



APEGA Discipline Decision

APEGA members and permit holders are required to practise engineering and geoscience skillfully, ethically, and professionally. They must meet all prescribed requirements and follow all applicable legislation and regulations, such as the [Engineering and Geoscience Professions Act, General Regulation, Code of Ethics, and APEGA bylaws](#). Investigation and enforcement—followed by, when necessary, judgment based on a fair hearing of the facts—are requirements of ours in service to the public interest. For more information, please visit www.apega.ca/enforcement/discipline-decisions.

Date: July 19, 2021

Discipline Case Number: 20-007-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 [A PROFESSIONAL MEMBER] P.ENG.

INTRODUCTION

These matters came up for hearing before a panel of the Discipline Committee (the Panel) which took place virtually via video conferencing on June 8, 2021. The hearing complied with the Association of Professional Engineers and Geoscientists of Alberta's (APEGA) Standing Order (Statutory Meetings in the APEGA Offices during COVID-19).

Opening of the Hearing

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

The Charges

3. The Notice of Hearing was marked as Exhibit 1. The allegation in the Notice of Hearing is as follows:
 1. In or around January 2016, the Registrant engaged in a verbal and physical altercation with a former business partner (the "Complainant") at his former partner's place of business in connection with a business dispute between the two parties.



APEGA Discipline Decision

IT IS FURTHER ALLEGED that the above-referenced conduct constitutes unprofessional conduct as set out in one or more of subsections 44(1)(a), (b) and of the *Engineering and Geoscience Professions Act* and is contrary to one or both of Rules 3 and 5 of APEGA's *Code of Ethics*.

Submissions of Investigative Committee (IC) Legal Counsel

4. IC Legal Counsel advised that the Investigative Committee did not intend to call evidence in this matter, and that they were not seeking to prove the allegation set out in the Notice of Hearing. They went on to explain how the matter came to be before the Hearing Panel.¹
5. The allegation in the Notice of Hearing related to a physical and verbal altercation that occurred between the Registrant and the Complainant. The Investigative Committee investigated the complaint and decided to terminate the investigation under section 51(1)(b) of the *Engineering and Geoscience Professions Act* (the "Act") on the basis there was insufficient evidence of unskilled practice of the profession or unprofessional conduct.
6. The Complainant appealed the Investigative Committee's decision to the Appeal Board under section 51(3) of the Act. IC Legal Counsel noted that the Appeal Board does not make findings as to whether any facts are proven or not.
7. The Appeal Board heard the appeal and decided that, with respect to most aspects of the complaint, the Investigative Committee had made a reasonable decision to terminate the investigation. However, the Appeal Board referred the single allegation to the Discipline Committee for a formal hearing under section 51(4)(b) of the Act.
8. After the Appeal Board's decision, on September 25, 2020, the Complainant wrote to APEGA's Regulatory Affairs Manager requesting to withdraw the complaint and unequivocally stating their intention not to give evidence in the proceedings unless required to do so by APEGA. The Complainant also noted that all civil litigation matters between the parties had been resolved as of the date of the letter. In light of this correspondence, the Investigative Committee did not see a principal basis to compel the Complainant to give evidence in these proceedings.
9. IC Legal Counsel submitted that the allegation concerned off-duty conduct. From the perspective of the Investigative Committee, there were no professional practice or public safety issues involved. The allegation contained in the Notice of Hearing concerned a heated moment between two individuals involved in a legal dispute. They noted that although police were called, they did not lay any charges. The Complainant, the only person who might be impacted by the outcome of these proceedings, aside from the Registrant,



APEGA Discipline Decision

made it clear that they did not want to be involved. As such, the Investigative Committee's view was that the appropriate course was not to compel the Complainant to give evidence.

10. IC Legal Counsel submitted that if the Hearing Panel accepts the Investigative Committee's approach, the only possible outcome will be a finding that the allegation against the Registrant is not proven. The onus is on the Investigative Committee to prove the allegation and there is no onus on the Registrant to disprove the allegation.

Submissions of the Registrant

11. The Registrant confirmed that their comments would be very much like that of IC Legal Counsel's statements. The Registrant requested that their spouse speak on their behalf. IC Legal Counsel had no objections on behalf of the Investigative Committee. The Hearing Panel allowed the Registrant's spouse to proceed with her submissions.
12. The Registrant's spouse clarified that though they are a lawyer, in these proceedings they were acting solely as support to their spouse. They stated that given the absence of evidence and that the onus is on the Investigative Committee to prove on a balance of probabilities that the Registrant is guilty of unprofessional conduct or unskilled practice, the Hearing Panel should find the allegation not proven and exonerate the Registrant.
13. The Registrant's spouse then asked the Hearing Panel to not publish the Registrant's name in its decision. The Registrant's spouse noted that the Registrant did not pose a risk to the public and had been a member of APEGA for a number of years with no priors. They submitted that it would not be in the public interest to publish their name. They also requested a copy of the transcript.
14. The Registrant confirmed that they did not wish to enter any documents as exhibits or for identification.

Questions from the Hearing Panel

15. The Hearing Panel clarified with IC Legal Counsel that based on their submissions, that without any evidence and no witnesses being called, the allegation is not proven and therefore the allegation would be dismissed. IC Legal Counsel confirmed this was the Investigative Committee's position.
16. The Registrant's spouse confirmed that they were requesting that the Registrant be exonerated and that the Hearing Panel decide not to publish the outcome. They asked that if the decision is to be published, then the Hearing Panel should do so without names. The Investigative Committee did not object to the requests made by the Registrant's spouse.



APEGA Discipline Decision

17. The Hearing Panel adjourned to consider the matter.

Decision of the Hearing Panel

18. After a short adjournment, the Hearing Panel returned and advised that it had considered the submissions made and decided to dismiss the allegation against the Registrant. The Hearing Panel indicated that it would provide a written decision to the parties with reasons.

Reasons of the Hearing Panel

19. The Hearing Panel finds that the allegation contained in the Notice of Hearing has not been proven and therefore the allegation in the Notice of Hearing is dismissed.
20. The Investigative Committee submitted no evidence to support the allegation in the Notice of Hearing and no witnesses were called to speak to the allegation. This alone is enough for the Hearing Panel to find that the allegation has not been proven on a balance of probabilities and to dismiss the allegation. However, in addition, the Hearing Panel dismisses the allegation because the civil litigation has been resolved between the parties and there is no professional practice issue or public safety issue before the Hearing Panel. The allegation concerned off-duty conduct that arose in the context of two business partners and not in the Registrant's capacity as an engineer. Further, in the Appeal Board's decision, it stated that the "Appeal Board does not make any finding that there was unprofessional conduct," and noted that that finding would be for the Discipline Committee.
21. Moreover, the Hearing Panel notes that the Complainant asked to withdraw this matter and unequivocally stated their intention not to give evidence in these proceedings unless they were required to do so by APEGA. The Hearing Panel notes that the Registrant was supportive of the Investigative Committee's submissions.
22. The Registrant's spouse requested that the Hearing Panel decide not to publish the outcome of this decision and that if the decision is published, then it be done on a without names basis. The Hearing Panel noted that the Investigative Committee had no objection to this request.
23. The Hearing Panel decides that if this decision is published, it is to be published on a without names basis. Section 77 of the *Act* and section 46 of the *Engineering and Geoscience Professions General Regulation* both apply to publications by the Discipline Committee and suggest that it is within the discretion of the Discipline Committee to order the publication of names of investigated persons. Given that the allegation was dismissed against the Registrant, the publication of their name is not required to protect the public interest. They have also been a member of APEGA for a significant amount of time



APEGA Discipline Decision

without any prior discipline. Therefore, the Hearing Panel decides that if this decision is published, it will be published without names.

24. The Registrant's spouse also requested a copy of the hearing transcripts. The Hearing Panel informed her that APEGA does not provide transcripts; however, they are available from the court reporter for purchase, should she wish a copy.

Conclusion

25. For the reasons above, the Hearing Panel finds that the allegation against the Registrant is not proven and dismisses the allegation. The hearing is concluded on that basis.

Signed,

ADAM WHITING, P.ENG.
Panel Chair, APEGA Discipline Committee

JOHANNE POIERIER MOUALLEM, P.ENG.
Panel Member, APEGA Discipline Committee

JOHN MCDONALD, P.ENG.
Panel Member, APEGA Discipline Committee