

# Recommended Orders

Date: January 15, 2018

Case No.: 17-019-RDO

## IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT, AND IN THE MATTER OF THE CONDUCT OF [PERMIT HOLDER A]

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [Permit Holder A] with respect to a complaint initiated by a former employee (the “Complainant”), dated August 8, 2017.

### A. THE COMPLAINT

The Complainant alleged that, as part of the settlement of a dispute between the Complainant and [Permit Holder A], regarding the cessation of his employment, [Permit Holder A] inappropriately required him to withdraw a complaint that he had submitted to APEGA in 2015, following the cessation of his employment.

### B. AGREED STATEMENT OF FACTS

#### (a) The First Complaint

1. The Complainant was employed by [Permit Holder A] from February 2012 through to January 2015.
2. Following the cessation of his employment, the Complainant submitted a letter of complaint to APEGA, dated January 28, 2015, in which he alleged that [Permit Holder A] and his former supervisor, who was a professional member of APEGA (the “Former Supervisor”), had engaged in unskilled practice and/or unprofessional conduct (the “First Complaint”).

#### (b) [Permit Holder A]’s Requirement for the Complainant to Withdraw the First Complaint

3. While the Investigative Committee was investigating the First Complaint, [Permit Holder A] and

the Complainant were engaged in settlement discussions regarding the cessation of the Complainant’s employment.

4. In or about July of 2015, [Permit Holder A] (through its legal counsel) proposed a settlement which included (among other things) a term requiring the Complainant to notify APEGA that he wished to withdraw the First Complaint to APEGA and to advise APEGA that he was satisfied that [Permit Holder A] and the Former Supervisor had acted in good faith and with due regard for the environment at all times during the period prescribed in the First Complaint, and that to the best of his knowledge, neither [Permit Holder A] nor the Former Supervisor had contravened the *Engineering and Geoscience Professions Act* (the “Act”), its regulations, *Code of Ethics*, or any other applicable guideline.
5. Subsequently, on July 31, 2015, the Complainant notified APEGA in writing that he wished to withdraw the First Complaint in order to receive the settlement payment from [Permit Holder A]. In addition, he provided a letter to APEGA indicating that: “I am satisfied that both [my supervisor] and [Permit Holder A] have acted in the public interest, with integrity, good faith and due regard for the environment, public safety and other persons at all times during the period described in my Complaint.”
6. On August 11, 2015, APEGA received a further email from the Complainant, in which he stated that his letter dated July 31, 2015, did not reflect his opinion and that he felt that APEGA should expand its investigation rather than contracting or pausing it.

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7. Despite the communications from the Complainant indicating that he wished to withdraw the First Complaint and that he no longer had concerns about the conduct of [Permit Holder A] and his Former Supervisor, the Investigative Committee determined that it would proceed with its investigation.
8. The Investigative Committee continued to investigate the concerns raised by the Complainant in regard to the conduct of [Permit Holder A] and the Former Supervisor. On September 1, 2016, the Investigation Panel issued its report, in which it recommended that the investigation be terminated in accordance with section 51 of the *Act*.
9. The Investigative Committee accepted the Panel's recommendations and terminated the investigation on the basis that there was insufficient evidence of unskilled practice or unprofessional conduct on the part of [Permit Holder A] or the Former Supervisor.

**(d) Letter to [Permit Holder A] Regarding Requirement for Complainant to Withdraw Complaint**

10. Although the Investigative Committee decided to terminate the investigation, the Investigative Committee was concerned that [Permit Holder A] had purportedly required the Complainant to seek a withdrawal of the First Complaint as part of the employment settlement between [Permit Holder A] and the Complainant. As a result, on or about November 30, 2016, the Investigative Committee's legal counsel forwarded a letter to [Permit Holder A's] legal counsel notifying [Permit Holder A] that the Investigative Committee was concerned about this conduct, since it appeared to be an attempt to interfere with APEGA's duty to protect the public, and the discipline process set out in the *Act*.
11. On December 9, 2016, [Permit Holder A's] legal counsel responded that the gravity of the issue was understood, that it had not been [Permit Holder A's] intent to interfere with the discharge of APEGA's legislative mandate or public interest obligation, apologized, and confirmed that the information provided by APEGA's legal counsel would guide [Permit Holder A's] future actions.

**(e) Appeal to Appeal Board**

12. The Complainant subsequently appealed, to the Appeal Board, the Investigative Committee's decision to terminate its investigation with respect to the First Complaint.
13. The appeal was heard by the Appeal Board on June 16, 2017. During the course of the appeal, the Complainant raised concerns regarding [Permit Holder A]'s conduct in requiring him to withdraw the First Complaint as part of the employment settlement.
14. On August 2, 2017, the Appeal Board issued a written decision dismissing the Complainant's appeal of the First Complaint and upholding the Investigative Committee's decision to terminate the investigation. The Appeal Board indicated that it did not consider whether [Permit Holder A] inappropriately required the Complainant to withdraw his complaint as part of the employment settlement, since that issue was outside the scope of the Investigative Committee's investigation into the First Complaint.

**(f) The Second Complaint**

15. On August 8, 2017, the Complainant submitted a further complaint to APEGA, in which he alleged that [Permit Holder A] inappropriately required him to sign a letter withdrawing his First Complaint while under duress (the "Current Complaint").
16. APEGA notified [Permit Holder A] of the Current Complaint on August 9, 2017.
17. [Permit Holder A] responded, and stated that [Permit Holder A] and the Complainant are currently involved in litigation which will determine (among other things) whether he was actually under duress when he signed and submitted to APEGA the letter stating that he wished to withdraw the First Complaint.
18. [Permit Holder A] explained that it had requested that the Complainant withdraw the First Complaint as part of the settlement based on its experience negotiating resolutions of complaints to other bodies, such as the Human Rights Commission and the Privacy Commissioner. [Permit Holder A] explained that it was unaware that it was inappropriate to make a similar request with

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respect to an outstanding complaint to APEGA.

[Permit Holder A] indicated that it did not intend to interfere with APEGA's discharge of its statutory duties and that it understood that APEGA would make its own determination of the matters raised in the First Complaint.

19. [Permit Holder A] also acknowledged that it is now aware that requiring an individual to withdraw a complaint to APEGA as part of the settlement of a dispute could potentially interfere with APEGA's ability to fulfill its statutory mandate to investigate complaints in furtherance of the public interest, and that similar requests would not be made in the future.
20. Accordingly, [Permit Holder A] confirmed that it was willing to resolve the Current Complaint without the need for further extensive investigation.

**C. CONDUCT**

21. [Permit Holder A] freely and voluntarily admits that:
  - a) [Permit Holder A] required the Complainant to submit a request to withdraw the First Complaint and to advise APEGA that he no longer had concerns about the conduct of [Permit Holder A] and his Former Supervisor as part of the settlement of an employment dispute.
  - b) [Permit Holder A's] actions in doing so were inappropriate.
  - c) Although the Investigative Committee proceeded to investigate the First Complaint with full compliance by [Permit Holder A] and participation by the Complainant, notwithstanding the Complainant's purported withdrawal request, such a requirement could have potentially interfered with the Investigative Committee's ability to fulfill its statutory mandate.
  - d) [Permit Holder A] acknowledges that the conduct described above constitutes unprofessional conduct as defined in the *Act*:
 

**44(1)** Any conduct of a professional member, licensee, permit holder, certificate holder or member-in-training that in the opinion of the Discipline Committee or the Appeal Board:

a) is detrimental to the best interests of the public;  
 b) contravenes a code of ethics of the profession as established under the regulations; . . .

. . . whether or not that conduct is disgraceful or dishonourable, constitutes either unskilled practice of the profession or unprofessional conduct, whichever the Discipline Committee or the Appeal Board finds.

- e) [Permit Holder A] also acknowledges that the conduct described above breaches Rules of Conduct #3 and #5 of the *Code of Ethics*:
 

**3** Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices.

**5** Professional engineers and geoscientists shall uphold and enhance the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.

**D. RECOMMENDED ORDERS**

22. On the recommendation of the Investigative Committee, and by agreement of [Permit Holder A] with that recommendation, following a discussion and review with the Discipline Committee's Case Manager, the Discipline Committee hereby orders that:
  1. [Permit Holder A] is hereby directed to cease requiring employees, contractors, or others to withdraw a complaint that has been submitted to APEGA, as part of a settlement of a dispute between [Permit Holder A] and its employees, contractors, or others.
  2. [Permit Holder A] shall receive a Letter of Reprimand, a copy of which will be maintained permanently in its registration file and may be considered at any future date by APEGA.
  3. The details of this matter will be published on APEGA's website and/or in *The PEG* magazine, but will be published in a manner that does not identify the names of the parties.
23. The parties submit that the Orders referred to above are appropriate, having regard to the following factors:
  - a. [Permit Holder A] was unaware that requiring a requested withdrawal of a complaint

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to APEGA as part of a settlement was inappropriate and did not consider that it could potentially impair APEGA’s ability to fulfill its statutory mandate;

- b. [Permit Holder A]’s actions were not intentional;
- c. [Permit Holder A] accepted responsibility for its actions at the earliest opportunity, thereby avoiding the need for a lengthy and protracted investigation or hearing;
- d. There is no evidence that [Permit Holder A] has engaged in a pattern of conduct, and this is therefore an isolated incident;
- e. [Permit Holder A’s] actions did not impact the Investigative Committee’s investigation of the First Complaint, and the investigation proceeded despite the Complainant’s attempt to withdraw the First Complaint;
- f. Publication of the Recommended Discipline Order will serve to educate APEGA’s members with respect to this issue and will also serve as a deterrent; and

g. The parties are unaware of any precedents that would assist in determining the appropriate Orders in this case.

24. Although there is a presumption that RDOs are normally published in a manner that identifies the name of the permit holder or member who is the subject of the RDO, publication without the name is being recommended in this case, given the concern that publishing the RDO with [Permit Holder A’s] name will indirectly identify the name of the Complainant. This is a consideration in this case, given that the RDO refers to the Complainant’s employment circumstances.

Signed,

**[PERMIT HOLDER A REPRESENTATIVE]**, *P.ENG.*

**KEVIN WILLIS**, *P.ENG.*

Panel Chair, APEGA Investigative Committee

**CHRIS GOULARD**, *P.ENG.*

Panel Chair, APEGA Discipline Committee

*Date: January 15, 2018*

Date: December 19, 2017

Case No.: 17-020-RDO

**IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT,  
AND  
IN THE MATTER OF THE CONDUCT OF MR. HARPREET S. DINSA, P.ENG.**

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has investigated the conduct of Mr. Harpreet S. Dinsa, P.Eng., with respect to allegations of unprofessional conduct pursuant to section 44(1) of the *Engineering and Geoscience Professions Act* (the *Act*).

The investigation related to allegations that Mr. Harpreet S. Dinsa, P.Eng., (the “Member”) engaged in unprofessional conduct with respect to online commentary on the social networking website LinkedIn.

On February 9, 2017, APEGA received a complaint from [Complainant A], P.Eng., concerning his public,

online conversation with the Member. It was noted by the complainant that the Member posted unprofessional comments by referring to the complainant in derogatory terms. As a result of the complaint, APEGA began monitoring the Member’s public postings. The Panel noted that these postings also contained derogatory comments towards APEGA and its staff.

**A. COMPLAINT**

1. The Member has engaged in conduct that contravenes Section 44(1)(b) of the *Act* and the *Code of Ethics* #5