



APEGA Appeal Board Decision

The Appeal Board's purpose is to provide registrants and the public full protection of their statutory right of appeal and right to natural justice, in accordance with the [Engineering and Geoscience Professions Act](#), through review of decisions and actions by the Discipline Committee, Practice Review Board, Investigative Committee or Board of Examiners. For more information, please visit www.apega.ca/enforcement/discipline-decisions.

Date of Hearing: December 11, 2020

Date of Decision: February 1, 2021

APEGA Appeal Case Number: 17-008-FH

**IN THE MATTER OF the Engineering and Geoscience Professions Act and
THE APPEAL by Mr. Richard Balliant, from a decision of the APEGA Discipline
Committee in the matter of conduct of Mr. Richard Balliant and Bal-Comp Engineering**

HEARING PANEL:

Ken Hawrelko, P.Eng. (Chair)
Christina Clark, P.Eng. (Member)
Garnett Schommer, P.Eng. (Member)
Jim Seale, P.Eng. (Member)
Harold Neth (Public Member)

INDEPENDENT LEGAL COUNSEL FOR THE APPEAL BOARD:

Natalie Tymchuk, Emery Jamieson LLP

APPEARANCES:

Richard Balliant, acting on his own behalf and on behalf of Bal-Comp Engineering Ltd.
Kimberly Precht, Field Law LLP, Legal Counsel for Investigative Committee
Garth Jespersen, APEGA Director, Investigations

Summary

The Appeal Board of the Association of Professional Engineers and Geoscientists of Alberta (the Appeal Board) (APEGA) has considered this appeal and, pursuant to section 69(3)(b) of the Engineering and Geoscience Professions Act, RSA 2000, c E-11 (the Act), confirms the decisions of the Discipline Committee (DC) for the reasons specified in this decision. The appeal is therefore dismissed.



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Background

- [1] This is an appeal by Mr. Richard Balliant, pursuant to section 67 of the Act. Mr. Balliant has appealed the findings and sanctions levied against him and Bal-Comp Engineering Ltd. by the DC.
- [2] In May of 2011, a former Complainant of Bal-Comp Engineering Ltd. (“the Complainant”) submitted a complaint to APEGA regarding the conduct of Mr. Balliant and his company Bal-Comp Engineering Ltd. The complaint alleged that Mr. Balliant, through his company, failed to pay wages owed to the Complainant and payments to the Canada Revenue Agency (CRA).

Investigation

- [3] In May 2011, a Notification of Investigation was issued to Mr. Balliant. He responded with partial information and made multiple requests for extensions to respond. Mr. Balliant also requested that the Investigative Committee (IC) investigator assigned to the matter not proceed with the investigation as he considered the matter to be a civil dispute. The investigator received further information from the Complainant alleging there were other people who were also not paid by Mr. Balliant and his company.
- [4] Over the course of the following two and a half years, the IC investigator and Investigative Panel had various communications with Mr. Balliant and the Complainant as to a potential settlement in connection with payments that Employment Standards had ordered Mr. Balliant and his company to provide to the Complainant. The investigation was held in abeyance during much of this time, pending a potential resolution of the matter between Mr. Balliant and the Complainant.
- [5] This investigation became essentially dormant from October 2013 until October 2015, when the investigation was assigned to a new staff investigator and a new Investigative Panel was formed to review the file and determine the next steps. The investigator obtained updated information regarding the status of the Employment Standards Orders and an updated response from Mr. Balliant. Throughout the investigation, Mr. Balliant maintained that he could not satisfy the Employment Standards Orders as he did not have the financial means to do so. This information was made available to the new Investigative Panel.
- [6] In May 2016, the IC notified the Complainant and Mr. Balliant of its decision to terminate the investigation of the Complainant’s complaint. The basis for this decision was the IC’s view at the time that it was not APEGA’s role to enforce



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Employment Standards obligations or to determine Mr. Balliant's ability to satisfy such obligations. The IC also found insufficient evidence of the alleged conduct relating to non-payment of income taxes.

- [7] The Complainant appealed the IC decision to the Appeal Board pursuant to section 51 of the EGP Act. In March 2017, the Appeal Board overturned the decision of the IC and referred the matter to the DC for a hearing. The Appeal Board noted in its decision that Mr. Balliant had provided contradictory information during the APEGA investigative process and that he was not candid during the 2017 appeal, particularly in response to inquiries regarding his alleged misrepresentations to the Complainant and failure to remit source deductions.

Disciplinary Committee Hearing

- [8] The DC issued a Notice of Discipline Hearing to Mr. Balliant in December 2017. The hearing was scheduled for March 5 and 6, 2018. The following charges were before the DC:
1. Richard Balliant ("Balliant") in his capacity as principal of Alberta 1470646 Ltd. (the "Company") failed to ensure that source deductions for CPP, income tax, and EI that were deducted from the 2009 earnings of the Complainant, [former Complainant] were remitted to the Canada Revenue Agency in a timely fashion, or at all.
 2. On or about October 2009 to February 2010, Balliant in his capacity as principal of the Company, inappropriately and falsely assured the Complainant that they would receive payment for wages owed to [the Complainant], particulars of which include one or both of the following:
 - a. Provided such assurances when it was unknown whether the Company would be able to satisfy its obligations to its employees; and
 - b. Provided such assurances for the purpose of persuading the Complainant to continue their employment, for the benefit of the Company.
 3. Balliant in his capacity as principal of the Company, failed to comply or take adequate steps to comply with an Order issued by Employment Standards, dated July 13, 2010, which required the Company to pay the Complainant the sum of \$41,461.61 to compensate [the Complainant] for outstanding wages, vacation pay, and termination pay owed to them by the Company.



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4. On or about May 2011 to December 2015, Balliant failed to cooperate or to adequately cooperate with the investigation being conducted on behalf of the Investigative Committee, particulars of which include one or more of the following:
 - a. Failed to provide a substantive written response to the complaint, despite requesting and being granted numerous to provide a written response;
 - b. Failed to provide a copy of the Professional Practice Management Plan for Bal-Comp Engineering Ltd., as requested; and
 - c. Failed to provide other papers, documents, or records in his possession related to the complaint, including but not limited to tax documentation.
 5. On or about November 2, 2011, [Balliant] inappropriately requested that the investigation be held in abeyance, particulars of which include:
 - a. Suggested or implied that the correct amount owing to the Complainant had not yet been finally determined, despite such a determination having been made in accordance with the Order issued by Employment Standards, dated July 13, 2010; and/or
 - b. Suggested or implied that the Order may be subject to appeal, even though Balliant did not file an appeal within the required deadline.
 6. During the investigation, Balliant inappropriately provided contradictory and/or misleading information to APEGA as to whether the Complainant resigned or was terminated from their employment with the Company on or about February 2, 2010.
- [9] The IC alleged that this conduct constituted unprofessional conduct as set out in section 44(1) of the EGP Act, and/or that it contravened section 32.1 of the Bylaws and/or one or more of Rules of Conduct 3, 4 and 5 of APEGA's Code of Ethics.
- [10] The hearing of this matter before the DC started on March 5, 2018. Mr. Balliant appeared without legal counsel and made a preliminary application to adjourn the



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proceedings. The reasons provided for the adjournment request were that Mr. Balliant was no longer represented by legal counsel and he was not prepared to proceed with the hearing. Mr. Balliant submitted that he believed he could retain new legal counsel within 30 days. Legal counsel for the IC opposed the adjournment. However, the DC granted Mr. Balliant's request and adjourned the hearing, directing Mr. Balliant to provide the name of his new legal counsel to DC staff by April 11, 2018. Mr. Balliant was also informed that DC staff would thereafter begin scheduling a new hearing date.

- [11] Mr. Balliant did not respond with the name of new legal counsel within the timeline directed by the DC and new hearing dates were scheduled for July 12 and 13, 2018. The hearing proceeded on those dates. Both parties submitted arguments and documentary evidence and called witnesses. Though Mr. Balliant did not have legal counsel present, he did have a friend attend, who assisted him through the DC hearing in presenting his case.

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- [12] The DC found that charges 3 and 4, constituting unprofessional conduct, had been proven by the IC. In particular, the DC found that the conduct proven in connection with those charges fell under the categories of unprofessional conduct set out in section 44(1) of the Act, as this conduct was detrimental to the best interests of the public and harmed or tended to harm the standing of the profession generally. Charges 1, 2 and 5 were dismissed as the DC determined that these charges were not proven on a balance of probabilities. Details of the reasons for these findings are outlined in the DC's decision dated October 18, 2018 (the Conduct Decision). Also, charge 6 was withdrawn by the IC at the hearing held on March 5, 2018.
- [13] Regarding Charge 3, the DC recognized that Mr. Balliant and his company were experiencing financial challenges and those challenges prevented them from paying in full the amounts owing under the Employment Standards Order. The DC nonetheless found that Mr. Balliant had failed to take adequate steps to ensure compliance with the Employment Standards Order. The DC clarified that not having the funds to fully comply with the Order was not the reason for its finding that he had engaged in unprofessional conduct. Rather, his actions and/or lack of action, in other words, the inadequacy of steps taken to comply, pushed his conduct into the realm of being unprofessional.
- [14] In this regard, the DC referred to Mr. Balliant having continued to dispute the amounts owing after the applicable appeal period had passed and having engaged only sporadically in communications with Employment Standards, during which he



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failed to follow-through on making any meaningful offers or effecting payments he said he would make. The DC also noted Mr. Balliant's failure to communicate with the Complainant regarding the matter.

- [15] The DC further found that there was a close connection between the practice of engineering and Mr. Balliant's conduct as the owner of an engineering company and as a Professional Engineer, particularly as Mr. Balliant presented himself as a Professional Engineer and was, through his engineering company, an employer involved in Employment Standards proceedings. The DC found that Mr. Balliant's conduct failed to meet the requirements of integrity, honesty, fairness and objectivity and to uphold the honour, dignity and reputation of the profession, as set out in Rules of Conduct 3 and 5.
- [16] Regarding Charge 4, the DC found Mr. Balliant's conduct contravened the s.49(1) of the Act and Bylaw 32.1. The DC noted that an APEGA member has the duty to cooperate during an investigation. The DC found that Mr. Balliant's non-responsiveness and failure to cooperate were deliberate and that this conduct constitutes unprofessional conduct.
- [17] Mr. Balliant noted to the DC that he had been experiencing challenging personal and professional circumstances at the time of the Complainant's complaint to Employment Standards. The DC found, however, that throughout the investigation Mr. Balliant regularly failed to meet deadlines to produce responses and documents, without providing any reasonable excuse and despite agreeing or committing to respond or meet deadlines, and extensions, on various occasions. The DC pointed to the fact that Mr. Balliant was afforded multiple opportunities over the course of several years to properly respond to and cooperate with investigators, yet he still failed to do so. Even before the DC, Mr. Balliant failed to provide a copy of his company's Professional Practice Management Plan or income tax records that had been requested in the investigation.
- [18] The DC concluded that Mr. Balliant's conduct in relation to the investigation reflected poorly on the profession and prevented the IC from carrying out its duties to protect the public.
- [19] In its Conduct Decision, the DC invited submissions from the IC and Mr. Balliant concerning sanctions.
- [20] Mr. Balliant did not provide formal submissions, but he did correspond with APEGA's Director of Enforcement and his correspondence was shared with the DC. His correspondence did not specifically address the issue of sanctions. The DC was



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satisfied that Mr. Balliant had the opportunity to provide submissions and that he chose not to specifically address the sanctions proposed by the IC. In its decision dated September 24, 2019 (the Sanctions Decision), the DC issued orders as follows:

- a) Mr. Balliant shall be reprimanded for his conduct and the Discipline Committee's written decision on sanction shall serve as the reprimand;
- b) Mr. Balliant shall provide evidence to the Director of Enforcement by no later than March 7, 2020, that he has successfully completed the National Professional Practice Exam. The course and exam will be undertaken at his own cost;
- c) The requirement in paragraph (b) shall be satisfied by Mr. Balliant complying with paragraph 39(b) of the Discipline Committee's Decision on Sanctions in APEGA Discipline Case Number 17-001-FH ("DC 17-001") dated February 26, 2019;
- d) Mr. Balliant shall pay a fine in the amount of \$2,500;
- e) Mr. Balliant shall pay \$7,500 with respect to the costs of the hearing;
- f) The fines and costs referred to in paragraphs (d) and (e) shall be payable as follows:
 - i. The first payment of \$5,000 shall be paid to the Director of Enforcement on or before March 11, 2020; and
 - ii. The second and final payment of \$5,000 shall be paid to the Director of Enforcement on or before March 11, 2021.
- g) The fine and costs referred to in paragraphs (d) and (e) above are a debt owing to APEGA;
- h) If Mr. Balliant fails to comply with the orders set out in paragraphs b), c), d), e) or f) his registration will be suspended until he complies with the order;
- i) The Discipline Committee's Decision shall be published or circulated as follows:
 - i. A written summary of the decision shall be published in the PEG, in a manner that identifies Mr. Balliant; and



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- ii. If any member of the public inquires with APEGA as to whether Mr. Balliant was the subject of a discipline hearing or was found guilty of any charges under the Engineering and Geosciences Professions Act, APEGA shall be at liberty to provide a complete copy of the Discipline Committee's decision.

Appeal

[21] Mr. Balliant indicated his intent to appeal on October 26, 2019 and submitted a Request for Appeal on November 6, 2019, in which he raised the following grounds of appeal:

1. He was denied the opportunity to adjourn the investigation pending court proceedings, as per section 43 of the Engineering and Geoscience Professions General Regulation (the General Regulation).
2. A mediation was conducted by the investigator and an agreement was reached, but the mediated agreement was removed from evidence, the IC did not inform Mr. Balliant of its comments or findings in relation to section 43(5) of the Act, and the IC has denied to the DC that a mediation occurred.
3. The investigator ignored or disposed of evidence as to the intent of the complainants.
4. The authority and actions of the 'Investigative officer' was in question, regarding:
 - a. the denial of a license for a company unrelated to these matters;
 - b. the provision of an application or Professional Practice Management Plan to the Registrar; and
 - c. the scope of work allowing the investigator to "operate outside of the Bylaws, Rules and Regulations of the APEGA Act", the "suspect" retirement of the investigator and "missing or offside" evidence.

[22] Mr. Balliant also provided a list of factors relating this appeal to appeal 17-001-FH, which was a previous appeal by Mr. Balliant before the Appeal Board. In this regard, Mr. Balliant alleged mainly that the complainants in both matters were seeking to recover money from him through APEGA proceedings, while misrepresenting information during the investigation and intending to cause harm to him, his company and the public.



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- [23] In his Request for Appeal, Mr. Balliant did not specifically refer to any specific finding or sanction that he disputed. However, based on the matters raised by Mr. Balliant in the course of this appeal, the Appeal Board has concluded that he is appealing both the Conduct Decision and the Sanctions Decision.
- [24] The Investigative Committee did not appeal the DC's decisions.
- [25] An appeal hearing was held using videoconference and a five-person panel of the Appeal Board on Friday, December 11, 2020.

Preliminary Matters

Objection to Ms. Precht and Field Law LLP

- [26] Shortly prior to the hearing, Mr. Balliant sent an email to APEGA staff indicating he had an objection to the participation of Ms. Precht and Field Law LLP in this hearing. APEGA Staff advised Mr. Balliant that his correspondence would be put to the Appeal Board for its consideration during the hearing.
- [27] At the beginning of the hearing, Mr. Balliant again raised his objection to the participation of Ms. Precht and Field Law LLP in this appeal. Mr. Balliant noted that the IC's legal counsel had taken the position that he could not submit additional information or evidence, including evidence of financial matters and information relating to other APEGA disciplinary proceedings involving him.
- [28] Ms. Precht's response to Mr. Balliant's objection was that there was no valid basis for it. She noted that, though Mr. Balliant had alleged a conflict of interest, corruption, cover-up and misrepresentation in connection with the IC's legal counsel, essentially relating to its involvement in both the DC hearing at issue in this appeal and other disciplinary proceedings involving him, there was no evidence that any impropriety had occurred. She further argued that her firm's legal representation of the IC on an adversarial basis vis-à-vis Mr. Balliant, in this appeal and in other proceedings, did not result in a conflict of interest and that Mr. Balliant had received both full disclosure of the documentary evidence that the IC presented to the DC and the opportunity to present his evidence and arguments in response. She also noted that the decisions issued in connection with appeal 17-001 were in the materials before this Appeal Board Panel, so that this Appeal Board Panel could fully understand what was at issue before the Panel in appeal 17-001.
- [29] The Panel briefly adjourned to consider Mr. Balliant's objection and concluded that there was no legal reason to exclude Ms. Precht or Field Law LLP.



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The Panel notes that the process before the DC is necessarily adversarial as between the IC and Mr. Balliant. The IC has a prosecutorial role in the disciplinary process, which does not equate to a conflict of interest, even if the IC has prosecuted other disciplinary matters against Mr. Balliant. There is no evidence that the IC's legal counsel has a vendetta against Mr. Balliant or that it has engaged in any sort of corrupt conduct in connection with these proceedings. Rather, it is clear that the IC fully disclosed its evidence to Mr. Balliant, thereby affording him the opportunity to know the case against him and to respond before the DC with whatever evidence he had to disprove the charges he faced. Accordingly, Mr. Balliant's objection to the IC's legal counsel was dismissed.

New Evidence

- [30] The Panel invited Mr. Balliant to make his submissions as to the merits of his appeal. From the outset of his submissions, Mr. Balliant made regular mention of documents and information which he said had been previously provided to the IC but had now disappeared. Mr. Balliant indicated to the Appeal Board that he was requesting it to consider new evidence. The Appeal Board asked Mr. Balliant to provide a description of the evidence, why it was not previously presented during the DC proceedings and what impact it would have on the outcome of this matter. Mr. Balliant provided the following clarification as to the new evidence that he wished to have admitted before the Appeal Board:
- a) He referred to evidence related to the suspension of his license to practice engineering pending an investigation unrelated to this matter. Mr. Balliant alleged this suspension prevented him from practicing engineering and thus from resolving the issue of paying the amounts owing to the Complainant; and
 - b) He asserted that evidence he had submitted, as to the other APEGA disciplinary proceedings that he has faced, was withheld by the IC.
- [31] Ms. Precht was given an opportunity to respond to Mr. Balliant's requests for the admission of new evidence. She submitted that Mr. Balliant had not satisfied the applicable test for the admission of new evidence and therefore Mr. Balliant's request should be denied. The Appeal Board briefly adjourned to consider Mr. Balliant's new evidence request.
- [32] The Panel returned at 12:30 pm to resume the hearing, but Mr. Balliant was not present. Appeal Board staff attempted to contact Mr. Balliant but were unable to connect with him. The Chair requested the IC's position regarding Mr. Balliant's



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absence. Ms. Precht responded that the IC's position was that the Appeal Board should not proceed without Mr. Balliant as he was participating prior to the break and had not indicated that he wanted to cease participating. Ms. Precht suggested waiting an hour to see whether Mr. Balliant reconnected with the virtual hearing because he had been connected earlier, and he may have encountered some technical difficulties. The Chair requested that APEGA staff stay online in the virtual hearing room and to notify the other participants if Mr. Balliant returned. Mr. Balliant reconnected with the virtual hearing room by 1:30 pm.

- [33] Upon resumption of the hearing, the Appeal Board informed Mr. Balliant that it was declining his application for new evidence to be admitted. In this regard, the Appeal Board notes that Mr. Balliant has not provided any cogent explanation for why the proposed new evidence had not been put before the DC, even after Mr. Balliant had been granted an adjournment of the initially scheduled hearing dates, in part due to Mr. Balliant's request to have an opportunity to provide additional evidence. It also became apparent from Mr. Balliant's submissions that much of the evidence he was proposing to have admitted before the Appeal Board was already part of the record of the DC proceedings. The Appeal Board was also not satisfied that the proposed new evidence would make any difference to the outcome of this case.
- [34] The Appeal Board notes Ms. Precht's submission that the IC had been careful during the DC hearing not to disclose other APEGA proceedings involving Mr. Balliant to avoid prejudicing him in this matter. Notwithstanding the IC's silence in this regard, legal counsel for the DC had informed Mr. Balliant during the DC hearing that he was at liberty to enter such information if he wanted to. Ultimately, the fact that Mr. Balliant was having significant financial difficulties was not in dispute and, in any event, evidence regarding his suspension and the other complainants was not relevant to the charges before the DC concerning his conduct and it could not have been expected to affect the result in this case.
- [35] The Appeal Board continued with the appeal as a review of the record which was before the DC.

Standard of Review

- [36] The Appeal Board agrees with the IC that the appropriate standard of review in a professional conduct appeal is reasonableness, for the grounds of appeal relating to the DC's findings on conduct and its decision on sanctions. In such a review, the Appeal Board must determine whether the DC's decisions:



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- [a] are justifiable, transparent and intelligible,
 - [b] fall within a range of possible, acceptable, legally defensible outcomes; and
 - [c] demonstrate an apparent line of analysis as to how the facts and the law were applied.
- [37] For issues of procedural fairness, the Appeal Board agrees with the IC that, instead of applying a standard of review, the Appeal Board must determine whether the disciplinary proceedings were fair.

Decision and Order

- [38] On an appeal under section 67 of the Act, the Appeal Board can:
- [a] make any findings relating to the conduct of the investigated person that it thinks ought to have been made by the DC,
 - [b] quash, confirm or vary the finding or order of the DC or substitute or make a finding or order of its own; or
 - [c] refer the matter back to the DC for further consideration.
- [39] In addition, the Appeal Board may order the investigated person to pay all or part of the costs of an appeal.
- [40] After reviewing the record that was before the DC, the decisions issued by the DC, and the submissions made by the parties in this appeal, the Appeal Board confirms the DC's findings that Mr. Balliant failed to take adequate steps to comply with the Employment Standards Order and failed to adequately cooperate with the IC's investigation, and that this conduct constituted unprofessional conduct, as set out in section 44(1) of the EGP Act.
- [41] The Appeal Board further confirms the orders made by the DC in its Sanctions Decision in their entirety.

Reasons

Procedural Fairness

- [42] Mr. Balliant claimed in this appeal that he was unable to properly address litigation that he was involved with due to APEGA not adjourning its investigation as per



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section 43 of the General Regulation. Section 43 of the General Regulation states the following:

A preliminary investigation under Part 5 of the Act may be adjourned if the complaint that gave rise to the investigation is the subject of proceedings in the Provincial Court of Alberta or the Court of Queen's Bench of Alberta.

- [43] The Appeal Board notes this regulation clearly states 'may', which indicates that the IC has the discretion to adjourn an investigation, where appropriate. While Mr. Balliant might have preferred to only deal with one matter at a time and claims that the APEGA investigation prevented him from addressing each matter properly, it is ultimately the IC's decision whether to proceed with an investigation or not in the face of pending litigation and, in this instance, it chose to proceed.
- [44] The IC is required to balance the regulatory and public interest goals of APEGA with its members' rights to fair investigatory and disciplinary proceedings. In this case, the investigation proceeded over several years, being held in abeyance over various lengthy periods of time. The IC had to, at some point, proceed with its investigation in order to meet its responsibilities. The Appeal Board is unable to conclude that the disciplinary proceedings were somehow unfair because the investigation proceeded while Mr. Balliant may have been involved in litigation.
- [45] Mr. Balliant's grounds for appeal also refer to a mediation within the IC's investigatory process which Mr. Balliant alleges negatively impacted him and his business. Mr. Balliant also claims the mediation resulted in his signing a release in order to avoid sanctions. It is unclear when the mediation occurred, and to which matters and/or complainants it was related. Nonetheless, The Appeal Board notes that there was no evidence before the DC that Mr. Balliant had reached any mediated agreement in this matter that would have effectively resolved the complaint and disciplinary proceedings he faced.
- [46] The intent of the complainants was also brought into question by Mr. Balliant; suggesting the complainants had ulterior motives for making the complaints. The complainants' motives in making complaints against Mr. Balliant are not relevant to how Mr. Balliant ultimately failed to adequately respond to the investigation in this disciplinary matter or to how he failed to make adequate efforts to comply with or respond to a legally enforceable Employment Standards Order. The conduct of individuals who are complainants in disciplinary proceedings involving Mr. Balliant are not at issue before the Appeal Board in this appeal. The only individual whose conduct the Appeal Board is concerned with in this proceeding is Mr. Balliant.



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- [47] In any event, Mr. Balliant had, and took, the opportunity before the DC to raise the issues he claims with respect to the Complainant's intention in filing an APEGA complaint and to argue that the Complainant was not entitled to the amounts owing under the Employment Standards Order. These arguments were considered and addressed by the DC. The Appeal Board has found no reason to interfere with the DC's conclusions in this regard,
- [48] Mr. Balliant has not provided any evidence that would substantiate his assertions that he was prevented or limited from participating in the disciplinary process, or that the process was otherwise unfair. Overall, the Appeal Board finds that Mr. Balliant was afforded a fair process before the DC. Mr. Balliant was represented by legal counsel initially and he was given an opportunity to retain new legal counsel. Lengthy adjournments were granted to him for the DC hearing and he had the chance to present both documentary and witness evidence in response to the charges that were advanced by the IC.

Conduct Decision

- [49] The DC found that Mr. Balliant's conduct regarding charge 3 constituted unprofessional conduct as he breached Rules of Conduct 3 and 5. The DC found that, despite the complaint being related to conduct outside of the practice of engineering, Rules 3 and 5 are still applicable. The Appeal Board agrees with the DC and stresses again, that this charge is not a question of Mr. Balliant's financial ability to satisfy the Employment Standards Order. Instead, it relates to how Mr. Balliant conducted himself with Employment Standards, and with the Complainant, regarding the Order. It is understandable that Mr. Balliant may not have been able to pay the Order due to his financial circumstances; but he also at times ignored the Employment Standards Order, failed to respond to Employment Standards in a timely manner and continued to dispute the Order even though the appeal period had elapsed.
- [50] In relation to charge 4, a similar trend of non-responsiveness and failing to cooperate was also demonstrated by Mr. Balliant in his conduct during the APEGA investigation. The record shows numerous requests for extensions from Mr. Balliant followed by minimal responses. This behavior is unacceptable for a Professional Member and the Appeal Board agrees with the DC that it constitutes unprofessional conduct. Similar behavior occurred during the DC process as well, when input or responses were required from Mr. Balliant, they were either provided late or not at all.
- [51] As cited from the Alberta Court of Appeal's decision in *Erdmann v Complaints Inquiry Committee*, 2013 ABCA 147, by the IC during the DC hearing: "private behaviour that



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derogates from the high standards of conduct essential to the reputation of one's profession cannot be condoned.”

- [52] Mr. Balliant presented no compelling arguments which would justify a disturbance of the DC's Conduct Decision.
- [53] For the reasons noted above, the Appeal Board concludes that the DC's Conduct Decision was reasonable.

Sanctions Decision

- [54] Mr. Balliant's focus in his appeal submissions tended towards the issues surrounding the complaint rather than the sanctions levied against him. In the appeal hearing Mr. Balliant did not specifically identify any particular sanction he wished to appeal. The record shows that Mr. Balliant provided minimal submissions to the DC specifically addressing sanctions. Correspondence between DC staff and Mr. Balliant indicates that Mr. Balliant had an opportunity to address the sanctions that the IC had requested. The Appeal Board is satisfied that Mr. Balliant was given a reasonable opportunity to respond regarding sanctions.
- [55] The Appeal Board has concluded that the DC's Sanctions Decision is reasonable and proportionate as to Mr. Balliant's conduct. The Appeal Board further finds that Mr. Balliant has not raised any issue which would warrant any variation of the sanctions ordered, including the costs order or the publication of the DC decision.
- [56] The Appeal Board will publish its decision in a manner that identifies Mr. Balliant.
- [57] The Appeal Board has not yet ordered costs with respect to this appeal and reserves the jurisdiction to do so. If the Investigative Committee wishes to make submissions on costs of this appeal, written submissions must be submitted to the Appeal Board by February 15, 2021. When submissions are received from the IC, they will be provided to Mr. Balliant for his review and an opportunity to respond.

Dated this 1st day of February 2021

On behalf of the Hearing Panel of the APEGA Appeal Board

Ken Hawrelko, P.Eng.
Chair, Appeal Board Panel