



The Association of Professional
Engineers and Geoscientists of Alberta

APEGA DISCIPLINE COMMITTEE DECISION ON SANCTIONS

Date of Hearing: Written Submissions
Date of Decision: April 17, 2023
APEGA Discipline Case Number: 20-003-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 ERIC CHRYSANTHOUS, P.ENG.
(The “Member”)**

DECISION ON SANCTIONS

INTRODUCTION

1. On January 6, 2023, the Hearing Panel of the Discipline Committee (“the Hearing Panel”) of the Association of Professional Engineers and Geoscientists of Alberta (“APEGA”) issued a written decision (the “Merits Decision”), in which it found that two of the three allegations against the Member were proven:

Allegation 1 – That Eric Chrysanthous engaged in email communications with members of the public and the engineering profession between December 26, 2010, and May 18, 2015;

Allegation 2 – That Eric Chrysanthous failed to comply with a November 1, 2016, request by or on behalf of the Investigative Committee of APEGBC to attend for the purposes of a rescheduled interview on November 7, 2016;

The remaining allegation was proven in part:

Allegation 3 (part proven) – That Eric Chrysanthous attempted to mislead the Investigation Panel of APEGA between September 20, 2018, and March 22, 2019;

2. The Hearing Panel determined that each of the proven allegations constituted unprofessional conduct pursuant to Section 44 of the *Engineering and Geoscience Professions Act* (“theEGP Act”).

3. The Hearing Panel directed the parties to advise APEGA Staff whether they wished to provide written submissions on sanctions or whether they wished to make their submissions at an oral hearing.

4. The Hearing Panel received an email from counsel to the Investigative Committee (the “IC”) on January 16, 2023, that indicated that the IC wished to proceed with written submissions.

5. The Hearing Panel received an unsigned email and attachment from “ [REDACTED] ” dated January 24, 2023. The sender did not identify themselves but referenced this hearing and the written decision of the Hearing Panel. They did not indicate a preference of written or oral sanction submissions.

6. The Hearing Panel considered these correspondences and directed the parties to provide written submissions on sanctions.

7. The IC provided written submissions on sanctions dated February 16, 2023.

8. On February 17, 2023, the Hearing Panel received an unsigned email that attached five documents: “Written statement by member 51052 of APEGA 2023,” “Rebuttal to EGBC (APEGBC) by lawyer for member 51052 of APEGA 2017,” “Note to APEGA President 2023,” “Complaint against Director of Enforcement of APEGA 2023,” and “ [REDACTED] APEGA CEO email 2016.” Although these documents did not explicitly state they were from the Member, they referenced this hearing and purported to come from “Member 51052 of APEGA.” The Member’s registration number with APEGA is 51052. The Member also emailed one of the Hearing Panel members on March 2, 2023. The Hearing Panel considered the emails and attachments collectively as the Member’s written submissions on sanctions.

9. On March 9, 2023, the IC submitted a brief reply to the Member’s submissions.

10. The members of the Hearing Panel met by videoconference on March 17, 2023, to consider the written submissions on sanctions from the parties.

SUBMISSIONS ON SANCTION

Written Submissions of the Member dated January 24, 2023

11. The Member's submissions referred to the hearing "conducted about me" that took place on November 24, 2022. He asked the Hearing Panel to dismiss all charges against him and to reject any sanctions.

12. In the Member's view, APEGA acted beyond its authority by regulating conduct in his personal life and conduct protected by his freedom of expression. He suggested that "what you say as an engineer in good faith to protect the public is not subject to disciplinary review" and referred to the "Strom judgment" in support of his arguments.

13. The Member stated that he spent countless hours over the past five years "indulging APEGA." When added to the time spent responding to the EGBC investigation and hearing, he has been subjected to almost one decade of "hectoring." He requested that the Hearing Panel award him \$50,000 in restitution.

Written Submissions of the IC dated February 16, 2023

14. The IC's submissions of February 16, 2023, responded to the Member's January 24, 2023, email and attachment and also proposed appropriate sanctions.

15. In their submissions of February 16, 2023, the IC briefly addressed the Member's reference to the "Strom judgment," which they believed to be *Strom v Saskatchewan Registered Nurses' Association*, 2020 SKCA 112 ("*Strom*"). The IC submitted that the Member's interpretation of *Strom* is incorrect. The Court in *Strom* required a sufficient nexus between off-duty conduct and the professions to engage the regulator's oversight. The IC submitted that the Hearing Panel appropriately found the Member's conduct to constitute unprofessional conduct and that the Hearing Panel should not reconsider its findings.

16. The IC noted that even if the Member's interpretation of *Strom* was correct, it is difficult to reconcile the Member's correspondence containing threats of violence as made in "good faith."

17. The IC made submissions on proposed sanctions. They noted the findings in the Merits Decision that Charges 1, 2, and 3 (in part) were factually proven and amounted to unprofessional conduct.

18. Based on the proven unprofessional conduct, the IC requested the Hearing Panel impose the following orders pursuant to sections 63 and 64 of the *EGP Act*:

- a) That the Member's registration with APEGA be cancelled; and
- b) That the Member pay the full costs of the hearing within 12 months of the Hearing Panel's written decision on sanctions.

19. The IC noted that the fundamental purpose of sanctions in professional regulation is to ensure protection of the public from unprofessional conduct.

20. The IC 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 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. The IC submitted the following:

- a) The nature and gravity of the proven allegations – The proven allegations are very serious in nature and demonstrate a clear lack of appreciation for the importance of the Member’s role and his standing as a professional engineer. The IC suggested that the proven conduct warrants serious sanction.

The IC noted that the Hearing Panel found the conduct in Charge 1 “went beyond merely voicing concerns and includes threats to commit violence and encouraging others to commit violence against members of the public.” Threats of violence do not uphold and enhance the honour, dignity, and reputation of the profession.

The IC suggested that the conduct in Charge 2 goes to the heart of the trust that is required for self-regulation to succeed and to maintain the public confidence in the profession.

- b) The experience of the Member – The Member is a senior member of the profession, having been initially registered with APEGA in 1994. Senior members of the profession who engage in unprofessional conduct warrant greater sanction as they should know their professional obligations.
- c) Presence or Absence of Prior Complaints or Convictions – While there is no evidence of any prior complaints or convictions in Alberta, the Member was a member of both Engineers & Geoscientists BC (“EGBC”) and APEGA. His membership with EGBC was cancelled; however, cancellation should not be considered a mitigating factor in Alberta because the Alberta public also needs to be protected. The IC suggested that the EGBC cancellation supports the argument that cancellation is the most appropriate sanction for the Hearing Panel to impose.
- d) Vulnerability of the Person Impacted – There is limited evidence of the impact of the Member’s conduct. However, witnesses in the EGBC Discipline Hearing provided evidence that people who received the emails were “visibly shaken” and were worried about their safety. The IC suggested this was an aggravating factor.
- e) Number of Times the Offence Occurred – The Member’s conduct was not a one-off event, but rather occurred nine times over five years. It was a significant and ongoing pattern of behaviour, and the Member made no attempt to modify that behaviour until the police served a cease-and-desist letter. The IC suggested this was an aggravating factor.

- f) The Member's Role in Acknowledging What Has Occurred – Although the Member did not attend the hearing, he provided written submissions denying that the charges were proven. Mere denial prior to and during the hearing should not be seen as an aggravating factor, as the Member is entitled to defend himself and insist the IC prove the charges without having that be an aggravating factor. However, Charge 3 related to the Member consistently mischaracterizing the findings and outcome of the EGBC such that he was found to have attempted to mislead the APEGA investigation. This conduct may be considered an aggravating factor. Further, the Member's recent submissions continue to represent that the charges should be dismissed, even after the Hearing Panel has found the charges proven. The Member suggests the "Strom judgment" legitimizes the conduct,¹ and demands \$50,000 in restitution for having "to indulge APEGA." These submissions demonstrate a lack of insight or a refusal to acknowledge the serious nature of his unproven conduct and go beyond mere denial.
- g) Other serious financial or other penalties because of the allegation – There is no direct evidence about other penalties or consequences, but the IC understands that the EGBC decision resulted in a costs award of \$50,000 to be paid in 60 days. Cancellation of the Member's APEGA licence could have financial consequences from the Member not being able to work. However, the Member has not renewed his registration with APEGA, so he is currently not able to work as an engineer. Therefore, this is a neutral factor.
- h) The Need to Promote Deterrence –There are two aspects of this factor: specific deterrence or the need to deter the member from repeating the conduct and general deterrence or the need to deter other members from engaging in similar conduct. Serious sanction is required to denounce the conduct to make it clear that APEGA takes threats of violence seriously and to emphasize the importance of self-regulation.
- i) The Need to Maintain the Public's Confidence in the Integrity of the Profession – If the Member is allowed to return to practice, it would send the wrong message to the profession. The Member not only self-identified as an engineer in his threatening emails, but also included references to being an engineer, engineering standards, and calculations that imply engineering knowledge. Therefore, his conduct likely reflected on the engineering profession. The IC's proposed orders will maintain the public's confidence in the integrity of the profession.

¹ Although not cited in the submissions, this case is believed to be the *Strom v. Saskatchewan Registered Nurses' Association*, 2020 SKCA 112. The IC discussed this case in the context of this factor. Those submissions are summarized later in this decision.

- j) Degree to which the Conduct was Outside the Range of Permitted Conduct – The Member’s conduct is a clear departure from the conduct expected of a professional engineer.
- k) The Range of Sentence in Similar Cases – The IC submitted that the APEGA decision 16-010-FH Drover, P. Geo., may assist the Hearing Panel. The member’s conduct in that case involved sending numerous emails on an ongoing basis with unprofessional content and tone to various individuals, corporations, and agencies. Among other findings, the nature of the correspondence showed a “blatant disrespect for his professional regulatory body and demonstrated a lack of integrity and objectivity.” The hearing panel found that Mr. Drover was ungovernable. The hearing panel ordered cancellation, permanent ineligibility for reinstatement, a \$10,000 fine, costs, and publication of the decision. The IC noted that while it was challenging to find decisions of a similar nature to that of the Member, the Drover matter has many similar features and suggests cancellation is appropriate.

21. The IC submitted that cancellation should be ordered despite the Member not having renewed his registration. It is one of the available sanctions per s. 63 of the *EGP Act* and carries the necessary deterrent effect to protect the public.

22. 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 Discipline Committee are estimated to be \$51,000.² This value did not include costs associated with the sanction phase of the hearing. The IC requested an order that the Member pay the full costs of the hearing and have up to 12 months to pay.

23. The IC noted that in the context of the *Health Professions Act*, the Alberta Court of Appeal in *Jinnah v. Alberta Dental Association and College*³ (“Jinnah”) held that costs are an inevitable part of self-regulation and it may not be appropriate to impose a significant portion of costs of a hearing onto the member, unless there is a “compelling reason” to do so.

24. The Court noted that a “compelling reason” exists if a member: engaged in serious unprofessional conduct that the professional *must have known* was completely unacceptable; was found to have engaged in unprofessional conduct on two or more occasions; failed to cooperate with the investigation and forced the regulator to expend more resources than otherwise necessary; or engaged in hearing misconduct.

25. The IC submitted that the Member’s conduct was of an extreme nature and therefore it is appropriate for the Member to pay the full costs of the hearing.

² The legal costs incurred in the hearing at the time of submissions was \$50,698.86, which included the legal costs of the IC and the Hearing Panel, but did not include other hearing costs such as the Court Reporter, amounts paid to Hearing Panel members or miscellaneous expenses.

³ 2022 ABCA 336

Written Submissions of the Member dated February 17 and March 2, 2023

26. In response to the IC's submissions, the Member resubmitted his written statement initially provided on January 24, 2023. He also provided four other documents entitled "Note to APEGA President 2023," "Complaint against Director of Enforcement of APEGA 2023" and "[REDACTED] APEGA CEO email 2016" which did not contain submissions on sanctions.

27. The Member's covering email indicated that he will be on leave from active practice in engineering until December 2023 and was undecided about whether to maintain his membership with APEGA. Accordingly, he asked the Hearing Panel to put any of its decisions "on hold" that concerned his status with APEGA. He submitted that the IC's proposed sanctions are unjustifiable and would be appealed.

28. In his March 2, 2023, email, the Member commented on the Canadian and Albertan economy, high levels of immigration, inflation, and the oil industry, which did not relate to this hearing. He referred to his current membership status, "I'm no longer a member of BC's engineering association, as a result, and my future membership in Alberta's engineering association is uncertain." He concluded with further arguments about the appropriateness of his conduct, "if you're a socialist, communist, or fascist voting to limit what people say, you see my conduct as unprofessional. If you aren't one, you don't and are asking yourself whether the CEO of APEGA is the right person for the job."

Reply Submissions of the Investigative Committee

29. In their reply submissions dated March 9, 2023, the IC responded to the Member's submissions with the following:

- a) The Member confirmed receipt of the Merits Decision, as the attachment labelled "Note to APEGA President 2023" is a copy of the letter enclosing the Merits Decision;
- b) The Member's submissions dispute the Hearing Panel's findings on merits rather than comment on the appropriate sanction to be ordered;
- c) The Member attempted to decide unilaterally whether to participate in the discipline process. This is not something a regulated member can do. Choosing to be "on leave from practice" or out of Canada does not affect one's obligation to participate in the discipline process.
- d) The Member's submissions state he has nothing further to submit to the Hearing Panel and show that he can send and receive correspondence. Accordingly, the Hearing Panel should determine sanctions and costs;
- e) The IC previously addressed the comments made in the "Written Statement by member 51052 of APEGA 2023" in its submissions;

- f) The Member's submissions in the EGBC hearing did not cause the EGBC Panel to refute the charges. Rather, after receiving those submissions, the EGBC Discipline Committee ordered cancellation with costs; and
- g) The remaining attachments do not contain submissions relevant to sanctions or costs.

Decision of the Hearing Panel on Sanctions and Costs

Submissions revisiting the Merits

30. The Member devoted a significant portion of his submissions to arguing the Hearing Panel's findings in the Merits Decision. This included most of his submissions in the February 16, 2023 email, the written statement by member 51052 of APEGA 2023, and the Rebuttal to EGBC (APEGBC) by lawyer for member 51052 of APEGA 2017.

31. The Hearing Panel confirms that the present issue is what sanctions and costs should be ordered following the findings in the Merits Decision.

32. The Hearing Panel acknowledges that the Member has a right to appeal to the Appeal Board after the Hearing Panel has issued both its Merits Decision and this decision on sanction.

33. The Member chose not to attend the disciplinary hearing on November 24, 2022. He provided arguments about his freedom of expression and about the *Strom* case after the Hearing Panel issued the Merits Decision to support his argument that his conduct is not unprofessional conduct. The Hearing Panel has already decided this issue and is not prepared to revisit its findings in the Merits Decision. This decision will only address the appropriate sanction given the proven conduct in this case.

Sanctions

34. The Hearing Panel agrees with the IC that the Member demonstrates a lack of insight into his conduct and its severity. The Member's submissions that he has disproved the charges and was acquitted in BC show a fundamental misunderstanding of the discipline process, the role of APEGA, the IC and this hearing, and the discipline provisions of the *EGP Act*. The Member fails to recognize that the Hearing Panel has already found his conduct to be unprofessional conduct.

35. The Hearing Panel finds that many of the *Jaswal* factors weigh in favour of significant sanction.

- a) The nature and gravity of the proven conduct is serious, as it falls well outside the range of acceptable conduct for an engineer. The proven conduct related to Charges 1 and 3 was very concerning and involved repeated threats of violence against members of the public and misleading an APEGA investigation. The Member's proven conduct offends the heart of self-regulation.

- b) The consistent and prolonged nature of the conduct in Charge 1 weighs in favour of significant sanction. The Member's conduct was not an isolated incident or small lapse in judgement. The Member engaged in the conduct for over five years and only stopped when there was police intervention.
- c) The Member continues to demonstrate that he does not appreciate the significance of his conduct or understand that his actions were unprofessional. In each of his correspondences he suggested he had disproven the charges or been acquitted. This is incorrect.
- d) The Hearing Panel was also very concerned about how the public would interpret the Member's conduct and how it would affect their perception of the engineering profession generally. The Member made threats while referring to an engineer's role, engineering standards, and calculations that imply engineering knowledge. His conduct endangers the reputation and integrity of the profession.
- e) The Hearing Panel believes it is important to signal to both the Member and other members of the profession that APEGA will not tolerate such conduct.

36. Based on these factors, the Hearing Panel considered the proposed orders. Its reasons and decision on each are set out below.

Cancellation

37. The Hearing Panel understands that the decision about whether to order cancellation depends on the specific facts of each case, and that the public interest is a guiding principle.

38. Cancellation is among the most serious sanctions that can be imposed under the *EGP Act*. However, a case need not be the single worst case in the history of the profession to justify cancellation. The threshold is whether the conduct is sufficiently serious to remove the Member from the profession. The Hearing Panel finds that the unprofessional conduct in this case is sufficiently serious for the Hearing Panel to consider cancellation.

39. In the Hearing Panel's view, it is unacceptable for professional members to make ongoing threats of violence against any person, but particularly against members of the public. It is even more unacceptable for professional members to leverage their status as engineers or geoscientists to intimidate and give weight to threats of violence against the public. This type of conduct is sufficiently serious that even a single proven incident warrants significant sanction.

40. Where possible, sanction should reinforce that individuals are able to learn from their actions and ameliorate their behaviour. For the Hearing Panel to find a likelihood of rehabilitation, the member should demonstrate some insight into the proven conduct, the appropriate standard for professional conduct, the shortcomings of their proven conduct, and the prevention of similar conduct in the future.

41. The information before the Hearing Panel demonstrates that the Member does not have the requisite insight. Despite the Hearing Panel's finding that his conduct went beyond freedom of expression into unprofessional conduct, the Member continued to advance an argument that he has a *Charter* right to send the emails that he did. Even in his most recent submissions, the Member repeatedly stated the hearing was not warranted. His interpretation of what occurred both in the EGBC hearing and this hearing are demonstrably incorrect. Collectively, his behaviour showed a complete lack of insight into the nature of his conduct and raised significant questions as to whether the Member can presently be rehabilitated.

42. The Member's written submissions failed to address the issues on which the Hearing Panel requested submissions. He made limited comments about sanctions and instead accused other people of unprofessional conduct, which is beyond the jurisdiction of this hearing. He repeatedly refused to follow the Hearing Panel's and APEGA Staff's directions. His behaviour further demonstrates a lack of insight into his obligations to the profession and to his regulator.

43. The Hearing Panel also considered how the EGBC outcome supports that the proven conduct warrants cancellation. Arguably, the EGBC case provides an example of the "range of sentence in other similar cases," which is a *Jaswal* factor that the Hearing Panel can consider. The outcome of the EGBC case suggests cancellation is in the range of appropriate sanction for the specific proven conduct.

44. A significant factor for the Hearing Panel was the message a light sanction would send to the profession and to the public. A light sanction would communicate that making threats of violence is conduct that is not taken as seriously in Alberta as it is in BC. The difference in sanction severity for substantially similar conduct may erode the public's confidence in APEGA.

45. The Hearing Panel considered whether there was any evidence before it of factors that mitigate against a serious sanction. The Hearing Panel's decision must be based on the information and evidence presented to it, whether that be during the hearing on the charges or during the sanctions phase.

46. The Member did not provide any relevant information or evidence for the Hearing Panel to consider. Instead, he chose to contest whether his conduct was unprofessional conduct. His continued denial of unprofessional conduct is not a mitigating factor at the sanction phase of the hearing. The only relevant information that he provided is that he is not actively practising engineering.

47. The Hearing Panel did consider information from the IC about two *Jaswal* factors that mitigate against a serious sanction such as cancellation:

- a) The Member has no prior history of complaints or convictions.
- b) The EGBC has already ordered that the Member's registration in BC be cancelled, which is a penalty that the Member has already suffered because of the allegations being made.

48. Neither factor precludes an order of cancellation, as the Hearing Panel determines the appropriate weight for each Jaswal factor. Further, the *EGP Act* does not prescribe limits of when cancellation can be ordered.

49. The Hearing Panel weighed these mitigating factors against the other aggravating factors and finds that:

- a) The aggravating factors outweigh the mitigating effects. As such, there must be significant sanctions to make it clear to the Member that his conduct was unacceptable, unprofessional, and must change, if he wants to be a member of this profession.
- b) The Member's submissions did not provide any evidence that he is presently able to acknowledge or reform his conduct.
- c) Cancellation, while among the most serious sanctions available to the Hearing Panel, is the appropriate sanction.

50. The Hearing Panel wishes to confirm that this is **not** an order that the Member is permanently ineligible for registration with APEGA. Sections 75(3) and (4) of the *EGP Act* provide that a professional member who has been cancelled can be reinstated. Section 47 of the *Engineering and Geoscience Professions General Regulation* details the process by which disciplined individuals may apply to be reinstated. Upon expiry of the prescribed period of ineligibility, the Member will have an opportunity to demonstrate to Council that he is sufficiently rehabilitated and should be permitted to rejoin the profession.

Costs

51. The Hearing Panel notes that the IC's submissions were based on the recent Alberta Court of Appeal case, *Jinnah*, which stands for the proposition that costs are an inevitable part of self-regulation and it may not be appropriate to impose a significant portion of the costs of a hearing on the member, unless there is a compelling reason. As listed earlier in this decision, the Court outlined four situations where a compelling reason would exist.

52. Before considering whether the facts in this matter meet the criteria of one of the four compelling reasons to order costs, the Hearing Panel notes that *Jinnah* explicitly states that the Court's observations apply to "all professionals regulated by the *Health Professions Act*." As the professions of engineering and geoscience are not regulated by the *Health Professions Act*, it is not clear to what extent, if any, *Jinnah's* principles apply to the Hearing Panel's decision.

53. As the parties' submissions referenced *Jinnah*, the Hearing Panel has considered the *Jinnah* principles as general guidance when deciding costs. However, this decision should not be interpreted as the Hearing Panel's endorsement that the *Jinnah* principles and presumption necessarily apply to the engineering and geoscience professions or future APEGA hearings.

54. The Hearing Panel agrees that the conduct was of a serious nature, particularly the threats of violence. The Hearing Panel finds that the member must have known that threatening violence was completely unacceptable. The average person should know the proven conduct is not acceptable. Police demonstrated that the situation was sufficiently serious to warrant their intervention. Accordingly, if the *Jinnah* presumption and principles apply, the Member's conduct would fall within the first *Jinnah* compelling reason, where the Member may be responsible for at least some costs.

55. The Hearing Panel notes that the Member's proven conduct occurred nine times in five years. Therefore, if the *Jinnah* principles apply, this case would likely fall within the second *Jinnah* compelling reason.

56. There is evidence that the Member forced the regulator to expend more resources than was otherwise necessary. Charge 3 related to the Member attempting to mislead the IC. When a member is less than forthright or provides demonstrably incorrect information, the costs of investigation will increase. Therefore, if the *Jinnah* principles apply, this case likely falls within the third *Jinnah* compelling reason.

57. The Member also complicated this hearing by refusing to attend and by evasive representations in his correspondence. There is ample evidence of the Member using multiple email addresses, changing the email addresses where APEGA is "allowed" to communicate with him, and claiming he was unaware of the hearing while submitting evidence that he was aware. This type of conduct resulted in one adjournment to ensure that the Member was aware of and able to attend the hearing. Despite APEGA's efforts, the Member still refused to attend. This increased the costs of the hearing. Therefore, if the *Jinnah* principles apply, this case likely falls within the fourth *Jinnah* compelling reason.

58. Even if the *Jinnah* principles are applied, a costs award against the Member is justifiable. The Hearing Panel concludes that the Member should be responsible for at least a portion of the costs. The question is then what is the appropriate portion of costs to order in this case.

59. The Member has not provided any information about his personal financial circumstances or the effect that a costs award may have on him. The Member's submissions reiterated his incorrect belief that he has rebutted the charges and that his conduct was appropriate. He suggested that the Hearing Panel should award him \$50,000 in restitution. This provided further evidence of his refusal to accept the validity of the Merits Decision, but it did not assist the Hearing Panel in determining the portion of costs that should be ordered.

60. The Hearing Panel accepts that the Member is currently an inactive member of APEGA and as such is not able to practise engineering. The Hearing Panel accepts that the inability to practise one's profession is likely to affect their income and to affect their ability to pay the full amount of the costs.

61. The Hearing Panel also notes that the Member was ordered to pay full costs in the EGBC hearing, which was around \$50,000. This previous order may affect the Member's ability to pay full costs in this hearing.

62. The Hearing Panel further acknowledges that, even though the Member did not attend, the IC was not successful in proving one charge in part.

63. Considering all this, the Hearing Panel finds the following factors support that the Member should pay a lower portion of the costs:

- a) The IC failed to prove one charge in part;
- b) The Member is currently an inactive member and this likely affects his income;
- c) The Member was ordered to pay \$50,000 in the EGBC matter, which related to substantially similar allegations;
- d) If required to pay the full amount of costs in this matter, the total costs payable would be approximately \$100,000, which is a very large amount and could be a crushing financial blow to any engineer; and
- e) Some of the costs are simply part of the profession's duty to regulate and the profession generally should bear some of the costs.

64. The Hearing Panel finds the following factors support the Member being responsible for a larger portion of the costs:

- a) The conduct was of a sufficiently serious nature that the Member must have known it was unacceptable;
- b) The conduct occurred repeatedly over five years and was not an isolated incident;
- c) The Member attempted to mislead the IC, which increased the cost of investigation;
- d) The Member's actions in relation to the scheduling of the hearing and the provision of written submissions complicated the hearing and contributed to additional costs.

65. After balancing all factors, the Hearing Panel finds that an order requiring the Member to pay 50% of the investigation and hearing is fair, appropriate, and reasonable in the circumstances.

66. The Hearing Panel further orders that the costs must be paid within 12 months on such terms as are acceptable to the Director, Enforcement, of APEGA.

67. Additionally, since the Member will not be a member of APEGA, it is appropriate that he be required to pay the costs before he is eligible to apply for reinstatement.

Publication of the Decision

68. Section 77 of the *EGP Act* provides that following a finding or order of the Hearing Panel, the name of the investigated person may be published.

69. Transparency favours that Hearing Panel decisions be available to APEGA members and members of the public in a manner that identifies the investigated member. Publication is important to protect the public interest. It makes it clear to the public and the profession that professional engineers and geoscientists must not make threats of violence to members of the public and must co-operate with their regulator in whatever jurisdiction they are registered.

70. Neither party raised an objection or an issue that would suggest publication that identifies the Member is inappropriate.

71. Further, the Member's registration with APEGA is cancelled. It is important that the public be aware that the Member is no longer permitted to practise engineering.

72. The Hearing Panel directs that the Merits Decision and this decision should be published in a manner that identifies the Member.

Conclusion

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

- a) The Member's registration is cancelled;
- b) The Member shall pay 50% of the costs of the investigation and hearing;
- c) The costs ordered in paragraph (b) shall be payable within 12 months of the Discipline Committee's written decision on sanction;
- d) The Member will not be eligible to apply for reinstatement as an APEGA member until he has paid the costs ordered in paragraphs (b);
- e) 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 the Member; and
 - ii. If any member of the public or any other professional organization inquires with APEGA as to whether the Member 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.

On behalf of the Hearing Panel of the APEGA Discipline Committee.

Tom Greenwood-Madsen

Signed with ConsignO Cloud (2023/04/17)
Verify with verifio.com or Adobe Reader.



Tom Greenwood-Madsen, P.Eng.,
Discipline Committee Panel Chair

Fred Ritter

Signed with ConsignO Cloud (2023/04/17)
Verify with verifio.com or Adobe Reader.



Fred Ritter, P.Eng., Discipline Committee
Panel Member

A handwritten signature in black ink.

Signed by Adam Whiting (2023/04/18)
Verify with verifio.com or Adobe Reader.



Adam Whiting, P. Eng., Discipline
Committee Panel Member

Muriel Dunnigan

Signed with ConsignO Cloud (2023/04/17)
Verify with verifio.com or Adobe Reader.



Muriel Dunnigan, Discipline Committee
Public Member