberta court of Appeals to reconsider on February 22, 2016 [2]. However, this case was closed by the court on January 12, 2017 on the basis that the appeal was not satisfying the requirements for this case to be continued [4].

**The Court of Queen’s Bench Decision:**

To challenge the Commission’s decision, APEGA raised the issues of procedural fairness, jurisdiction, prima face discrimination and finally whether the registrations requirements of APEGA were unjustified and unreasonable [1].

Since the Commission’s decision was based on Section 8 of the Engineering and Geoscience Professions Act (EGPR), APEGA raised the issue whether the Commission’s had overstepped on procedural fairness by ruling on an issue such as section 8 of the EGPR that “had not been raised by either Mr. Mihaly or the Tribunal during the hearing [1]”. However, the judge analyzed the precedent cases that were presented by APEGA as support of its defence and was not persuaded that those cases helped to establish that the Commission had breached the rules of procedural fairness [1].

The second defence that APEGA argued was that the Commission did not “have jurisdiction over Mr. Mihaly’s complaint because the AHRA does not protect against discrimination based upon the ‘place of origin of academic qualifications [1].’” This argument failed as the judge noted that APEGA “has not established that the Tribunal lacked jurisdiction [1].”

Thirdly, APEGA argued that the Commissions did not use the correct legal test or reasonably apply it to determine whether a prima face discrimination had occurred in Mr. Mihaly’s case [1]. The judge reasoned that the Moore test was a reasonable test to determine whether a prima face discrimination occurred or not [1]. The Moore test “requires complainants to show that they have a characteristic that is protected from discrimination; that they experienced an adverse impact; and that the protected characteristic was a factor in the adverse impact [1]”. According to the AHRA section 4, one of the protected characteristics is place of origin and therefore the judge agreed with “the tribunals finding that Mr. Mihaly place of education was ‘inextricability linked’ to his place of origin [1]”. In addition, the judge also concluded that Mr. Mihaly had “no way of avoiding the adverse impact of having to write confirmatory examinations or The FE exam [1]”. Therefore, he concluded “that Mr. Mihaly place of origin was factor in the adverse impact [1]”.

On the third necessary characteristic of the Moore test, the judge reasoned that the Commission’s argument was “not sufficient to establish discrimination” [1]. This is because the Commission did not consider the NPPE, which is required by all applicants whether you have studied from Canada or oversees. On this argument, the judge found that there was “no evidence that this requirement had an adverse impact on Mr. Mihaly based on his national origin [1]”. This resulted in the failure of Moore test and therefore the Commission’s “apparent finding of prima face discrimination in relation to the NPPE and Canadian experience requirement unreasonable [1]”.

Finally, the justification that the APEGA’s requirements for registration are unreasonable and unjustified was also negated by the judge [1]. He based his decision that “APEGA’s policy of assigning confirmatory examinations where competence has not been otherwise established is consistent with EGPR [1]”. The judge found that the recommendations given by the Commission “go beyond the scope of any discriminatory conduct found or even alleged[1]”. The judge also concluded that the Commission failed to take in to account that Mr. Mihaly’s had an “obligation to assist in the search of possible accommodations [1]”.

**Reflection and Opinions:**

I believe that APEGA should accommodate foreign engineers and geoscientist as it contributes to a more diverse skill set and increases the supply of engineers for Alberta and the Canadian economy. However, I also believe that a degree of credibility of the engineering profession is necessary for the public safety and the economy. Completely not validating foreign engineers fails to show appreciation for global educational institutions.

I align with the current procedures of examination requirements such as the FE exam to bring equivalency of foreign engineers to domestic engineers. Once a foreign engineer immigrates to Canada, since his engineering credentials are in question of equivalency to Canadian standards, then I believe that APEGA’s procedures that separate an experience requirement and an examination requirement are correct.

In the first phase, the matter of equivalency of the educational merits of the foreign institutions to Canadian institutions is be established by writing an exam such as the FE. I believe that this equivalency examination should provide a preliminary certification that acknowledge equivalency of the foreign education engineer with a Canadian educated engineer. This allows the foreign engineer to show his credentials to prospective employers and also put them on the same footing as a Canadian institution graduate. Then, as Canadians graduates are required 48 months of engineering experience in which one year must be a Canadian engineering experience to be able to apply for the Professional engineering licence; the foreign engineers will also uphold this requirement before they can be given a professional license after writing the relevant NPPE examination.

I don’t agree with the AHRC as the recommendations that it provided to APEGA were vague, unreasonable and demanded from APEGA to significantly alter its procedures without considering a proper investigation to the experiences and concerns by the thousands of other foreign engineers who integrated successfully as a professional engineers following APEGA’s set procedures.

I agree with the Honorable Madam Justice J.M. Ross of the Court of Queen’s bench that AHRC decisions should be reversed on the grounds that the Moore test was not successfully passed on all its requirements and therefore does not establish prima face discrimination. In addition, I agree with the court’s reasoning that the NPPE is required by all applicants regardless of their origin and since he did not pass his NPPE it does not constitutes having an adverse effect on him via discrimination.

Finally, I agree with the Alberta Court of Appeals decision to close the case as Mr. Mihaly has failed to comply with the necessary requirement to restore an appeal. Personally, I also believe that the amount of time since 1999 to 2016 is more than sufficient to complete four engineering degrees and therefore does not justify his argument of discrimination. Instead he only had to do confirmatory courses or the FE exam which requires significantly less time than four engineering degrees.

**References:**

1. Association of Professional Engineers and Geoscientists of Alberta vs Mihaly, 2016 ABQB 61
2. Milhay vs Association of Professional Engineers and Geoscientists of Alberta, 2017 ABCA 15
3. Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII), <http://canlii.ca/t/g3051>, retrieved on 2018-02-15
4. J. Cotter, “Alberta Court of Appeal won't restore foreign-trained engineer's appeal,” CBCnews, 13-Jan-2017. [Online]. Available: http://www.cbc.ca/news/canada/calgary/ladislav-mihaly-engineers-alberta-foreign-1.3933845. [Accessed: 15-Feb-2018].