



APEGA Recommended Discipline Order

APEGA members and permit holders are required to practise engineering and geoscience skillfully, ethically, and professionally. They must meet all prescribed requirements and follow all applicable legislation and regulations, such as the [Engineering and Geoscience Professions Act, General Regulation, Code of Ethics, and APEGA bylaws](#). Investigation and enforcement—followed by, when necessary, judgment based on a fair hearing of the facts—are requirements of ours in service to the public interest. For more information, please visit www.apega.ca/enforcement/discipline-decisions.

Date: June 5, 2023

Discipline Case Number: 23-010

**IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT
AND
IN THE MATTER OF THE CONDUCT OF [AN APEGA MEMBER]**

Pursuant to the Engineering and Geoscience Professions Act,
being Chapter E-11 of the Revised Statutes of Alberta 2000
Regarding the Conduct of [an APEGA Member]

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [Name Withheld] (the Registrant) with respect to a complaint initiated by [Name Withheld] (the Complainant) dated March 21, 2023.

I. THE COMPLAINT

The Complaint is about the Registrant who engaged in unprofessional conduct and/or unskilled practice arising from his involvement as the engineer who authenticated a final report (the “Final Report”) for a debris flood risk mitigation project (the “Project”)

The Registrant claimed that although they authenticated the Final Report, they did so as the Project Manager and not as the professional engineer who either completed the work or the work was undertaken under his direct supervision.

A. Allegations:

The investigative Committee investigated a matter that originally contained 7 allegations made by the Complaint against the Registrant.

1. Allegation #1 through #7:



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The panel investigated the original allegations and determined there was insufficient evidence to refer them to the Discipline Committee for a formal discipline hearing. Therefore, these allegations were recommended for termination.

As per section 49(2) of the *Act*, the Panel may investigate any other matter regarding the conduct of the investigated person that arises in the course of the investigation.

The Panel identified an additional 2 matters that arose and investigated those as Allegation #8 and #9

2. Allegation #8

The panel investigated this allegation and determined there was insufficient evidence to refer this to the Discipline Committee for a formal discipline hearing. Therefore, this allegation was recommended for termination.

3. Allegation #9: Authentication

Background:

This Allegation arose during the investigation when the Panel was trying to determine whether there ought to have been a section in the Final Report that explicitly expressed potential risks, known or unknown, related to the Project's impact on groundwater.

As the Registrant was the only professional who authenticated the Final Report, the Panel pursued this matter with the Registrant.

The Registrant, in their written response, claimed he authenticated the Report only in the role of Project Manager, and to update the Final Report for funding purposes. The Registrant clarified that they were not the designer and were not the engineer responsible for taking technical responsibility for the work contained in the document.

During their interview with the Panel, the Registrant maintained he was the construction manager, and that his role was to oversee the Project to ensure that it was constructed as per the drawings and specifications. The Registrant confirmed again that they did not authenticate the Final Report with the intention that they were taking responsibility for the engineering or geoscience work that was represented in the document.



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The Panel reviewed the Final Report and found that it did not include any references to previous report revisions, caveats of changes between revisions, nor did it reference work completed by other professionals that contributed to the contents of the Final Report.

The Panel determined there was a disconnect as to who was actually taking responsibility for the Report and added this as an allegation to be investigated. This was an allegation #9.

Allegation #9:

Whether the Registrant failed to understand and accept his responsibility and obligations as per APEGA's Practice Standard for Authenticating Professional Documents v3.1, January 2013. (the "Authentication Standard") when the Registrant authenticated the Report.

II. AGREED STATEMENT OF FACTS

As a result of the investigation, it is agreed by and between the Investigation Committee and the Registrant that:

(a) Background:

4. At all relevant times, the Registrant was an APEGA Professional Member and was thus bound by the *Engineering and Geoscience Professions Act* and the *APEGA Code of Ethics*.

(b) Facts Relating to the Allegation #9

5. The *Designed Report for Exshaw Creek Debris Flood Risk Mitigation_Rev2a* was the Final Report submitted to the Authority Having Jurisdiction (AHJ).
6. The Registrant was the only professional to apply their stamp and signature to the Final Report.
7. There were no references made to the other revisions of reports, or work completed by other professional identified in the Final Report (Rev 2a) or previous versions of the Report (REV 0, REV 1, REV 2).
8. Subject matter experts who contributed to the Final Report did not authenticate the Final Report



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9. The Registrant indicated that there was another engineer (Engineer A), who was the design engineer, who signed the Final Report but was not able to authenticate it.
10. It was the Registrant's understanding that Engineer A did not have their stamp at the time and as such, the Registrant's in their role as a Project Manager authenticated the Final Report on Engineer A's behalf.
11. Engineer A responded as a witness to questions about their role on the Final Report, and the role of the Registrant, Engineer A clarified:

*I was responsible for the preparation of the report and signed as 'prepared by'.
(The Registrant) authenticated the report as the responsible engineer.*

12. The Registrant admitted that he did not do the work presented in the Final Report, nor was the work completed under their direct supervision.
13. The Registrant indicated they reviewed the Final Report and were satisfied that it met the design intent written by Engineer A.

Following the Investigation:

14. The Panel determined there was sufficient evidence that the Registrant failed to fully understand and accept his responsibility and obligations as per APEGA's Authentication Standard when he authenticated the Final Report.
15. The Panel determined the matter could be resolved by way of a Recommended Order.
16. The Panel offered the Registrant the option of contesting the Panel's findings of referring the matter to the Discipline Committee for a formal discipline hearing, or to resolve the matter by the way of a Recommended Order.
17. The Registrant met with the Panel to discuss the Panel's ruling and the path forward.
18. At the meeting the Registrant changed his mind and stated they now take responsibility; however, based on their previous responses, the work was not necessarily done under their direct supervision. Therefore, the Registrant would not have authenticated the document in compliance with the Standard.
19. The Registrant admitted that when they authenticated the Final Report, their stamp and signature, according to the Authentication Standard, represents that the was either prepared by themselves or under their direct supervision.



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20. The Registrant further admitted that by authenticating the Final Report, the Registrant was providing assurance that a licensed professional member of APEGA had accepted responsibility for the engineering or geoscience work represented in the authenticated document.

III. CONDUCT

(a) Section 44(1) of the Act:

21. The Registrant freely and voluntarily admits that the conduct as described above constitutes unprofessional conduct and that the conduct is detrimental to the best interests of the public, contravenes the Code of Ethics as established under the regulations, harms, or tends to harm the standing of the profession, and displays a lack of judgement in the carrying out of his duties as required by the profession, contrary to Section 44(1)(b), Rule of Conduct #5 of the Act as defined below:

Section 44(1) of 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;*
- (c) harms or tends to harm the standing of the profession generally; displays a lack of knowledge of or a lack of skill or judgment in the practice of the profession or;*
- (d) displays a lack of knowledge or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of the profession or;*
- (e) Displays a lack of knowledge or lack of skill or judgement in the carrying out of any duty or obligation undertaken in the practice of the profession.*

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



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APEGA Code of Ethics – The Rules of Conduct:

1. *Professional engineers and geoscientists shall, in their areas of practice, hold paramount the health, safety, and welfare of the public and have regard for the environment.*
2. *Professional engineers and geoscientists shall undertake only work that they are competent to perform by virtue of their training and experience.*
3. *Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness, and objectivity in their professional activities.*
4. *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.*

IV. RECOMMENDED ORDERS

On the recommendation of the Investigative Committee, and by agreement of the Registrant, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:

22. The Registrant shall be reprimanded for his conduct and this order shall serve as the reprimand.
23. The Registrant shall provide written confirmation to the Director, Enforcement, within six (6) months of the date this order is approved by the Discipline Committee Case Manager, written confirmation that they have reviewed the following APEGA publication, and that the Registrant will comply with the requirements therein:

*APEGA's Practice Standard, Authenticating Professional Work Products
(January 2022)*

24. The Registrant shall provide the Director, Enforcement within twelve (12) months of the date this order is approved by the Discipline Committee Case Manager, written confirmation/proof of successful completion of:

Apega Permit to Practice seminar (virtual or in-person)



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25. The Registrant shall pay a fine in the amount of \$500. The fine is a debt owing to APEGA and shall be paid within six (6) months of the date this order is approved by the Discipline Committee Case Manager.
26. If there are extenuating circumstances, the Registrant may apply in writing to the Director, Enforcement, for an extension prior to the deadlines noted in Paragraphs 23, 24 and 25. The approval for extending a deadline is at the discretion of the Director, Enforcement. If such an application is made, the Registrant shall provide the Director, Enforcement, the reason for the request, a proposal to vary the deadline, and any other documentation requested by the Director, Enforcement.
27. If the Registrant fails to provide the Director, Enforcement with written confirmation/proof that he has completed the requirements noted above in Paragraphs 23, 24 and 25 within the timelines specified, the Registrant shall be suspended from the practice of engineering until the Registrant has provided the Director, Enforcement with written confirmation/proof of successful completion. If the requirements are not completed within 6 months of the suspension date with respect to Paragraphs 23 and 24, the Registrant shall be cancelled. In the event the Registrant is cancelled he will be bound by APEGA's reinstatement policy.
28. This matter and its outcome will be published by APEGA as deemed appropriate and such publication shall not name the Registrant.

Although the Investigative Committee and the Registrant understand and acknowledge that APEGA's usual policy is to publish Recommended Orders in a manner that identifies the Registrant by name, the parties understand that the decision to publish with or without name is discretionary. The parties submit that publication without name is appropriate given the specific facts in this case:

- The admission by the Registrant of unprofessional conduct.
- The Registrant's cooperation with the investigation.
- The Panel's finding that the safety of the public was not at issue.



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IN WITNESS WHEREOF the undersigned agrees with the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct in its entirety.

Signed,

[REGISTRANT]

BRONWEN KELLEY, P.Eng.
Panel Chair, APEGA Investigative Committee

KEN LIU, P.Eng.
Case Manager, APEGA Discipline Committee

Date: June 5, 2023