



The Association of Professional
Engineers and Geoscientists of Alberta

APEGA DISCIPLINE COMMITTEE DECISION ON SANCTIONS

Date of Hearing: Written Submissions

Date of Decision: December 12, 2024

APEGA Discipline Case Number: 23-011-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 STANTEC CONSULTING LTD.

INTRODUCTION

1. A Hearing Panel of the Discipline Committee (“Hearing Panel”) of the Association of Professional Engineers and Geoscientists of Alberta (“APEGA”) issued a decision dated August 21, 2024 regarding the conduct of Stantec Consulting Ltd. (the “Merits Decision”). The Hearing Panel found that the following Charge against Stantec Consulting Ltd. was proven and constituted unprofessional conduct under section 44 of the *Engineering and Geoscience Professions Act* (“the EGP Act”):

Charge 1 – On or between January 2016 and August 2017, a professional mechanical engineer and principal of Stantec Consulting Ltd. (“Stantec”) authenticated six iterations of storm water management designs (the “Designs”) in connection with the construction of a church in [REDACTED] Alberta. The Designs were not subjected to a peer or independent review, contrary to Stantec’s own Professional Practice Management Plan and/or Stantec’s own Project Management Framework; and further, or in the alternative, contrary to APEGA’s Guideline for Professional Practice (2013) and/or contrary to APEGA’s Guideline for Responsibilities for Engineering Services for Building Projects (2009).

The Designs contained errors including one or more of the following:

- a) Storm water catchment boundaries were not identified, or alternatively not adequately identified;
- b) The total capacity or storage volume for storm water management was inaccurately assessed;
- c) The rate of storm water flow leaving the system was inaccurately calculated;
- d) Incorrect, or alternatively insufficient, elevation grading points.

The Designs were submitted to the Town [REDACTED] for permitting purposes, at which time some or all of the foregoing errors were identified. The foregoing errors resulted in the installation of incorrect equipment and the replacement of that equipment.

2. Following the Hearing Panel's Merits Decision, the parties provided written submissions on what orders should be made, if any. The Hearing Panel met on November 7, 2024 to consider the parties' written submissions on sanctions and costs orders.

SUBMISSIONS ON SANCTION

Written Submissions of the Investigative Committee

3. The Investigative Committee provided written submissions on sanctions and costs on September 16, 2024. The Investigative Committee submitted that the Hearing Panel should make the following orders under sections 63 and 64 of the EGP Act:

- Stantec shall receive a reprimand, and the Hearing Panel's written decision shall serve as that reprimand.
- Stantec shall pay a fine of \$7,500.
- Stantec shall pay one-half of the hearing costs.
- The fine and costs ordered in paragraphs (b) and (c) shall be payable within 90 days of the Hearing Panel's written decision on sanction.
- This matter and its outcome will be published by APEGA as deemed appropriate and such publication shall name Stantec.

4. The Investigative Committee submitted that the fundamental purpose of sentencing in the professional regulatory context is to ensure the public is protected from unprofessional conduct. The goal of public protection is achieved by ensuring that the public is not at risk as a result of continuing conduct by the permit holder, by ensuring the public has confidence in the profession,

and by sending an appropriate message to other members of the profession through APEGA's response regarding conduct found to be unacceptable.

5. The Investigative Committee referred to *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630 ("*Jaswal*"), which outlines several factors that a discipline tribunal can consider when determining an appropriate sanction. The Investigative Committee submitted the following:

- The nature and gravity of the proven allegations: The Hearing Panel's findings against Stantec are serious.
- The age and experience of the offending member: Stantec has been an APEGA permit holder for more than 50 years and has been a sophisticated engineering firm for decades. Stantec's experience is not a mitigating factor.
- The previous character of the member and in particular the presence or absence of prior complaints or convictions: The Investigative Committee was not aware of any prior APEGA complaints or findings of unprofessional conduct under the EGP Act.
- The number of times the offence was proven to have occurred: Over a period of 18 months, GH authenticated six Stormwater Designs, none of which were submitted for independent review as required by Stantec's PPMP and PM Framework. The prolonged, repeated failures of Stantec to comply with its PPMP warrants a more serious sanction than a single example of non-compliance.
- The role of the member in acknowledging what has occurred: Stantec took responsibility for the Stormwater Designs and took significant steps to correct those designs. However, Stantec's position at the hearing was that GH was ultimately responsible for the Stormwater Designs and the failures to comply with the PPMP.
- Whether the member has already suffered other serious financial or other penalties as a result of the allegations having been made: Stantec invested its personnel and costs for a period of months to correct the stormwater designs. This is mitigating.
- The impact of the incident on the affected person: It took more than two years from the initial design in February 2016 to complete an appropriate stormwater design and in the interim, equipment was placed according to the deficient Stormwater Designs, which subsequently required removal.
- The presence or absence of any mitigating circumstances: The Investigative Committee was not aware of any mitigating circumstances that should be considered.

- The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of the profession: An appropriate sanction should deter the specific member from repeating the conduct in the future and also deter other members of the profession from engaging in similar conduct. The Investigative Committee submitted that a reprimand and a meaningful fine would demonstrate to Stantec that its conduct is unacceptable and send a clear message to other members of the profession that conduct of this nature would not be tolerated.
- The need to maintain the public's confidence in the integrity of the profession: The public must have confidence that APEGA takes unprofessional conduct seriously and takes appropriate steps to ensure professional members found to have engaged in unprofessional conduct are unlikely to do so in the future. The Investigative Committee submitted there is clearly a public confidence component to any sanction, not only with respect to the integrity of applying a permit to practice to designs, but also with respect to permit holders that might deflect responsibility to individual engineers.
- The degree to which the offensive conduct that was found to have occurred was clearly regarded as being the type of conduct that would fall outside the range of permitted conduct: Stantec's departure from permitted conduct was not intentional but due to an overall lack of awareness of non-compliance with the PPMP. The degree of Stantec's failure to exercise appropriate diligence was not exceptionally severe; however, undermining client and public confidence in the quality of engineering services is a serious departure from expected standards of conduct.
- The range of sentences in similar sentences: The Investigative Committee provided three cases¹ to demonstrate that their proposed orders align with previous cases. They noted that the previous cases were resolved by admission and agreement, which is a significant mitigating factor. Stantec did not admit misconduct in this case.

6. The Investigative Committee also submitted that Stantec should be responsible for 50% of the hearing costs up to a maximum of \$37,000. The Investigative Committee submitted that the purpose of a costs order is not to punish the permit holder, but to allow APEGA to recoup some of the incurred hearing expenses. The Investigative Committee described the legal principles governing costs orders.² The Investigative Committee submitted that the Hearing Panel could consider the following factors in its decision on costs. The Investigative Committee's submissions on the factors were as follows:

¹ 17-005-RDO Supreme Steel LP dated May 15, 2017; 21-017 RDO Davison and RND Engineering dated December 11, 2021; 23-001 RDO Azeem and Everest Canadian Resources Corp., dated April 4, 2023.

² The Investigative Committee referred to the following cases: *Zuk v Alberta Dental Association and College*, 2018 ABCA 270; *Lysons v Alberta Land Surveyors' Association*, 2017 ABCA 7; *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253; *Dr. Ignacio Tan III v Alberta Veterinary Medical Association*, 2024 ABCA 94; *Dr. Ignacio Tan III v Alberta Veterinary Medical Association*, 2022 ABCA 221; *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336.

- The parties' success or failure at the hearing: The Hearing Panel found that the single Charge against Stantec was proven and amounted to unprofessional conduct.
- The conduct of the parties: Stantec did not delay the proceedings, and in fact consented to an adjournment requested by the Investigative Committee. The Investigative Committee and Stantec reached an agreement on a joint book of hearing exhibits and an Agreed Statement of Facts, which shortened the hearing. Stantec called three witnesses, who were handled efficiently, as were closing arguments. The Investigative Committee submitted there are no aggravating factors attributable to the parties' conduct at the hearing.
- The seriousness of the charges: Though Stantec's conduct is serious, it does not fall at the most serious end of the spectrum of unprofessional conduct. This is not a case where Stantec should be required to bear all the costs of the hearing. Requiring Stantec to pay approximately one half of the total costs is proportionate and fair.
- The reasonableness of the amounts: The costs of preparing for and conducting this hearing were significant but not unreasonable. The amount of the costs order is also reasonable when considered in the contexts of costs orders made in other contested hearings before the Discipline Committee. In *19-003-FH Jan Korzeniowski, P.Eng.*, the total costs were approximately \$117,000 and four of six charges were proven. The Discipline Committee ordered Mr. Korzeniowski to pay \$78,000 in costs. In *19-016-FH Ameer Bakheet, P.Eng.*, the total costs were approximately \$80,000 and three of four charges were proven. The Discipline Committee considered Mr. Bakheet's submissions of his very difficult financial situation due to his prolonged unemployment and ordered Mr. Bakheet to pay \$10,000 in costs. Lastly, in *20-003-FH Eric Chrysanthous, P.Eng.*, the Discipline Committee ordered Mr. Chrysanthous pay 50% or approximately \$50,000 of the total investigation and hearing costs. Mr. Chrysanthous had already been required to pay the full costs of a hearing before the Engineers and Geoscientists BC involving substantially similar allegations.

7. Lastly, the Investigative Committee submitted that publication was appropriate in this case. Publication is the norm in professional discipline decisions, as it provides transparency and accountability. The profession should be aware that non-compliance with a PPMP may lead to disciplinary consequences.

8. Given the Hearing Panel's findings and the factors relevant to sanctions and costs, the Investigative Committee submitted that the Hearing Panel should make the proposed orders.

Written Submissions of Stantec Consulting Ltd. on Sanction

9. Stantec provided written submissions on sanctions on October 7, 2024. Overall, Stantec took the position that a reprimand alone is a sufficient sanction. Stantec responded additionally and specifically to each of the Investigative Committee's proposed orders:

- Stantec took no issue with the request for a reprimand.
- A fine of \$7,500 is inappropriate in the circumstances. There should be no fine.
- Given recent authority from the Alberta Court of Appeal, there should be no award of costs. Alternatively, costs should be no more than 25% of the costs claimed by the Investigative Committee.
- Stantec took no issue with the timelines proposed by the Investigative Committee.
- If the matter and outcome are to be published by APEGA, any such publication should be anonymized, with appropriate redactions to remove reference to Stantec, individual Stantec employees, the project and the complainant. Further, any such publication of the Hearing Panel's decision should be postponed until the civil litigation commenced by the complainant is concluded.

10. Stantec agreed that the applicable test with respect to an appropriate sanction is set out in *Jaswal*, and that discipline tribunals could consider the factors listed. Overall, Stantec submitted that the Investigative Committee inflated the Hearing Panel's findings to suggest that Stantec's conduct was more serious than what was actually found. Stantec noted that the Hearing Panel had not heard evidence from GH, the project architect at Company A who hired GH, or the complainant. Stantec noted that the complainant launched the discipline proceedings as an adjunct to civil litigation. Given the absence of these witnesses, there is no evidence of what occurred on the Church Project, how the Church Project progressed, and at what cost after the agreement between Stantec and the project architect was terminated.

11. Stantec noted that the evidence that was before the Hearing Panel related to the internal review process, and the steps that Stantec took to address the issue once those issues were discovered. Stantec has always acknowledged that its internal review processes were bypassed. Stantec acknowledged responsibility for the mistakes in the Stormwater Designs and redid the design work at no cost. The revised drawings were accepted by the local authority.

12. Stantec further submitted that it was entitled to a full hearing and to make a full defence before the Hearing Panel. Stantec noted it was unfair to suggest that its defence is an attempt to deflect responsibility. Stantec also disputed the Investigative Committee's submission suggesting that the conduct was an ongoing issue over a period of 18 months. The case arises from a single incident, the failure to seek internal review, to which Stantec responded promptly and completely.

13. Stantec disagreed that it did not fully implement the internal processes it had developed and noted that it had developed a compliant PPMP and associated project management system. Stantec further disagreed that there were gaps in the supervision and management of GH. GH was a senior Stantec principal, with more than 40 years of experience. Stantec submitted that there was no evidence of systemic problems with the PPMP or its oversight.

14. Stantec noted that the quality of its internal processes are borne out by a lack of a discipline history, notwithstanding the thousands of projects undertaken in Alberta and across the country. Stantec noted that only a single complaint was referred for a hearing.

15. Stantec reviewed the cases that the Investigative Committee provided to support its position on sanction. Stantec submitted that at a high level, the case before the Hearing Panel is distinguishable from cases involving instances where the parties were found to have poorly implemented and designed PPMPs.

16. Stantec submitted that this was not an appropriate case for a costs order. Stantec took no issue with the amount of costs incurred in this case, and expected they were reasonable. However, the Alberta Court of Appeal in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 (“*Jinnah*”) held that costs should only be ordered where one of four scenarios with “compelling reasons” exist. Stantec submitted that none of the compelling reasons listed in *Jinnah* were present in this case, and therefore the profession should bear the costs of this proceeding.

17. Stantec requested that the Hearing Panel’s decision not be published until the complainant’s civil litigation be concluded. Further, Stantec submitted that the decision should be anonymized as there is no compelling reason to bring public attention to those involved in the facts, nor do the events at issue represent any ongoing concerns or potential harm to the public.

18. To conclude, Stantec submitted there is no indication of ongoing concerns. The facts in this case involve a single isolated departure from the PPMP. There is no suggestion of an ongoing systemic concern, and educational value for the profession can be provided in an anonymized publication. Stantec requested that the Hearing Panel order the reprimand as a sanction.

Reply Submissions of the Investigative Committee

19. The Investigative Committee submitted a reply to Stantec’s submissions on October 15, 2024. The Investigative Committee began by submitting that Stantec’s acknowledgment that its internal review processes were bypassed are not mitigating. The Hearing Panel found that any lack of knowledge by Stantec’s leadership could not excuse any unprofessional conduct “when the organizational structure was such that leadership would not learn of non-compliance.”

20. The Investigative Committee acknowledged that Stantec was entitled to defend its position at the hearing. The Investigative Committee noted that the Hearing Panel found Stantec bore

responsibility for compliance with its PPMP; however, Stantec took no such responsibility. The Investigative Committee submitted that this position is relevant to an appropriate sanction.

21. The Investigative Committee responded to Stantec's submissions on the application of *Jinnah*. The Investigative Committee submitted that the Alberta Court of Appeal has not followed *Jinnah* in multiple cases,³ that *Jinnah* does not purport to apply outside of the *Health Professions Act*, and that the Court of Appeal in *Charkhandeh v College of Dental Surgeons of Alberta*, 2024 ABCA 239 held that *Tan* did not follow *Jinnah*. Accordingly, the Investigative Committee's position was that *Jinnah* was not the leading case in force in Alberta.

DECISION ON SANCTIONS AND COSTS

Sanctions

22. The Hearing Panel agrees with the Investigative Committee that Stantec's conduct is deserving of sanctions to ensure the public is protected from unprofessional conduct. However, the Hearing Panel finds that Stantec's conduct was not at the most serious end of the spectrum, and there are a number of mitigating factors present.

23. The Hearing Panel acknowledges that the *Jaswal* factors referred to by the parties guide a determination of appropriate sanctions. Stantec's failure to adhere to the quality control systems in the PPMP is sufficiently serious to warrant a meaningful sanction. It is important that permit holders, like Stantec, understand that their responsibilities flowing from a PPMP. However, Stantec's unprofessional conduct is not so serious as to warrant the most severe type of sanction.

24. Further, Stantec's conduct was not an isolated, single incident, though it occurred over a relatively short period of time. There were six Stormwater Designs affixed with Stantec's permit to practice despite the lack of an independent review over a period of months.

25. The Hearing Panel also considered the mitigating factors. Stantec has been an APEGA permit holder for more than 50 years and is an experienced engineering firm with no evidence of a prior discipline history. Stantec took responsibility for the Stormwater Designs and took action to rectify the issues while minimizing the impact on its client and the public generally.

26. The Hearing Panel went on to consider the orders proposed by the parties in light of its assessment of the *Jaswal* factors.

³ *Dr. Ignacio Tan III v. Alberta Veterinary Medical Association*, 2024 ABCA 94; *Rashid v. Alberta (Securities Commission)*, 2023 ABCA 53.

Reprimand

27. The Hearing Panel finds that a reprimand is appropriate to denounce Stantec's unprofessional conduct. A reprimand will reinforce to Stantec the importance of maintaining the systems and quality control measures described in their PPMP.

Fine

28. The Hearing Panel finds that a fine of \$5,000 is necessary to convey that Stantec's conduct is unacceptable. A reprimand alone would not sufficiently deter Stantec and other permit holders from engaging in similar conduct. The fact that Stantec took responsibility for the Stormwater Designs and redesigned them at no cost to the Diocese is mitigating but does not eliminate the need for a sanction that protects the public through specific and general deterrence.

29. Stantec and other permit holders in the industry must know they have obligations to adhere to PPMPs, and that they will have consequences for failing to do so. Fines are punitive measures and will send a message to Stantec and other permit holders in the industry that they can expect consequences such as fines if they act in the way that Stantec has in this case.

30. The Hearing Panel finds that a fine of \$5,000 is appropriate in the circumstances. The EGP Act allows the Hearing Panel to order fines to a maximum of \$10,000. The Investigative Committee proposed a fine of \$7,500, which is 75% of the maximum allowed. The mitigating factors in this case – including Stantec's corrective actions after the events, the lack of a history of unprofessional conduct, and Stantec's admissions of facts outlined in the Agreed Statement of Facts – do not support a fine that is 75% of the maximum allowable. The Hearing Panel finds that a lower fine of \$5,000 will serve deterrence purposes while recognizing mitigating factors.

Costs

31. The Hearing Panel considered whether this was an appropriate case for a costs order. The Hearing Panel's authority to order a member to pay costs is set out in the EGP Act at section 64. The expenses that can be recovered through a costs order are listed in APEGA's Bylaws.

32. The Investigative Committee's Statement of Costs showed that APEGA had incurred \$74,197.92 as of September 16, 2024. The items listed in the Statement of Costs include the Investigative Committee's legal fees and disbursements and costs of the hearing. Stantec did not dispute that the costs incurred appeared reasonable.

33. The Hearing Panel accepts the Investigative Committee's characterization of the law on costs set out in *Dr. Ignacio Tan III v Alberta Veterinary Medical Association*. While the case of *Jinnah v Alberta Dental Association* also addresses costs, there are other authorities that do not follow *Jinnah*. The Hearing Panel also notes that the Court of Appeal in *Jinnah* states that their observations apply to professionals under the *Health Professions Act* (which does not apply in this case). The

Court of Appeal has also granted permission for *Jinnah* to be reconsidered. On this basis, the Hearing Panel prefers the approach set out in *Tan*.

34. The Hearing Panel finds that it is appropriate for APEGA to be responsible for some of the costs of this discipline proceeding, as it is APEGA's responsibility to discipline regulated members. It is also appropriate for Stantec to be responsible for some costs, as the hearing occurred because of Stantec's unprofessional conduct.

35. The Hearing Panel considered the factors relevant to costs orders. The Hearing Panel recognized that the Investigative Committee successfully proved the single Charge against Stantec. Both the Investigative Committee and Stantec acted appropriately during the hearing. While Stantec's unprofessional conduct was serious, it was not at the most serious end of the spectrum. The parties' conduct during the hearing was professional and shortened the length of the hearing. Stantec admitted to facts in the Agreed Statement of Facts and agreed that the Investigative Committee's documents could be entered by consent, which obviated the need for the Investigative Committee to call witnesses. The Investigative Committee did request an adjournment, which was granted. The adjournment was appropriate in the circumstances and did not arise from a lack of preparation.

36. The Hearing Panel considered the reasonableness of the amounts proposed by the Investigative Committee. The Hearing Panel agrees that the costs of preparing for and conducting this hearing were significant but not unreasonable in the context of a contested hearing. The Hearing Panel also considered the amount of costs ordered following other contested hearings before the Discipline Committee. The Investigative Committee proposed a costs order of one-half of the hearing costs to a maximum of \$37,000, which reflected approximately half of the total costs incurred at the time of their submissions. The total sum of \$ 74,197.92 did not include expenses incurred for the sanctions portion of the proceedings. The Investigative Committee's proposal would result in APEGA bearing more than half of the costs of the hearing.

37. For the above reasons, the Hearing Panel accepts that a costs order to pay one-half of the hearing costs to a maximum of \$37,000 is reasonable and proportionate in all circumstances. This ensures that the financial burden of regulatory proceedings does not fall disproportionately on APEGA or the other members of the profession.

38. The Hearing Panel also notes that the parties have not raised any issues with the proposed timeline for payment of the fine and costs to be payable within 90 days. The Hearing Panel finds that this payment timeline is reasonable. No additional instructions are considered necessary, and the Hearing Panel will allow APEGA to enforce the fine and cost order.

Publication

39. The Hearing Panel considered the parties' submissions on publication. The Investigative Committee submitted that the decision should be published in a manner that named Stantec.

Stantec submitted that if the decision was published by APEGA, the publication should be anonymized to remove reference to Stantec, Stantec employees, the project, and the complainant. Stantec further suggested that publication of the decision should be postponed, citing concerns about litigation involving the complainant.

40. Stantec argued that publication without its name was appropriate in this case, citing concerns about potential impact on its ongoing civil litigation with the complainant. However, the Hearing Panel ultimately determines that publication with names is appropriate as APEGA's decisions must be transparent to maintain public confidence in the profession. Naming Stantec reinforces the principle that all regulated members, including its larger entities, are subject to professional obligations and discipline.

41. Furthermore, it is APEGA's standard practice to publish its decisions with names unless there are compelling reasons to deviate. The Hearing Panel finds that while Stantec raised some concerns with the publication of its name, the reasons given against doing so were not sufficient to overcome the broader public interest in favour of full transparency.

42. With respect to timing of the publication, the Hearing Panel finds that delaying publication until the resolution of civil litigation between Stantec and the complainant would undermine APEGA's regulatory process. Civil litigation can take years to resolve, and there is no justification for postponing the publication of this decision that overcomes APEGA's need to ensure the public's confidence in its regulatory processes through prompt publication.

CONCLUSION

43. For the reasons set out above, the Hearing Panel makes the following orders and directions:

- a) Stantec shall receive a reprimand, and the Hearing Panel's Sanctions decision shall serve as the reprimand;
- b) Stantec shall pay a fine of \$5,000;
- c) Stantec shall pay a portion of the hearing costs in the amount of one-half of the hearing costs up to a maximum of \$37,000; and
- d) The fine and costs ordered in paragraphs (b) and (c) shall be payable within 90 days of the Sanctions Decision.
- e) The Merits and Sanctions Decision shall be published by APEGA in a manner that identifies Stantec.

On behalf of the Hearing Panel of the APEGA Discipline Committee

Douglas Cox

Signed with ConsignO Cloud (2024/12/13)
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D. Cox, P.Eng.

Discipline Committee Panel Chair

Tom Greenwood-Madsen

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T. Greenwood-Madsen, P.Eng.

Discipline Committee Panel Member

Fred Ritter

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F. Ritter, P.Eng.

Discipline Committee Panel Member

Paul Kavanagh

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P. Kavanagh, P.Geo.

Discipline Committee Panel Member

Muriel Dunnigan

Signed with ConsignO Cloud (2024/12/12)
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M. Dunnigan

Discipline Committee Public Member