



APEGA DISCIPLINE COMMITTEE DECISION

Date of Hearing: June 13, 2023

Date of Decision: July 17, 2023

APEGA Discipline Case Number: 22-012-FH

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

Regarding the Conduct of

[REDACTED], P.ENG. AND [REDACTED], P.ENG.

INTRODUCTION

1. The hearing of the Discipline Committee took place virtually via video conferencing on June 13, 2023. The hearing was held remotely via Microsoft Teams.
2. The hearing proceeded by an agreed statement of facts and admission of unprofessional conduct. The parties submitted a partial joint submission on penalty.
3. The members of the Hearing Panel of the Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of Alberta ("APEGA") were:

Parand Meysami, P.Eng., Discipline Committee Panel Chair
John Van der Put, P.Eng., Discipline Committee Panel Member
David Woodall, P.Eng., Discipline Committee Panel Member
Maliha Zaman, P.Eng., Discipline Committee Panel Member
Muriel Dunnigan, Discipline Committee Panel Member, Public Member
4. Also in attendance were:

[REDACTED], P.Eng., Self-Represented (“Member 1”)
[REDACTED], P.Eng., Self-Represented (“Member 2”)

Paul Vogel, APEGA Investigator

Kimberly Precht, Legal Counsel for the Investigative Committee of APEGA (“the Investigative Committee”)

Jason Kalapurakal, P.Eng., APEGA Discipline Manager

Aman Costigan, Independent Legal Counsel for the Hearing Panel

Several members of APEGA staff attended the hearing as observers.

OPENING OF THE HEARING

5. The Chair called the hearing to order and proceeded to confirm on the record that each participant was in a private space.

Preliminary Matters

6. The parties advised there were no objections to either the jurisdiction or the constitution of the Panel.

7. Ms. Precht presented the Amended Notice of Hearing for Member 2 to be marked as Exhibit 1 and the Notice of Hearing for Member 1 to be marked as Exhibit 2. She reviewed the amendments in the Amended Notice of Hearing. Member 2 confirmed there was no objection, and the Panel accepted the changes.

The Charges in the Notices of Hearing

8. The Notice of Hearing for Member 1 included the following charges:

- 1) On or about the period between March 6, 2014 and May 20, 2021, Member 1, P.Eng. represented himself as a professional engineer (“P.Eng.”) in good standing while suspended, contrary to section 76 of the *Engineering and Geoscience Professions Act*, particulars of which included one or more of the following:
 - a. Choosing not to inform or, in the alternative, failing to inform his colleagues and staff at the Company, other than Member 2, P.Eng., that he was suspended by APEGA;
 - b. Failing to ensure the Company website was revised so it did not identify Member 1 as a P.Eng.;

- c. Failing to ensure business cards identifying Member 1 as a P.Eng. were removed from the front desk of the Company's office;
- d. On or about December 18, 2014, failing to ensure a letter on behalf of the Company to a client did not identify Member 1 as a P.Eng. or provide Member 1's hourly rate in a proposal for engineering services;
- e. On or about November 15, 2019, signing a letter to a client identifying Member 1 as a P.Eng.;
- f. Failing to inform one or more clients, including [REDACTED] and [REDACTED], that Member 1 was suspended by APEGA, including in response to an inquiry from [REDACTED] on or about July 14, 2020 as to Member 1's perspective as a P.Eng..

IT IS FURTHER ALLEGED that the above-referenced conduct constitutes either unprofessional conduct or unskilled practice of the profession, or both, as set out in one or more of subsections 44(1)(a), (b), and (c) of the *Engineering and Geoscience Professions Act*, and is contrary to one or more of Rules 3, 4, and 5 of APEGA's Code of Ethics.

9. The Amended Notice of Hearing for Member 2 included the following charges:
- 1) On or about the period between November 3, 2015 and May 20, 2021, Member 2, P.Eng. in his role as Responsible Member for the Company, failed to take appropriate steps with respect to the suspension of Member 1, P.Eng. by APEGA, particulars of which included one or more of the following:
 - a. Choosing not to inform or, in the alternative, failing to inform the staff at the Company that Member 1 was suspended by APEGA;
 - b. Failing to ensure the Company website was revised so it did not identify Member 1 as a professional engineer ("P.Eng.");
 - c. Failing to ensure business cards identifying Member 1 as a P.Eng. were removed from the front desk of the Company's office;
 - d. [withdrawn]
 - e. Failing to inform one or more clients, including [REDACTED] and [REDACTED], that Member 1 was suspended by APEGA, including on or about September 28, 2020, in response to [REDACTED] inquiry as to Member 1's perspective as a P.Eng.

IT IS FURTHER ALLEGED that the above-referenced conduct constitutes either unprofessional conduct or unskilled practice of the profession, or both, as set out in one or more of subsections 44(1)(a), (b), (c), and (e) of the *Engineering and Geoscience Professions Act*, and is contrary to one or more of Rules 3, 4, and 5 of APEGA's Code of Ethics.

Submissions by the Investigative Committee

10. Counsel for the Investigative Committee advised the Panel that the hearing would proceed by way of an Agreed Statement of Facts and Admission of Unprofessional Conduct, which was entered as Exhibit 3. Ms. Precht submitted that Exhibit 3 contained sufficient factual information and admissions for the Panel to find the allegations were proven.

11. Ms. Precht reviewed the Agreed Statement of Facts and Admission of Unprofessional Conduct as it related to the complaint, the investigation, the allegations and the specific facts related to the allegations. Given that the allegations arise from the same set of facts, the parties agreed these matters should be heard together by the same Panel.

Background

12. Each member faces one allegation with particulars. The allegations relate to the way the Members managed Company affairs when Member 1 was suspended by APEGA. The sole issue is the use of the P. Eng. title while Member 1 was suspended.

13. Ms. Precht explained that Member 1 was the President of the Company and Member 2 was the Responsible Member for the Company. Member 1 has been a professional member of APEGA since 1975. However, Member 1's registration with APEGA was suspended from March 2014 to September 2021. Since January 13, 2009, Member 1 has also been a professional member of Engineers & Geoscientists British Columbia ("EGBC").

14. Member 2 has been a professional member of APEGA since 1988. At all material times, Member 2 has been a professional member of APEGA in good standing. This is Member 2's first disciplinary proceeding.

The Complaint and Investigation

15. On December 11, 2020, APEGA received a complaint regarding the conduct of various members of the Company, including Member 1 and Member 2. The complaint noted that Member 1 was identified as a P.Eng. on the Company's website and in client correspondence, even though Member 1 was, at that time, listed as suspended on APEGA's online member directory.

16. The complaint was investigated, but on November 29, 2021, the Investigative Committee terminated the investigation under section 51(1)(b) of the *Engineering and Geoscience Professions Act* ("EGPA"), on the basis that there was insufficient evidence of unskilled practice

or unprofessional conduct. [REDACTED] (“the Complainant”) appealed the termination of the investigation to the Appeal Board.

17. In the Appeal Board’s decision dated July 7, 2022, the Appeal Board upheld the Investigative Committee’s termination of the investigation as it related to concerns about work performed by the Company. However, the Appeal Board allowed the appeal as it related to Member 1’s use of the “P.Eng.” title while suspended, and Member 2’s involvement in the same. As a result, this issue was referred to the Discipline Committee for a formal hearing.

Specific Facts Related to the Allegations

18. In March 2012, Member 1 entered a Recommended Discipline Order (“RDO”) under section 52 of the EGPA, in which he was ordered to pass the National Professional Practice Examination (“NPPE”) within two years, failing which his registration would be suspended until he passed the NPPE. The RDO arose from an unrelated complaint. The details of the RDO were published without names.

19. While Member 1 fully intended to write the NPPE, his efforts were interrupted by significant health problems starting in 2012. Between 2012 and 2015, Member 1 underwent multiple surgeries. Although Member 1 registered for the NPPE three times during this period, Member 1 was not able to write the NPPE due to his health issues. Member 1 did not seek guidance from APEGA about how to deal with this situation.

20. Member 1’s registration with APEGA was suspended on March 6, 2014, as a result of his failure to pass the NPPE. However, Member 1 remained a P.Eng. under EGBC.

21. In 2013, due to Member 1’s health problems, the Company decided Member 1 would concentrate his efforts on the business aspect of the company while Member 2 took over the day-to-day management of the engineering department. This remained the status quo after Member 1 was suspended.

22. Member 1 did not work between March 3, 2013 and November 2, 2015. When Member 1 returned to work, he informed Member 2 of his suspension but asked Member 2 not to inform the Company staff. Member 2 complied with this request.

23. The Members reasoned that, because Member 1 was not practicing engineering and would not practice engineering until he had completed the NPPE and the suspension was lifted, it was unnecessary to tell anyone else about the suspension. Further, Member 1 was embarrassed by the suspension. The Members did not tell anyone at the Company or otherwise about the suspension.

24. The Members did not think to update the Company’s website after Member 1’s suspension, and so Member 1 continued to be identified as a “P.Eng.” on the website. There was no suggestion on the website that Member 1 was a P.Eng. in British Columbia (“B.C.”) as opposed to Alberta. As a result, Google searches also continued to identify Member 1 as a P.Eng.

25. The Members did not think to update Member 1's business cards, which identified Member 1 as a "P.Eng.". The business cards continued to be displayed on the front desk of the Company's office. The Members acknowledge that all the geographical references on Member 1's business card are to Alberta, and there is no reference to B.C.

26. Because the Company staff were unaware of Member 1's suspension, on at least one occasion while Member 1 was suspended, an Engineering and Survey Services Proposal was sent out identifying Member 1 as a P.Eng. and providing an hourly rate for his services as a professional engineer. This was before Member 2 was aware of Member 1's suspension.

27. Upon learning of Member 1's suspension, Member 2 informed the Company's secretaries not to use the P.Eng. title on any correspondence involving Member 1. Nevertheless, on at least one occasion while Member 1 was suspended, a letter was sent out to a client under Member 1's signature, identifying Member 1 as a P.Eng.

28. In September 2020, the Members did not clarify that Member 1's registration with APEGA was suspended when the Complainant wrote an email referring to Member 1 as a P.Eng. The Members acknowledge this situation would not have arisen if Member 1 had not been identified as a P.Eng. while he was suspended.

29. When APEGA informed the Members that they could not use the P.Eng. title while suspended, Member 2 immediately updated the website and removed Member 1's business cards from the office. Member 2 also took APEGA's Responsible Member course and Ethics webinar, to ensure a better understanding of his responsibilities as Responsible Member for the Company.

30. Further, when Member 2 realized there was some question as to whether Member 1 could continue to serve as the president during his suspension, he instructed Member 1 not to come into work until the suspension was lifted and informed the staff of Member 1's suspension.

31. Member 1's registration with APEGA was reinstated on September 29, 2021, after he successfully completed the NPPE.

32. The Members did not intend to actively mislead the staff or the public about the status of Member 1's registration with APEGA.

Admissions of Unprofessional Conduct

33. The Members acknowledge that the P.Eng. title is not merely an honorary title. It is a restricted title under section 3(1)(a)(i) of the EGPA and its use indicates an entitlement to engage in the practice of engineering.

34. Further, Member 1 acknowledges that under section 76 of the EGPA, he was prohibited from holding himself out as registered and in good standing with APEGA while his registration was suspended. Member 1 admitted to the allegation, including each of its particulars. Member 1 also admitted that the allegation was factually proven and his conduct constitutes

unprofessional conduct within the meaning of sections 44 and 76 of the EGPA. Member 1 acknowledged his conduct:

- a. is detrimental to the best interests of the public;
- b. displayed a lapse in judgment and tends to harm the standing of the profession generally; and
- c. contravenes Rules of Conduct 3, 4 and 5 of the Code of Ethics.

35. Member 2 acknowledged that as Responsible Member for the Company, he had an obligation to ensure Member 1's registration status with APEGA was not misrepresented. Member 2 also admitted that the allegation was factually proven and his conduct constitutes unprofessional conduct within the meaning of section 44 of the EGPA. Member 2 acknowledged his conduct:

- a. is detrimental to the best interests of the public;
- b. displayed a lapse in judgment and tends to harm the standing of the profession generally; and
- c. contravenes Rules of Conduct 3, 4 and 5 of the Code of Ethics.

36. Ms. Precht submitted that even though there were admissions of unprofessional conduct, the Panel will decide whether the facts underlying the allegations have been proven on a balance of probabilities based on the evidence. If the Panel finds the allegations proven, then the Panel will decide whether the conduct amounts to unprofessional conduct.

Submissions of the Members

37. The Members had no comments at this point in the proceedings.

Question from the Panel

38. A Panel member sought clarification as to whether Member 1, while suspended in Alberta, was practicing engineering in B.C. After a brief adjournment to allow the parties to consult, Ms. Precht informed the Panel that Member 1 did not practice engineering in B.C. during the material times and where the Agreed Statement of Facts states that Member 1 was not practicing, this includes Alberta and B.C.

Decision of the Hearing Panel regarding Unprofessional Conduct

39. After an adjournment to consider Exhibits 1 to 3 and the submissions, the hearing reconvened and the Chair informed the parties that the Panel accepted the admissions of unprofessional conduct and agreed that the allegations were factually proven and constituted unprofessional conduct.

40. For Member 1, the Panel finds the allegation and particulars a. to f. proven. For Member 2, the Panel finds the allegation and particulars a. to c. and e. proven. The Panel came to these conclusions in view of the evidence in Exhibit 3.

a. Particular a. – same for both Members

For particular a., the Members admitted to choosing not to inform or, in the alternative, failing to inform their colleagues and staff at the Company other than Member 2 of the suspension.

b. Particular b. – same for both Members

For particular b., the Panel reviewed the screenshot dated September 20, 2020 of the Company's website where Member 1 is identified as a P.Eng. (Tab 2, Exhibit 3). The Panel also reviewed the screenshot of the Google search dated November 22, 2020 where Member 1 is identified as a P.Eng. (Tab 3, Exhibit 3). The Panel accepts the Members' admissions.

c. Particular c. – same for both Members

Particular c. is proven based on the Members' admissions and the Panel's review of the business card picked up by the Complainant on December 10, 2019 (Tab 4, Exhibit 3).

d. Particular d. – only in Member 1's Notice of Hearing

Particular d. is proven based on Member 1's admission and the Panel's review of the letter dated December 18, 2014 which identified Member 1 as a P.Eng. and included an hourly rate for Member 1 in the Company's proposal for engineering services (Tab 5, Exhibit 3).

e. Particular e. – Member 1's Notice of Hearing

Particular e. is proven given Member 1's admission and the Panel's review of the letter dated November 15, 2019 to the Complainant identifying Member 1 as a P.Eng. (Tab 6, Exhibit 3).

*f. Particular e. – Member 2's Amended Notice of Hearing
Particular f. – Member 1's Notice of Hearing*

Particular f. for Member 1 and particular e. for Member 2 are proven based on the Members' admissions. Additionally, proof of the particulars is supported by the Complainant's emails dated July 14, 2020 and September 8, 2020. In Member 2's response on September 28, 2020, Member 2 identified himself as the engineer for the relevant project, and generally indicated that Member 1 was

involved. In the email, he did not tell the Complainant that Member 1 was suspended. (Tab 7, Exhibit 3).

41. In the opinion of the Panel, the lapse of judgment displayed by the Members in the use of Member 1's title during the suspension period is sufficiently serious to be considered unprofessional conduct. While there are mitigating factors and steps were taken as soon as it was brought to the Members' attention, there was a misrepresentation of Member 1's status in the use of the P. Eng. title to their staff, the Complainant and the public. The P.Eng. title is a restricted title under section 3(1)(a)(i) of the EGPA and its use indicates an entitlement to engage in the practice of engineering. Since Member 1 was suspended, Member 1 was not entitled to use the P. Eng. title, as it signifies an entitlement to practice engineering and is in breach of section 76 of the EGPA.

42. Under section 3(1)(a)(i) of the EPGA, P.Eng. is a restricted title that only allows an individual to use the title if they are a professional engineer entitled to engage in the practice of engineering. Therefore, it is important that members comply with the legislation so the public can rely on the use of the P.Eng. title and have confidence that the person they are dealing with is qualified and entitled to provide engineering services.

43. As a result of the above, Member 1 engaged in conduct that constitutes unprofessional conduct as set out in section 44(1)(a)(b)(c) and 76 of the EGPA and breached Rules of Conduct 3, 4, and 5 of the Code of Ethics. Member 2 engaged in conduct that constitutes unprofessional conduct as set out in section 44(1)(a)(b)(c) and (e) of the EGPA and breached Rules of Conduct 3, 4, and 5 of the Code of Ethics

SUBMISSIONS ON PENALTY

Partial Joint Submission on Penalty

44. Ms. Precht informed the Panel that the authority to sanction was set out in sections 63 and 64 of the EGPA.

45. Ms. Precht advised the Panel that the parties were submitting a Partial Joint Submission on Penalty, which was marked as Exhibit 4. In Exhibit 4, the following joint recommendations for orders were set out:

- a. Member 1 and Member 2 shall each be reprimanded for their conduct, and the Discipline Committee's written decision (the "Decision") shall serve as the reprimand;
- b. Member 1 shall pay a portion of the investigation and hearing costs in the amount of \$1,250 within 12 months from service of the Decision or in accordance with a payment schedule approved by the Director, Enforcement of APEGA (the "Director");

- c. Member 2 shall pay a portion of the investigation and hearing costs in the amount of \$1,250 within 12 months from service of the Decision or in accordance with a payment schedule approved by the Director; and
- d. The costs referred to in paragraphs (b) and (c) above shall be a debt owing to APEGA.

46. Ms. Precht made her submissions on penalty in two parts. The first part addressed the Partial Joint Submission on Penalty. Separately from the Partial Joint Submission on Penalty, the parties sought the Panel's decision on whether the written decision would be published on a named or unnamed basis. The second part of Ms. Precht's submissions addressed publication.

47. Ms. Precht reviewed the factors when imposing sanction to demonstrate how the proposed penalties will protect the public and will appropriately convey to members, the public and APEGA that this conduct is taken seriously and is unacceptable. In doing so, she referred the Panel to the case of *Jaswal v Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC) ("Jaswal").

48. Ms. Precht made submissions on why the penalties proposed by the parties were appropriate. Ms. Precht submitted that although there was a lapse of judgment, the conduct is on the low end of the spectrum and there are also significant mitigating circumstances. This includes the sympathetic circumstances that led to Member 1's suspension. There were significant health issues underlying the lapse of judgment.

49. Further, Member 1 was not practicing engineering while suspended, and the Members did not actively intend to mislead the staff at the Company or the public. As soon as the Members realized there was a problem, the Members took appropriate steps to resolve the situation. Member 2 went even further and took APEGA's Responsible Member course and Ethics webinar, to ensure a better understanding of his responsibilities as the Responsible Member for the Company.

50. Member 1 has had a long career with only one previous disciplinary matter that was resolved by agreement in 2012. Member 2 has no disciplinary record. There is no evidence of any harm caused by the misrepresentation of Member 1's status while suspended. The Members have acknowledged their conduct and accepted that their conduct was unacceptable.

51. Ms. Precht submitted that while this was a Partial Joint Submission on Penalty, the law on the level of deference a tribunal should show still applies. The Panel should only depart from the joint submission if the proposed penalty would bring the administration of justice into disrepute or would be otherwise contrary to the public interest.¹

Publication

52. Ms. Precht submitted that the issue of publication was contested. The Investigative Committee's position is that the Members' names and the Company's name (also the Permit

¹ *R. v. Anthony-Cook*, 2016 SCC 43

Holder) should be published in the decision. On the other hand, the Members' position is that the decision should not identify them or the Company.

53. Ms. Precht reviewed relevant sections from the EGPA and the *Engineering and Geoscience Professions General Regulation* ("Regulation"), legal principles of openness, relevant court cases and previous APEGA decisions and the allegations in this case. Ms. Precht provided the Panel with the Investigative Committee's authorities and reviewed them with the Panel.²

54. Ms. Precht submitted that publication is at the discretion of the Panel.³ She noted that section 57 of the EGPA provides that discipline hearings are open to the public by default. Ms. Precht submitted that this is consistent with the idea that decisions are published and typically identify a member.

55. Next, Ms. Precht reviewed the open court principle, which provides that courts are presumptively open to the public. Ms. Precht further submitted that protecting the reputation of a regulated professional is not generally a sufficient basis to depart from the norm of named publication.

56. Ms. Precht reviewed the following cases:

- a. *Law Society of BC v Doyle*, 2005 LSBC 24 - The Law Society has introduced very specific rules where the default is publication when a person is found to have engaged in unprofessional conduct. There is 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 – Ms. Precht submitted that she was able to find only three previous decisions on APEGA's website that went to a full hearing and where publication was ordered on an unnamed basis. She noted that the two cases of precedential value were almost five years old and that the norm is for panels to order named publication. The cases were:
 - 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

² Excerpts from the *EGPA*; Excerpts from the *Regulation*; APEGA DC 20-007-FH (July 19, 2021); APEGA DC 16-001-FH (June 26, 2021); APEGA DC 16-006-FH (July 20, 2021); *Law Society of BC v Doyle*, 2005 LSBC 24; *Zachary v CPSA*, 2013 ABCA 336; and Excerpt from the *Health Professions Act*.

³ Section 77 of the EGPA and section 46 of the Regulation

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.

57. Ms. Precht submitted that the issue in this case was representations made while Member 1 was suspended; however, Member 1 is no longer suspended. The question is whether there is harm beyond the ordinary reputational harm and embarrassment that would justify publishing on an unnamed basis.

58. The Panel has the discretion on whether to identify the members by name in the decision. In this case, the findings involving misrepresentation are narrow, Member 1’s suspension was lifted in 2021 and arguably not relevant to their current suitability for practice.

59. One of the key reasons for the Investigative Committee’s decision not to jointly propose anonymous publication is that it would be at odds with the underlying conduct: a lack of transparency with staff and others about the member’s suspension.

60. Ms. Precht noted that this matter was not able to proceed by way of an RDO. This was due to there being no legislative ability when a dismissal of a complaint is appealed to the Appeal Board and the Appeal Board allows an appeal in part and referred this issue to a hearing. Ms. Precht submitted that there were many RDOs on the APEGA website in which names are withheld compared to hearing decisions, but she noted that this is becoming less frequent for RDOs.

Submissions on Penalty by the Members

61. Member 2 made submissions on behalf of both members. Member 2 submitted that the decision should be published on an unnamed basis. Member 2 submitted that publication on a named basis would meet no goal of discipline that would be proportionate to the damage that

named publication would cause. The Members are partners in a small company with three other partners in a non-engineering department. The Company has been in business for over 60 years and has not had any legal or professional issues until now. There are approximately 17 employees at the Company and four employees are either a professional engineer or legal surveyor. Most of the employees are long-term employees. Grievous harm would result to the Company, their employees, their partners, the Members and their families if this decision was published on a named basis. There would be more than reputational harm and embarrassment.

62. Member 2 submitted that named publication would result in the Company losing business and clients and the non-engineering department, which had nothing to do with these proceedings and that employs the majority of their employees, being negatively impacted due to no fault of those employees or their partners.

63. They are a long-standing company whose business is built on reputation and if two of the owners are named in the decision, the Company will not survive. The Company lost two engineers due to these allegations. As such, publishing on a named basis will make it even more difficult to find capable employees and retain and acquire larger clients.

64. Member 1 has over 35 years of engineering practice with no prior findings of unprofessional conduct until 2012, and Member 2 has had no prior findings of unprofessional conduct. Combined, the Members have 50 years of engineering practice without any incident.

65. Member 2 acknowledged that their conduct exercised poor judgment and there was a misunderstanding of their requirements and obligations. Member 2 submitted that they are not a serious risk of re-offending. They are hardworking and honest people. This conduct will never happen again. They are deeply regretful.

66. The Members were surprised that this matter did not proceed by way of an RDO, where it is more common for matters to be published on an unnamed basis. Member 2 submitted that if the matter had proceeded by way of an RDO, it would have been published without names.

Reply Submissions on Penalty by the Investigative Committee

67. Ms. Precht clarified that the reason this matter came before a hearing panel and did not proceed by way of an RDO is because this is how the legislation is structured when a matter is referred from an appeal board to the Discipline Committee.

Questions from the Panel

68. The Members were asked about the impact of Member 1's suspension on the Company and when that occurred. Member 2 responded that when Member 1 was suspended, clients read about it through APEGA and the Company lost long-term clients. Member 2 has been trying to rebuild the Company's reputation ever since.

69. Ms. Precht was asked when Member 1 was reinstated. Ms. Precht responded that Member 1 has been reinstated since September 2021 and has been practicing for nearly two years.

70. The Chair of the Panel advised the parties that it had no further questions and a written decision outlining their reasons would follow in due course. The hearing then concluded.

The Decision of the Panel on Orders of Penalty

71. The Panel accepts the Partial Joint Submission on Penalty and orders publication of this decision on an unnamed basis.

72. The Panel recognizes that, as stated by the Supreme Court of Canada in *R v Anthony-Cook*, it has a duty to give serious consideration to a joint submission on penalty by the parties, including a partial one, and should exercise deference. After considering the proposed orders, the Panel finds that the Partial Joint Submission on Penalty is appropriate and not unreasonable or against the public interest.

73. The Panel carefully considered the evidence submitted, the Agreed Statement of Facts and Admission of Unprofessional Conduct, and the submissions with respect to penalty. The Panel also considered the factors in *Jaswal*, including the poor judgment that was exercised by the Members, that Member 1 has been reinstated since September 2021 and has been practicing for nearly two years since reinstatement, and the Members' cooperation and admissions of unprofessional conduct.

74. The Panel finds that a reprimand is an appropriate order. The reprimand to each member and the publication of this decision (even on an unnamed basis) will act as a specific deterrent to the Members. A reprimand is also important to denounce the proven conduct to the Members and to the general membership that this conduct is unprofessional and serious. This is also a reminder to members that the P.Eng. title is a restricted title. It will also serve as a general deterrent by informing the profession and the public that such conduct is not tolerated and will have consequences.

75. The Panel finds it appropriate for each Member to pay a portion of the investigation and hearing costs. Overall, the Panel finds that the proposed orders on penalty fall within a range of reasonable orders and are therefore not unreasonable or contrary to the public interest. The Panel accepts the Partial Joint Submission on Penalty.

Decision of the Panel regarding Publication

76. The Panel exercised its discretion and orders publication on an unnamed basis given that:

- a. Member 1 completed the NPPE and was reinstated on September 29, 2021 and has been practicing and a member in good standing for almost two years such that this decision is not relevant to the Members' current suitability for practice;

- b. Member 1 did not practice engineering while he was suspended;
- c. The Members were cooperative throughout the discipline proceedings and made admissions of unprofessional conduct;
- d. The proven conduct is at the lower end of the spectrum;
- e. The Members have long-standing careers in the profession, with Member 1 having one previous RDO in 2012 and Member 2 having no discipline history.

77. Further, the Panel noted the reasoning by the Discipline Committee in DC Case 16-001 and 16-006 as to why they determined that the decision be published without names. Similarly to those cases, publication on a named basis would meet no goal of discipline that is proportionate to the damage that named publication would cause. The Members' Company and the other department, which employs the majority of the employees, would be significantly impacted such that their careers would be jeopardized by no fault of their own. Publishing on a named basis would potentially cause further harm to an already challenging situation.

78. In this case, the goals of the discipline process are met in other ways: through the reprimands, the partial costs payable by the Members and publication on an unnamed basis.

Conclusion

79. For the reasons set out above, the Panel makes the following orders pursuant to sections 63 and 64 of the EGPA:

- a. Member 1 and Member 2 shall each be reprimanded for their conduct, and the Discipline Committee's written decision (the "Decision") shall serve as the reprimand;
- b. Member 1 shall pay a portion of the investigation and hearing costs in the amount of \$1,250 within 12 months from service of the Decision or in accordance with a payment schedule approved by the Director, Enforcement of APEGA (the "Director");
- c. Member 2 shall pay a portion of the investigation and hearing costs in the amount of \$1,250 within 12 months from service of the Decision or in accordance with a payment schedule approved by the Director;
- d. The costs referred to in paragraphs (b) and (c) above shall be a debt owing the APEGA; and
- e. The Decision will be published on APEGA's website or in a medium deemed appropriate by the Director in a manner that does not identify the Members or the Company.

Dated this 17th day of July, 2023

On behalf of the Panel of the APEGA Discipline Committee

Parand Meysami

Signed with ConsignO Cloud (2023/07/21)
Verify with verifio.com or Adobe Reader.



Parand Meysami, P.Eng., Discipline
Committee Panel Chair

John Van der Put

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John Van der Put, P.Eng., Discipline
Committee Panel Member

Maliha Zaman

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Maliha Zaman, P. Eng., Discipline
Committee Panel Member

David Woodall

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David Woodall, P.Eng., Discipline
Committee Panel Member

Muriel Dunnigan

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Muriel Dunnigan, Discipline Committee
Panel Member, Public Member