



APEGA RECOMMENDED ORDER TO THE DISCIPLINE COMMITTEE

*IN THE MATTER OF THE ENGINEERING,
AND GEOSCIENCE PROFESSIONS ACT,*

AND

IN THE MATTER OF THE CONDUCT OF

Binh Mai, P.Eng.

Registrant: #79167
Investigation Case #2023-20

APEGA RECOMMENDED ORDER TO THE DISCIPLINE COMMITTEE

In the matter of the *Engineering and Geoscience Professions Act*

and

In the matter of the conduct of
Binh Mai, P.Eng.

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of Binh Mai, P.Eng., (the Registrant) with respect to a complaint initiated [REDACTED] (the Complainant) dated June 22, 2023 (the Complaint).

A. The Complaint

The Complainant filed a complaint alleging the Registrant engaged in unprofessional conduct as defined at section 44(1) of the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (*EGP Act*) in relation to actions while an employee of Catch Engineering (Catch) and actions related to a Civil Proceeding at the Alberta Kings Bench Court (ABKB), Edmonton.

The Investigative Committee's investigation focused on the following allegations which can be summarized as follows.

Whether the Registrant engaged in unprofessional conduct in that:

The Complainant asserts that the Registrant, a former employee at Catch, engaged in unprofessional conduct by:

- 1. violating his contract with Catch by Soliciting a client (CNRL) and lying about doing so, and*
- 2. lying under Oath during the related ABKB civil proceedings.*

B. Agreed Statement of Facts:

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

(i) Background:

1. The Registrant has been an APEGA Professional Member in good standing since September of 2021.
2. The Registrant registered with APEGA in September 2021.
3. The Registrant was an Engineer in Training (E.I.T.) at the time of this set of circumstances.
4. The Registrant completed his B.Sc degree in electrical engineering in 2014 and a B.Sc in applied mathematics in 2018.
5. The Registrant was bound by the *Engineering and Geoscience Professions Act* and the APEGA Code of Ethics during the relevant time.
6. The Registrant cooperated with the investigation.
7. The Complainant has been an APEGA Professional Member in good standing since December 11, 1998.

(ii) Facts Relating to Allegations 1 and 2:

8. The Complainant is a Professional Electrical Engineer, CEO, and one of the Responsible Members (RM) of Catch. Catch is a company whose focal scope of practice concerns electron-based electrical controls, instrumentation, telecommunications, some processing, and some mechanical work.
9. In February 2019, the Registrant, in the capacity as an E.I.T., was hired by Catch for his expertise and experience with a type of engineering software referred to as 'SmartPlant.'
10. Canadian Natural Resources Ltd. (CNRL), a client of Catch at the time, required the Registrant's expertise. The employment arrangements with Catch were that the Registrant was under the supervision of CNRL but governed per Catch's master service agreement.
11. In December 2019, the Registrant approached Catch and requested a higher wage for the services he was providing to CNRL. It was the Registrant's position that he was deserving of a higher wage because CNRL provided positive feedback on the Registrants performance. Initially, it was Catch's position that the RUI was being paid in line with industry standards as an E.I.T., for similar scopes, however, they considered the Registrants rationale and entered into wage negotiations with him.
12. During this process, Catch learned the Registrant was considering resigning. Catch agreed to a higher wage for the Registrant as they recognized his

specialty and the value the Registrant brought to Catch. Catch made this raise conditional on a change in employee status for the Registrant, to that of contractor status.

13. The Registrant initially agreed with this, however, days later, tendered his resignation. It was immediately learned/confirmed by Catch that the Registrant went to work for Noramtec and was subsequently seconded back to CNRL through Noramtec to do the exact same work he was performing for CNRL while at Catch.
14. It was Catch's belief that the Registrant breached the terms of his employment agreement and used confidential information for his own gain by further soliciting business with CNRL in violation of the non-solicitation agreement/confidentiality agreement the Registrant had signed and agreed to when hired.
15. Catch brought the matter to the ABKB. The proceedings took place between January 3 to January 5, 2023. In May 2023, all parties received the ABKB decision, which ruled in favor of Catch's complaint. The ABKB Justice's decision upheld the contract terms to which the Registrant agreed. The Justice determined that the Registrant did not act in good faith/was dishonest when he resigned from Catch and joined Noramtec to continue his work with CNRL.
16. The ABKB Justice also concluded the Registrant had provided false answers to specific questions regarding the Registrant's plans to continue working for CNRL through a new sub-contractor. Specifically, the Registrant had misled the court as to whether he was already planning to work for CNRL through a new sub-contractor before resigning from Catch.
17. The Registrant confirmed his employment history with Catch, the circumstances surrounding the concerns by the Complainant, and the ABKB proceedings and findings.
18. The Registrant initiated salary negotiations with Catch as he believed he was underpaid for his services and expertise. The Registrant also believed at the time the terms of the contract he signed with Catch was broad and not enforceable, which was why he acted in the manner described.
19. The Registrant admitted he acted unprofessionally during salary negotiations with Catch by failing to disclose his intention to continue working for CNRL through a competing company. The Registrant acknowledged he was aware of potential legal repercussions that were communicated to him from Catch.
20. The Registrant acknowledges and accepts the court decision/findings and the facts as presented:
 - a. The Registrant accepted the finding he was at times misleading to the court.

- b. The Registrant, while providing testimony accepts that some of his responses/answers to questions were not clear and determined by the Justice as being deceptive.
- c. The Registrant agreed his conduct did “*constitute lying under oath.*”

C. Conduct by the Registrant:

- 21. The Registrant freely and voluntarily admits that at all relevant times the Registrant was a professional member and thereby bound by the *Engineering and Geoscience Professions Act* and the APEGA Code of Ethics.
- 22. The Registrant acknowledge that the conduct described above constitutes unprofessional conduct as defined in Section 44(1) of the Act:

Section 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,
- (d) displays a lack of knowledge of or lack of skill or judgement in the practice of the profession, or
- (e) displays a lack of knowledge of 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.

The Rules of Conduct of the APEGA Code of Ethics state:

- 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 honor, dignity, and reputation of their professions and thus the ability of the professions to serve the public interest.
23. The Registrant acknowledges that the conduct described above is conduct that is detrimental to the best interests of the public and contravenes the Code of Ethics as established under the regulations.
24. Further, the Registrant acknowledges that the conduct described above constitutes a breach of Rules 3 and 5 of the Code of Ethics.

D. Recommended Order with Respect to the Registrant:

25. On the recommendation of the Investigative Committee, by agreement of the Registrant with that recommendation, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:
- a. The Registrant shall be reprimanded for their conduct and this order shall serve as the reprimand.
 - b. The Registrant shall pay a fine in the amount of \$1000.00. 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.
 - c. The Registrant shall provide the Discipline Manager, with 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 publications, and that the Registrant will comply with the requirements therein:
 - i. 'Guideline for Ethical Practice', August 1, 2022.
 - d. The Registrant shall provide the Discipline Manager, within twelve (12) months of the date this order is approved by the Discipline Committee Case Manager, written confirmation/proof of successful completion of the following training:
 - i. The APEGA 'Ethical Practice Self-Directed Learning Module', available on myAPEGA.
 - e. The Registrant shall provide the Discipline Manager, within twelve

(12) months of the date this order is approved by the Discipline Committee Case Manager, written confirmation/proof of successful completion (passing grade) of a post-secondary ethics course, that is satisfactory to the Discipline Manager, such as University of Calgary ADL 213, 'Ethics for Professional Practice'. If the noted course is no longer available on approval of this order, at the discretion of the Discipline Manager another course in Ethics may be authorized for substitution if it is deemed substantially equivalent. The Registrant shall be responsible for all costs associated with the completing of the course.

- f. If there are extenuating circumstances, the Registrant may apply to the Discipline Manager for an extension prior to the noted deadlines. If such an application is made, the Registrant shall provide the Discipline Manager, the reason for the request, a proposal to vary the schedule, and any other documentation requested by the Discipline Manager.
- g. If the Registrant fails to provide the Discipline Manager with proof that they have completed the requirements noted above in Paragraphs 25 (b), (c), (d), and (e) within the timelines specified, the Registrant shall be suspended from the practice of engineering until the requirements are met. If the requirements with respect to Paragraphs 25 (c), (d), and (e) are not completed within six (6) months of the suspension date, the Registrant shall be cancelled. In the event the Registrant is cancelled, they will be bound by APEGA's reinstatement policy.
- h. This matter and its outcome will be published by APEGA as deemed appropriate and such publication will name the Registrant.

I, Binh Mai, P.Eng., acknowledge that before signing this Recommended Discipline Order, I consulted with legal counsel regarding my rights or that I am aware of my right to consult legal counsel and that I hereby expressly waive my right to do so. I confirm that I agree to the facts and admissions as set out above in this Recommended Discipline Order, and that I agree with the Orders that are jointly proposed.

Further to the above, I acknowledge that a copy of this Order and my identity will be disseminated to all provincial and territorial engineering and geoscience regulators in Canada.

Further to the above, I acknowledge that I have reviewed APEGA's 'Good Standing Policy.' I understand that I will not be considered to be a member '*in good standing*' until I have fully complied with the Orders set out above, and I understand that good standing status may affect membership rights or benefits, or the ability to volunteer with APEGA in any capacity.

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

Binh Mai, P.Eng.

Signed with ConsignO Cloud (2024/03/28)
Verify with verifio.com or Adobe Reader.



Binh Mai, P.Eng.

Ryan Jones, P.Eng.

Signed with ConsignO Cloud (2024/03/28)
Verify with verifio.com or Adobe Reader.



**Ryan Jones, P. Eng (Panel Chair)
APEGA Investigative Committee**

APEGA Discipline Committee

Kim Maddin

Signed with ConsignO Cloud (2024/05/14)
Verify with verifio.com or Adobe Reader.



14 May 2024

Case Manager Name