



The Association of Professional
Engineers and Geoscientists of Alberta

APEGA DISCIPLINE COMMITTEE DECISION ON SANCTIONS

Date of Hearing: Written Submissions
Date of Decision: November 18, 2024
APEGA Discipline Case Number: 21-011-FH

**IN THE MATTER OF A HEARING OF THE DISCIPLINE COMMITTEE OF
THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND
GEOLOGISTS 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 DR. LIAN ZHAO, P.ENG.


INTRODUCTION

1. A Hearing Panel of the Discipline Committee (“Hearing Panel”) of the Association of Professional Engineers and Geoscientists of Alberta (“APEGA”) issued a written decision regarding the conduct of Dr. Lian Zhao (“Merits Decision”). The Hearing Panel found that Dr. Zhao’s conduct described in three Charges was proven and constituted unprofessional conduct and unskilled practice under the *Engineering and Geoscience Professions Act* (“the EGP Act”).
2. The Hearing Panel invited the parties to provide submissions about what orders should be made, if any, in respect of the Hearing Panel’s findings. The Investigative Committee provided its written submissions on August 13, 2024. Dr. Zhao did not provide written submissions and did not request to appear before the Hearing Panel to otherwise make submissions.
3. The Hearing Panel met on September 6 and 24, 2024, to consider the Investigative Committee’s written submissions on sanctions and costs orders.

SUBMISSIONS ON SANCTION

The Investigative Committee's Written Submissions

4. The Investigative Committee summarized the Hearing Panel's findings of unprofessional conduct and unskilled practice. They advised that sections 63 and 64 of the EGP Act grant the Hearing Panel's authority to make sanctions and costs orders. The Investigative Committee recommended that the Hearing Panel make the following orders based on its findings:

- a) that Dr. Zhao's registration with APEGA be cancelled;
- b) that Dr. Zhao pay two thirds of the hearing costs to a maximum of \$70,000;
- c) that the costs ordered in paragraph (b) be payable within 24 months of the Hearing Panel's written decision on sanctions (the "Sanctions Decision");
- d) that Dr. Zhao not be eligible to apply for reinstatement until:
 - i) 
 - ii) Dr. Zhao pays the costs ordered in paragraph (b).
- e) that this matter and its outcome be published by APEGA as deemed appropriate and such publication may name Dr. Zhao if deemed appropriate by APEGA.

5. The Investigative Committee indicated that the fundamental purpose of sanctioning a regulated member is to ensure the public is protected from unprofessional conduct. The goal of public protection is achieved by ensuring that the public is not at risk of harm from continuing conduct by the member, by ensuring public confidence in the profession, and by sending an appropriate message to other regulated members regarding unacceptable conduct.

6. The Investigative Committee referred the Hearing Panel to an excerpt of James Casey's textbook, *Regulation of the Professions in Canada*, which summarizes the factors that a disciplinary tribunal can consider for determining appropriate sanctions orders. The Investigative Committee submitted that the Hearing Panel should consider the below factors, and described how each of the factors applied to the circumstances of this case:

- the seriousness of the unprofessional conduct;
- the impact of the unprofessional conduct on clients or others;
- specific deterrence of the investigated person from further unprofessional conduct;

- general deterrence, so the general membership understands that this type of conduct is unacceptable;
- the need to maintain the public’s confidence in APEGA’s ability to properly supervise the conduct of its members and maintain the integrity of the profession;
- rehabilitation of the investigated person. What was the underlying cause or causes of unprofessional conduct? What orders will address the underlying causes and contribute to rehabilitation?;
- other mitigating factors;
- other aggravating factors;
- whether there are previous findings of unprofessional conduct against the investigated person; and
- the range of sanctions in other similar cases, which serve as a general, non-binding guide.

7. The Investigative Committee also expressed concerns about Dr. Zhao’s governability, based on Dr. Zhao’s communications with APEGA. The Investigative Committee submitted that it is impossible for APEGA to govern a member who behaves like Dr. Zhao, when the member has not provided the information necessary to assist APEGA to understand the reasons for that behaviour.

[REDACTED]

These concerns remained a significant factor in the Investigative Committee’s proposal for cancellation.

8. The Investigative Committee submitted that Dr. Zhao should be responsible for a portion of the costs associated with the hearing. The purpose of a costs order is not to punish the regulated member, but rather to allow the professional regulatory body to recoup some of the expenses incurred in the hearing. The Investigative Committee described the legal principles governing costs orders as established in decisions from the Court of Appeal.¹ The Investigative Committee further outlined the factors relevant to the decision on costs orders, and applied the factors to the circumstances on this case:

- The parties’ success or failure at the hearing;
- The conduct of the parties;
- The seriousness of the charges; and
- The reasonableness of the amounts.

¹ *Zuk v Alberta Dental Association and College*, 2018 ABCA 270; *Lysons v Alberta Land Surveyors’ Association*, 2017 ABCA 7; *Dr. Ignacio Tan III v Alberta Veterinary Medical Association*, 2022 ABCA 221; *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253; *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336; *Dr. Ignacio Tan III v Alberta Veterinary Medical Association*, 2024 ABCA 94.

Questions from the Hearing Panel

9. The Hearing Panel met on September 6, 2024, to consider the Investigative Committee’s written submissions on sanctions. Following the Hearing Panel’s meeting, the Hearing Panel requested the parties’ responses to four questions:

- 1) [REDACTED]
- 2) The Investigative Committee’s submissions referred to concerns about Dr. Zhao’s governability. What legal test should the Hearing Panel apply to consider Dr. Zhao’s governability? How should that test be applied to the facts of this case?
- 3) If the Hearing Panel does not determine cancellation of Dr. Zhao’s registration as an appropriate sanction in this case, what, if any other sanctions, would the parties propose instead of cancellation?
- 4) What is the Hearing Panel’s authority to order conditions on reinstatement?

10. The Investigative Committee responded to the Hearing Panel’s questions on September 20, 2024. Dr. Zhao did not respond to the Hearing Panel’s questions.

11. [REDACTED]

12. The Investigative Committee also described the law on governability and identified factors that the Hearing Panel could use to assess Dr. Zhao’s governability. The Investigative Committee noted that Dr. Zhao repeatedly failed to respond to APEGA, to attend the hearing, [REDACTED]. From the Investigative Committee’s view, Dr. Zhao’s behaviour demonstrated indicia of ungovernability, which supports a cancellation order.

13. The Investigative Committee suggested that if the Hearing Panel were inclined to order a sanction less than cancellation, it would be possible to suspend Dr. Zhao indefinitely [REDACTED]. However, the Investigative Committee noted that if Dr. Zhao was cancelled, she would be permitted to apply for reinstatement after a period of one year. The Investigative Committee maintained that a suspension with conditions would be insufficient.

² 2012 ABCA 267.

14. Lastly, the Investigative Committee noted the Hearing Panel's broad powers to order appropriate sanctions, including any orders that it considers appropriate in the circumstances. The Hearing Panel could rely on Section 63(k) of the EGP Act to impose reinstatement conditions.

DECISION ON SANCTIONS AND COSTS

15. The Hearing Panel considered the Investigative Committee's submissions regarding the factors that should be considered to determine an appropriate sanction. The Hearing Tribunal referred to the excerpt of *Regulation of the Professions in Canada* provided by the Investigative Committee. The Hearing Panel finds that the following factors are relevant to determine what orders should be made under sections 63 and 64 of the EGP Act:

- The seriousness of the unprofessional conduct: The Hearing Panel agreed with the Investigative Committee's submission that Dr. Zhao's conduct is very serious. Dr. Zhao submitted or permitted others at CEPro to submit reclamation certificate applications on behalf of Company A to the AER. The CEPro Applications contained basic errors, clear and obvious deficiencies, and inaccurate information. Dr. Zhao's conduct showed a severe lack of knowledge and skill and a lack of professionalism when she failed to address the problems in the CEPro Applications, when she declared that the CEPro Applications were true and accurate, and when she continued to sign severely deficient documents.

The seriousness of Dr. Zhao's unprofessional conduct is compounded by the fact that prior to Dr. Zhao's proven unprofessional conduct, the AER had a meeting with Dr. Zhao and CEPro on July 31, 2017, to discuss concerns about substantially similar deficiencies in previous reclamation certificate applications. Despite the meeting with the AER, Dr. Zhao continued to submit or allowed others to submit similarly deficient applications.

- The impact of the unprofessional conduct on clients and others: Dr. Zhao's conduct negatively impacted Company A. After Dr. Zhao submitted or allowed others to submit the CEPro Applications, the AER issued reclamation certificates to Company A. The AER subsequently audited the CEPro Applications and cancelled the reclamation certificates based on deficiencies in the CEPro Applications. Based on the results of the audit, the AER found that Company A was in contravention of the *Environmental Protection and Enhancement Act*, the *Conservation and Reclamation Regulation*, and the AER's SED002. The AER described Company A's contraventions in the Global Refer Letter.

Dr. Zhao's conduct also impacted the public generally by failing to ensure that the well sites related to the CEPro Applications were reclaimed in accordance with regulatory requirements. Regulatory requirements set out in legislation and the AER directives such as the completion of Phase 2 assessments and the provision of Landowner Packages to landowners serve to protect the environment for the public's benefit. Dr. Zhao submitted or allowed others to submit CEPro Applications when these regulatory requirements were not

satisfied. There is a possibility that Dr. Zhao's failure to identify and address issues in the CEPro Applications translated to environmental impacts on well sites.

- Specific deterrence of the investigated person from further unprofessional conduct: The Hearing Panel agrees that any sanctions orders should deter Dr. Zhao from engaging in similar conduct in the future. Specific deterrence is given a particular weight in these circumstances. The AER had concerns with Dr. Zhao's and CEPro staff's reclamation certificate applications as early as July 2017, and met with Dr. Zhao and CEPro staff to discuss those concerns. Despite the AER's attempts to educate Dr. Zhao and CEPro staff, there continued to be issues with CEPro's applications. Dr. Zhao's failure to learn from meetings with the AER suggests a more serious sanction is needed to deter her from acting similarly in the future.
- General deterrence, so the general membership understands that this type of conduct is unacceptable: The Hearing Panel agrees that any sanctions orders in this case should send a message to the profession that conduct like Dr. Zhao's conduct is unacceptable.
- The need to maintain the public's confidence in APEGA's ability to properly supervise the conduct of its members and maintain the integrity of the profession: The Hearing Panel's orders should ensure that the public has confidence in APEGA's ability to regulate professional engineers and to respond appropriately to unprofessional conduct. The Hearing Panel noted that there is a public awareness of Dr. Zhao's conduct already. The media brought Dr. Zhao's conduct to APEGA's attention, following which the registrar initiated a complaint. The public must be confident that APEGA and the engineering profession views Dr. Zhao's conduct as unacceptable.
- Rehabilitation of the investigated person. What was the underlying cause or causes of unprofessional conduct? What orders will address the underlying causes and contribute to rehabilitation?: Dr. Zhao's motivations for her unprofessional conduct are unclear. Due to her absence at the hearing, the Hearing Panel does not have the benefit of evidence as to the underlying cause of Dr. Zhao's unprofessional conduct. Further, the Hearing Panel does not have any evidence as to Dr. Zhao's ability to be rehabilitated due to her lack of participation in the hearing process. The Hearing Panel does note that Dr. Zhao submitted or allowed others to submit the deficient CEPro Applications despite the AER's previous attempts to educate Dr. Zhao and the CEPro staff. The Hearing Panel does not give significant weight to rehabilitation, given the AER's unsuccessful rehabilitation efforts and the lack of evidence about the cause underlying Dr. Zhao's unprofessional conduct.
- Other mitigating factors: The Hearing Panel noted that these proceedings mark the first finding of unprofessional conduct against Dr. Zhao.

- Other aggravating factors: The Hearing Panel considered that Dr. Zhao’s conduct did not involve an isolated incident. She submitted or allowed others to submit many deficient reclamation certificate applications to the AER over a period of months.
- The range of sanctions in similar cases: The Hearing Panel reviewed the five cases that the Investigative Committee provided. The Hearing Panel considered that 19-001-RDO Rogers and 21-002-FH Ackroyd involved unskilled practice or unprofessional conduct similar to Dr. Zhao’s conduct. However, the regulated members in those cases admitted to engaging in unprofessional conduct, which did not happen in Dr. Zhao’s case.

The regulated member’s conduct in 19-001-RDO Rogers involved falsifying information submitted to Alberta Environment and Parks. The member voluntarily resigned, and the disciplinary order made them ineligible for reinstatement for an additional three years. The regulated member’s conduct in 21-002-FH Ackroyd involved undertaking work they were not competent to perform, failing to satisfy responsibilities as coordinating registered professional of record, and acting unprofessionally toward clients. The Discipline Committee in that case cancelled the member’s registration. These cases suggest that the Hearing Panel should order a very serious sanction against Dr. Zhao.

The Hearing Panel gave little weight to the cases of 16-010-FH Drover, 20-003-FH Chrysanthous, and 20-001-FH Ubah, as they involved unprofessional conduct that was very different from Dr. Zhao’s proven unprofessional conduct.

16. The Hearing Panel considered the Investigative Committee’s submission that it should also consider Dr. Zhao’s behaviour during the hearing and her governability to determine an appropriate sanction. The Investigative Committee’s submissions on Dr. Zhao’s governability relate to Dr. Zhao’s actions and communications during the investigation and the hearing. This conduct is not alleged in the Notice of Hearing.

17. Under Section 53(3) of the EGP Act, the purpose of the Notice of Hearing is in part to give “reasonable particulars of the conduct or complaint in respect of which the hearing will be held.” The Notice of Hearing serves the duty of fairness by telling the regulated member what conduct the Discipline Committee will consider to be unprofessional conduct, and if found, what conduct could give rise to sanctions.

18. The Notice of Hearing relates to Dr. Zhao’s submission or permission for others to submit the CEPro Applications to the AER between June 20 and October 11, 2018. It is this conduct that the Hearing Panel found to constitute unprofessional conduct or unskilled practice. The Hearing Panel’s authority to order the Investigative Committee’s proposed sanctions flows from findings of unprofessional conduct or unskilled practice:

63 If the Discipline Committee finds that the conduct of the investigated person is unprofessional conduct or unskilled practice of the profession, or both, the Discipline Committee may make any one or more of the following orders:

- (j) cancel the registration of the investigated person;
- (k) any other order that it considers appropriate in the circumstances.

19. The Hearing Panel finds that based on sections 53(3) and 63 of the EGP Act, it would not be appropriate to consider Dr. Zhao's hearing conduct and her governability based on that conduct to inform the Hearing Panel's decision on sanctions. If the Investigative Committee considers Dr. Zhao's conduct during this hearing to be inappropriate, the Investigative Committee may investigate her conduct through the usual courses, during which Dr. Zhao may have an opportunity to provide further information or an explanation for her actions.

Sanctions

20. Based on the Hearing Panel's assessment of factors above, the Hearing Panel finds that a serious sanction is warranted. The Hearing Panel considered the sanctions proposed by the Investigative Committee in light of this assessment.

Cancellation

20. The Investigative Committee submitted that Dr. Zhao's registration should be cancelled. An order for cancellation is the most serious sanction that can be imposed. However, cancellation is not reserved solely for the single case involving the most serious unprofessional conduct.

21. The Hearing Panel finds that an order to cancel Dr. Zhao's registration is proportionate to the severity of her unprofessional conduct. When a regulator requires a professional engineer to make declarations as to the truth and accuracy of information, the professional must take steps to ensure the information is true and accurate. Dr. Zhao's improper declarations as to the truth and accuracy of the CEPro Applications were not small mistakes. The deficiencies in the CEPro Applications were egregious and recurring. A professional declaration is not mere lip service. Regulators rely on professional declarations as they fulfill their public protection mandate.

22. The fact that Dr. Zhao's conduct continued and was repeated numerous times after the AER brought its concerns to Dr. Zhao's attention and the attention of CEPro staff is a serious aggravating factor. When regulators such as the AER notify a regulated member about errors or deficiencies in professional work, the regulated member should take those concerns seriously. Yet, Dr. Zhao continued to submit or allowed others to submit numerous inadequate applications after meeting with the AER. The errors or deficiencies previously noted by the AER were not addressed, and the fact that the AER continued to audit CEPro Applications demonstrates that she lost the AER's trust. These events weigh in favour of cancellation.

23. An order for cancellation is also consistent with the Hearing Panel’s assessment of other sanction factors described above. Cancellation will serve specific and general deterrence purposes. A serious order like cancellation accounts for the impact of Dr. Zhao’s unprofessional conduct on her clients and on the public, and will maintain public confidence in APEGA’s ability to properly supervise the conduct of its members. Further, cancellation is consistent with the previous cases of 19-001-RDO Rogers and 21-002-FH Ackroyd which involved similar conduct.

24. The Hearing Panel’s order to cancel Dr. Zhao’s registration will not bar her from the profession forever. Dr. Zhao will be eligible to apply for reinstatement after one year.

Eligibility for Reinstatement

25. [REDACTED]

26. If Dr. Zhao wishes to return to the profession and the practice of engineering, she will need to apply for reinstatement. APEGA’s Council or the relevant statutory committee under legislation in force at the time will evaluate Dr. Zhao’s application for reinstatement following her disciplinary cancellation. [REDACTED]

27. It is also open to the council or the relevant statutory body to consider any outstanding costs orders that Dr. Zhao may have at the time of reinstatement.

Costs

28. The Hearing Panel considered whether it was appropriate to order Dr. Zhao to pay a portion of the costs of the hearing. The Hearing Panel’s authority to order a member to pay costs is established by Section 64 of the EGP Act. APEGA’s bylaws identify the expenses that can be included in a costs order.

29. The Investigative Committee’s Statement of Costs showed that APEGA incurred \$106,367.76 in hearing expenses as of August 13, 2024. The items listed in the Statement of Costs included the Investigative Committee’s legal fees and disbursements, the court reporter and transcript fees, and the Hearing Panel’s legal expenses. These items fall within the expenses listed in Section 36 of APEGA’s Bylaws and can be included in a costs order.

30. The Hearing Panel recognized that the purpose of a costs order is not to punish Dr. Zhao, but to allow APEGA to recoup some of the expenses incurred for the discipline hearing. There is no

presumption that a member should be responsible for most or all of the costs incurred. However, the hearing arose as a result of Dr. Zhao's unprofessional conduct, and so it is fair for her to be responsible for some of the costs.

31. The Hearing Panel considered the parties' success or failure at the hearing, the parties' conduct, the seriousness of the charges, and the reasonableness of the amounts as relevant to the Hearing Panel's assessment of costs. The Investigative Committee successfully proved all charges against Dr. Zhao. Dr. Zhao's proven unprofessional conduct is very serious, for the reasons described above. Dr. Zhao's conduct may have increased APEGA's hearing costs, but not substantially. The hearing was adjourned once at the Investigative Committee's suggestion, following concerns about Dr. Zhao's mental health condition. When the hearing proceeded on rescheduled dates, the Investigative Committee and the Hearing Panel dealt with the issue of whether to proceed in Dr. Zhao's absence. The Investigative Committee's presentation of their case was reasonable. Overall, the Hearing Panel does not see the parties' conduct as a significant factor weighing in favour of either lower or higher costs.

32. The Hearing Panel considered the costs orders from previous cases to assess the reasonableness of the Investigative Committee's proposed costs sum. The case of 19-003-FH Korzeniowski involved a five-day hearing that proceeded in the absence of the regulated member. The total hearing costs were approximately \$117,000 and the Investigative Committee proved four of six allegations against the regulated member. The regulated member did not make submissions or present evidence regarding his financial circumstances. The Discipline Committee ordered the regulated member to pay \$78,000 in costs. The Hearing Panel notes that though the Korzeniowski hearing was longer than Dr. Zhao's hearing, the total costs incurred and the costs orders proposed are very similar.

33. The case of 19-016-FH Bakheet involved a two-day hearing, and the regulated member attended. The estimated costs were approximately \$80,000. The Investigative Committee proved three of four allegations against the regulated member. The regulated member had been without full-time employment for over four years and had debts that would take them years to pay off. The Discipline Committee considered that Mr. Bakheet's financial circumstances and his cooperation in the hearing process were mitigating factors that warranted a low costs order of \$10,000. Dr. Zhao has not provided any similar information as to her financial circumstances.

34. In the case of 20-003-FH Chrysanthous, the Discipline Committee ordered that the regulated member pay 50% or approximately \$50,000 of the total investigation and hearing costs. The Discipline Committee noted that the regulated member had been subject to discipline proceedings in another jurisdiction that involved substantially similar allegations and was ordered to pay the full costs of that hearing.

35. There is not enough information in this case as to Dr. Zhao's financial circumstances or other financial penalties she may have incurred related to her conduct described in the Charges. The

Hearing Panel does not find on a balance of probabilities that the Investigative Committee's proposed costs order would be a crushing financial blow.

36. In the circumstances of this case, the Hearing Panel's view is that the costs order proposed by the Investigative Committee is slightly higher than would be consistent with costs orders in previous similar cases, namely in 19-003-FH Korzeniowski. The Hearing Panel's view is that it is appropriate for Dr. Zhao to bear 50% of the costs of the hearing to a maximum of \$60,000.

Publication

37. The Hearing Panel notes that discipline decisions are generally published in a manner that names the regulated member. It is in the public interest for members of APEGA and the public to be informed about the actions of members that have engaged in unprofessional conduct. Given Dr. Zhao's serious unprofessional conduct and cancellation, transparency is given more weight.

38. [REDACTED]

39. [REDACTED]
[REDACTED] Dr. Zhao can be identified by name in relation to her unprofessional conduct and the profession and the public adequately informed of her actions.

40. The Hearing Panel directs that its decision regarding Dr. Zhao's conduct be published with names [REDACTED]

CONCLUSION

41. For the reasons set out above, the Hearing Panel makes the following orders pursuant to sections 63 and 64 of the EGP Act:

- a) Dr. Zhao's registration is cancelled;
- b) Dr. Zhao shall pay 50% of the hearing costs to a maximum of \$60,000 within 24 months of this Sanctions Decision in accordance with a payment plan approved by the Discipline Manager.

The Hearing Panel directs under Section 46 of the *Engineering and Geoscience Professions General Regulation* that this matter and its outcome be published by APEGA in a manner that names Dr. Zhao.

On behalf of the Hearing Panel of the APEGA Discipline Committee:

Johanne Poirier Mouallem

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Joanne Poirier Mouallem, P.Eng.,
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