



# APEGA DISCIPLINE COMMITTEE DECISION

**Date of Hearing:** October 26, 2023  
**Date of Decision:** November 24, 2023  
**APEGA Discipline Case Number:** 20-006-FH

**IN THE MATTER OF A HEARING OF THE DISCIPLINE  
COMMITTEE OF THE ASSOCIATION OF PROFESSIONAL  
ENGINEERS AND GEOSCIENTISTS OF ALBERTA**  
Pursuant to the *Engineering and Geoscience Professions Act*,  
being Chapter E-11 of the Revised Statutes of Alberta 2000

**Regarding the Conduct of**  
[REDACTED]

## INTRODUCTION

1. The hearing of the Discipline Committee took place virtually via video conferencing on October 26, 2023.
2. The hearing proceeded by an agreed statement of facts, and admission of unprofessional conduct. The parties submitted a joint submission on penalty.

## Appearances

3. The members of the Hearing Panel of the Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of Alberta ("APEGA") were:

Alex Bolton, P.Geo., Discipline Committee Panel Member Chair  
John McDonald, P.Eng., Discipline Committee Panel Member  
Christopher Goulard, P.Eng., Discipline Committee Panel Member  
Muriel Dunnigan, Discipline Committee Panel Member, Public Member

4. Others in attendance included:

Kimberly Precht, Legal Counsel for the Investigative Committee of APEGA (“the Investigative Committee”)

Frank Boehres, APEGA Investigator

Raphael Jacob, Legal Counsel to the Member  
[REDACTED]

Stacey McPeck, Independent Legal Counsel for the Hearing Panel

5. There were several observers from APEGA staff attending virtually and each of the staff identified themselves. Present were Jason Kalapurakal, P.Eng. Discipline Manager; and Jenny Seibel and Neetu Dodd, Discipline Coordinators.

### **OPENING OF THE HEARING**

6. Mr. Kalapurakal welcomed all in attendance to the hearing and provided some general housekeeping guidelines.

7. Each of the participants, including the Panel members, were asked to verify on the record that they were in a private space with no one else in attendance.

8. The Chair indicated that there was a court reporter in attendance who would produce the official record of the proceedings. The Chair stated that there would be no other recordings.

### Preliminary Matters

9. The parties advised there were no objections to either the jurisdiction or the constitution of the Panel.

10. Ms. Precht advised that the Investigative Committee sought to amend the Notice of Hearing to withdraw allegations 2 and 3.

11. Ms. Precht advised that when an amendment is presented this late, the Panel should consider whether there is prejudice to the investigated member. Ms. Precht noted that the amendment was with the Member’s consent and that there was no prejudice.

12. Ms. Precht advised that the Investigative Committee is satisfied that Allegation 1 is the most important and encompasses the root of the conduct, which was a mistaken belief that the Member was not required to comply with the legislation.

13. Mr. Jacob confirmed that the Member agreed with the amendments.

14. The Panel caucused to consider the proposed amendment and submissions from the parties. The Panel accepted the amendment to the Notice of Hearing, agreeing with the submissions from the parties that the first allegation was the most substantive.

#### The Charges in the Notices of Hearing

15. The amended Notice of Hearing included the following charge:

1. On or about August 18, 2018, [REDACTED] attended at a property (the "Property") owned by P.K. (the "Complainant") to conduct a property assessment (the "Inspection") and issued a report (the "Report") contrary to the requirements of the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3, the *Designation of Trades and Businesses Regulation*, Alta Reg. 128/1999, and the *Home Inspection Business Regulation*, Alta Reg. 75/2011, particulars of which include one or more of the following:

a. Completing a home inspection, without being registered pursuant to the *Designation of Trades and Business Regulation*; or

b. Providing an estimate of the cost of repair in his report, contrary to s. 26(6) of the *Home Inspection Business Regulation*.

IT IS FURTHER ALLEGED that the above-referenced conduct constitutes unprofessional conduct as set out in sections 44(1) of the Engineering and Geoscience Professions Act, and contravenes one or any of Rules of Conduct 3, 4, and 5 of APEGA's Code of Ethics.

#### Submissions by the Investigative Committee

16. Ms. Precht advised the Panel that the hearing would proceed by way of an Agreed Statement of Facts and Admission of Unprofessional Conduct, which was entered as Exhibit 1.

17. Ms. Precht reviewed the Agreed Statement of Facts and Admission of Unprofessional Conduct as it related to the complaint, the investigation, the allegation and the specific facts related to the allegation.

#### *Background*

18. Ms. Precht explained that the Member is a professional engineer based in Calgary, Alberta. He became a registered member of APEGA in 1999. At all relevant times, he was a registered member in good standing.

19. The Member is the responsible member for Company A, an APEGA permit holder. Company A offers several services, including, most notably for the allegation, building inspections.

### *The Complaint and Investigation*

20. On September 10, 2018, APEGA received a complaint alleging the Member had engaged in improper conduct by inspecting the Complainant's home on behalf of a prospective buyer.

21. In August 2018, the Complainant was in the process of selling his home in Calgary, Alberta (the "Property"). A prospective buyer (the "Buyer") made an offer, which was conditional on a home inspection.

22. The Buyer was the Member's former common-law partner. The Buyer wanted to move into the Property with their daughters, and wanted to know if she would be able to renovate the basement to eventually rent it out. The Buyer asked the Member to inspect the Property, and the Member agreed to do so.

### *Application of Consumer Protection Act, Designation of Trades and Business Regulation, and Home Inspection Business Regulation*

23. Part 10 of the *Consumer Protection Act* prohibits any person from engaging in a "designated business" unless licensed to do so under the *Consumer Protection Act*.

24. The *Designation of Trades and Businesses Regulation* designates the home inspection business and home inspection occupation as being a designated business subject to Part 10 of the *Consumer Protection Act*.

25. The *Home Inspection Business Regulation* sets out what a person must do to obtain a home inspection business license, and the standards that apply to anyone conducting home inspections.

26. Neither the Member nor Company A possessed a license authorizing them to engage in the home inspection business.

27. At the time, the Member understood section 103 of the *Consumer Protection Act* to exempt professional engineers from the requirement to obtain a home inspection business license to conduct home inspections. The Member now acknowledges his understanding was incorrect.

28. The *Designation of Trades and Businesses Regulation* and the *Home Inspection Business Regulation* define a home inspection as "an opinion as to the condition of a dwelling based primarily on a non-invasive examination of readily accessible features and components of the dwelling."

29. The *Designation of Trades and Businesses Regulation* elaborates that a home inspection excludes "the inspection of a dwelling to be used for commercial or business purposes, including its use as a rental property" from the meaning of home inspection, and "the inspection of a dwelling for the purposes of constructing, altering, maintaining, repairing or

improving the dwelling”. At the time, the Member understood that the Buyer’s intention to eventually renovate and rent out part of the Property was enough to bring it under these exclusions. The Member now acknowledges his understanding was incorrect.

30. The Member inspected the Property on August 18, 2018. He prepared a draft report (the “Report”). The Report was never finalized because the Buyer decided not to proceed with the sale after the Member gave his verbal concerns about the Property. The parties agree that the Report was very similar to what would be expected in a home inspection under the *Home Inspection Business Regulation*.

#### *Cost estimates*

31. The *Home Inspection Business Regulation* prohibits a home inspector or home inspection business from providing a consumer with an estimate of the cost of any repair or improvement to a dwelling because of a home inspection.”

32. In the Report, the Member provided cost estimates to repair observed defects in the property.

#### *Future Compliance with Part 10 of the Consumer Protection Act and its regulations*

33. The Member confirms he will not offer or conduct any more home inspections, unless and until he is properly licensed under the *Home Inspection Business Regulation*.

34. The Member acknowledges that as a professional engineer, if he becomes licensed to conduct home inspections, he must comply with all the requirements for home inspections under the *Home Inspection Business Regulation*.

#### *Admissions of Unprofessional Conduct*

35. The Member admits the allegation set out in the Notice of Hearing is factually proven.

36. The Member acknowledges that his inspection of the Property on August 18, 2018 was a home inspection within the meaning of the *Designation of Trades and Businesses Regulation*.

37. The Member acknowledges he incorrectly concluded that his status as a professional engineer exempted him from needing to obtain a home inspection business license under the *Consumer Protection Act* and its regulations. The Member acknowledges that professional engineers have an ethical responsibility to comply with applicable statutes and regulations in their professional practice.

38. The Member admits his conduct, as described in this Agreed Statement of Facts, constitutes unprofessional conduct within the meaning of section 44 of the *Engineering and Geoscience Professions Act* (“EGPA”). Specifically, the Member acknowledges:

- a. His conduct is detrimental to the best interests of the public, because it is the best interests of the public that professionals adhere to legislation aimed at protecting consumers from unfair business practices; and
- b. His conduct contravenes Rule of Conduct 4 of the Code of Ethics.

#### *Submissions of the Member*

39. The Member had no additional comments at this point in the proceedings.

#### Decision of the Panel regarding Unprofessional Conduct

40. After an adjournment to consider the evidence and the submissions, the hearing reconvened and the Chair informed the parties that the Panel accepted the admission of unprofessional conduct and agreed that the allegations were factually proven and constituted unprofessional conduct.

41. The Panel considered that the Report was performed by Company A and the Member is specifically listed as "P.Eng." in the Report. This could reasonably lead a member of the public to conclude that the Report was the work of an engineer.

42. Engineers are required to abide by all legislation and performing home inspections without a license is a breach of legislation.

43. Such a breach constitutes unprofessional conduct as set out in section 44 of the EGPA and Rules of Conduct 4 of the Code of Ethics.

#### **SUBMISSIONS ON PENALTY**

##### **Joint Submission on Penalty**

44. Ms. Precht informed the Panel that the authority to sanction was set out in sections 63 and 64 of the EGPA.

45. The primary purposes of penalty are to ensure the public is not further harmed, to maintain the public's confidence in APEGA's ability to regulate the professions, and to deter the member and the profession generally from engaging in similar conduct.

46. Ms. Precht advised the Panel that the parties were submitting a Joint Submission on Penalty, which was marked as Exhibit 2. In Exhibit 2, the following joint recommendations for orders were set out:

- a. The Member shall be reprimanded for his conduct, and the Discipline Committee's written decision (the "Decision") shall serve as the reprimand;

- b. APEGA may publish a written summary of the Decision in a medium deemed appropriate by the Director, Enforcement, but such publication shall not name the Member or Company A;
- c. The Member shall pay hearing costs in the amount of \$1,000; and
- d. The costs ordered in paragraph (c) shall be payable within 3 months of the Decision. If the Member fails to pay the costs within this time, the Member's registration shall be suspended until the costs are paid in full.

47. Ms. Precht advised that the parties worked together and for parties to do so and come to an agreement, the parties need to have some assurance that the proposal will be accepted.

48. Ms. Precht reviewed the public interest test from *R. v. Anthony-Cook*, 2016 SCC 43. She submitted that it is a high test and suggested that the Panel should not depart from a joint submission unless the proposed penalty would bring the administration of justice into disrepute or be otherwise contrary to the public interest.

49. Ms. Precht emphasized that if the Panel has concerns with the proposed penalty, they must advise the parties, so that they can make submissions to address those concerns and consider whether to withdraw the admission and joint submission and proceed to a contested hearing.

50. Ms. Precht reviewed the factors when imposing sanction to demonstrate how the proposed penalty will protect the public and will appropriately convey to members, the public and APEGA that this conduct is taken seriously and is unacceptable. In doing so, she referred the Panel to the case of *Jaswal v Medical Board (Nfid.)*, 1996 CanLII 11630 (NL SC) ("Jaswal"). Ms. Precht noted that not all the factors will be relevant in every case and that some of the factors may be given more weight depending on the specific circumstances.

51. Ms. Precht submitted the following:

- a. Nature and gravity of the proven allegations – The issue is one of error and misunderstanding rather than calculated intention to not comply with legislation. The Investigative Committee suggested that the conduct falls on the lower end of the spectrum.
- b. Presence or absence of prior complaints or convictions - The Member does not have any prior findings of unprofessional conduct against him. As there was no evidence of prior misconduct, the Investigative Committee suggested that there was no such aggravating factor to be considered.
- c. Number of times the offence occurred – The conduct occurred a single time and should not be considered an aggravating factor.

- d. Member's role in acknowledging what occurred – The Member admitted to his conduct and allowed the hearing to proceed without witnesses. The Investigative Committee suggested that this is a significant factor, as it avoided the need for a contested hearing, which would have required the Member's former common law partner to testify. By proceeding by agreement, the parties were able to avoid placing the former common law partner in an awkward position of having to appear.
- e. Need to promote deterrence – As far as specific deterrence, the Member has confirmed that his belief was incorrect and that he will comply with the legislation going forward.

As far as general deterrence, the reported decision will serve to educate the profession and ensure that all members of the professions are aware that they are not exempt from this legislation.

52. Regarding publication, Ms. Precht noted that the Panel has the discretionary authority to order publication pursuant to the EGPA. While in most cases decisions resulting from hearings that are open to the public are published with names, there are situations where publications without names are appropriate.

53. Ms. Precht suggested that where publication would meet no goal of discipline that would be proportionate to the damage that named publication would cause, it can be appropriate to publish without names.

54. The parties provided examples of three matters where publication without names was found to be appropriate:

- a. 16-006-FH – a matter that went by joint submission which included publication without names due to the disproportionate damage that named publication would cause.
- b. 16-001-FH – a matter that went by joint submission which included publication without names. The Panel considered the deference owed to joint submissions and concluded that named publication was not needed due to the member's very long career, cooperation, acknowledgment, and personal circumstances.
- c. 22-012-FH – a matter that went by partial joint submission. Publication was the contested portion of the hearing. The Panel ordered publication on an unnamed basis as the publication would jeopardize the careers of employees by no fault of their own and would cause further harm to an already challenging situation.

55. Ms. Precht noted that s. 135.93 of the *Health Professions Act* allows a health regulator to refuse to publish information on the website, where publication is likely to cause harm to one or more persons. However, the health regulator is not permitted to consider the reputation of the regulated member or any related practice.



56. Ms. Precht noted that there was a sensitive underlying family situation that could result in harm. Since the conduct is on the lower spectrum, the goals of sentencing can be served without publication.

#### Submissions on Penalty by the Member

57. Mr. Jacob agreed with the submissions from Ms. Precht and added the following as it relates to the *Jaswal* factors:

- a. Nature and gravity of the proven conduct – Regarding the nature of the conduct, this is not a situation where the Member’s belief was blatantly incorrect on a plain reading. Rather, it was a reasonable interpretation that turned out to be mistaken.

Regarding the gravity of the conduct, the sale of the home did not ultimately go through and there was minimal impact on anyone.

58. Regarding publication, Mr. Jacob noted that the issues before the Panel are inextricably linked with the Member’s family and his children. The same reasoning that was applied in 22-012-FH about jeopardizing the careers of employees by no fault of their own should be applied to the Member’s family.

#### Questions from the Panel

59. The Panel noted that the joint submission did not include a fine, only costs. The Panel asked the parties to provide their rationale for the lack of fine.

60. Ms. Precht noted that often in sentencing it is said “it is not a science, it is an art.” When working together to determine appropriate sanctions it is not a rigid process where certain sanctions must be ordered in certain circumstances.

61. It is important to allow the parties to consider the issues and their respective positions and negotiate what they feel is reasonable.

62. While a reprimand is on the lighter end of the spectrum of sanction, that does not mean that a reprimand is an insignificant sanction. The hearing in and of itself requires the Member to appear before a panel consisting of a member of the public and his professional peers and have them determine whether his conduct was unprofessional. That is not an insignificant consequence.

63. The parties acknowledge that were the circumstances different than they are, the parties may have proceeded with a fine; however, the parties’ view is that the proposed sanction is appropriate in the circumstances.

64. The Panel noted that the parties referred to “sensitive family matters”; however, there was limited, if any, evidence of what that means. The Panel asked the parties to help connect what harm there would be to the family.

65. After a brief adjournment, the parties returned. Ms. Precht advised that the Investigative Committee looked at the whole picture and the goal of being able to reach agreement and submit a joint submission. The Investigative Committee acknowledges that there are sensitive underlying circumstances that would be exacerbated in a contested hearing. The Investigative Committee sought to balance that harm with the nature of the conduct.

66. Mr. Jacob noted that the parties provided three prior decisions where publication with names was not warranted. He noted that two of the three decisions did not include harm to other parties.

67. Further, Mr. Jacob reminded the Panel that the agreement between the parties should be afforded significant weight and that the Panel should only depart from the joint submission if clearly unreasonable.

#### The Decision of the Panel on Orders of Penalty

68. The Panel adjourned to consider the submissions of the parties and returned to advise that they accepted the Joint Submission on Penalty.

69. The Panel recognizes that, as stated by the Supreme Court of Canada in *R v Anthony-Cook*, it has a duty to give serious consideration to a joint submission on penalty by the parties and should exercise deference. After considering the proposed orders, the Panel finds that the Joint Submission on Penalty is appropriate and sufficient to ensure protection of the public.

70. The Panel carefully considered the evidence submitted, the Agreed Statement of Facts and Admission of Unprofessional Conduct, and the submissions with respect to penalty.

71. The Panel also considered the factors in *Jaswal* and found the following factors weighed in favour of accepting the joint submission:

- a. The Panel agreed with the parties that the nature and gravity of the conduct was on the lower end of the spectrum. While there was unprofessional conduct, the Panel feels this was a series of errors rather than malicious intention to deceive. The proposed penalty was proportionate to the nature and gravity of the conduct.
- b. The Panel found that the harm to individuals affected was minimal. While the complainant lost a sale, there was no guarantee the sale would have gone through if inspected by a licensed home inspector.
- c. The Panel noted that it was a single occurrence of unprofessional conduct that was then acknowledged by the Member. The Member had a long career prior with no previous history of unprofessional conduct. The single occurrence in a long unblemished career and acknowledgment by the Member were significant mitigating factors.

72. The Panel found that a reprimand is an appropriate order. In some circumstances, a reprimand may be the mildest form of sanction available to the Panel. In others, a reprimand can reflect recognition and acceptance of responsibility by the party who receives it. This is such a case.

73. The reprimand will act as a specific deterrent to the member. Additionally, the effect of going through the discipline process and a hearing before his peers has a deterrent effect. The reprimand will also confirm to the general membership that this conduct is unprofessional. The profession and the public will know that such conduct is not tolerated.

74. The Panel finds it appropriate for the Member to pay a portion of the investigation and hearing costs. The Panel acknowledges that the Member's cooperation greatly reduced the cost of the hearing and that the Member had to bear his own costs in participating in the process, such as retaining legal. The Panel considered these factors in accepting the proposed costs.

75. The Panel finds the enforcement mechanism of potential suspension if costs are unpaid to be reasonable, as it reflects the powers conferred to the Panel in section 64(2) of the EGPA .

76. Regarding publication, the Panel notes that the presumption is for all decisions to be published with names. There is significant public interest in having hearings that are open to the public and where the public can be informed about the actions of members, in particular when they are found to have committed unprofessional conduct. This public interest should not be easily set aside.

77. The Panel notes that the 22-012-FH decision indicated that there were only three previous decisions on APEGA's website that went to a hearing where publication was ordered on an unnamed basis. Most of the cases are five or more years old. While that is some precedence for unnamed publication, it is certainly neither the default nor the expectation.

78. The Panel notes that there was no evidence about the circumstances of the family to assess what harm, if any, they would suffer should the decision be published on a named basis. Merely having a family who may be affected is insufficient to warrant publication without names, as most APEGA members have families. While testifying at a hearing of one's former spouse may be awkward, that does not, without further evidence, rise to the level of "harm". The Panel was not convinced that they had the information before them that would allow them to find that publication with names would cause disproportionate harm to other people or that such harm outweighs the goals of sentencing.

79. However, when the Panel reviewed the proposed publication without names in the context of the joint submission, they did not feel that their concerns relating to publication rose to the level of rejecting the joint submission on penalty. Following the guidance from the court in *R. v. Anthony-Cook*, the Panel was mindful that they are not to tinker with the joint submission, unless there were concerns that the joint submission would bring the administration of justice into disrepute. The Panel accepts that the parties are in the best position to evaluate the strengths and weaknesses of their case and that concessions on both sides were likely made to

reach agreement. Tinkering by the Panel could impact future joint submissions, if done without due reason. The Panel did not feel that publishing on an unnamed basis would bring the administration of justice into disrepute in these circumstances. Therefore, the Panel accepted the joint submission, including publication on an unnamed basis.

Conclusion

80. For the reasons set out above, the Panel makes the following orders pursuant to sections 63 and 64 of the EGPA:

- a. the Member shall be reprimanded for his conduct, and the Discipline Committee’s written decision (the “Decision”) shall serve as a reprimand;
- b. APEGA may publish a written summary of the Decision in a medium deemed appropriate by the Director, Enforcement, but such publication shall not name the Member or Company A;
- c. the Member shall pay hearing costs in the amount of \$1,000; and
- d. The costs ordered in paragraph (c) shall be payable within 3 months of the Decision. If the Member fails to pay the costs within this time, the Member’s registration shall be suspended until the costs are paid in full.

Dated this 24<sup>th</sup> day of November, 2023

On behalf of the Panel of the APEGA Discipline Committee.

**Alex Bolton**

Signed with ConsignO Cloud (2023/11/24)  
Verify with verifio.com or Adobe Reader.



Alex Bolton, P.Ge., Discipline Committee  
Panel Chair

**Chris Goulard**

Signed with ConsignO Cloud (2023/11/25)  
Verify with verifio.com or Adobe Reader.



Christopher Goulard, P.Eng., Discipline  
Committee Panel Member

**John McDonald**

Signed with ConsignO Cloud (2023/11/28)  
Verify with verifio.com or Adobe Reader.



John McDonald, P.Eng., Discipline  
Committee Panel Member

**Muriel Dunnigan**

Signed with ConsignO Cloud (2023/11/24)  
Verify with verifio.com or Adobe Reader.



Muriel Dunnigan, Discipline Committee  
Panel Member, Public Member