



# APEGA Recommended Discipline Decision

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**Date of Decision:** November 10, 2021  
**Date of Hearings:** February 10-11, 2021  
**Discipline Case Number:** 19-016-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 Ameer Bakheet, P.Eng.

## Introduction

Under the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11, (the “EGP Act”) a hearing into this matter was held by a Hearing Panel of the Discipline Committee (the “DC” on February 10-11, 2021, into the conduct of Ameer Bakheet, P. Eng. The hearing occurred virtually via video conferencing to comply with the Association of Professional Engineers and Geoscientists of Alberta’s (“APEGA”) Standing Order (Statutory Meetings in the APEGA Offices during COVID-19)

1. Each of the participants, including the Hearing Panel members, were asked to verify on the record that they were in a private space with no one else in the room. The Chair indicated that there was also a court reporter in attendance who would produce the official record of the proceedings.
2. The parties then advised the Hearing Panel that there were no objections to the constitution of the Hearing Panel and no objections of a jurisdictional nature.



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### **Opening Statement by Investigative Committee (“IC”) Counsel**

3. The concerns about Mr. Bakheet’s conduct arose during an investigation into another APEGA member, G.G. and their company, Company A. As part of that investigation, G.G. entered a voluntary undertaking with APEGA that prohibited them from practicing structural engineering. G.G. was permitted to hire an interim responsible member, as well as a structural engineer to do the work that they were not allowed to do. It was in this context that Mr. Bakheet was hired by Company A to review and stamp structural drawings for residential projects.
4. As the investigation into G.G.’s conduct progressed, the Chair of the Investigative Panel, A.Y. obtained a tall wall design stamped by Mr. Bakheet on behalf of Company A. The Investigative Panel Chair had a number of concerns with the design. The Investigative Panel Chair presented a Staff Progress Report to the IC in March 2018 recommending that an investigation be opened into the conduct of Mr. Bakheet. IC Counsel indicated that, effectively, the Staff Progress Report was the written complaint in this matter.
5. As a consequence of the Staff Progress Report, the IC commenced an investigation into Mr. Bakheet’s conduct, and they appointed A.Y. as the sole member of the Investigation Panel. During the investigation, Mr. Bakheet provided written responses to specific questions and participated in two interviews. At one point, the investigation was expanded under section 49(2) of the EGP Act” to address additional concerns of the Investigation Panel. However, these additional concerns were not referred for a formal hearing.
6. As a result of the investigation, the IC proceeded with Charges 1 – 4 in the Notice of Hearing. IC Counsel then discussed the witnesses that they intended to call, the concepts of unprofessional conduct and unskilled practice described in the Act, and the Rules of Conduct 1 – 5 of APEGA’s *Code of Ethics*.
7. A Binder of the IC’s documents, including an Index of Documents and 67 Tabs of documents was entered as Exhibit 1.

### **Opening Statement by Mr. Bakheet<sup>1</sup>**

8. Mr. Bakheet reserved his opening statement until the IC had presented its evidence.

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<sup>1</sup>Mr. Bakheet confirmed that he was representing himself at the hearing and that he was aware he was entitled to representation by legal counsel. He indicated he was prepared to proceed without a lawyer.



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### The Charges

9. IC Counsel advised the Hearing Panel that the IC was seeking to withdraw particulars b. and c. under Charge 1, and particulars c. and d. under Charge 2.<sup>2</sup>
10. The amended charges were as follows:
  1. On or between January 1 and June 5, 2018, Mr. Bakheet engaged in unskilled practice by authenticating professional documents providing generic repair detail advice and options for load bearing walls that had not been constructed or damaged, particulars of such professional documents include the following:
    - a. "Interior Damaged Load Bearing Walls Repair Detail" letter for [Address A]  
Authentication: February 6, 2018
  2. On or between January 1 and June 5, 2018, Mr. Bakheet engaged in unskilled practice by authenticating professional documents without appropriate understanding of the contents of the documents, particulars of such professional documents include the following:

[Particulars a. – b. and e. – s. have not been reproduced]
  3. On or between January 1 and June 5, 2018, Mr. Bakheet engaged in unskilled practice in the design of tall walls exceeding 11'6" in height, including by doing one or more of failing to include the correct height of the walls, failing to include any or appropriate connection details to columns, headers, and sill plates, and failing to include any or appropriate step down foundation details, particulars of such unskilled design include the following:

[Particulars a. – d. have not been reproduced]
  4. On or between January 1 and June 5, 2018, Mr. Bakheet engaged in unskilled practice in the design of tall walls exceeding 11'6" in height by incorrectly stating that stairs provide lateral support, particulars of such unskilled designs including the following:

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<sup>2</sup>Particular b. under Charge 1 and particulars c. and d. under Charge 2 alleged that Mr. Bakheet authenticated documents for specific projects on May 7, 2018, without an appropriate understanding of the contents of those documents. IC Counsel submitted that in preparation for the hearing, it became apparent that the IC did not possess the documents authenticated by Mr. Bakheet for the projects described in the particulars. The IC also sought to withdraw particular c. under Charge 1 because, in preparation for the hearing, it became clear that the evidence was not sufficient to prove particular c.



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[Particulars a. – k. have not been reproduced]

IT IS FURTHER ALLEGED that the above-referenced conduct constitutes unskilled practice and unprofessional conduct as set out in section 44(1)(a) through (e), inclusive, and of the Act, or any of them, and contravenes one or more of Rules of Conduct 1 through 5, inclusive, of APEGA's *Code of Ethics*.

### Witnesses called at the Hearing

11. The Hearing Panel heard evidence from the following witnesses at the hearing:
  - a. P.V., APEGA Investigator
  - b. K.G., Structural Engineer at Company B
  - c. Ameer Bakheet, P. Eng.

### Exhibits entered during the hearing

12. The following Exhibits were entered at the hearing:
  - Exhibit 1 – IC's index of documents containing 67 Tabs of documents
  - Exhibit 2 – 18 pages of design notes handwritten by Mr. Bakheet
  - Exhibit 3 – Email from Mr. Bakheet to P.V. dated August 23, 2019
  - Exhibit 4 – Letter from Mr. Bakheet to Company B responding to K.G.'s report, dated February 8, 2021
  - Exhibit 5 – Letter regarding exterior wall cladding systems authenticated by Mr. Bakheet on February 6, 2018, with handwritten notes
  - Exhibit 6 – Page 154 "Prescriptive Design" from a wood frame construction manual, with footnotes for Table 3.2
  - Exhibit 7 – A page from a wood frame construction manual, with footnotes for Table 3.20B
  - Exhibit 8 – Sections 2.4.1.4.2 "Studs Supporting Header Beams" and 2.4.1.4.3 "Window Sill Plates" from a wood frame construction manual
  - Exhibit 9 – Table 3.20A1 titled "Maximum Exterior Loadbearing and Non-Loadbearing Stud Lengths for Common Lumber Species Resisting Interior Zone Wind Loads – Stud Deflection Limit = H/180" with highlighting<sup>3</sup>

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<sup>3</sup>Exhibits 2 – 9 were marked but not for the truth of their contents.



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## Decision on the Charges of Unprofessional Conduct and Unskilled Practice

### Introduction and Standard of Proof

13. The Hearing Panel heard evidence from the witnesses, including Mr. Bakheet, over two days. It reviewed all the documents contained in Exhibits 1 – 9 which were entered at the hearing. The Hearing Panel also considered the written correspondence from IC Counsel on behalf of the IC on February 18, March 12, April 12 and April 14, 2021, and the written correspondence made by Mr. Bakheet on April 5 and April 13, 2021.
14. In coming to its decision in this matter, the Hearing Panel recognized that the onus is on the IC to prove the factual particulars of the Charges contained in the Notice of Hearing to satisfy the “balance of probabilities” standard of proof. This standard of proof requires that any particular be proven as more probable than not. If some or all of the particulars are proven, the IC must also establish on the same balance of probabilities that the proven particulars constitute unprofessional conduct or unskilled practice.

**Charge 1 - On or between January 1 and June 5, 2018, Mr. Bakheet engaged in unskilled practice by authenticating professional documents providing generic repair detail advice and options for load bearing walls that had not been constructed or damaged.**

### Decision as to Whether the Conduct is Factually Proven

15. First, the Hearing Panel considered whether the factual elements of Charge 1 were proven on a balance of probabilities. The only particular to be considered under Charge 1 related to the “Interior Damaged Load Bearing Walls Repair Detail” letter for [Address A], which Mr. Bakheet authenticated on February 6, 2018 (the “Repair Detail letter”).
16. The Repair Detail letter was before the Hearing Panel at Tab 27 of Exhibit 1<sup>4</sup>. The letter at Tab 27-002 states:

Based on review of several damaged load bearing mechanical walls, where the bottom and/or top plates have been cut to accommodate mechanical services, and our review of the information provided by the contractor/builder, we recommend any of the following repair options to be suitable to restore the structural integrity of the walls;

The Repair Detail letter continues with recommendations on three repair options.

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<sup>4</sup> The address on the Repair Detail letter is incorrectly identified, as one digit in the address is incorrect. Since the letter was part of one document package prepared by Company A, and when compared with the other documents, it is clear that the Repair Detail letter applies to Address A.



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17. Neither party contested the fact that the walls referred to in the Repair Detail letter had not in fact been built, damaged, or reviewed at the time that Mr. Bakheet authenticated the Repair Detail letter. The letter's use of the past tense suggested that the walls had in fact been built, damaged, and reviewed. On cross-examination, Mr. Bakheet agreed that this language could be misleading.
18. Mr. Bakheet testified that at Company A, there was a practice of "pre-stamping" generic letters providing repair advice (such as the Repair Detail letter). The "reviews" referred to in the letter would be completed after the document was authenticated, if damage did occur.
19. Initially, when asked by G.G. to authenticate the Repair Detail letter, Mr. Bakheet objected and said that they should wait until the damage occurred. However, he had a meeting with the interim responsible member (D.K.) and G.G., and D.K. explained that "pre-stamping" the generic letters providing repair advice ensured that damage caused during construction could be fixed quickly. At the hearing, Mr. Bakheet suggested that there are safety concerns for construction workers in situations where walls are damaged and in need of repair.
20. Mr. Bakheet explained that government permits are needed to repair a damaged wall. It was unclear on the evidence whether the Repair Detail letter was in fact submitted in support of an application for a permit.
21. Having considered Mr. Bakheet's testimony and the Repair Detail letter, the Hearing Panel found that Mr. Bakheet authenticated the Repair Detail letter, which provided generic repair detail advice for load bearing walls that had not yet been constructed or damaged. While Mr. Bakheet provided an explanation as to the purpose of the letter (so repairs can be done quickly if they are needed in the future), the letter was misleading and unclear. The advice in the letter did not clearly communicate that the listed repair options would be available *if* damage did occur. The letter could have been written more clearly.
22. As a result, the Hearing Panel found that Charge 1 was factually proven.

### Decision as to Whether Unprofessional Conduct or Unskilled Practice is Proven

23. The IC submitted that the conduct in Charge 1 falls short of the expectations that apply when a professional engineer applies their stamp to a document and the conduct amounts to unskilled practice and unprofessional conduct.



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24. APEGA's Guideline for Ethical Practice, v2.2 (February 2013) states at section 4.2.4 that

Professionals shall only stamp and sign reports, plans or documents that they have prepared or that have been prepared under their direct supervision and control. In the case of work prepared by others, they shall only stamp and sign after having thoroughly reviewed the work and accepted responsibility for it [ . . . ]

Professional stamps and seals shall be affixed, signed and dated only after the responsible member is satisfied that the document or component for which he or she is professionally responsible is complete and correct.

25. The IC argued that Mr. Bakheet had a professional responsibility to thoroughly review the letter and satisfy himself it was complete and correct, before accepting responsibility for the letter and applying his stamp. It was not sufficient for Mr. Bakheet to approve the intent of the letter, without concerning himself with the written details. By authenticating a document that was misleading, whatever the reason, Mr. Bakheet displayed a lack of judgment in the practice of the profession.

26. Further, the IC submitted that Mr. Bakheet's conduct breached Rules of Conduct 3, 4, and 5 of the *Code of Ethics*. These Rules state the following:

*3 Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.*

*4 Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices.*

*5 Professional engineers and geoscientists shall uphold and enhance the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.*

27. The IC's view was that, in authenticating the Repair Detail letter, Mr. Bakheet failed to conduct himself with honesty and objectivity, contrary to Rule of Conduct 3. He also failed to comply with professional standards that apply when a professional engineer authenticates a document, contrary to Rule of Conduct 4.

28. The IC acknowledged that while Mr. Bakheet's authentication of the Repair Detail letter may have been a relatively minor lapse in judgment, when professionals cut corners for expediency or because they are worried about pushing back against how someone more senior has approached matters, it undermines the reputation of the profession and thus the ability of the profession to serve the public interest, contrary to Rule of Conduct 5.



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29. In his written submissions, Mr. Bakheet argued that pre-stamping the Repair Detail letter was justified on the basis of public safety, and that in doing so, he acted in accordance with Rule of Conduct 1, as he was holding paramount the safety, health and welfare of the public.
30. Mr. Bakheet also argued that he had relied on D.K.'s opinion and explanation as to why the Repair Detail letter should be pre-stamped. He noted that APEGA did not inform him about the investigation into G.G.'s conduct, or the restrictions on G.G.'s practice. Mr. Bakheet suggested that if he had known about APEGA's investigation into G.G., he could have decided whether to continue working for Company A or to resign. Mr. Bakheet argued that it was improper for APEGA to allow him to continue working for G.G. and authenticate drawings for Company A without knowing about the investigation against G.G.
31. Mr. Bakheet's arguments indicated to the Hearing Panel that he relied on the opinions of others in deciding whether the Repair Detail letter should be authenticated. However, it was Mr. Bakheet who stamped the letter, not D.K. or G.G.. He had a responsibility to independently review the letter and accept it as correct and complete. Mr. Bakheet's motivations in authenticating the Repair Detail letter was clear to the Hearing Panel; however, they do not change the fact that Mr. Bakheet was solely responsible, as he was the professional engineer who affixed his stamp.
32. The Hearing Panel considered the parties' arguments and found that Mr. Bakheet's conduct in Charge 1 did not amount to unprofessional conduct or unskilled practice. Mr. Bakheet's authentication of the Repair Detail letter did not contravene the Rules of Conduct 3, 4, or 5. Though he may have authenticated a letter that was misleading and unclear, he did not act dishonestly, or without integrity, fairness or objectivity contrary to Rule of Conduct 3.
33. With respect to Rule of Conduct 4, there was nothing before the Hearing Panel to suggest that Mr. Bakheet had breached a statute, bylaw, or regulation. Further, the Hearing Panel is not satisfied that Mr. Bakheet's conduct contravened Rule of Conduct 5.
34. The Hearing Panel noted that there is nothing wrong with the technical elements of the Repair Letter. The letter was misleading and unclear because it was written in the past tense. The Hearing Panel also observed that there was no evidence before it as to the instructions of the builder about the preparation of the Repair Detail letter, or the builder's intended use of the letter. The Hearing Panel was not satisfied that Mr. Bakheet's authentication of the Repair Detail letter impaired the ability of the profession to serve the public interest or amounted to a failure to uphold the honour, dignity and reputation of the profession.
35. The Hearing Panel also noted that while professional members are held to a high standard, they are not held to a standard of perfection. Not every mistake in a letter of this nature undermines the profession's reputation. Such an expectation would set an impossibly high bar for APEGA's professional members.





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36. The Hearing Panel went on to consider whether Mr. Bakheet's authentication of the Repair Detail letter displayed a lack of judgment in the practice of the profession. As indicated above, there is nothing wrong with the technical elements of the Repair Detail letter. The issue under this Charge is that Mr. Bakheet stamped the document saying that the damage had already occurred. The Hearing Panel found that the conduct, in these circumstances, did not amount to a lack of judgment in the practice of the profession.

**Charge 2 - On or between January 1 and June 5, 2018, Mr. Bakheet engaged in unskilled practice by authenticating professional documents without appropriate understanding of the contents of the documents.**

Decision as to Whether the Conduct is Factually Proven

37. The Hearing Panel considered whether the factual elements of Charge 2 were proven. The particulars of Charge 2 pertain to letters regarding exterior wall cladding systems at 17 different addresses. The letters were authenticated by Mr. Bakheet between February 6, 2018 and June 5, 2018 (the "Exterior Wall Cladding letters"). Charge 2 does not engage the question of whether the Exterior Wall Cladding letters were technically sound, but whether Mr. Bakheet applied his stamp to the letter without an appropriate understanding of the contents of the documents.
38. On June 22, 2018, Mr. Bakheet participated in an interview with P.V. and A.Y. The interviewers referred Mr. Bakheet to the final sentence in an Exterior Wall Cladding letter for [Address A], dated and stamped on February 6, 2018 (Exhibit 1, Tab 27). It states:
- All installation to be done according to the enclosed specification for the project except the paper is to be lapped 4" (minimum) and the drying time between scratch coat and stone coat to be 48 hours (minimum).
- P.V. asked Mr. Bakheet if he knew what a scratch coat was. He did not.
39. At the hearing, Mr. Bakheet indicated that he was comfortable stamping the letters because they were generic letters G.G. provided to him, and that D.K. and G.G. were comfortable with the letters. He explained that he did not have any technical input into the letter, and that the letter did not require his knowledge of structural engineering. Mr. Bakheet acknowledged that he was not a specialist in stone or rock and said that the certification is the responsibility of the manufacturer or the supplier.



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40. Mr. Bakheet stated that D.K. had reviewed one of the letters at some point and made changes to it. The Exterior Wall Cladding letters were generally prepared as components of documents packages that were reviewed by D.K. and other engineers. Mr. Bakheet indicated that he stamped the Exterior Wall Cladding letters to “make it more official for the people just take it and do the work.”
41. A Hearing Panel G.G. asked Mr. Bakheet for what sort of permit the Exterior Wall Cladding letters were required. Mr. Bakheet indicated that he was not familiar with permitting, but that the owner of the building would have a building permit, and that any changes would require an additional permit. He was not certain whether it would be Company A or a builder who submitted the letter to a permitting authority.
42. The Hearing Panel found Charge 2 was factually proven on a balance of probabilities. Neither party contested the fact that Mr. Bakheet authenticated each of the Exterior Wall Cladding letters without having a background in stonework. As Mr. Bakheet acknowledged, the letters did not require any technical input with respect to structural engineering.
43. It was also clear on the evidence that Mr. Bakheet did not have an appropriate understanding of these letters at the time that he authenticated them, given his responses at the interview. While Mr. Bakheet stated that the Exterior Wall Cladding letters were generic and that D.K. and G.G. were comfortable with the letters, it was Mr. Bakheet’s signature and stamp alone that is on the professional documents. As such, he was responsible for understanding the contents of the letters before affixing his stamp.
44. The Hearing Panel also noted that the Exterior Wall Cladding letters appeared to be architectural documents, not engineering documents, as they did not relate to support and structure requirements for the relevant projects. The Exterior Wall Cladding letters did not require a stamp. Mr. Bakheet did not understand the letters to the extent that he did not know a stamp was not required.

### Decision as to Whether Unprofessional Conduct or Unskilled Practice is Proven.

45. APEGA’s Guideline for Ethical Practice, v2.2 (February 2013) states at section 4.2.4:

Professional engineers and geoscientists who apply their seals or stamps to reports, plans or other documents are, in effect, stating that they understand and are in agreement with these documents. If other members of the engineering or geoscience team prepared the documents, the responsible professional shall have exercised sufficient supervision and control, or have thoroughly reviewed the document, so that he or she can sign based on personal knowledge.



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46. The IC submitted that Mr. Bakheet was not in a position to state that he understood and agreed with the Exterior Wall Cladding letters when he authenticated them, and that his decision to authenticate the letters reflects a lack of knowledge and a lack of judgment in the practice of the profession.
47. The IC also submitted that Mr. Bakheet's conduct contravened Rules of Conduct 2, 3, 4 and 5. Rule of Conduct 2 provides that professional engineers shall only undertake work that they are competent to perform by virtue of their training and experience. Mr. Bakheet testified that he was not familiar with permitting and acknowledged in his written submissions that he is not a specialist in stone. Regardless of what he may have been told by G.G. about the necessity of the Exterior Wall Cladding letter, it was the view of the IC that Mr. Bakheet had no business authenticating a document he did not understand, and by doing so he failed to comply with Rule of Conduct 2.
48. By failing to comply with the professional standards for authentication, Mr. Bakheet also failed to comply with Rule of Conduct 3. Further, in the view of the IC, making a document "more official" is not the purpose of authentication. This approach to authentication displays a lack of integrity and objectivity, contrary to Rule of Conduct 3. It further does not uphold the honour, dignity, and reputation of the profession, contrary to Rule of Conduct 5.
49. The Hearing Panel agreed with the IC and found that Mr. Bakheet's factually proven conduct amounted to unskilled practice and unprofessional conduct. Stamping a document without understanding it, with the intent of making the document appear "more official" diminishes the value of a professional stamp or seal. Members of the public should be able to rely on the stamp of a professional engineer as indicative of a reliable design.
50. Mr. Bakheet's approach to stamping in these 17 different instances impaired the ability of the profession to serve the public in that regard. The Hearing Panel was concerned with Mr. Bakheet's practice of putting his stamp on the Exterior Wall Cladding letters without understanding whether it was appropriate. The Hearing Panel found that Mr. Bakheet's decision to authenticate these documents reflected a lack of knowledge and a lack of judgment in the practice of the profession.
51. It was also significant that Mr. Bakheet acknowledged that the Exterior Wall Cladding letters did not require his structural engineering knowledge and that he stamped the documents anyways to make them appear "more official". The Hearing Panel found this conduct undermined the honour, dignity and reputation of the profession, and was contrary to Rule of Conduct 5.



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**Charge 3 - On or between January 1 and June 5, 2018, Mr. Bakheet engaged in unskilled practice in the design of tall walls exceeding 11'6" in height, including by doing one or more of failing to include the correct height of the walls, failing to include any or appropriate connection details to columns, headers, and sill plates, and failing to include any or appropriate step down foundation details.**

### Decision as to Whether the Conduct is Factually Proven

52. The Hearing Panel considered whether Charge 3 and its particulars a. – d. were factually proven. The particulars alleged that Mr. Bakheet failed to include the correct height of walls, and various appropriate connection details in authenticated documents relating to projects in four instances.
53. Mr. Bakheet's authenticated packages of documents for the different projects were before the Hearing Panel in the following Tabs of Exhibit 1:  
Address A: Tabs 27 and 28  
Address B: Tabs 45 and 46  
Address C: Tab 49  
Address D: Tabs 50 and 51
54. In deciding whether the Charge was proven, the Hearing Panel also considered the expert testimony of K.G., the testimony of Mr. Bakheet, and the submissions of the parties.
55. K.G. is a structural engineer at Company B. At the request of the IC, he prepared an expert opinion report (the "K.G.'s Report") for this matter found at Exhibit 1, Tab 66.<sup>5</sup>
56. K.G.'s resume was marked as Exhibit 1, Tab 67. Briefly, they graduated with a Bachelor of Science in Civil Engineering. They completed their Master of Engineering in Civil Engineering with a specialty in structural engineering. K.G. worked for Company C for 15 years, before becoming the Director of Technical Resources at Company D. In 2011, they established their own company, Company B, where they currently practice.
57. At the hearing, the Hearing Panel accepted K.G.'s qualifications as an expert in tall wall design and heard their opinion in relation to minimally acceptable standards of practice expected of a member of the profession of tall wall design. Mr. Bakheet did not object to K.G.'s qualification as an expert witness.

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<sup>5</sup>In their letter of February 18, 2021, the IC submitted that no weight should be given to the first point of the Expert Opinion Report, at Tab 66-003 of Exhibit 1. Subsequent to his oral testimony, K.G. became aware of an oversight in their report, and they informed the IC to ensure that the Hearing Panel did not proceed based on this mistake. Otherwise, they confirmed their opinion as provided in the Expert Opinion Report. Therefore, the Hearing Panel did not consider the first point of the Expert Opinion Report at Tab 66-003 of Exhibit 1.



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58. K.G. provided a background on the Alberta Building Code. Part 9 applies to housing and small buildings and contains parameters for walls up to 3.6 metres. Walls under this Part do not require a specific engineered design. If a wall is greater than 3.6 metres in height, it is considered a “tall wall” and requires a specific engineered design under Part 4 of the Alberta Building Code. K.G. stated that the specific engineered designs for tall walls are relied upon by the appropriate permitting authorities, and by the builders during construction.
59. K.G. further testified that at a minimum, tall wall designs should contain “appropriate members, sizes, geometries that are indicated as well as appropriate and detailed connections for top[s] of walls, [and] sill plates.” He stated that the “most critical [connections] are the top and bottom of walls, where they rely on the structure to support the reactions.”
60. K.G. indicated that they had reviewed Mr. Bakheet’s tall wall designs, and that in their opinion, some portions of the designs met the minimum professional standards, whereas other parts did not meet the minimum standards.

### Mr. Bakheet’s Use of Generic Details

61. Before the Hearing Panel was a “Generic Tall Wall Connection Details” drawing (the “Generic Connection Details”) at Exhibit 1, Tab 27-009 and a “Generic Tall Wall Bracing at Gable End” detail (the “Generic Bracing Detail”) at Exhibit 1, Tab 27-010. As per Mr. Bakheet’s testimony, the Generic Connection Details and the Generic Bracing Detail were included with “every package when it goes out”.
62. The Hearing Panel noted that the Generic Connection Details page contained a variety of different connection details numbered 1 – 8, and was authenticated by G.G.. References to the numbered details were included in the packages of authenticated documents that related to Addresses A – D.<sup>6</sup>
63. Mr. Bakheet testified that that he later authenticated a version of the Generic Connection Details page without changing the details. In his view, most of the time the generic details worked in the designs.

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<sup>6</sup>Note that the Generic Connection Detail page appeared before the Hearing Panel only at Tab 27-009 of Exhibit 1. See also Exhibit 1, Tabs 27-006, 45-004, 49-005 and 50-005.



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64. K.G. expressed concern in several instances where Mr. Bakheet referred to details from the Generic Connection Details and the Generic Bracing Detail. In K.G.'s view, these details were inapplicable or inappropriate in several of the designs. At the hearing, Mr. Bakheet agreed that some of the detail references in his tall wall designs were inaccurate and that he should have changed them or provided additional notes on the drawings.
65. K.G. testified that the Generic Connection Details could be modified to suit a specific condition by including a note on the tall wall design, or to have a modified drawing included. He noted that this would depend on the comfort an engineer had with their builder. If it was a builder they had worked with before, a note might be sufficient. If it was a generic builder the engineer was unfamiliar with, they should be more specific and have a page describing the modified details. At the hearing, Mr. Bakheet confirmed that he had no personal knowledge of the builders who were going to rely on his designs.
66. K.G. noted that there were no clear references to the Generic Bracing detail in the drawings. There were certain unclear or open-ended references to top-of-wall bracing, which could lead a builder to believe that the Generic Bracing Detail was applicable. K.G. stated that in his opinion this detail was not appropriate for any of the designs in issue.
67. K.G. made additional specific comments on each of the designs included in the packages of authenticated documents for Addresses A – D. K.G. identified concerns with there being references to inapplicable generic connection details; improper top of wall details and unclear or inaccurate height of a tall wall.

### Particular a. – Address A

68. The “High Wall Details” design for Address A was authenticated by Mr. Bakheet on February 6, 2018 (Exhibit 1, Tab 27-006). The drawing references a Detail #7 from the Generic Connections Detail page. It should show how the bottom of the 19-foot form wall was safely connected to the supporting structure. However, in the K.G.'s opinion, Detail #7 could not be applicable as other drawings showed a stairwell in the same location.
69. The “High Wall Details” design for Address A also included a note stating that the tall wall should be stacked on top of a pony wall. In the K.G.'s opinion, this could possibly cause the wall to exceed the maximum allowable design height, given the types of studs specified. The design indicated that a “metal strap” would be used, but K.G. stated that the reference “metal strap” did not provide sufficient information. To implement a metal strap, builders would require details about the metal strap's size, thickness and fastening pattern. Further, the design would require metal straps both inside and outside, as the wind load is reversible.



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70. In his written submissions, Mr. Bakheet indicated that of the metal straps used by builders, the one with the least strength has a capacity of 1030 lbs. According to his calculations, this metal strap would suffice for his design. Therefore, it did not matter much which strap the builder used.
71. K.G. also noted that the jamb base connection to the foundation was incorrect on this design. The use of Detail #5 from the Generic Connection Details page called for a jamb post situated on top of a floor system, but the floor system at that location has a step down in the foundation. Therefore Detail #5 was not appropriate, and the risk was that the jamb connection would be insufficient. Detail #5 does not show how the connection applies where there is a step down.

### Particular b. – Address B

72. The “High Wall Details” design for this location included the statement “Top Connection as per Truss supplier (Reviewed by us)” (see Exhibit 1, Tab 45-004). In K.G.’s view, this statement inappropriately transferred responsibility for the connection to the truss supplier. This was not acceptable practice unless specific information was provided to the truss supplier. It was also unclear what connection detail was required by the design.
73. In his written submissions, Mr. Bakheet noted that the truss supplier has its own engineer. Responsibilities between Mr. Bakheet and the truss supplier’s engineer were not well defined, and it is the responsibility of the engineer of the truss company to make sure that the trusses are stable vertically and laterally.

### Particulars c. and d. – Addresses C and D

74. In the Expert Opinion Report, K.G. indicated that the drawings corresponding to Addresses C and D displayed a lack of sufficient detail for the top of wall connections. K.G. testified that in several cases, Details #5 and #6 from the Generic Connection Details page were referenced and were either not applicable or required modification to suit the conditions.
75. Specifically, K.G. noted that the drawing at Tab 49-005 of Exhibit 1 contained the statement “Provide additional bracing to laterally support top of tall wall supporting gable truss (See attached).” K.G. noted that unlike other drawings that referenced specific and appropriate connection details, this reference was unclear as to the appropriate connection detail. He suggested that the statement could reference the Generic Bracing Detail, which would not be sufficient for the design.



## APEGA Recommended Discipline Decision

76. K.G. indicated again that Mr. Bakheet was offloading responsibility for the connection to the truss supplier. In their view, this was not an acceptable practice unless specific forces are provided to the truss supplier to use in its design. They noted that if the Generic Bracing Detail was used in these drawings, it would not be sufficient.
77. Mr. Bakheet submitted that in the scope of his role and responsibilities, bracing trusses in both vertical and lateral directions should have been the responsibility of the truss engineer. The truss bracing was from the truss supplier's engineer, and he told G.G. that the truss supplier's engineer should have stamped the brace drawing. Additionally, Mr. Bakheet disputed K.G.'s opinion that the diagonal bracing at the gable end wall was insufficient.
78. The Hearing Panel accepted K.G.'s report, as amended, and their evidence as an expert. The Expert Opinion Report is consistent with Mr. Bakheet's admissions that he used improper connection details in some of the designs.
79. The Hearing Panel considered Mr. Bakheet's arguments that K.G.'s analysis contained oversights and errors and that Mr. Bakheet had used the correct details; however, the Hearing Panel found that the designs lacked clarity, for instance how the connection was to be executed and connection details were not sufficiently defined for the builder or supplier. If there were multiple load paths, the failure of a single bad connection may not cause the system to fail. However, if there was a single load path, the failure of the single connection could have a significant negative impact.
80. Based on K.G.'s testimony and Mr. Bakheet's admissions, the Hearing Panel found that the factual elements described in particulars a. – d. are proven on a balance of probabilities. Mr. Bakheet failed to include the correct height of the walls, failed to include appropriate connection details to columns, headers and sill plates, and failed to include appropriate step down foundation details in the designs. The Hearing Panel went on to consider whether Mr. Bakheet's conduct amounted to unprofessional conduct or unskilled practice.

### Decision as Whether Unprofessional Conduct or Unskilled Practice is Proven

81. The IC acknowledged that K.G.'s opinion had no evidence of significant structural design flaws in Mr. Bakheet's tall wall designs. They submitted that "significant structural design flaws" is not the threshold needed to be proven for a design to constitute unskilled practice of the profession.





## APEGA Recommended Discipline Decision

82. The IC submitted that the lack of clarity and, in some cases, absence of applicable details in Mr. Bakheet's designs was a matter of poor design that rose to the level of unskilled practice of the profession. Further, the IC suggested that as a professional engineer taking responsibility for his designs, Mr. Bakheet had an obligation to include correct and appropriate details. His failure to correct inaccurate details reflected a lack of judgment in the profession.
83. In the Hearing Panel's view, the errors, omissions, and lack of clarity in the packages of authenticated documents corresponding to particulars a. – d. amounted to unskilled practice and unprofessional conduct. Mr. Bakheet failed to ensure that the interconnection of the members was sufficient. Failure to provide sufficient connection capacity may compromise the systems ability to perform. To not recognize this is both unskilled practice and unprofessional conduct.
84. Unclear or inaccurate design details that are approved by an engineer undermines the honour and reputation of the profession, as confidence in these documents is impacted. Mr. Bakheet should have known that approving designs without reviewing them would be contrary to his expected conduct as an engineer. The Hearing Panel found that Mr. Bakheet's conduct amounted to unprofessional conduct and unskilled practice.

**Charge 4 - On or between January 1 and June 5, 2018, Mr. Bakheet engaged in unskilled practice in the design of tall walls exceeding 11'6" in height by incorrectly stating that stairs provide lateral support.**

### Decision as to Whether the Conduct is Factually Proven

85. The Hearing Panel considered whether Charge 4 was factually proven on a balance of probabilities. The particulars of Charge 4 alleged that Mr. Bakheet incorrectly stated that stairs provided lateral support in 11 "High Wall Details" designs.
86. The "High Wall Details" designs corresponding to each of the 11 particulars contained the statement "Wall Laterally Supported by Stairs." However, the designs did not provide the builder or supplier with any specific performance requirements for the design or construction of the stairs. The fact that there was no detail provided indicated that they were not being relied on as a structural element in the design.
87. This was consistent with Mr. Bakheet's testimony. He stated that while he had stamped the designs, D.K. used them, and neither he nor the other engineers made any comments about the notation. Ultimately, Mr. Bakheet did not remove the notation from the designs because many engineers, including D.K., had asked that they not be removed. However, he designed the walls so as not to require support from the stairs.



## APEGA Recommended Discipline Decision

88. At the hearing and in his written submissions, Mr. Bakheet explained that when contractors build the intermediate landing for stairs, they usually clad it, and sometimes brace it. When they clad the landing, some of the cladding will provide lateral support to the wall. This is a typical practice, but Mr. Bakheet did not rely on it in his designs.
89. K.G. testified that from a design perspective it is not usually acceptable for stairs to provide lateral support for a tall wall. Technically, such support would be possible. However, in their view, the mere statement of “Wall Laterally Supported by Stairs” in Mr. Bakheet’s designs is not appropriate, as there are too many unknown details that would be required.
90. K.G. observed that when they reviewed the documents described in the particulars, the notation appeared almost at random, or as though it came from a template document. For this reason, in the Expert Opinion Report, they included the following observation: “This appears to indicate a copy/paste approach with limited review or understanding of the structural load path.”
91. K.G. testified that even if the lateral support from the stairs was not required, it would be problematic to include the statement, as it “serves to confuse and muddy the waters. [The builders] might think that the studs aren’t spanning as far as they are. It needs to be clear what the assumptions are for the tall wall support.”
92. Based on the documentary evidence, K.G.’s testimony and Mr. Bakheet’s admissions, the Hearing Panel found that Mr. Bakheet did include notations in his “High Wall Details” designs that unnecessarily indicated stairs provided lateral support for tall walls. Having found Charge 4 factually proven on a balance of probabilities, the Hearing Panel went on to consider whether Mr. Bakheet’s conduct amounted to unprofessional conduct or unskilled practice.

### Decision as to Whether Unprofessional Conduct or Unskilled Practice is Proven

93. The IC submitted that by leaving the notation “Wall Laterally Supported by Stairs” in his tall wall designs after expressly deciding not to rely on the stairs for support, and by failing to indicate this in the design documents provided to the contractors who would rely on his designs, Mr. Bakheet created ambiguity around his assumptions regarding the support for tall walls. The IC submitted that this conduct reflects a lack of judgment in the practice of engineering that constitutes both unskilled practice and unprofessional conduct.
94. The Hearing Panel found that the proven conduct amounted to unprofessional conduct and unskilled practice. It was poor practice for Mr. Bakheet to leave the notation in the designs despite the fact that he knew that his design did not rely on them. However, the Hearing Panel noted that there was no impact on public safety arising from this oversight.



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95. Though the notation may not have impacted Mr. Bakheet's overall design, it was not an "extra benefit" if the stairs did in fact support the wall, without consequences. The notation had significant implications for future construction, as anyone who wanted to modify the structure would believe that the stairs did provide lateral support for the wall.
96. Further, the Hearing Panel cannot ignore the fact that this notation appeared in 11 different design drawings, and that Mr. Bakheet was providing engineering advice without any details of how a builder was meant to implement that advice. Even after Mr. Bakheet was notified by the IC that there was an investigation into his tall wall designs, Mr. Bakheet continued to leave the notation in without details for suppliers or builders because he did not want to upset D.K. and the other engineers at Company A.

### **Fairness of the Hearing**

97. During the hearing and in his written submissions, Mr. Bakheet expressed concern regarding the way the investigation was first conducted by the Investigative Panel, and the actions of A.Y. He argued that A.Y. was a friend of one of Company A's competitors, and that A.Y. was motivated during the investigation to ensure that their friend stayed competitive in the market.
98. Mr. Bakheet also expressed concern about the absence of A.Y. at the hearing. As the complainant, Mr. Bakheet believed that A.Y. should have been present at the hearing to stand by their claims. Further, Mr. Bakheet did not have the opportunity to question A.Y. as a witness.
99. The IC submitted that during the investigation, Mr. Bakheet had the opportunity to respond to the Investigative Panel's concerns, and that if there was any unfairness in the investigation, it was cured by a fair hearing before the DC, where he would have the opportunity to fully and fairly respond to the allegations against him.
100. The IC also submitted that prior to the hearing, IC Counsel informed Mr. Bakheet of the witnesses they intended to call at the hearing, and that Mr. Bakheet did not raise any issue with their decision not to call A.Y. as a witness. If Mr. Bakheet felt that it was important for the Hearing Panel to hear evidence from A.Y., it was up to Mr. Bakheet to request that the IC call A.Y. as a witness, or for him to call A.Y. as a witness in his own case. The IC did not and does not consider it necessary for the Hearing Panel to hear from A.Y. to make a determination of whether the Charges were proven.
101. In the Hearing Panel's opinion, Mr. Bakheet had the opportunity to present his own evidence and make submissions to the Panel. Mr. Bakheet received disclosure of the IC's documents and witnesses prior to the hearing and received notice of the charges. The Hearing Panel found that Mr. Bakheet knew the allegations and had the opportunity to respond to those allegations over the course of a two-day hearing. The Hearing Panel found that procedural unfairness at the investigation stage, if any, was cured by the hearing before the Hearing Panel.



## APEGA Recommended Discipline Decision

102. With respect to A.Y., they were the complainant and not a party to the hearing process. It was open to Mr. Bakheet before the start of the hearing and during the hearing to request A.Y. be called as a witness if he wished to do so. He did not. The Hearing Panel found the hearing process was fair and the parties were given the opportunity to present their respective cases to the Hearing Panel.

### **Decision of the Hearing Panel on Sanctions**

103. The parties elected to make written submissions on sanctions. The IC provided written submissions on sanctions dated August 24, 2021. Mr. Bakheet's written submissions were dated September 10, 2021, and on September 16, 2021, the IC submitted a brief reply to Mr. Bakheet's submissions.
104. The Hearing Panel met by videoconference on September 24, 2021 to consider the written submissions on sanctions from the parties.

### **Written Submissions of the IC**

105. The IC began its written submissions by noting the findings of the Hearing Panel in its decision of July 16, 2021 (the "Merits Decision").
106. Based on the proven unskilled practice and unprofessional conduct, the IC requested the Hearing Panel make the following orders pursuant to sections 63 and 64 of the EGP Act:
- a. Mr. Bakheet shall receive a reprimand, and the DC's written decision shall serve as the reprimand;
  - b. Mr. Bakheet shall pay a fine of \$2,000;
  - c. Mr. Bakheet shall pay a portion of the hearing costs, which should be in the range of 50% to 65% of the total hearing costs;
  - d. The fine and costs ordered in paragraphs (b) and (c) shall be payable within one year of the DC's written decision on sanction;
  - e. Mr. Bakheet will not be eligible to apply for reinstatement as an APEGA member until he has paid the fine and costs ordered in paragraphs (b) and (c);



## APEGA Recommended Discipline Decision

- f. If Mr. Bakheet is reinstated as an APEGA member, he shall be restricted from the practice of structural engineering with respect to residential construction, until he has written and achieved a passing grade on the Associate Membership Exam for the Institution of Structural Engineers (“ISTRUCTE”). Mr. Bakheet shall be responsible for registering to write this exam and for any fees and costs associated with writing this exam. Details on how to register to write the ISTRUCTE exam, locations where it may be written, dates and costs may be found at [www.istructe.org](http://www.istructe.org);
- g. This matter and its outcome will be published by APEGA as deemed appropriate and such publication shall name Mr. Bakheet.
107. The IC then reviewed the factors listed in paragraph 35 of *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630, which should be taken into consideration by a discipline tribunal in determining an appropriate sanction. The IC submitted the following:
- The nature and gravity of the proven allegations – Mr. Bakheet’s conduct reflected very poor professional judgment. Stamping a document merely to make it “more official” without understanding the document in the first place is serious misconduct that undermines the true purpose of a professional engineer’s stamp. Further, Mr. Bakheet’s use of unclear and inaccurate details in tall wall designs, and his inclusion of inapplicable notations on design drawings out of deference to his superiors, amounted to a serious failure to take professional responsibility for his work. The IC, however, recognized there were examples of much worse conduct with respect to tall wall design. The IC acknowledged there was no evidence that Mr. Bakheet’s tall wall designs included significant structural design flaws.
  - The age and experience of the offending member – Mr. Bakheet is not a new member of the profession. As such, Mr. Bakheet’s age and experience are not mitigating factors.
  - Presence or Absence of Prior Complaints or Convictions – Mr. Bakheet has not previously been found to have engaged in unprofessional conduct or unskilled practice during his career. This is a mitigating factor.
  - Number of Times the Offence Occurred – The proven allegations did not concern an isolated incident of unskilled practice or unprofessional conduct. As found by the Hearing Panel, Mr. Bakheet continued to leave the errant statement “Wall Laterally Supported by Stairs” in his designs even after he was aware of the investigation into his tall wall designs, because he did not want to upset his supervisors and co-workers. The repeated nature of Mr. Bakheet’s conduct supported a more severe sanction.



## APEGA Recommended Discipline Decision

- Mr. Bakheet's Role in Acknowledging What Has Occurred – To an extent, Mr. Bakheet acknowledged his role in what had occurred. He agreed at the hearing that some of the detail references in his tall wall designs were inaccurate and he should have changed them or provided additional notes on the drawings. This was not a significant mitigating factor because, to a larger extent, Mr. Bakheet attempted to cast blame and responsibility on others. For example, Mr. Bakheet suggested that APEGA should have informed him about its investigation into G.G. and Company A. Further, Mr. Bakheet's evidence and submissions indicate he relied heavily on the judgment of his supervisors, at the expense of exercising his own judgment and responsibility as an engineer. The Hearing Panel should not treat Mr. Bakheet's failure to admit conduct as an aggravating factor, as members are innocent until proven guilty and may choose to defend themselves.
- Impact of the Incident on Affected Persons – Although there was no evidence of actual harm resulting from Mr. Bakheet's tall wall designs, the Hearing Panel found that Mr. Bakheet's failure to ensure the interconnection of the members was sufficient and could compromise the system's ability to perform. Further, with respect to Mr. Bakheet's errant notation "Wall Laterally supported by Stairs", the Hearing Panel found the notation had implications for future construction, as anyone who wanted to modify the structure would believe the stairs did provide lateral support for the wall. Therefore, despite the lack of evidence of a failure of any of the tall wall designs in issue, the IC submitted that it cannot be said that Mr. Bakheet's conduct did not impact anyone.
- The Need to Promote Deterrence – There are two types of deterrence. Firstly, specific deterrence suggests that the imposed orders ought to deter the specific member from repeating the conduct in the future. Secondly, general deterrence suggests that imposed orders ought to deter other members of the profession from engaging in similar conduct. The IC advised that because Mr. Bakheet is not currently an APEGA member<sup>7</sup>, the Hearing Panel must ensure that appropriate provisions are in place so that if he is reinstated, he does not engage in similar conduct again. The concerns in this case arose specifically within the context of residential construction, so, in the IC's view, if Mr. Bakheet is reinstated as an APEGA member, he should be restricted from practicing structural engineering with respect to residential construction unless he successfully completes a relevant remedial course or qualification.

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<sup>7</sup>Mr. Bakheet's registration was cancelled in December 2019 for non-payment of fees.



## APEGA Recommended Discipline Decision

The proposed order that Mr. Bakheet be required to achieve a passing mark on the Associate Membership Exam for ISTRUCTE, or another remedial course focused on wood construction, is appropriate. Further, the Hearing Panel should consider whether Mr. Bakheet needs to take a course in professional ethics as a condition of reinstatement. The IC's view is that Mr. Bakheet's conduct reflected a serious lack of judgment and inappropriate deference to pressures from other parties was an ethical issue.

- The Need to Maintain the Public's Confidence in the Integrity of the Profession – For Charge 2, Mr. Bakheet admitted to stamping a document to make it “more official”. This conduct diminished the value of a professional stamp or seal. Members of the public should be able to rely on the stamp of a professional engineer as indicative of a reliable design. Given that Mr. Bakheet is not currently a member of APEGA, a reprimand, a fine and remedial requirements in the event of reinstatement are sufficient to allow the public to have confidence in the integrity of the profession.
- Degree to Which the Conduct was Outside the Range of Permitted Conduct – Mr. Bakheet's conduct under Charge 2 is significantly outside the range of permitted conduct. Further, Mr. Bakheet's conduct in Charges 3 and 4 demonstrated “carelessness” which is more concerning because Mr. Bakheet was not personally familiar with the builders who would rely on his tall wall designs. The IC acknowledged there are examples of conduct that fall further outside the range of permitted conduct for a professional engineer. As such, the IC did not propose a period of time for which Mr. Bakheet would be ineligible for reinstatement, and proposed a fine that was lower than the maximum of what the Hearing Panel was authorized to order.
- The Range of Sentence in Similar Cases – Four cases were provided in the IC's submissions. The orders proposed by the IC in this case are closer to those imposed in the latter two cases<sup>8</sup>, which they submitted appropriately reflects the severity of Mr. Bakheet's conduct.

108. On the issue of costs, the IC provided a summary of the estimated costs of the hearing and advised that the total anticipated costs incurred by the IC and the DC are in the range of \$80,000<sup>9</sup>. This value did not include costs associated with the sanction phase of the hearing. The IC requested an order that Mr. Bakheet be required to pay between 50% and 65% of the total hearing costs.

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<sup>8</sup>See the decisions of 18-011-RDO and 18-009-RDO. The other two cases involving the conduct of Gurpreet Gill, P.Eng, (18-015-FH) and Sundeep Jhinjar, P.Eng. and S&M Project Services Inc. (17-009-FH) involved conduct significantly more serious than the conduct at issue in this case.

<sup>9</sup>A Statement of Costs was attached to the IC's written submissions as Appendix A. The IC's hearing costs to date were approximately \$57,000 and the DC's costs to date were \$23,165.



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109. The IC referred to three decisions of the Alberta Court of Appeal dealing with costs in professional discipline matters: *Zuk v Alberta Dental Association and College*<sup>10</sup>, *Lysons v Alberta Land Surveyors Association*<sup>11</sup> and *K.C v College of Physical Therapists of Alberta*.<sup>12</sup> It submitted that these cases established the following principles:

- The purpose of a costs order in a professional conduct hearing is not to punish the professional member, but rather to allow the professional regulatory body to recoup some of the expenses incurred in the proceedings;
- Requiring a professional to pay all or a portion of hearing and investigation costs is a common part of professional disciplinary sanctions;
- The factors that are relevant when considering whether to award costs include the conduct of the parties, the seriousness of the charges, and the reasonableness of the amounts;
- Costs order, like sanctions for misconduct, must be individualized to the circumstances of the investigated person;
- Costs orders must be sensitive to a member's financial circumstances;
- Costs orders delivering a "crushing financial blow" must be scrutinized carefully; and
- A tribunal should consider whether a large costs award may deny "an investigated person a fair chance to dispute allegations of professional misconduct."

110. The IC also referred to the *Jaswal* case which suggests the following factors are relevant in determining whether to exercise the discretion to order payment of costs:

- The degree of success, if any, of the member in resisting any or all of the charges;
- The necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing;
- Whether the persons presenting the case could reasonably have anticipated the result based on what they knew prior to the hearing;
- Whether the member cooperated and offered to facilitate proof through admissions; and

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<sup>10</sup>2018 ABCA 270.

<sup>11</sup>2017 ABCA 7.

<sup>12</sup>1999 ABCA 253.





## APEGA Recommended Discipline Decision

- The financial circumstances of the member and the degree to which his financial position has already been affected by other aspects of any penalty imposed.

111. Based on these principles, the IC submitted that:

- a. The proven conduct was serious but does not fall at the most serious end of the spectrum of unskilled practice and unprofessional conduct;
- b. The Hearing Panel found that the factual conduct at issue in Charge 1 did not amount to unprofessional conduct;
- c. All of the witnesses called were necessary to prove the conduct alleged. However, some time was spent at the hearing addressing a portion of K.G.'s expert report, which the Hearing Panel was later asked to disregard. The IC has reduced the portion of hearing costs it seeks accordingly;
- d. The outcome of the hearing with respect to Charges 2, 3, and 4 could have been reasonably anticipated by Mr. Bakheet. During the hearing, he admitted he stamped the document in issue in Charge 2 to make it "more official" that some of the connection details at issue in Charge 3 were inaccurate, and that he had not relied on the stairs to provide support to the walls in the designs at issue in Charge 4; and
- e. Mr. Bakheet was not uncooperative, but he did not offer to facilitate proof by admission. He also provided late disclosure of the documents he intended to rely on at the hearing, which contributed to the overall hearing costs.

### Written Submissions of Mr. Bakheet on Sanction

112. Mr. Bakheet devoted a significant portion of his submissions to rearguing the Merits Decision and findings that were reached by the Hearing Panel in that decision. Mr. Bakheet had a right to appeal to the Appeal Board after the Hearing Panel has issued its Merits Decision and decision on sanction. The Hearing Panel did not consider submissions that re-argue the Merits Decision. The Hearing Panel was not prepared to revisit its findings in the Merits Decision.
113. With respect to the proposed sanctions, Mr. Bakheet submitted that payment of 50% to 65% of the hearing costs is beyond his financial capacity as he has been without full-time employment for over four years. He has spent his time studying online for more than two years and taking free wood design courses offered by the Wood Frame. He has debts which will take him years to pay off, as a result of his extended unemployment.
114. Mr. Bakheet referred to his reliance on D.K., and trust in D.K.'s 40 years of experience in the field. He blamed APEGA for not informing him of the investigation into G.G. and Company A.



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115. Mr. Bakheet submitted that he did cooperate with the IC, and always provided them with the documents they requested within the set timeframe. He stated that he had difficulty with the IC, as they withheld submitted documents and did not provide them to qualified members for review.

### Reply Submissions of the IC

116. In its reply submissions dated September 16, 2021, the IC responded to Mr. Bakheet's submissions with the following:
- a. The Hearing Panel should disregard Mr. Bakheet's submissions to the extent he seeks to challenge the basis for the allegations against him, the findings of the Hearing Panel on the merits of those allegations or the manner in which the hearing was conducted; and
  - b. In his submissions, Mr. Bakheet made representations about his financial capacity. Although this information is not formally in evidence before the DC Panel, the IC does not object to the Hearing Panel taking this information into account with respect to sanctions and costs.

### **Decision of the Hearing Panel on Sanctions and Costs**

117. Mr. Bakheet's failures to include the correct height of walls, to include appropriate connection details to columns, headers and sill plates, and to include appropriate step-down foundation details in his tall wall designs did not meet the standards required of a professional engineer. It was particularly concerning that Mr. Bakheet included incorrect heights of walls and failed to include applicable details or included inapplicable details in his tall wall designs. Though there was no evidence of a negative impact on public safety, the Hearing Panel noted that some of the inapplicable details included in Mr. Bakheet's designs had significant implications for future construction.
118. Further, Mr. Bakheet repeatedly demonstrated that he did not appreciate the significance of affixing his professional stamp when he authenticated documents he did not understand and included inapplicable notations on his tall wall designs. Mr. Bakheet continued to defer to the opinions of others, even though he was personally stamping the designs.



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119. It is not acceptable conduct for a professional engineer to stamp, seal or sign a document without taking reasonable steps to ascertain whether the document contains errors or inapplicable notations. The Hearing Panel highlights this point because the profession needs to appreciate the importance of an engineer's stamp and the proper authentication of documents to the practice of engineering. By a professional engineer signing, stamping and dating a document, the professional engineer and their firm accepts responsibility for the matter under seal or stamp. This signifies to the public that they can rely on the opinions and recommendations contained in the report.
120. With respect to the unskilled practice demonstrated by Mr. Bakheet, the Hearing Panel accepted that there was no evidence that Mr. Bakheet lacked competency in general with respect to structural engineering. The concerns in this case arose in the context of residential construction. Mr. Bakheet submitted that he was already taking free online courses in wood design to further his education. While there was no evidence that Mr. Bakheet's unskilled practice had caused harm to the public, the Hearing Panel considered it appropriate that Mr. Bakheet be prohibited from practicing engineering that engages Part of 9 of the National Building Code of Canada until he has provided evidence of having successfully completed an engineering course in wood design at a university or technical institute. This will ensure he can practice structural engineering in the context of residential construction competently and safely.
121. The Hearing Panel acknowledged that while Mr. Bakheet's conduct was serious conduct that amounted to unskilled practice and unprofessional conduct under section 44 of the EGP Act, his conduct was not at the most serious end of the spectrum. A significant factor to the Hearing Panel is public safety, and the Hearing Panel found that public safety was not of a particular concern in this case.
122. The Hearing Panel noted that Mr. Bakheet was a self-represented person. Throughout the hearing process, the Hearing Panel found Mr. Bakheet made good faith efforts to comply with the investigation and the directions of the Hearing Panel. He was respectful toward the Hearing Panel and actively participated in the hearing process.
123. Further, the Hearing Panel acknowledged that due to Mr. Bakheet's prolonged unemployment, a high costs award could be a crushing financial blow to Mr. Bakheet's financial situation. However, at the same time, the Hearing Panel must send a message to members of the profession and to Mr. Bakheet to deter them from engaging in similar conduct.
124. On the issue of costs, the Hearing Panel agreed that it is appropriate that Mr. Bakheet pay a portion of the costs of this hearing. However, in the view of the Hearing Panel, Mr. Bakheet's financial situation and his attempts to cooperate with the investigation and hearing process are mitigating factors that suggest a lower costs award.



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### Reprimand

125. The Hearing Panel found that a reprimand is appropriate to denounce Mr. Bakheet's failure to understand the documents to which he was affixing his professional stamp, as this was a failure to comply with a fundamental practice of engineering. A reprimand will assist in deterring similar conduct in the future by Mr. Bakheet and by other members of the profession.

### Fine

126. The Hearing Panel found that a fine of \$2,000 is appropriate to further confirm the serious and inappropriate nature of Mr. Bakheet's unskilled practice and unprofessional conduct. It will also address Mr. Bakheet's lack of appreciation for the importance of an engineer's stamp or seal and the responsibility an engineer must have when affixing their stamp or seal to documents, even if they are prepared by others. Fines are punitive measures, so the fine will deter Mr. Bakheet and other members of the profession from engaging in similar conduct, and will put them on notice that such conduct has consequences.
127. The Hearing Panel also found that the proposed fine of \$2,000 is appropriate in the circumstances and was not so large as to impose a significant financial burden on Mr. Bakheet given his current circumstances.

### Practice Restriction and Course in Wood Construction

128. The Hearing Panel found that it was appropriate for Mr. Bakheet to be required to successfully complete a course in wood construction, such as Steel Wood and Design (NAIT CIVL 2310) or Structural Wood Design (SAIT CIVL 358). The Hearing Panel recognizes that there is no evidence that Mr. Bakheet lacks competence with respect to structural engineering generally, and that the concerns in this case arose specifically in the context of residential construction. Restricting Mr. Bakheet from practicing engineering that engages Part 9 of the National Building Code of Canada until he has successfully completed a course in wood construction is a way of ensuring that Mr. Bakheet can demonstrate his understanding of the technical knowledge required for residential construction.

### Professional Ethics Course

129. The Hearing Panel found that Mr. Bakheet should be required to take a course in professional ethics, such as Practice of the Engineering Profession (University of Alberta, ENGG 600) to be completed within 12 months of the date he is reinstated. Mr. Bakheet's deference to his superiors, and his failure to understand the documents that he was stamping suggested a lack of understanding of his obligations as a professional engineer. The requirement that Mr. Bakheet complete this course serves educative and remedial purposes and protects the public by ensuring he has the appropriate knowledge of his ethical obligations.



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### Costs

130. The Hearing Panel accepted that Mr. Bakheet is currently in a very difficult financial position and has been for some time. At the same time, however, the Hearing Panel accepted that the investigation and the hearing in this matter arose because of Mr. Bakheet's conduct. As such, he should be responsible for a portion of the costs.
131. The Hearing Panel carefully considered the costs in this matter, to date, being approximately \$80,000. The Hearing Panel found the following factors supported a lower costs order: Mr. Bakheet's financial situation; Mr. Bakheet was successful in defending himself against one of the four Charges; he is entitled to defend himself against the Charges and should not be punished for doing so; he was cooperative throughout the hearing process; the proven conduct was serious but does not fall at the most serious end of the spectrum; and some of K.G.'s time at the hearing about his expert report was later disregarded. Having said all that, the Hearing Panel found the following factors supported Mr. Bakheet being responsible for a portion of the costs: Mr. Bakheet made some factual admissions during the hearing that, if admitted prior to the hearing, could have assisted in the efficiency of the hearing and three of the four Charges were proven and found to be unprofessional conduct and unskilled practice.
132. Taking into consideration Mr. Bakheet's individual circumstances, the Hearing Panel found that an order requiring Mr. Bakheet to pay \$10,000 of the costs of the hearing is fair, appropriate and reasonable in the circumstances. Additionally, since Mr. Bakheet is not currently a member of APEGA, it is appropriate that he be required to pay the fine and costs before he is eligible to apply for reinstatement.

### Publication of the Decision

133. The Hearing Panel found that its decisions should be available to APEGA members and members of the public in a manner that identifies Mr. Bakheet. Publication is important to protect the public interest. It is also important to make clear to the public and the profession that professional engineers and geoscientists must understand the documents to which they are affixing their stamp or seal, and that reliance or deference to the expertise of others is no excuse for a failure to do so. The Hearing Panel also noted that Mr. Bakheet made no submissions with respect to publication of the Hearing Panel's decisions.

### **Conclusion**

134. For the reasons set out above, the Hearing Panel makes the following orders pursuant to sections 63 and 64 of the EGP Act:



## APEGA Recommended Discipline Decision

- a) Mr. Bakheet shall receive a reprimand for his conduct and the Hearing Panel's written decisions shall serve as the reprimand;
- b) Mr. Bakheet shall pay a fine of \$2,000;
- c) Mr. Bakheet shall pay a portion of the costs of the hearing in the amount of \$10,000;
- d) The fine and costs ordered in paragraphs (b) and (c) shall be payable within one year of the DC's written decision on sanction;
- e) Mr. Bakheet will not be eligible to apply for reinstatement as an APEGA member until he has paid the fine and costs ordered in paragraphs (b) and (c);
- f) If Mr. Bakheet is reinstated as an APEGA member, he will be restricted from the practice of structural engineering with respect to any construction subject to Part of 9 of the National Building Code of Canada, until he has successfully completed an engineering course in wood design at a university or technical institute, such as Steel and Wood Design (NAIT CIVL 2310) or Structural Wood Design (SAIT CIVL 358), to the satisfaction of the Director, Enforcement. With respect to this order:
  - i. Mr. Bakheet shall be responsible for registering for this course and for any fees and costs associated with it;
  - ii. Upon successful completion of the course, Mr. Bakheet shall provide proof of same to the Director, Enforcement;
  - iii. Mr. Bakheet shall not practice structural engineering with respect to any construction subject to Part of 9 of the National Building Code of Canada until the restriction on his practice has been lifted.
- g) Mr. Bakheet shall present evidence that he has successfully completed a course in professional ethics, such as Practice of the Engineering Profession (University of Alberta, ENGG 600) to the Director, Enforcement within 12 months of the date of his reinstatement as an APEGA Member. Mr. Bakheet shall be responsible for registering for this course and any fees and costs associated with it. If Mr. Bakheet fails to provide the required evidence to the Director, Enforcement, he will be suspended until the course is successfully completed;
- h) The Hearing Panel's Decision shall be published or circulated as follows:
  - i. A written summary of the decision will be published by APEGA in a medium deemed appropriate by the Director, Enforcement, in a manner that identifies Mr. Bakheet; and



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- ii. If any member of the public or any other professional organization inquires with APEGA as to whether Mr. Bakheet was the subject of a discipline hearing or was found guilty of any charges under the Engineering and Geoscience Professions Act, APEGA shall be at liberty to provide a complete copy of the Hearing Panel's Decision.

Signed,

**NEIL JAMIESON**, P.Eng.  
Panel Chair, APEGA Discipline Committee

**TIM MORAN**, P.Eng.  
Panel Member, APEGA Discipline Committee

**DR. DEAN MULLIN**, PH.D., MBA, P.Eng.  
Panel Member, APEGA Discipline Committee