APEGA
DISCIPLINE COMMITTEE

DECISION

Hearing Date: August 18, 2025
Date of Decision: October 7, 2025
APEGA Discipline Case No.: 21-14-FH

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

Regarding the Conduct of [redacted], P. Eng (the "Member")

INTRODUCTION

1 Pursuant to Part 5 of the EGPA, a hearing was held on August 18, 2025 (the "**Hearing**") regarding the conduct of the Member. The Hearing was held remotely via Teams before a hearing panel of the Discipline Committee (the "**Hearing Panel**"). The Hearing proceeded by way of an agreed statement of facts, admissions and a joint submission on sanction.

2 The Hearing Panel considered, and subsequently accepted, the agreed statement of facts and admissions. The Hearing Panel then heard from counsel to the IC and the Member with respect to the joint submission on sanctions. Ultimately, the Hearing Panel accepted the joint submission on sanctions and has made an order in this decision consistent with that submission.

3 That order requires this decision be published, but on a no-names basis, and with any confidential business information redacted or not included. Therefore, this decision shall redact the name of the Member and any other parties or any confidential business information necessarily referred to herein.

ORDER OF THE HEARING PANEL

4 The Hearing Panel makes the following order with respect to the Member:

1. *The Member shall be reprimanded for their conduct, and this Decision shall serve as that reprimand.*

2. *The Member shall complete a certified ethics course, to be approved in advance by the Discipline Manager, whose approval will not be unreasonably withheld. The Member will provide written confirmation or other such similar proof of successful completion to the Discipline Manager within one (1) year of the date of the Order. The Member shall be responsible for all costs associated with the completion of the course.*

3. *The Member shall write to the Discipline Manager an apology letter (the "Apology Letter") and the Apology Letter must:*

    a. *be addressed to APEGA;*
    b. *include a reflection of their cooperation in the investigation of this matter;*
    c. *be at least 500 words;*
    d. *be provided within one (1) month of the date of the Order.*

4. *The Discipline Committee's decision in this matter will be published by APEGA as deemed appropriate; however, any such publication will redact the name of the Member, any other individuals, corporate and institutional entities, and any other such reference that would reveal the identity of any of the foregoing.*

5. *The Member shall pay costs in the amount of $5,000. The costs are a debt owing to APEGA and shall be paid within two (2) years of the date of the Order.*

6. *Prior to the expiration of any of the above noted deadlines on sanction or cost, the Member may apply to the Discipline Manager for an extension of such deadline. In making such an application, the Member shall provide the Discipline Manager the reason for the request, a proposal to vary the schedule, and any other documentation requested by the Discipline Manager.*

7. *If the Member fails to provide the Discipline Manager with proof that the Member has completed the requirements noted in paragraphs 2, 3 and 5 herein within the timelines specified, the Member may be suspended from the practice of engineering until the requirements are met. If the requirements with respect to paragraphs 2, 3 and 5 herein are not completed within six (6) months of the*

suspension date, the Member's registration may be cancelled. In the event the Member is cancelled, they will be bound by APEGA's reinstatement policy.

THE HEARING

Appearances

5 The members of the Hearing Panel are:

Robert Swift, P.Eng. (Chair)
Niki Weinrauch, P.Geol.
John Lee, P.Eng.

6 The IC Investigator, B. Anderson, was present in the Hearing along with Legal Counsel for the Investigative Committee of APEGA (the "**IC**"), Karen Smith, KC and Nancy Tran from Parlee McLaws LLP.

7 The Member attended with their legal counsel, Michelle Casey of Lawson Lundell LLP.

8 Independent Legal Counsel for the Hearing Panel, Shauna Finlay from Reynolds Mirth Richards and Farmer LLP, was also in attendance.

9 Members of APEGA staff attended as observers and to provide administrative support for the hearing, namely N. Dodd, J. Seibel, and C. Theroux.

Preliminary Matters

10 There were three preliminary matters that arose prior to the Hearing. First, the Member applied for an order closing the Hearing and requiring the matter to proceed on a no-names basis. Second, the Member applied to dismiss charges two (2) and three (3) from the original Notice of Hearing. Third, the IC applied for Notices to Attend to be issued to three individuals, two of whom worked for a federally constituted Crown council. The federal Crown opposed the issuance of the notices.

11 The Hearing Panel issued decisions on all three issues. The Hearing Panel dismissed the applications on the first two issues, with reasons to follow. With respect to the third issue, the decision of the Hearing Panel with reasons was released on June 10, 2025. Therefore, this decision will not address that preliminary issue. However, with respect to the other two issues, this decision will provide reasons for the Hearing Panel's dismissals.

(i) Application to Close the Hearing and Proceed on a No-Names Basis

12 The Member applied to close the hearing and proceed on a no-names basis, relying on the authority in sections 57 and 77 of the EGPA. Those sections provide:

57 All hearings before the Discipline Committee and the Appeal Board under this Part are open to the public unless that Committee or Board orders otherwise.

...

77 After a finding or order is made by the Discipline Committee, the Council, the Appeal Board, the Court or the Court of Appeal under this Part, the name of the investigated person may be published in accordance with the regulations.

13 The Member submitted that the Hearing Panel should evaluate the request to close the hearing using the same considerations as those used to determine if a decision should be published on a no-names basis.

14 The Member's principal points in their submissions were:

- The underlying allegations do not involve a safety concern, and an open hearing would be disproportionately damaging to the Member's standing and reputation in their professional community.
- There are aspects of the matter that involve highly sensitive and personal matters.
- There is the potential that the Member's ability to secure funding to pursue research projects may be affected.
- The allegations relate to personal issues, not professional issues.
- The Member had an unblemished disciplinary history.

15 The Member cited a number of APEGA Disciplinary decisions that identified factors that resulted in a party not being named in the published decision. These cases are discussed below:

DC -23-021-RDO

This case Involved a registrant working on a residential property that required the design of tall walls. This required the calculation of wind loads and for two tall walls. This was done incorrectly. The agreed facts acknowledged the error but also acknowledged that the registrant had designed many tall walls with no issue and did have this expertise but had erred in this case. In this case, the name of the registrant was withheld. Paragraph 22(g) of that decision provided that the reasons for publishing the RDO on a no-names basis were: i) it was an isolated incident, ii) the registrant was experienced and skilled with respect to tall wall construction and (iii) there was no risk to public safety going forward.

DC-23-010 RDO

This case had involved an issue with improper authentication. The registrant had authenticated and stamped a final report even though they had not been involved in the preparation of the report and had a project management role. In that case, the name of the registrant was withheld because the registrant co-operated with the investigation, they had admitted the unprofessional conduct and public safety was not at issue.

DC-23-008-RDO

This matter involved the incorrect calculation of the snow load for a transit shelter in a resort community. The names were withheld in this decision based on the fact the registrant admitted their shortcomings and together with another party was proactive in implementing measures to prevent this oversight in the future. Public safety was not at risk given the final snow load determined for the shelter did not require a re-design. Finally, publication of the registrant's name was not required to protect the public interest.

DC-22-012-FH

This case dealt with a registrant who failed to alert his employer and others to the fact he was suspended by APEGA. The matter proceeded on the basis of an agreed statement of facts and partial joint submission on penalty. This decision summarized submissions made by counsel to the Investigative Committee on a number of cases considering publication:

a. ***Law Society of BC v Doyle, 2005 LSBC 24*** *- The Law Society introduced very specific rules where the default is publication when a person is found to have engaged in unprofessional conduct. There was a specific test for when a panel could order anonymous publication. This approach is consistent with modern trends in professional regulation where openness and transparency are important to allow the public to have confidence in discipline proceedings.*

b. ***Zachary v CPSA, 2013 ABCA 336*** *– The member challenged the publication order. Under the Health Professions Act, publication serves the public interest and a transparent disciplinary process. This case shows that discipline tribunals have discretion to publish on a named basis.*

c. *Three previous APEGA decisions –*

   i. ***APEGA DC 20-007-FH (July 19, 2021)*** *– This case involved off-duty conduct where the complainant withdrew their complaint and did not want to testify. The Investigative Committee did not advance evidence and there were no findings of unprofessional conduct made against the member. The member did not want their name published and the Investigative Committee did not oppose.*

   ii. ***APEGA DC 16-001-FH (June 26, 2017)*** *– The hearing proceeded by agreement and the joint submission on penalty specifically provided for unnamed publication. The reasons for the panel accepting the joint submission included the member's very long career, the member's*

cooperation, acknowledgement of unprofessional conduct and the member's personal circumstances.

iii. ***APEGA DC 16-006-FH (July 20, 2017**) – The panel found publication on a named basis would meet no goal of discipline that would be proportionate to the damage that named publication would cause. The conduct that led to the findings of unprofessional conduct was relatively minor, there was no actual damage resulting from the conduct, the member was cooperative throughout and was prepared to take proactive steps to ensure things would be done properly in the future and there were no prior discipline findings.*

Ultimately, the Panel decided that the decision would be published on a no-names basis for the following reasons:

- *Member 1 completed the NPPE and was reinstated on September 29, 2021 and had been practicing and a member in good standing for almost two years such that the decision was not relevant to the Members' current suitability for practice;*
- *Member 1 did not practice engineering while he was suspended;*
- *The Members were cooperative throughout the discipline proceedings and made admissions of unprofessional conduct;*
- *The proven conduct was at the lower end of the spectrum of seriousness; and*
- *The Members had long-standing careers in the profession, with Member 1 having one previous RDO in 2012 and Member 2 having no discipline history.*

16 The IC opposed the requests to close the Hearing and proceed on a no-names basis. With respect to the request to withhold the registrant's name on publication of the decision, the IC's position was that this request was premature.

17 With respect to the request to close the hearing, the IC opposed this request on the basis that there was a presumption of an open hearing, and the Member had not provided a sufficient reason for closing the hearing to the public. Regarding the concerns about commercially sensitive information, the IC stated that they would be making an application in advance of the hearing to ensure the confidentiality of commercial and proprietary information was protected.

18 The cases cited by the IC were:

Sierra Club v. Minister of Finance, 2002 SCC 41
In this case, the Crown had sought to protect certain documents from being produced in a judicial review of a decision by Atomic Energy of Canada Ltd. to sell nuclear reactors to China. The SCC determined that, in light of the established link between open courts and freedom of expression, the fundamental question for a court to consider in an application for a confidentiality order is whether the right to freedom of expression should be

compromised in the circumstances. The court must ensure that the discretion to grant the order is exercised in accordance with Charter principles because a confidentiality order will have a negative effect on the s. 2(b) right to freedom of expression. A confidentiality order should only be granted when:

> *(1) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and*
> *(2) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.*

Three important elements are subsumed under the first branch of the test. First, the risk must be real and substantial, well grounded in evidence, and posing a serious threat to the commercial interest in question. Second, the important commercial interest must be one which can be expressed in terms of a public interest in confidentiality, where there is a general principle at stake. Finally, the judge is required to consider not only whether reasonable alternatives are available to such an order but also how to restrict the scope of the order as much as is reasonably possible while preserving the commercial interest in question.

Taseko Mines Limited v. Franco-Nevada Corporation, 2023 ONSC 2055
This involved an appeal of an arbitration order. One of the issues was whether certain documents should be sealed in the appeal. With respect to determining whether the sealing order should be granted and the proper test, the Court stated at para. 120:

> *However, it has been well established that the "open court" principle is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of our democracy. In order to grant an order of the nature sought, the applicant must show that the information sought to be excluded from the public record meets the test established by the Supreme Court of Canada, first in Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41, [2002] 2 S.C.R. 522, and later refined in Sherman Estate v. Donovan, 2021 SCC 25. A party seeking a confidentiality order must establish three elements: (1) public disclosure would pose a serious risk to an important public interest; (2) no reasonably alternative measures would prevent this risk; and (3) the benefits of the order outweigh any negative effects.*

Sherman Estate v. Donovan, 2021 SCC 25
This case dealt with the probate records of a wealthy and well-known couple who were found dead in their home. The matter was investigated as a homicide. The estate

trustees sought to stem the press scrutiny by seeking sealing orders of the probate files. Initially granted, the sealing orders were challenged by a journalist who had reported on the couple's deaths, and by the newspaper for which he wrote. The application judge sealed the probate files, concluding that the harmful effects of the sealing orders were substantially outweighed by the salutary effects on privacy and physical safety interests. The Court of Appeal unanimously allowed the appeal and lifted the sealing orders. It concluded that the privacy interest advanced lacked a public interest quality, and that there was no evidence of a real risk to anyone's physical safety. Ultimately, the Supreme Court agreed. In doing so, the Court restated the proper test:

> *The test for discretionary limits on court openness is directed at maintaining the presumption while offering sufficient flexibility for courts to protect other public interests where they arise. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects*.

19 The Hearing Panel considered the submissions of the parties carefully.

20 With respect to publishing any decision by the Hearing Panel on the merits, the Hearing Panel determined that requesting anonymity at this stage was premature and, therefore, it was declining to issue any ruling at this time. The Hearing Panel noted that decisions where a registrant has not been named followed either an early resolution of a disciplinary matter or a hearing. In other words, the outcome had been determined. In this case, the Hearing Panel was at the beginning of this process, and no findings had been made with respect to the Member or the facts. Without better context and established facts from which to make a determination regarding whether publication is necessary or appropriate, the Hearing Panel was not prepared to pre-determine how it would address publication of any decision arising from a hearing on the merits.

21 As to whether the hearing would proceed on a confidential or closed basis, the Hearing Panel found that the Member did not provide sufficient evidence or reasons to compel the Hearing Panel to conclude that closing the hearing was necessary. The Hearing Panel agreed with the IC that disciplinary hearings are presumptively open to the public and that this transparency is important for the public to have confidence in APEGA's ability to regulate its members.

22 While the Hearing Panel noted the concerns regarding confidential information, it directed the parties to work together in the hearing to identify portions of the evidence or hearing where concerns about confidentiality might arise and the Hearing Panel could deal with those circumstances in due course. It noted that protecting certain information from being noted on the public record or restricting access to sensitive information are procedural matters that can be

addressed in the course of a hearing without making the entire hearing closed to the public. The Hearing Panel concluded that the Member did not provide evidence of a serious risk to an important public interest that needed to be protected by full closure of the hearing. The Hearing Panel determined a better balance was to ensure that confidential information in the hearing was protected but the hearing itself could be open to the public.

(ii) Application to Dismiss Charges two (2) and three (3)

23 The Member requested that charges 2 and 3 from the original notice of hearing be dismissed; or, in the alternative:

a) The hearing currently scheduled for Feb. 3, 4,10 and 11 be adjourned;
b) The IC provide the Member with particulars of the "confidential information" referred to in Charge 2 and the "intellectual property" referred to in Charge 3 within two weeks;
c) If disclosure is not provided within the time required, the Member be permitted to apply to have charges 2, 3, or both dismissed.

24 The Member had alleged there was insufficient disclosure of the confidential information and intellectual property that was the subject of charge 2 and 3 in the charges appended to the original notice of hearing. As a result, the Member argued that either additional disclosure should be provided, or the charges should be dismissed.

Background

25 On April 8, 2024, a Notice of Hearing was issued with respect to the Member. Four charges were identified with respect to the Member – two of which alleged the misuse of confidential information and the appropriation of intellectual property of a third party.

26 While it appeared the Member had received some information, the issues raised by the Member concerned whether the information was, if properly characterized, confidential. It appeared the issue between the IC and the Member concerned exactly what information the IC was alleging was confidential as opposed to publicly available and, therefore, not confidential.

27 The Member argued that professional disciplinary allegations have the potential to seriously affect a party's reputational, economic and legal interests and, as a result, the Member was entitled to a high degree of procedural fairness. Among other procedural entitlements, the Member argued that procedural fairness requires that a party know the case they are required to meet. Applied to disciplinary proceedings, this meant the Member was entitled to be provided with sufficient particulars of the allegations against them to mount a defense.

The Member's Arguments

28 The Member cited a number of cases that outlined the requirement for particulars and described the scope of this obligation. The Hearing Panel found that three decisions were particularly applicable.

> ***Katsoulakos v. Assn. of Professional Engineers of Ontario***, 2014 ONSC 5440
> In this case, the charges against the engineer did not identify issues with his advice on dealing with a cut out in a tank. The Court found the allegations did not sufficiently identify this issue and, therefore, it was not open to the hearing panel in that case to consider those allegations. The Court found that even if the matter came up in the hearing and had been investigated, this was not sufficient. The allegations needed to be sufficiently clear and particular with respect to the conduct at issue.
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> ***Violette v New Brunswick Dental Society,* 2004 NBCA 1**
> This case dealt with a dentist who judicially reviewed a disciplinary decision rather than pursue an internal appeal. This was because the dental society had a policy of not providing formal charges – which the dentist alleged breached the duties of procedural fairness.
>
> The Court agreed with the dentist that he could judicially review the decision instead of taking it through an internal review (because this would have been futile given the policy), but it found that the dentist had received sufficient particulars by way of the complaint letter. The Court found at pages 13-14 of the decision that it may be possible, due to the surrounding context and circumstances, to infer that a member understands the nature and subject matter of the hearing. In this case, the Court found that what might have been an otherwise deficient notice, was acceptable.
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> ***Finch v Assn of Professional Engineers and Geoscientists of British Columbia* (1994), 90 BCLR (2d) 98 (CA)**
> In this case, there was a lack of particularity to the charge as it simply alleged negligence and unprofessional work with respect to four identified projects. This decision reviewed examples where particulars were insufficient because they did not allege the specific facts that constituted the alleged unprofessional behavior. The decision made the point that the specific facts must be detailed where they are alleged to constitute unprofessional or negligent behavior.

29 The Member argued that the technical nature of the disclosure they were seeking was essential because differentiating between the different types of subject substances and formulas was central to preparing their defense – presumably because it would differentiate the work that the Member was undertaking at the time of the complaint from the work they did with the Complainant. In essence, because the Member asserted they had created their own intellectual property and

confidential information from the work they were doing, they were requesting the IC be required to identify *exactly* what was alleged to have been inappropriately used.

30 The Member argued that without knowledge of what specifically was alleged to be confidential or intellectual property of the Complainant, they could not properly argue and investigate whether the subject information was, in fact, confidential, or intellectual property of a third party.

The IC's Response

31 The IC generally agreed with the legal principles as articulated by the Member as it relates to procedural fairness. However, the IC cited two cases that suggested that the proper inquiry is not simply whether the charges themselves provide sufficient particulars but, more broadly, whether the professional is aware of the facts alleged to constitute misconduct and, therefore, what case they have to meet. These cases are summarized below:

> ***Hesje v Law Society of Saskatchewan,* 2015 SKCA 2**
> In this case, the charge identified the failure to properly advance a matter for a particular client. After the charge, the lawyer received disclosure and a copy of the complaint. It was acknowledged that disclosure was adequate. The Court found that the lawyer adequately understood the nature of the allegations against them and the facts underlying the charge.
>
> ***Brooks v Ontario (Racing Commission),* 2017 ONCA 833**
> This case involved allegations that Brooks assisted his brother in running a stable when his brother was banned from doing so due to convictions of fraud in New York.
>
> The Court of Appeal upheld a lower court decision that found that a notice was adequate because it was sufficient to allow Brooks to understand and appreciate the allegations against him. Brooks had argued that the allegations against him did not include fraud – whereas the Commission's decision had referenced fraud. The Court found that the integrity and conduct of Brooks was squarely before the Commission and there was nothing that would have caught Brooks by surprise.
>
> In other words, this case suggests courts look at the broader picture and determine whether, as a result of the particulars and other disclosure, the party has a good understanding of what is alleged so they can gather evidence, mount a defense and are not taken by surprise.

32 The IC argued that the Member did have a clear understanding of the confidential and proprietary information at issue and the Member did have sufficient knowledge that this information formed the basis for the alleged wrongdoing.

33 The IC referred to portions of the Investigation Report that identified information coming from the third-party Complainant to the Member as the confidential information. This had been outlined in

the portion of the investigation report that outlines the basis for the charges. The IC also referred to portions of interview transcripts wherein the Complainant identified aspects of a process, the objectives of the process and how this was shared with the Member.

34 The IC asserted that between the charges and the Investigation Report, the Member understood the information at issue was (i) the scientific formula used in the relevant process and associated research and testing; (ii) the conditions of use for the scientific formula; and (iii) the performance of the formula, all information which had been provided to the Member.

35 Therefore, the IC requested the application of the Member be dismissed.

The Hearing Tribunal's Decision and Reasons

36 The Hearing Tribunal determined that the key question was whether the charges and allegations in the Investigation Report sufficiently identified the confidential information referred to in the charges. The Hearing Panel found that, from the materials provided by the Member, a central issue was not necessarily what information was at issue, but whether that information fell within the definition of confidential information, which generally excludes publicly available information or general knowledge.

37 This is a distinct issue from knowing the case to meet. The Hearing Panel determined that the Member did know what information was being alleged to be confidential and proprietary – however the Member appeared to be suggesting that this information was not confidential or proprietary. Further, no evidence was provided directly from the Member that explained why the charges set out in the Notice of Hearing and the information contained in the Investigation Report about what had been provided to the Member did not provide them with sufficient information from which to conclude the substance of the charges against them.

38 In this context, the Hearing Panel concluded that the charges and the Investigation Report provided sufficient information to the Member about the charges against them. The Hearing Panel noted the Member did not provide evidence that would explain or provide a foundation upon which to conclude that such materials were insufficient to inform the Member of the specific allegations against them. Therefore, the Hearing Panel dismissed the Member's application.

OPENING OF THE HEARING

39 The Hearing opened on August 18, 2025. The parties advised that there were no objections to the Hearing Panel's constitution or jurisdiction. All participants introduced themselves and confirmed that they were in a private space.

40 Counsel for the IC advised as a preliminary matter that the Hearing would be proceeding by way of an Agreed Statement of Facts ("**ASOF**"), there would be a Joint Submission on Sanctions subject to

the Hearing Panel's acceptance of the ASOF, and that two of the four allegations outlined in the Notice of Hearing dated March 24, 2025 ("**Notice**")[1] would be withdrawn.

41 The two allegations remaining at issue in the Hearing were as follows:

(a) *In or about July 2019, with respect to the [redacted] Grant Application for joint research and project funding with [redacted], [redacted] while engaged as a graduate student influenced [redacted] that [redacted], [redacted] supervisor, and not [redacted], [redacted] prior supervisor, had the relevant expertise such that [redacted] moved the application for the [redacted] grant from [redacted] to [redacted] to the potential detriment of [redacted] interest and [redacted] would to [redacted] personal interest have the option to work on the project in [redacted] capacity as a graduate student for [redacted].*

(b) [redacted] *made disparaging remarks of [redacted], P. Eng, for [redacted] personal benefit, particulars of which include one or more of the following:*

a. [redacted] *was not a good professor, difficult to work with, not reliable, and/or unethical; and*
b. [redacted] *did not have enough expertise.*

42 It was alleged that these allegations constituted unprofessional conduct within the meaning of s. 44(1)(b) of the EGPA.

43 The following documents were entered as exhibits in the Hearing:

Exhibit 1: Notice of Hearing dated March 24, 2025

Exhibit 2: Investigation Report with Appendices

Exhibit 3: Agreed Statement of Facts and Admission of Unprofessional Conduct – signed

Exhibit 4: Joint Recommendation on Sanctions - signed

SUBMISSIONS ON UNPROFESSIONAL CONDUCT

44 Counsel to the IC began by reviewing the statutory framework which led to the Hearing being convened, namely that there had been a complaint, which had been referred to the IC pursuant to s. 43(4) of the EGPA, and s. 44 of the EGPA which sets out the definition for unprofessional conduct.

[1] The Notice of Hearing dated March 24, 2025, was marked as Exhibit 1 in the Hearing.

45 It was noted that an investigation had been conducted under s. 47 of the EGPA which led to a referral to a hearing.

46 Counsel to the IC summarized the role of the Hearing Panel in reviewing the ASOF, namely to determine whether (i) there is a sufficient factual background upon which to conclude the alleged facts or charges have been proven; and (ii) whether the admitted conduct falls within the definition of unprofessional conduct set out in s. 44 of the EGPA.

47 In terms of accepting the ASOF, counsel to the IC noted that the Investigation Report was also before the Hearing Panel, not for the truth of its contents, but to reflect the extent of the IC's investigation into the allegations and that this, combined with the final ASOF, should give the Hearing Panel confidence that the facts admitted are reasonable.

48 Counsel for the IC then turned to whether the admitted facts fall within the definition of unprofessional conduct. Section 44(1)(b) provides that contravention of a code of ethics of the profession as established under the regulations constitutes unprofessional conduct. The Hearing Panel was taken to the Code of Ethics set out in the Schedule to the *Engineering and Geoscience Professions General Regulation,* AR 150/99 (the "**Code of Ethics**"). Counsel to the IC directed the Hearing Panel to Rule of Conduct number three which provides "[p]rofessional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities."

49 Counsel to the IC pointed the Hearing Panel to the admissions in the ASOF in relation to allegation 1. It was suggested that the facts admitted thereto constituted a breach of Rule of Conduct number three. This was because the actions admitted by the Member had influenced the Complainant to make decisions potentially to the Complainant's detriment, but which the Complainant believed were in the Member's personal interest because the Member would have had the option to work on a certain research project.

50 In relation to allegation 4, it was noted that the Member admitted to making disparaging remarks regarding the engineer they had previously been working with, which had the effect of potentially disadvantaging the Complainant.

51 The IC concluded that these admitted facts were sufficient to support the admission of unprofessional conduct contained in the ASOF.

52 Counsel for the Member supported the submissions of counsel to the IC. They emphasized to the Hearing Panel that, if the Hearing Panel were inclined to accept the ASOF and the admissions, it was important to use the wording drafted by the parties because it had been carefully negotiated and was specific.

53 Following a brief adjournment, the Hearing Panel determined that it would accept the ASOF and the admissions therein. It found that the admitted conduct did constitute unprofessional conduct for the reasons set out below.

Decision of the Hearing Panel on the Issue of Unprofessional Conduct

54 The Hearing Panel considered the admissions set out in the ASOF.

55 The admitted facts established that the Complainant had a research relationship with an engineer for the purpose of applying for research funds. The Member then began working with a different party and told the Complainant that the original engineer did not have a technology that the different party was developing. This influenced the Complainant to move their relationship from the original engineer to the different party. The different party and the Member then worked on and drafted a research funding application, but subsequently it was withdrawn. The admitted facts were that this was to the potential detriment of the Complainant. It was further admitted that the Member made certain disparaging remarks about the original engineer which had the effect of potentially disadvantaging the complaint, had the original research funds been granted and that research produced translative results.

56 The Hearing Panel found these facts supported the admission of unprofessional conduct because, ultimately, the purpose for the actions did not appear to be serving a professional purpose, and potentially served a personal one. This is at the core of Rule of Conduct No. 3, which requires professionals to conduct themselves with integrity, honesty, fairness and objectivity in their professional activities. The above noted facts occurred in a professional setting where the reason for the interaction was working on an engineering research problem. The Hearing Panel agrees that disparaging the original engineer with the effect of the Complainant altering their own position to their potential disadvantage, in the absence of an objective engineering purpose for doing so, constitutes unprofessional conduct as defined in s. 44(1)(b).

Joint Submission on Sanction

57 Having accepted the ASOF and admission of unprofessional conduct, the Hearing Panel then considered the parties' Joint Submission on Sanctions.

58 Counsel for the IC reviewed the principles that apply to the consideration of a joint submission on sanctions. Counsel to the IC reviewed the Hearing Panel's jurisdiction to order sanctions (section 63 of the EGPA) and the objectives of the sanctioning process.

59 Counsel to the IC emphasized that the overriding purpose is protection of the public. Other objectives are deterrence, for the specific member of the profession and other members at large, rehabilitation of the Member, fairness in how the Member is sanctioned in relation to other sanctioned members and the obligation of the professional organization to regulate its members.

60 The case of *Jaswal v. Newfoundland Medical Board*, [1996] 42 Admin L.R. (2d) 233 was cited for setting out the factors that should be considered when imposing sanctions, and which the counsel to the IC stated were considered in arriving at the joint submission on sanctions. Some of the key considerations identified were:

- *Nature and Gravity of the conduct* – the IC noted that the conduct does address integrity of the professional, which is significant
- *Risk to the public* – The IC suggested the conduct was at the lower end of the spectrum of risk
- *Age and Experience* – The IC noted that the Member had been registered since 2006
- *Previous incidents* – There were none
- *The other party* – was a commercial entity
- *The number of incidents* – the conduct involved one instance
- *Role of the member in taking responsibility* – the Member did take responsibility and the matter has proceeded by consent
- *Impact on the Complainant* – there has been some impact on the Complainant
- *Mitigating circumstances* – none.

61 The IC suggested that a consideration of these factors supported the joint submission on sanctions proposed to the Hearing Panel.

62 Counsel to the IC then reviewed the joint submission on sanctions and addressed how the sanctions agreed to by the parties addressed the objectives of the sanctioning process.

63 Counsel to the IC noted that the Member would be reprimanded and required to take an ethics course that is approved by the Discipline Manager. Counsel to the IC suggested that this be a university level course that is substantial. This addressed the specific rehabilitation of the Member while the reprimand served as a deterrent to this specific Member as well as other members. Further, the Member was required to write an apology to APEGA that included a reflection of their cooperation in the investigation of this complaint. This also addressed the rehabilitative objective. It was noted that the apology would be retained on APEGA's membership files.

64 Further, the publication of the decision (albeit on a without names basis) will serve an educative purpose to other members in terms of communicating the type of conduct that is unprofessional.

65 No fine is suggested.

66 Counsel to the IC also addressed the costs proposed as part of the joint submission, namely an order to pay $5000 in costs. It was noted that the authority to impose costs is found in s. 64 of the EGPA.

67 Counsel to the IC noted that this costs order was appropriate considering recent caselaw[2] that emphasizes that a costs order must be proportional to the issues involved, the circumstances of the case and consider the overall burden to be imposed on the member. Costs awards are not to be punitive and should be focused on hearing costs.

68 Counsel to the IC stated that the costs proposed in the joint submission reflect the limited participation of the Member in the actual Hearing, which was originally scheduled for multiple days and was reduced to a single day consent hearing. It was argued the costs were not disproportional to the actual Hearing.

69 Counsel to the IC then reviewed the principles that the Hearing Panel should consider when reviewing a joint submission on sanction.

70 The case of *R. v. Anthony Cook,* 2016 SCC 43 was cited. This case addresses how decision makers should approach joint submissions on sentence, which has been applied in the professional regulatory context to joint submissions on sanctions. In short, this decision reviews the benefits and importance of joint submissions and the importance to the administration of justice of respecting those agreements. The *Anthony Cook* decision sets out a public interest test to evaluate joint submissions. Essentially, a joint submission should not be departed from unless it brings the administration of justice into disrepute.

71 Counsel to the IC noted that a joint submission in these circumstances achieves a number of salutary benefits. It allows for a party to take responsibility for their conduct, it reduces administrative steps and costs which permits the redirection of those resources, it allows for the efficient resolution of a matter and reduces the stress for the member who is the subject of the proceedings.

72 Before the Hearing Panel adjourned to consider whether to accept the joint submission on sanction, it requested clarification on a number of points.

73 Firstly, the Hearing Panel confirmed that the intention of the written apology was that it come directly from the Member. It was confirmed that this was the intention.

74 Secondly, it was determined that a sample of the ASOF with the redactions contemplated would be provided by counsel to the IC and the Member.

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[2] Counsel to the IC referred to the recent decision of the Alberta Court of Appeal in *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258. This decision articulates a number of key principles as it relates to sanctioning by professional bodies and orders for costs. Key principles include that a sanction order should, above all else, be focused on protecting the public and sanctions focused on punishment are not appropriate. Further, as it relates to costs, that costs should not be another form of sanction, they must be proportional to the hearing costs, which should include actual hearing costs, not costs properly borne by the regulatory body such as travel for tribunal member and the cost of independent counsel.

75 Thirdly, the Hearing Panel confirmed that the intention was that the apology letter would be retained on the Member's file at APEGA. It was confirmed that this was the intention.

76 Finally, the Hearing Panel requested clarification on the Member's background [redacted] and confirmed that the Member's [redacted] role [redacted] postdated the conduct at issue in these proceedings.

77 With these clarifications, the Hearing Panel adjourned to consider the joint submission on sanctions.

Decision of the Hearing Panel on Sanction

78 The Hearing Panel accepted the joint submission on sanctions. The Hearing Panel noted that it is required to defer to the joint submission proposed by the parties unless doing so would result in, essentially, a miscarriage of justice. The Hearing Panel concluded that the joint submission was not contrary to the public interest and generally achieves the objectives of the sanctioning process as summarized by counsel to the IC.

79 The Hearing Panel agrees that the ethical conduct of the Member did not meet the expected standard of a professional engineer, which is a serious matter. However, public safety was not at risk, it was an isolated incident, and the Member has taken accountability for their actions. In that context, the Hearing Panel considers that the sanction order proposed appropriately addresses the conduct and provides for the Member to undertake steps to learn from their actions.

Order

80 In light of the above, the Hearing Panel makes the following order pursuant to sections 63 and 64 of the EGPA:

1. The Member shall be reprimanded for their conduct, and this Decision shall serve as that reprimand.

2. The Member shall complete a certified ethics course, to be approved in advance by the Discipline Manager, whose approval will not be unreasonably withheld. The Member will provide written confirmation or other such similar proof of successful completion to the Discipline Manager within one (1) year of the date of the Order. The Member shall be responsible for all costs associated with the completion of the course.

3. The Member shall write to the Discipline Manager an apology letter (the "Apology Letter") and the Apology Letter must:

    a. be addressed to APEGA;

b. include a reflection of their cooperation in the investigation of this matter;
c. be at least 500 words;
d. be provided within one (1) month of the date of the Order.

4. The Discipline Committee's decision in this matter will be published by APEGA as deemed appropriate; however, any such publication will redact the name of the Member, any other individuals, corporate and institutional entities, and any other such reference that would reveal the identity of any of the foregoing.

5. The Member shall pay costs in the amount of $5,000. The costs are a debt owing to APEGA and shall be paid within two (2) years of the date of the Order.

6. Prior to the expiration of any of the above noted deadlines on sanction or cost, the Member may apply to the Discipline Manager for an extension of such deadline. In making such an application, the Member shall provide the Discipline Manager the reason for the request, a proposal to vary the schedule, and any other documentation requested by the Discipline Manager.

[Remainder of page intentionally left blank.]

7. If the Member fails to provide the Discipline Manager with proof that the Member has completed the requirements noted in paragraphs 2, 3 and 5 herein within the timelines specified, the Member may be suspended from the practice of engineering until the requirements are met. If the requirements with respect to paragraphs 2, 3 and 5 herein are not completed within six (6) months of the suspension date, the Member's registration may be cancelled. In the event the Member is cancelled, they will be bound by APEGA's reinstatement policy.

Dated this 7th day of October, 2025.

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

Robert Swift
Signed with ConsignO Cloud (2025/10/07)
Verify with verifio.com or Adobe Reader.
notarius

Robert Swift, P.Eng., Discipline Committee Panel Chair

Niki Weinrauch
Signed with ConsignO Cloud (2025/10/07)
Verify with verifio.com or Adobe Reader.
notarius

Niki Weinrauch, P.Geol., Discipline Committee Panel Member

John Lee
Signed with ConsignO Cloud (2025/10/08)
Verify with verifio.com or Adobe Reader.
notarius

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