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Professional Bodies, Internationally Educated Graduates and the *Alberta Human Rights Act*

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Case commented on: *Mihaly v The Association of Professional Engineers, Geologists and Geophysicists of Alberta*, [2014 AHRC 1](#)

A recent Human Rights Tribunal decision about the actions of the Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA, now called the Association of Professional Engineers and Geoscientists of Alberta or APEGA) has sparked a fair bit of critical commentary (see [here](#) and [here](#)). Mr. Mihaly filed a complaint with the Alberta Human Rights Commission on August 5, 2008, alleging that he was discriminated against when he was denied registration as a Professional Engineer (PEng). He argued that the requirements imposed upon him by APEGGA for registration are contrary to the *Alberta Human Rights Act*, [RSA 2000, c A-25.5 \(AHRA\)](#).

Mr. Mihaly was born in Czechoslovakia and has Masters degrees from the Slovak University of Technology in Bratislava and from the Institute of Technical Technology in Prague (para 4).

APEGGA is the professional regulatory body for the engineering profession. An individual cannot practice engineering in Alberta unless s/he has been approved for registration as a PEng, licensee, permit holder or certificate holder under the *Engineering and Geoscience Professions Act*, RSA 2000 c E-11. APEGGA admitted Mihaly under the discretionary category of an “Examination Candidate”, thus he was required to meet the following conditions as set out in the *Engineering and Geosciences Professions General Regulation* (paras 36-44):

13(1) A person who meets the following requirements and applies to the Registrar for registration is entitled to be registered as a professional member:

...

(e) the applicant meets one of the following requirements:

.....

(iii) the applicant is admitted as an **examination candidate** and

(A) has completed the examinations referred to in section 8(b), and

(B) has obtained at least 4 years of experience in work of an engineering or geoscientific nature that is acceptable to the Board of Examiners;...

Mihaly's application for registration with APEGGA included names of three referees who could be sent questionnaires for completion. AGEPPA received his application and requested his transcripts and Landed Immigration form, and requested Mihaly to write the National Professional Practice Exam (NPPE) (paras 4 to 8). The NPPE is not a technical exam. It tests knowledge of law, ethics, professionalism, professional practice, professional responsibility, and understanding of the governing legislation, among other things (para 126).

On January 28, 2000, the Board of Examiners considered Mihaly's transcripts, referees' questionnaires and Mihaly's experiences and concluded that he had "long but narrow experience" and that the references were from supervisors who had short exposure to him. APEGGA advised him on February 11, 2000 that he must first pass the NPPE, then complete three confirmatory examinations and take a course, or pass an equivalent exam in Engineering Economics by May 2001. That same letter informed Mihaly that he had failed the NPPE, and he applied to rewrite the exam, which would be held in October 2000. APEGGA next advised Mihaly that it had withdrawn his application for registration since he had failed to write the confirmatory exams by May 2001. Although he had applied to write the second NPPE, Mihaly did not attend to write the test (paras 9 to 13).

On May 31, 2002, Mihaly applied to re-activate his application, and he applied to write the NPPE on July 15, 2002. The reason for the delay in responding to APEGGA was a serious car accident and health problems arising after the accident. The file was re-activated and APEGGA indicated that he was required to write three confirmatory exams by May 2003 and the Engineering Economics exam by November 2003. Subsequent communication indicated that APEGGA considered these exams to be necessary because the Chemical Engineering degree from Bratislava did not meet APEGGA's academic requirements and the degree is listed on the Canadian Council of Professional Engineers Foreign Degree List (FDL). The communication from APEGGA also noted that there are no Mutual Recognition Agreements (MRAs) in place between Canada and Mihaly's former country. Further, if the institution had not been on the FDL, Mihaly would have been required to write nine examinations. Mr. Mihaly was surprised that he had to write any exams, asking for a waiver because he had 12 years of international experience, he used to teach his colleagues, he worked for years at a research institute and he could have tried to obtain further references but this was problematic as the company had gone out of business (paras 14 to 21). Mihaly was sent an Appeal form but did not file an appeal. Again, Mihaly failed the NPPE, and his file was withdrawn by APEGGA on August 1, 2003 because he had failed to write the confirmatory exams (paras 22 to 24).

On October 3, 2006, Mr. Mihaly asked APEGGA to reactivate his application once again. On October 18, 2006, APEGGA advised Mihaly that he would need an updated resume and a list of updated references. Mihaly submitted the names of a professional engineer he had worked for for more than a year in Calgary, the name of a gas company owner and the name of a co-worker for consideration. In August 2007, the Board of Examiners determined that Mihaly had to complete the three confirmatory exams plus a course in Engineering Economics or the Fundamentals of Engineering Examination. The Board also determined that Mihaly had not acquired the one-year North American professional engineering experience in the position where he had worked because it was not at a "D level" position. So, he was also required to obtain one year acceptable

D level North American engineering experience. Mr. Mihaly did not write the required exams, and on August 5, 2008, filed a complaint with the Commission (paras 26 to 29).

Tribunal Chair Moosa Jiwaji heard the complaint. While Mihaly alleged that *AHRA* sections 4 (services), 7 (employment), and 9 (occupational associations) were all violated, the Commission determined that either section 4 or section 9 could apply, but section 7 did not.

Section 9 of the *AHRA* provides as follows:

No trade union, employers' organization or occupational association shall

- (a) exclude any person from membership in it,
- (b) expel or suspend any member of it, or
- (c) discriminate against any person or member,

because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, *place of origin*, marital status, source of income, family status or sexual orientation of that person or member.

(Emphasis added)

Section 44(1)(j) defines "occupational association" as meaning:

... an organization other than a trade union or employers' organization in which membership is a prerequisite to carrying on any trade, occupation or profession;

While APEGGA argued that the Commission did not have jurisdiction to hear a complaint about discrimination based on "place of origin of academic qualifications", Chair Jiwaji concluded that "place of origin" is broad enough to include any adverse treatment based on one's foreign credentials. In addition, the evidence related to the FDL indicated that the applicant's "place of origin" is important to APEGGA in analyzing foreign credentials (para 49).

Evidence provided at the hearing indicated that Internationally Educated Graduates (IEGs) who come from countries that have not entered into Mutual Recognition Agreements (MRAs) with APEGGA (i.e., those in Europe, Africa and Asia) are assessed using an Examination and Experience Standard. If the applicant's institution is on the FDL, then APEGGA used to assign three confirmatory exams plus a course/exam in Engineering Economics to the applicant. Currently, APEGGA merely assigns only the Fundamentals of Engineering (FE) exam. If the applicant has other attributes, such as a Masters or Doctoral degree in Engineering completed at a Canadian institution or a country with which there is a MRA, then APEGGA may consider waiving the exams. In addition, exams may be waived if the applicant has ten years of progressively responsible engineering experience acceptable to APEGGA. In addition, all applicants are required to pass the NPPE (paras 153 to 160).

Mr. Mihaly alleged that he had been adversely impacted by the process instituted by APEGGA, in that he had to successfully complete the confirmatory exams and the FEE, while engineering graduates from Canada and those countries with which APEGGA has MRAs do not. This was found to amount to *prima facie* discrimination on the basis of place of origin (paras 168 to 172).

Chair Jiwaji concluded that the underlying assumption made by APPEGA is that engineers with qualifications from foreign countries with which APEGGA has no MRAs have qualifications that are not equal to Canadian engineering accreditation standards. Further, the complainant need only show that “place of origin” was a factor in the adverse impact experienced by Mihaly (para 174). Also, many Eastern European immigrants and those from Africa and Asia experience disadvantage and discrimination in the workforce because of language, culture and racial prejudice. The imposition of additional exams and/or requirements without appropriate individualized assessment restricts these immigrants from working in their professions and perpetuates disadvantage in these groups (para 180).

Because Chair Jiwaji found that a *prima facie* case of discrimination was made out, APEGGA had the opportunity to justify its actions under *AHRA* section 11, which provides that a contravention of the *AHRA* “shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.” The factors which will be considered are set out in two decisions: *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights) (Grismer)*, [1999] 3 SCR 868 and *British Columbia (Public Service Employee Relations Commission) v BCGEU (Meiorin)*, [1999] 3 SCR 3. The respondent must show that:

- (1) It adopted the standard for a purpose or goal that is rationally connected to the function being performed;
- (2) It adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and
- (3) The standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible (as further clarified in *Hydro-Québec v Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, [2008] 2 SCR 561) to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer. (*Meiorin* at para 54)

Rational Connection: Chair Jiwaji noted that APEGGA’s Board of Examiners had exercised their discretion to place Mihaly in the category of “Examination Candidate”. This meant that he would have been registered as a PEng if he had satisfied the requirements set out in section 13(1)(e)(iii) of the regulation (above). Since APEGGA assesses the educational qualifications and the experience of international engineers in order to ensure that the public is protected from harm, using the Examination Standard and the Experience Standard as adopted to ensure safety and competency are rationally connected to APEGGA’s functions (para 191).

Good Faith: Chair Jiwaji held that APEGGA adopted the standards in good faith (para 192).

Standard Reasonably Necessary: Finally, Chair Jiwaji analyzed whether APEGGA could show that the standards used are reasonably necessary for the accomplishment of protecting the public and ensuring that IEGs perform competently. He noted that in *Meiorin*, the Supreme Court set out questions that may be asked in the course of this analysis (at para 65):

- a) Has the employer investigated alternative approaches that do not have a discriminatory effect, such as individual testing against a more individually sensitive standard?
- b) If alternative standards were investigated and found to be capable of fulfilling the employer's purpose, why were they not implemented?
- c) Is it necessary to have all employees meet the single standard for the employer to accomplish its legitimate purpose or could standards reflective of group or individual differences and capabilities be established?
- d) Is there a way to do the job that is less discriminatory while still accomplishing the employer's legitimate purpose?
- e) Is the standard properly designed to ensure that the desired qualification is met without placing an undue burden on those to whom the standard applies?
- f) Have other parties who are obliged to assist in the search for possible accommodation fulfilled their roles?

Chair Jiwaji noted that in considering whether the Examination Standard is reasonably necessary to accomplish APEGGA's purpose, one must examine the purpose and process followed in preparing the FDL. The original purpose of the List was to provide Canada Immigration information for its point system to assess the suitability of engineers immigrating to Canada. This informal assessment tool was developed in the early 1980s and bases its considerations on documentation that is publicly available, such as World University Handbooks and other information about institutions and degrees offered. The FDL process does not look at particular engineering programs at the institutions and assess them. Chair Jiwaji emphasized that there was "no evidence ... of direct consultation or interaction with institutions in the country themselves [sic] in order to determine the quality and content of their engineering programs" (at para 200). Chair Jiwaji noted that this process is a "poor substitute for directly assessing the education of IEGs who come from many different countries." (at para 201). It is also insufficient as a measurement of what is required to correct a perceived deficiency as required in the legislation. APEGGA must use current, reliable and more detailed information on institutions. The "crucial categorization" of qualifications must not be based on secondary information using a tool that was originally developed for immigration purposes (para 202).

The Fundamentals of Engineering Exam (FEE) is prepared in the United States, and parallels the Canadian Accreditation Standard. However, Chair Jiwaji noted that the FEE fails to take into consideration an individual's background, experience and training. Under the regulations, the exams are instituted to correct a "perceived academic deficiency." Because APEGGA does not perform a meaningful individualized assessment of an engineer's skills and experience, and the exams chosen are related to the particular engineering discipline the document review indicates the applicant falls under, these could not fulfill the purpose of correcting a "perceived academic deficiency" (paras 209 to 215). Further, the reviews of Mihaly performed by APEGGA were not to identify a deficiency in his academic credentials so that recommendations could be made to respond to any perceived deficiencies in knowledge or training (para 217).

Mihaly was also required to take the NPPE, which he took three times and failed. Chair Jiwaji found that there was no evidence that APEGGA explored any alternatives to the exam or offered any courses or instructions for exam preparation. Once again, there was a “one size fits all” approach similar to that taken with the FEE which was found to be “particularly unhelpful to foreign trained engineers who need assistance in understanding the APEGGA process and its requirements” (at para 223).

Noting that there was little evidence that APEGGA had considered appropriate alternative approaches, Chair Jiwaji held that APEGGA must explore other evaluation methods that are less discriminatory yet allow engineers to practice in a competent and reasonably safe manner (paras 226 to 227). Finally, APEGGA had not demonstrated that it had “properly considered alternatives or that it would suffer undue hardship by exploring or implementing alternatives to the Examination Standard” (at para 234).

With respect to the Experience Standard (“one year Canadian experience”), which is a policy of APEGGA, the purpose is for applicants to understand Canadian codes and practices. However, Chair Jiwaji found that this standard fails to consider the “serious challenges foreign professionals experience when looking for employment in the engineering field when the applicant is not a professional engineer or otherwise” (at para 237). Once again APEGGA did not provide any evidence regarding the exploration of options to help applicants to achieve sufficient knowledge of Canadian legislation and work codes. Thus, the standards used by APEGGA could not be justified under step 3 of the *Meiorin* analysis (para 240).

Chair Jiwaji concluded that Mihaly succeeded in establishing that the Examination Standard and the Experience Standard used by APEGGA to assess his educational credentials, “without more individualized assessment or exploration of other options”, amounted to discrimination which could not be justified under the *AHRA* (para 242). He ordered APEGGA to comply with the following remedies under *AHRA* s 32 (at para 249):

- (a) Review Mr. Mihaly’s transcripts and experience in direct consultation with the Slovak University of Technology, the Institute of Chemical Technology and any of his references who may still be available, to better identify Mr. Mihaly’s skills and qualifications and to identify core areas of engineering from which Mr. Mihaly could be exempted
- (b) Grant Mr. Mihaly the option to challenge specific examinations in areas where he is not granted an exemption by APEGGA
- (c) Within three months of the date of this decision, establish a committee that preferably includes engineers who received their qualifications in institutions and countries outside of Canada and who have successfully integrated themselves into the engineering profession, to specifically explore and investigate options to appropriately and individually assess the qualifications of Mr. Mihaly with a view to correcting any perceived academic deficiencies. Once these options have been evaluated, APEGGA shall apply these individual assessment options to Mr. Mihaly with a view to correcting any perceived academic deficiencies. These options may include exemptions from the Fundamentals of Engineering exam or the NPPE combined with the implementation of a different method of

assessment, such as some type of graduated or modular approach which would provide Mr. Mihaly assistance and guidance to progress gradually in the engineering profession. Other explorations could include a possible collaboration of APEGGA with Alberta's post secondary institutions in terms of offering programs or courses which could be offered to foreign trained engineers to correct any perceived academic deficiencies.

- (d) Use its best efforts to match Mr. Mihaly with a Mentor who has a similar background and who can provide him the necessary guidance to approach his challenges as an engineer and gradually integrate himself into the profession;
- (e) Direct Mr. Mihaly to resources within the profession which will allow him to network with other foreign engineering graduates facing similar challenges; and
- (f) Direct Mr. Mihaly to community resources which would assist him to increase his fluency and facility in the use of the English Language.

APPEGA (now APEGA) is appealing this decision to the Court of Queen's Bench. Under the *AHRA* (section 37) the Court may confirm, reverse or vary the order of the human rights tribunal and make any order that the tribunal can make under section 32.

Commentary

NPPE for Foreign Engineers – English / no English

Mr. Mihaly failed the National Professional Practice Exam (NPPE), an ethics and law exam for engineers, and not the Fundamental Engineering (FE) exam, which tests an engineer's competency in engineering. The NPPE does not show competency or incompetency when it comes to engineering. It does seem to show a *prima facie* lack of understanding of the ethics and law regarding the professional practice of engineering, but this needs to be analyzed further.

The questions that should be asked are two-fold: (1) whether or not Mr. Mihaly would have passed the exams in his native language; and (2) whether or not what is of importance is an engineer's ability to command the English language.

Whether or not Mr. Mihaly would have passed the NPPE if it was given in his native language is a question that cannot be answered unless he writes the exam in that language and is assessed on it, so the issue will not be addressed here.

Whether or not a good command of the English language exists is, however, of importance. One can easily surmise the difficulty in learning rules of law and concepts of ethics in a foreign language. For example, difficulties arise when having to deal with double negatives – in several languages, such as French, double negatives remain as negatives compared to the English double negatives that make a positive. Issues of interpretation are another issue that may not translate well for someone who speaks English as a second language.

If APEGA's focus is on its engineers having a strong command of English, then an English exam such as the Test of English as a Foreign Language (TOEFL) before taking any such further

exams (such as the NPPE) is an adequate step. On the other hand, if the question is whether engineers in Canada understand the rules of law and ethics surrounding engineering, then certain steps may need to be taken to ensure that foreign engineers are not discriminated against simply on the basis of English being their second language.

It is likely that APEGA's mandate would be to have all engineers do the NPPE in English as that would be a fair measure across the board. Translating an exam into multiple languages, especially on issues of law, is no easy feat as the nuances and interpretations are difficult to translate – this is easily seen when creating laws in both of Canada's official languages, which must have the same meaning.

This argument may seem far-fetched to some. However, both the College of Physicians & Surgeons of Alberta (CPSA) (see [International Medical Graduates](#)) and the College of Physicians & Surgeons of Ontario (CPSO) (see [International Medical Graduate Living in Ontario](#)), self-governing bodies for doctors that are comparable to APEGA, require proof of language proficiency in order to meet the registration requirement with the CPSA and CPSO to obtain a Certificate of Independent Practice (i.e. an applicant must show that s/he is authorized to practice medicine within the physician's scope of practice, is responsible and accountable for his or her medical practice, and does not require another physician to be responsible for, or oversee any aspect of, his or her practice of medicine.)

“Real Court” vs Tribunal

The Commission has been in the cross hairs of those who oppose it by calling it a “Kangaroo Court” (including the Calgary Herald, see [here](#)). The reason for the name-calling is supposedly due to issues of “procedural fairness”, or rather, a lack thereof. Procedural fairness was defined in *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817:

[28] The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.

The Commission allows both parties to make their case. The rules of evidence, although different from those of a “real court”, also apply in the same manner to both parties. Further, any decision that is made by the Tribunal may be appealed to the Court of Queen's Bench (see *AHRA* section 37).

To call the Commission a “Kangaroo Court” on the grounds that there are relaxed or no rules of evidence is a poor assessment of the Commission's mandate, which is to foster equality and to reduce discrimination (see [here](#)). The criticism that there are “no rules of evidence” does not mean that there are actually no rules of evidence. Simply put, the Commission has the discretion to accept all evidence, no matter how prejudicial, and to make decisions on how much weight to give each piece of evidence (*Alberta Human Rights Commission Procedural Manual*, Evidence – see [here](#)).

Other tribunals and boards, which make similar decisions outside the context of a formal court, have a similar approach to that of the Commission in that they have relaxed or no explicit rules

of evidence. Some examples are the Residential Tenancy Dispute Resolution Service, the Workers' Compensation Board – Alberta, and the Alberta Energy Regulator.

Are there issues of procedural fairness on a case-by-case basis? Yes, of course. An example would be if a complainant had two separate applications to the Commission and the investigator made a decision on one based on information from the other. However, in this scenario the aggrieved party could appeal any decision made by the Director of the Commission, the Chief of the Commission, and the Chair of a Tribunal hearing (see *AHRA* sections 26 and 37).

Fairness, Fairness, Fairness

The [*Oxford Dictionary of English*](#), Third Edition defines the word “fair” as “treating people equally without favouritism or discrimination”. With respect to APEGA, fairness would be defined as treating foreign engineers equally. The Human Rights Commission has done its duty in this case in saying that no one, including self-governing bodies, is above the law of human rights, and, in this case, they cannot discriminate based on place of origin.

The problems arise when determining if a foreign engineer is discriminated against on the basis of place of origin. As noted above, APEGA has a list of schools, the Foreign Degree List (FDL), which is created and maintained by Engineers Canada. The official standing regarding an applicant from a FDL is that being on the list:

... will help with the academic review portion of your application, as this is an indication that your specific degree has been previously evaluated by Engineers Canada. This does not exempt you from writing any exams. The assessment of technical exams is determined by the Board of Examiners and cannot be determined until your file has been fully reviewed (see “[Apply at APEGA](#)”)

The discretionary power of APEGA in determining whether a candidate is required to write exams seems to be exercised in an arbitrary, unfair manner, which was exposed in the *Mihaly* decision.

For example, it seems to be common practice that if a person has an engineering degree from a university in the United States, then that person may come to Canada, work as an Engineer In Training for four years and then be permitted to take the NPPE and be qualified as a licensed PEng. That same person, however, would not have been able to become a PEng in the US without taking the FE exams. So, why allow it here in Canada? It can be said that each state in the US administers the FE exam because the US is unable to standardize engineering programs across each state, let alone the country. So it is odd for APEGA to argue standardization when it will likely allow an engineering graduate from a US school to come to Canada, practice, and become a PEng without first having to take the FE exam. However, this is not to say that if a PEng from the US came to Canada and then was automatically given a PEng Canada license, this would be unfair, because that individual must have taken the FE exam (similar if not the same FE exam administered to foreign engineers in Canada) in the US to become a PEng. So, for Canadian engineers educated in the United States, the difference in treatment depends on whether they stay in the United States or come to Canada.

Currently, APEGA has discretionary powers as to how foreign engineers are treated. APEGA is able to decide which foreign engineers are qualified enough to be licensed in the province of Alberta without further testing and which ones are not. This is determined on a case-by-case

basis similar to the Law Society of Alberta determining the fate of foreign lawyers (via the National Committee on Accreditation) and the governing body for medicine determining the fate of foreign doctors.

Where the situation differs is in the type of exam that the two other professions require in order for any member to be permitted to practice in their respective field. Prospective lawyers are required at minimum to do the bar exam or an equivalent of the bar exam (in Alberta, CPLED – Canadian Centre for Professional Legal Education course) (see: Section 60, [Rules of Law Society of Alberta](#)) while doctors are required, pre-residency, to take the Medical Council of Canada Qualifying Examination (MCQE) (see [here](#)) and after their residency, the specialty examination given by the Royal College of Physicians and Surgeons of Canada (RCPSC) (see [here](#)). These exams are all mandatory for Canadian and foreign trained lawyers and doctors. The difference between the exams of these professions and the NPPE, the only exam a Canadian trained engineer (from an accredited school) has to complete, is that law and medicine are competency-based exams, testing the knowledge and skill of the practitioners in the field, while the NPPE is not.

The issue of fairness also presents itself when comparing APEGA to similar bodies such as those governing the practice of medicine or law. Comparing the practice of medicine to engineering is more similar than comparing law to engineering. In both medicine and engineering, competency-based exams are generally focused on a person's knowledge and ability in the sciences. Further, mistakes in both may have a life or death impact on the patient or the general public. This can be seen when doctors administer the wrong concentration of a certain drug and engineers use the wrong type of steel in the construction of a bridge. These are factual mistakes based on knowledge (or lack thereof) of science. This is simply to say that the most appropriate comparator self-governing body for engineers will be that of doctors, which is recognized in public opinion and the media (see e.g. [here](#) and [here](#)). Standards are important to all Canadians, especially in the field of engineering where people may be placed at harm.

It is helpful to think of medicine as a pyramid. At the top is the Medical Council of Canada, followed by the College of Physicians and Surgeons of Canada, and then the College of Physicians and Surgeons of Alberta (and the other provinces). A foreign doctor, more appropriately an International Medical Graduate (IMG), must go through the following process:

The Medical Council of Canada requires an IMG to confirm that their degree is from a recognized medical school, take an online self-assessment exam, submit their credentials with the Medical Council of Canada and take the Medical Council of Canada Evaluating Examination (MCCEE) which is an exam that tests competency skills in medicine. ([“Overview of licensure process for IMGs”](#))

The Royal College of Physicians and Surgeons of Canada (RCPSC) process is complicated, having multiple routes to becoming certified. The one factor that is the same across any of the various routes is the requirement that all applicants take the Examination given by the RCPSC (see [“Routes for Certification for Specialty Designation”](#)). Further, the RCPSC requires IMGs -- “someone who has completed his/her postgraduate training outside of Canada or the United States” – to complete an acceptable undergraduate medical degree from a list determined by the Foundation for Advancement of International Medical Education and Research (FAIMER) before being allowed to take the exam. The United States is special in that it has its own equivalent exam, the United States Medical Licensing Examination (USMLE) that all US resident graduates must take (see [“Diplômés hors du Canada et des États-Unis \(DHCEU\)”](#)).

There are, however, 29 international jurisdictions that the RCPSC has deemed to be of equivalence to Canada, and IMGs from those jurisdictions do not have to redo the residency requirements in Canada. This equivalency will permit an IMG to skip the residency requirement but not the competency examination. The RCPSC does allow an applicant to reduce the time for Canadian residency through an Individual Competency Assessment, but never waives the RCPSC Examination.

It is curious to see that in the requirements of the College of Physicians & Surgeons of Alberta (CPSA), the MCCEE is required; this, as mentioned before, is a competency-based exam. CPSA does not want any IMG practicing in the province without having taken at a minimum, the MCCEE, which is given to all undergraduate medical graduates in Canada before entering a residency program. The requirements of the CPSA are a medical degree from a school listed in the International Medical Education Directory, English Language Proficiency if medical education and patient care experience was not obtained in a country with English as the first and native language, passing marks on the MCCEE if outside of Canada or the US (recall that the US has the USMLE equivalent exam), an independent practice or a formal postgraduate training program within three years preceding application, and postgraduate training requirements for Family/General or Specialty Practice (see "[Alberta Medical Practice Permit](#)"). These requirements are identical for Ontario (see "[International Medical Graduate Living in Ontario](#)").

It is clear that when comparing the two assessment systems, there is no issue of fairness in the medical field, as all IMGs have to go through a very similar process and at the least must have passed a competency-based exam, the MCCEE; in Engineering, there is discretion in whether or not a foreign candidate has to take a competency exam. Further, in medicine, all practicing IMGs in Alberta must have passed a separate English qualifying examination, unlike the situation for engineers regarding English exams.

Compared to medical graduates from a Canadian institution, there is an argument that APEGA and Engineers Canada (the national body) have created a program for accredited schools that is rigorous enough so that engineering graduates in Canada do not need to take further competency exams. However, the lack of fairness here only deals with foreign engineers, because all foreign engineers in Alberta are not assessed equally to each other.

APEGA is never going to be able to assess all universities individually, because it would be almost impossible to do so. That said, the standard should be the same for all foreign trained engineers, with no special permission given to any engineer with respect to competency exams.

At its core, the decision by Tribunal Chair Moosa Jiwaji did not take any power away from APEGA. The decision did not tell APEGA to give Mr. Mihaly PEng status. The decision was one about fairness towards foreign engineers in that APEGA should re-evaluate their procedure and system in determining whether or not it is fair to all, or in other words, non-discriminatory on the basis of place of origin. Standards are important so long as those standards are applied in a fair and just manner to all foreign engineers.

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