



# APEGA Discipline Decision

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**Date:** June 2, 2021

**Case Number:** 19-011-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 MICHEL MILLS, P.GEOL.

The Discipline Committee hearing took place virtually via video conferencing and in-person on October 26 to October 29 and December 8, 2020, in an Association of Professional Engineers and Geoscientists of Alberta (“APEGA”) Boardroom, in Scotia Place Tower 1. The hearing complied with APEGA’s Standing Order (Statutory Meetings in the APEGA Offices during COVID-19).

1. Each of the participants, including the Hearing Panel members, were asked to verify on the record that they were in a private space with no one else in attendance. The Chair indicated that there was also a court reporter in attendance who would produce the official record of the proceedings. The Chair stated that there would be no other recordings.

## Preliminary Matters

2. The parties advised the Hearing Panel that there were no objections to the jurisdiction or constitution of the Hearing Panel. Mr. Mills then indicated that he intended to raise three other preliminary matters. The submissions of the parties on each have been described below.

### *Matter #1: Statutory Basis for Legal Counsel*

3. Mr. Mills argued that there is no statutory basis for legal counsel to advise the Investigative Committee throughout an investigation or to represent the Investigative Committee for the entirety of the disciplinary hearing. He stated that the *Engineering and Geoscience Professions General Regulation* (the “Regulation”) prescribes the makeup of the Investigative Committee but does not reference any legal counsel membership.



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4. Further, he stated that though the Regulation permits an Investigative Panel to consult with technical experts or legal counsel, there is no basis for counsel to be present throughout the entire investigation. Similarly, Mr. Mills argued that there is no definitive basis for counsel to be present at a hearing. He acknowledged that the *Engineering and Geoscience Professions Act* (the “Act”) permitted the Investigative Committee to be “represented” by counsel at a disciplinary hearing.
5. In response, Legal Counsel for the Investigative Committee (“IC Counsel”) submitted that the Regulation contemplates the provision of legal advice during investigations at section 44, which is titled “Assistance in conducting preliminary investigation.” Section 44 authorizes an investigation panel to “employ any [...] legal counsel it considers necessary to conduct a preliminary investigation.” Therefore, there is no concern with the involvement of legal counsel at the investigative stage, as it is specifically contemplated by the Regulation.
6. Further, section 56 of the Act states that the Investigative Committee may appear and be represented by counsel at a hearing before the Discipline Committee. IC Counsel explained that he and co-counsel to the Investigative Committee (“IC Co-Counsel”) were at the hearing not only in an advisor capacity, but also in a representative capacity. This representative role is specifically contemplated by the Act and is part of the statutory scheme crafted by the legislature.
7. Mr. Mills expressed that, in his view, the Investigative Committee or their representative should also be in attendance with counsel. IC Counsel indicated that due to the spacing requirements, the representative from the Investigative Committee could not physically attend in the same room, but attended virtually and was seated in the room next door.

### *Matter #2: Conflict of Interest*

8. With respect to the second preliminary matter, Mr. Mills submitted that it is improper and a conflict of interest when the same legal counsel advises a panel of the Investigative Committee during the investigation stage and then represents the Investigative Committee at a disciplinary hearing.
9. In response, IC Counsel advised the Hearing Panel as to the different roles of the Investigative Committee, and their counsel. During an investigation, the Investigative Committee is not in a position adverse to the investigated member, as their role is to gather facts related to a complaint to determine if a hearing is justified. The Investigative Committee does not represent or defend the complainants.
10. IC Counsel also submitted that the Investigative Committee may retain the counsel it chooses for advice in the investigation process. He stated that legal counsel is not retained during investigations to make decisions. A panel of the Investigative Committee makes recommendations to the Investigative Committee as a whole, and that latter whole makes



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decisions about screening complaints and referring complaints to hearing. If the complaint is to be referred for a hearing, the Investigative Committee may retain legal counsel to prosecute the charges, and there is no inherent conflict in doing so.

11. Further, IC Counsel stated that Mr. Mills had not asserted an actual conflict of interest. The Investigative Committee had not represented the complainant, or Mr. Mills, or another party in the investigation that caused any conflict. If Mr. Mills' concern was that legal counsel had been adverse to him in other parts of the disciplinary process, and were also adverse to him at the hearing, there is no conflict of interest.
12. Mr. Mills confirmed that his concern was that counsel for the Investigative Committee was adverse to him at both stages of the disciplinary process.

### *Matter #3: Witnesses and Notices to Attend*

a. Seven Lawyers from XYZ Law Firm

13. Mr. Mills requested that the Hearing Panel issue Notices to Attend to 20 individuals that he intended to call as witnesses.<sup>1</sup> Firstly, he wished to call as witnesses seven lawyers from XYZ Law Firm, including IC Counsel and IC Co-Counsel. Mr. Mills indicated that he wished to question the lawyers on their retainer with APEGA, and to determine their relationship to APEGA and to this case.
14. Mr. Mills was also concerned that the Investigative Committee was using his copyrighted work for entertainment purposes and indicated that the lawyers listed were either responsible for or privy to the use of his copyrighted work. He wanted to confirm with the lawyers that the Investigative Committee was using his copyrighted documents.
15. IC Counsel submitted that he and IC Co-Counsel had advised Mr. Mills on numerous occasions that they represented the Investigative Committee, and had the Investigative Committee confirm that fact. He further noted that Mr. Mills' concerns about the use of copyrighted documents were irrelevant to the charges before the Hearing Panel.
16. IC Counsel confirmed that the Investigative Committee and XYZ Law Firm had possession of Mr. Mills' copyrighted documents, which formed part of the record of the investigative process. The documents were not being used for entertainment purposes but as evidence of the charges in issue at the hearing.

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<sup>1</sup> Mr. Mills requested Notices to Attend for all 20 witnesses in letters to the Director, Enforcement dated October 8 and 9, 2020. In subsequent correspondence, counsel for the Investigative Committee raised several objections. After the pre-hearing conference on October 13, 2020, the Director, Enforcement communicated that the Hearing Panel would need to decide on Mr. Mills' request and the related objections before the Director, Enforcement would issue any Notices to Attend.



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17. Further, IC Counsel stated that some of the lawyers listed had not been involved on this particular file, and that he would object to any of the lawyers being called as witnesses.
  - b. Independent Counsel to the Hearing Panel
18. Mr. Mills stated that though independent counsel to the Hearing Panel (“HP Counsel”) was not privy to Mr. Mills’ copyrighted work, he was interested in HP Counsel’s retainer and his relationship to APEGA. However, at the hearing, Mr. Mills stated that he understood that HP Counsel was present as independent counsel to oversee the proceedings. Mr. Mills indicated that he was no longer interested in pursuing HP Counsel as a witness.<sup>2</sup>
  - c. Six APEGA Staff Members and Volunteers
19. Mr. Mills indicated that he wished to question these individuals about the retainers and contractual documents with XYZ Law Firm lawyers, and to have the witnesses produce that documentation. He indicated that he had thought that any one of the six people listed could produce the documentation, and that he only needed one person. Mr. Mills also wished to examine the Deputy Registrar and Chief Regulatory Officer of APEGA about the second complaint made against him.
20. In response, IC Counsel stated that the Investigative Committee planned to call one of the individuals as a witness, and that Mr. Mills would have an opportunity to cross-examine him. In the view of the Investigative Committee, the other individuals named by Mr. Mills were unlikely to bring new evidence that the Investigative Committee’s witness could not provide.
21. Further, the information about the Investigative Committee or APEGA’s retainer with XYZ Law Firm was irrelevant to the matters before the Hearing Panel. IC Counsel noted that representation of the Investigative Committee by himself and IC Co-Counsel had been confirmed on the record. He emphasized that his statements were not to be construed as a waiver of solicitor-client privilege held by APEGA, and that he was not in a position to waive that privilege.
  - d. Six Present and Former Members of Mountain View County (the “County), and Contractors
22. Mr. Mills submitted that the complaint by the County was a baseless and false complaint. He wanted these six individuals to bring requested documentation, and to answer Mr. Mills’ questions pertaining to the basis for the complaint. Mr. Mills implied that the complaint was made because his reports highlighted errors made by the County.

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<sup>2</sup> HP Counsel distributed the case of *Lysons v Alberta Land Surveyors’ Association*, 2017 ABCA 7 to the parties as it involved a comparable situation as was before the Hearing Panel with respect to the involvement of various counsel. Neither party objected to the case being reviewed by the Hearing Panel.



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23. In response, IC Counsel stated that the Investigative Committee planned to call two of these individuals as witnesses, and that Mr. Mills would have an opportunity to cross-examine them. He noted that the other individuals named by Mr. Mills were unlikely to bring new evidence that the Investigative Committee's witnesses could not provide.
24. IC Counsel also submitted that it was not necessary for complainants to personally attend and give evidence at the hearing, as the complainants are not a party to the hearing process. The motivation for the County in submitting the complaint is irrelevant as the Investigative Committee is the body that has determined there is sufficient evidence to proceed, not the complainants.
25. IC Counsel commented generally that Mr. Mills did not know what evidence the proposed witnesses would offer, and that it appeared that Mr. Mills wished to conduct his own inquiry into the charges. IC Counsel submitted that this is not the proper purpose of the hearing and is not a proper basis for issuing a Notice to Attend. IC Counsel stated that the Hearing Panel must be satisfied that the witnesses and documentation requested by Mr. Mills are someone or something that has knowledge of the complaint or any of the conduct complained about. In this case, the charges were only about unprofessional conduct, and were not about unskilled practice.
26. Mr. Mills also requested that the Investigative Committee's witnesses bring Mr. Mills' desired documents. IC Counsel stated that Mr. Mills received over 4,000 pages of disclosure, which Mr. Mills indicated was insufficient. IC Counsel stated that there is no basis upon which to request additional documents beyond what was already disclosed, as the witnesses would testify only about relevant matters.
27. After hearing submissions on the preliminary matters, the Hearing Panel adjourned to decide the preliminary matters.

### Decision of the Hearing Panel on the Preliminary Matters

28. The Hearing Panel reconvened the hearing and gave its decision on the preliminary matters orally. With respect to the first and second preliminary matters, the Hearing Panel accepted the Investigative Committee's arguments that the Regulation allows counsel to advise a panel of the Investigative Committee, who then makes recommendations to the Investigative Committee as a whole.
29. After a complaint is referred for hearing, the Investigative Committee is tasked with prosecuting a case before a panel of the Discipline Committee and may be represented by legal counsel in that process. The Act makes no distinction or prohibition that the same legal counsel cannot both advise a panel of the Investigative Committee during investigation and represent the Investigative Committee at a disciplinary hearing. The fact that a counsel



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provides advice to an Investigative Panel does not prevent them from being instructed by the Investigative Committee at the disciplinary hearing.

30. The Hearing Panel noted that the Discipline Committee is at all times represented by separate and independent legal counsel who has not had any exposure to the issue and the case being decided.
31. The Hearing Panel then turned to Mr. Mills' request that Notices to Attend be produced for 20 witnesses. Mr. Mills indicated that he wanted to determine who paid retainers to the lawyers, and that he wanted to question County employees and contractors about their reports, and implied that the County's complaint was made because Mr. Mills' reports highlighted errors in the County's reports.
32. The Hearing Panel found that there is no convincing need to compel all witnesses named. The charges in issue relate to Mr. Mills' conduct. Further, he would have the opportunity to cross-examine the Investigative Committee's witnesses when they testify. Because the Investigative Committee charged Mr. Mills with unprofessional conduct, it is not necessary to review technical documents or reports as his skilled practice was not in issue.
33. With respect to Mr. Mills' concern that various individuals had access to his copyrighted reports and drawings, the Hearing Panel noted that the Act specifically provides in section 49(1)(a) that an investigation panel may require the investigated person to "produce any plans, drawings, detailed drawings, specifications, reports, books, papers, or other documents or records in that person's possession or control." The Hearing Panel found that many of the witnesses requested by Mr. Mills serve no purpose to defend or support the charges of unprofessional conduct against Mr. Mills. The Hearing Panel noted that if this changed during the hearing, it could revisit the ruling.

### Opening Statement by IC Counsel

34. IC Counsel submitted that the hearing arose out of two complaints involving distinct but related series of events. They both concerned Mr. Mills' seeking of compensation for work that was not sought, contracted for, or desired by a recipient. The first complaint was submitted by the County, and the second complaint was lodged by the Deputy Registrar and Chief Regulatory Officer of APEGA.
35. In 2017, the County was considering two applications for the redesignation of certain lands. The associated process allowed for adjacent landowners to comment on the proposals. As part of that process, Mr. Mills prepared three geological reports and one addendum on behalf of an adjacent landowner, Landowner A, which were provided to the County. He sent several invoices and demands for payment to the County in relation to the above-mentioned reports.



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36. The County did not at any time request Mr. Mills' services or make any other overture to him that would be expressed or implied as a compensatory arrangement for Mr. Mills. Mr. Mills was providing the geological reports within a voluntary proposal process that did not imply any payment obligation on the County. However, Mr. Mills continued to demand payment for purported services to the County despite the County's communications. Further, he made a court application demanding payment from the County, but the Court ultimately denied the application due to a lack of evidence.
37. The second complaint arose out of the investigation of the first complaint by the County. As part of the investigation, the Investigative Committee obtained Mr. Mills' geological reports and addendums submitted to the County. When Mr. Mills became aware that the Investigative Committee had received those documents, he proceeded to invoice APEGA on the basis that the reports were proprietary information and that APEGA had caused him damages in tort.
38. IC Counsel clarified that the charges before the Hearing Panel do not engage Mr. Mills' skills as a professional geologist. In the view of the Investigative Committee, Mr. Mills' conduct and demands for payment were unjustified and amounted to unprofessional conduct for the purposes of the Act.
39. IC Counsel indicated that he intended to call three witnesses. He also provided a Binder of the Investigative Committee's documents, including a Document Index and 90 Tabs of documents, which was later entered as Exhibit 1.

### Opening Statement by Mr. Mills

40. Mr. Mills began by referring the Hearing Panel to his case summary, which was later entered as Exhibit 4. He indicated that in his view of the case, there is no basis to any of the charges presented by the Investigative Committee.
41. He advised that his friend, Landowner A, owned recreation property next to the Red Deer River and her property was flooded in 2005 and 2013. In 2017, Landowner A received two letters from the County advising of proposed land redesignations for aggregate extraction within one mile of her property. The letters enclosed technical reports and documentation prepared by Company B.
42. Landowner A did not understand the maps and documentation because they omitted mention of the flooding that she had suffered in 2005 and 2013. She asked Mr. Mills if he was interested in looking at the documents, as she could not understand them. Mr. Mills examined the documents and could not understand them either. He surmised that there was something wrong with the documents but did not know whether it was a mistake.





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43. Fearing that the matter might go to court, Mr. Mills asked Landowner A to commission him as an *amicus curiae*. He noted that the concept of *amicus curiae* translates to “friend of the Court.” He stated that an *amicus curiae* is not a party to a case before the court but is a knowledgeable person who can shed light on the technical issues involved and assist the court with its decision.
44. Mr. Mills visited the lands in question, documented his findings, and prepared technical reports that he volunteered for the County’s public hearing process. In the reports, he stated that the Company B reports were mistaken either in fact or by error or omission of important surface drainage and flood hazard.
45. He delivered additional documents to the attention Director C, the Director of Planning & Development Services with the County. He included a letter with these documents from Landowner A, requesting that the County pay for Mr. Mills’ reports owing to the pertinent information they contained.
46. Later that same week, Mr. Mills discovered that the County was excavating in an area that had been identified in his report but was not shown on their maps. He assumed that they were using his reports, so he delivered to Director C the PDFs for the reports and a request for payment.
47. Mr. Mills also recollected that he delivered invoices for damages in tort because it became apparent during the investigation that the County was aware of the flood hazard, and that Mr. Mills’ preparation of the reports for the hearing was unnecessary.
48. Mr. Mills submitted that the County’s complaint was false, and that the evidence and charges brought forth by the Investigative Committee had no basis and were fabricated. He indicated that the County, in making their false complaint to APEGA, used his copyrighted geological reports and affidavits, and that Mr. Mills intended to request compensation from both the County and their third party for the use of his works.
49. Mr. Mills concluded by saying that in the ninth century A.D., Alfred the Great wrote that “for every man must, according to the measure of his understanding and time, speak what he can speak and do what he can do.” He submitted that the evidence before the Hearing Panel represented the body of knowledge about the case, and that the Hearing Panel must, according to the measure of their understanding and time, speak what they can speak and do what they can do.

### The Charges

50. At the outset of the hearing, the Investigative Committee sought to amend particular L of Charge 1. The amended charges are as follows:





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1. On one or more occasions in or around the period between August 18, 2017 and November 14, 2018, Mr. Mills, P.Geol. demanded payment by the County for services not requested by the County, particulars of which include the following:
  - a. On or about July 17, 2017, the County circulated a notification letter to adjacent landowners regarding a proposal for redesignation of land owned by the County from Agricultural District to Aggregate Extraction/Processing District ("PLRD 20170183"), providing adjacent landowners with an opportunity to provide the County with written comments with respect to the proposal;
  - b. On or about August 2, 2017, the County circulated a notification letter to adjacent landowners regarding a proposal for redesignation of land owned by Company D from Agricultural District to Aggregate Extraction/Processing District, ("PLRD 20170196"), providing adjacent landowners with an opportunity to provide the County with written comments with respect to the proposal;
  - c. Mr. Mills prepared two geological reports (the "Two Geological Reports") on behalf of Landowner A, an adjacent landowner who received notification of PLRD 20170183 and PLRD 20170196. Duplicate copies of the Two Geological Reports were provided to the County on or about August 14, 2017;
  - d. On or about August 18, 2017, Mr. Mills sent the County PDF copies of the Two Geological Reports as well as an invoice for the Two Geological Reports in the amount of \$31,500;
  - e. By letter dated September 15, 2017, Mr. Mills sent the County a "Final Demand" for payment of his invoice dated August 18, 2017 in the amount of \$31,500, and stated that if his invoice was not paid by September 30, 2017, Mr. Mills intended to:
    - i. pursue payment by Civil Claim in Provincial Court; and
    - ii. invoice the County for his time and efforts related to the Court process;
  - f. On or about November 3, 2017, Mr. Mills provided the County with a third Geological Report (the "Third Geological Report");
  - g. On or about November 21, 2017, Mr. Mills provided the County with a "Geological Report Addendum", and indicated that additional invoices would be forthcoming to the County for the Two Geological Reports, the Third Geological Report, and the Geological Report Addendum;



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- h. Mr. Mills sent the County an invoice dated November 21, 2017 in the amount of \$28,770 for the Third Geological Report and the Geological Report Addendum, by cover letter dated November 21, 2017 in which Mr. Mills requested payment of \$31,500 as per his "letter of Final Demand" dated September 15, 2017 and his additional invoice dated November 21, 2017 (for \$28,770) as restitution for the County using his Reports and recommendations;
  - i. Mr. Mills also sent the County an invoice dated November 21, 2017 in the amount of \$60,270 for the Two Geological Reports, the Third Geological Report, and the Geological Report Addendum, by cover letter dated November 21, 2017 in which Mr. Mills requested compensatory payment of his invoices as damages in tort;
  - j. At no point did the County commission Mr. Mills' services or request that Mr. Mills prepare any geological reports in connection with PLRD 20170183 or PLRD 20170196;
  - k. On one or more occasions the County, or its legal counsel, informed Mr. Mills that the County had not commissioned or requested Mr. Mills' services, and would not be paying any portion of the invoices submitted to the County by Mr. Mills;
  - l. On or about February 23, 2018, Mr. Mills commenced legal proceedings against the County in the Court of Queen's Bench of Alberta (Court File No. 1801-02721);
  - m. On or about April 5, 2018, Mr. Mills and Landowner A commenced legal proceedings against the County in the Court of Queen's Bench of Alberta (Court File No. 1801-04740) in which Mr. Mills sought an order requiring, among other things, the County to pay Mr. Mills for the Two Geological Reports, the Third Geological Report, and the Geological Report Addendum, as damages in tort;
  - n. At a Special Chambers hearing with respect to Court of Queen's Bench File Nos. 1801-02721 and 1801-04740, on or about November 14, 2018, a Justice of the Court of Queen's Bench of Alberta found the activities of Mr. Mills on behalf of himself and Landowner A were voluntary and were not solicited by the County, and was not persuaded there was basis for the damages claimed by Mr. Mills.
2. At some point between 2012 and 2018, or thereabouts, Mr. Mills lost control of the stamp or seal issued to Mr. Mills by APEGA, contrary to section 54 of the Regulation and the APEGA Practice Standard for Authenticating Professional Documents, or either of them.



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3. Mr. Mills failed to properly authenticate one or more of the following reports, contrary to section 78 of the Act, section 54 of the Regulation, and the APEGA Practice Standard for Authenticating Professional Documents, or any of them:
  - a. The Two Geological Reports;
  - b. The Third Geological Report;
  - c. The Geological Report Addendum.
  
4. Mr. Mills accused an APEGA Permit Holder, Company B, of mistakenly or deliberately producing false and misleading maps, reports, and documents, without first consulting anyone at Company B to attempt to determine the relevant facts, particulars of which include the following:
  - a. Mr. Mills reviewed one or more of the following documents prepared by Company B with respect to PLRD 20170183 and PLRD 20170196, or either of them:
    - i. Redesignation & Subdivision Application;
    - ii. Comprehensive Site Development Plan;
    - iii. Biophysical Impact Assessment;
  - b. In the Two Geological Reports, the Third Geological Report, and the Geological Report addendum, or any of them, Mr. Mills expressed or implied one or more of the following with respect to documents prepared by Company B:
    - i. The Redesignation & Subdivision Applications are mistaken either in fact, or by error, or by omission;
    - ii. The documents include false (or false by omission) maps and reports and documents;
    - iii. The documents are false by deliberate omission of watercourses prone to flooding;
    - iv. The documents include false mapping that was created as the basis for the Redesignation & Subdivision Applications;



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- v. Company B deliberately ignored Mr. Mills' geological reports and maps, which post-date any of the previous flood mappings, therefore making the previous flood mappings outdated;
  - vi. Company B is acting as a proxy for the County in the public hearing process, and thus their deliberate omission of the watercourses and flood hazard identified within Mr. Mills' geological reports is contrary to the *Municipal Government Act*;
  - vii. The Biophysical Impact Assessment is false;
  - viii. Company B's flawed conclusion is based on their inability to recognize many of the basic elements of the 'aquatic resources' including the multiple Red Deer River channels, and the relationship between the surface drainage and the associated groundwater within the gravel substrate;
- c. Prior to making the express or implied statements set out in paragraph 4(b) above, Mr. Mills did not consult with anyone at Company B to attempt to determine the relevant facts.
5. On one or more occasions in or around the period between August 2, 2018 and November 18, 2018, Mr. Mills demanded payment by APEGA for services not requested by APEGA, particulars of which include one or more the following:
- a. In or around November 2017 and July 2018, the County provided APEGA with copies of several geological reports prepared by Mr. Mills (the "Geological Reports") and submitted to the County, as supporting materials in a complaint made by the County to APEGA regarding Mr. Mills' conduct ("the County's Complaint");
  - b. In a fax addressed to APEGA and initially sent on or about May 14, 2018 to an incorrect fax number, but later received by APEGA on or about July 20, 2018, Mr. Mills stated that if he sent one of the Geological Reports to APEGA as requested, there would be an associated invoice of \$8,000 on the basis that this was Mr. Mills' "proprietary report";
  - c. On or about August 2, 2018, Mr. Mills sent an invoice to APEGA's Investigation Department in the amount of \$8,400, and requested APEGA to pay within 28 days;



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- d. On or about September 4, 2018, Mr. Mills issued a second invoice to APEGA's Investigation Department noting the invoice was a "final demand for payment" and stated in an accompanying letter that "if payment is not received forthwith, I will proceed with a Court application for compensation";
- e. On or about November 10, 2018, Mr. Mills sent an invoice to APEGA's Registrar and CEO in the amount of \$51,870, and requested in an accompanying letter "compensation from APEGA, for APEGA's unauthorized use of my three proprietary reports without permission";
- f. On or about November 18, 2018, Mr. Mills sent a letter to APEGA's Registrar and CEO attaching an invoice in the amount of \$12,537, and detailing a "timesheet / invoice to November 17, 2018, with respect to damages in tort caused by APEGA";
- g. At all relevant times, APEGA's use of the Geological Reports was solely in connection with its investigation of the County's Complaint, in accordance with Part 5 of the Act;

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

### **Decision on the Charges of Unprofessional Conduct**

#### Introduction and Standard of Proof

51. The Hearing Panel heard evidence from four witnesses, including Mr. Mills, over four days. It also reviewed all the documents contained in the Exhibits entered at the hearing, the written submissions made by IC Counsel and IC Co-Counsel on behalf of the Investigative Committee on January 11, 2021 and February 24, 2021, and the written submissions made by Mr. Mills on February 7, 2021 and March 4, 2021.
52. In coming to its decision, the Hearing Panel recognizes that the onus is on the Investigative Committee to prove the factual allegations made in the Charges contained in the Notice of Hearing to satisfy the "balance of probabilities" standard of proof. This standard of proof requires that any Charge be proven as more probable than not. If some or all of the factual allegations are proven, the Investigative Committee must also establish on the same balance of probabilities standard of proof that the proven factual allegations constitute unprofessional conduct by Mr. Mills.



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**Charge 1 - On one or more occasions in or around the period between August 18, 2017 and November 14, 2018, Mr. Mills, P. Geol. demanded payment by the County for services not requested by the County**

### Decision of the Hearing Panel as to Whether the Conduct is Factually Proven

53. Firstly, the Hearing Panel considered whether the factual elements of Charge 1 were proven on a balance of probabilities.
54. On July 17, 2017 and August 2, 2017, the County circulated notification letters to adjacent landowners regarding two applications for land redesignations. The Hearing Panel observed that these letters invited the adjacent landowners to provide written comments to be considered by the authority deciding the applications.
55. In response to the notification letters, Landowner A, an adjacent landowner and friend of Mr. Mills, submitted geological reports to the County dated August 11, 2017 and August 14, 2017 that had been prepared by Mr. Mills. On November 3, 2017, Mr. Mills provided a third geological report to the County, followed by an addendum on November 21, 2017.
56. Mr. Mills testified that the geological reports were provided in duplicate, with one set volunteered for the public hearings related to the redesignation applications, and a second set delivered to Director C, Director of Planning & Development Services for the County. Director C testified that she had received an invoice from Mr. Mills for geological reports commissioned by Landowner A, and that she had not expected to receive the invoice.
57. Mr. Mills indicated that the geological reports had not been prepared on behalf of Landowner A, but rather that Landowner A commissioned Mr. Mills as an *amicus curiae*. Mr. Mills indicated that he prepared the geological reports after he was so commissioned. In written submissions, the Investigative Committee expressed that an *amicus curiae* is not self-appointed, but may be appointed by a court or tribunal in exceptional cases. The Investigative Committee submitted that Landowner A did not have the authority to appoint Mr. Mills as an *amicus curiae*, and that there was no need for her to do so.
58. Between August 18, 2017 and November 21, 2017, Mr. Mills sent three invoices to the County in the amounts of \$31,500, \$28,770, and \$60,270. Mr. Mills also sent a letter to Director C dated September 15, 2017, in which Mr. Mills submitted his "Final Demand for payment." The letter indicated that if the invoices were left unpaid, Mr. Mills would pursue payment through the courts, and that he would invoice the County at an hourly rate for the time and effort spent related to the court process.



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59. Director C testified that, in response to receipt of the first invoice, she scheduled a telephone call with Landowner A on August 23, 2017 to explain that the County would not be paying any invoices for work or studies that they did not ask for or commission. Mr. Mills also attended the call. Director C stated that she advised Mr. Mills and Landowner A that the County had not requested or commissioned the geological reports, and therefore would not be paying the invoice. Director C confirmed this in a letter dated August 24, 2017.
60. When Mr. Mills continued to send invoices and demands for payment, Director C and the County's legal counsel sent additional letters indicating that the County's position had not changed. These letters were sent on September 20, 2017; October 26, 2017; November 7, 2017; and December 4, 2017.
61. On February 23, 2018 and April 5, 2018 Mr. Mills initiated lawsuits against the County in the Court of Queen's Bench of Alberta. In one of these two lawsuits, Mr. Mills sought a "costs award, as damages in tort" for his three geological reports. Landowner A and Mr. Mills each swore supporting affidavits that referenced payment by the County for Mr. Mills' geological reports.
62. Ultimately, Mr. Mills' lawsuits were dismissed, and costs were awarded to the County. In their written submissions, both the Investigative Committee and Mr. Mills referenced the transcripts of the proceedings before Justice Poelman. In delivering his oral judgment, Justice Poelman said the following: "The activities of Mr. Mills on behalf of himself and perhaps particularly Landowner A were entirely voluntary, they were not solicited by the county, nor did the county in any way intimate that it was prepared to compensate Mr. Mills for his work."
63. The Hearing Panel notes that in Mr. Mills' written submissions, he stated that particulars A B, D, E, G, I, J, and K were correct.<sup>3</sup> He indicated that particulars L, M, and N were partially correct, in that he did commence legal proceedings against the County; however, Mr. Mills' position was that he did not "seek payment" from the County for the geological reports, but rather sought "damages in tort" and "compensation for the improper use of [his] work product."
64. Mr. Mills indicated that particular C was incorrect, as he had not prepared any of the geological reports on behalf of Landowner A. With respect to particular H, he stated that it appeared incorrect, as the invoices to the County should have totaled \$60,270.00.
65. The Hearing Panel finds that between August 18, 2017 and November 14, 2018, Mr. Mills demanded payment by the County of services that were not requested by the County. The Hearing Panel finds that the County did not request or commission the geological reports prepared by Mr. Mills. In his arguments, Mr. Mills did not contest this fact and indicated that he had prepared the geological reports voluntarily.

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<sup>3</sup> In Mr. Mills' written submissions, he commented on particular F but did not indicate whether he thought it was correct or not.





## APEGA Discipline Decision

66. The Hearing Panel finds that Mr. Mills' belief that he was commissioned as an *amicus curiae* is incorrect for the reasons submitted by the Investigative Committee, and are also not relevant to whether he sought payment from the County when the County had not requested or commissioned his services.
67. Mr. Mills voluntarily prepared the geological reports. The County did not request them, and Mr. Mills was informed by way of letters from the County and their legal counsel that they would not be paying for the reports. However, Mr. Mills continued to send the County invoices and pursued legal action to recover payment that was not owed to him. Based on the above evidence, the Hearing Panel finds that Charge 1 and particulars A – N are factually proven on a balance of probabilities.

### Decision of the Hearing Panel as to Whether Unprofessional Conduct is Proven

68. Next, the Hearing Panel went on to consider whether the proven conduct amounted to unprofessional conduct under the Act. In his written submissions, Mr. Mills indicated that there was no basis in fact, nor any evidence at all, for any factual conduct to amount to unprofessional conduct under the Act. He stated that his conduct conformed to all the Rules of Conduct in the *APEGA Code of Ethics*. Mr. Mills further opined that it was XYZ Law Firm, not the Investigative Committee, who submitted that his conduct breached the *Code of Conduct*.
69. The Investigative Committee submitted that Mr. Mills' conduct contravened Rule of Conduct 3, which requires professional members to conduct themselves with integrity, honesty, fairness and objectivity. Additionally, they submitted that Mr. Mills' conduct contravened Rule of Conduct 5, which requires professional members to uphold and enhance the honour, dignity and reputation of their professions and thus the ability of their professions to serve the public interest.
70. In the view of the Investigative Committee, Mr. Mills failed to conduct himself in a fair and objective manner. Throughout the events in issue and at the hearing, Mr. Mills was unwilling or unable to view the situation from any perspective other than his own. Further, Mr. Mills did not at any point suggest that the County had commissioned or requested his services. He testified that he issued the invoices expecting that the County would not pay but expressed that it was fair to invoice the County for work that they had not requested.
71. The Investigative Committee submitted that Mr. Mills also failed to conduct himself in an honest manner with respect to his demands for payment from the County. Mr. Mills' initial invoice to the County on August 18, 2017 did not identify the various reasons he cited at the hearing for invoicing the County, other than stating that he had prepared the reports "*amicus curiae*." The Investigative Committee suggested that Mr. Mills either omitted his real reasons for invoicing the County or created additional bases for invoicing the County after the fact.



## APEGA Discipline Decision

72. Lastly, the Investigative Committee submitted that by pursuing the County with demands for payment for services the County had not requested or commissioned, Mr. Mills failed to uphold and enhance the honour, dignity, and reputation of the profession, and thus undermined the ability of the profession to serve the public interest.
73. The Hearing Panel accepts the arguments of the Investigative Committee and finds that Mr. Mills' proven conduct amounts to unprofessional conduct under sections 44(1)(a), (b), and (c) of the Act and contravened Rules of Conduct 3 and 5.
74. The Hearing Panel finds that Mr. Mills' conduct, repeatedly demanding payment from the County for services they had not asked for, was particularly egregious. The manner in which Mr. Mills' made the various demands for payment from the County resulted in Mr. Mills failed to act reasonably with fairness and objectivity, and his approach throughout was devoid of professionalism. His correspondence contained inflammatory statements and threats of legal action. Throughout his dealings with the County, Mr. Mills further failed to uphold the reputation of the profession, as the baseless demands for payment and repetitive nature of his conduct reflects poorly on the profession of geoscience and undermines the ability of the profession to serve the public interest.

**Charge 2 - At some point between 2012 and 2018, or thereabouts, Mr. Mills lost control of the stamp or seal issued to Mr. Mills by APEGA, contrary to section 54 of the Regulation and the APEGA Practice Standard for Authenticating Professional Documents, or either of them.**

### Decision of the Hearing Panel as to Whether the Conduct is Factually Proven

75. Section 54 of the Regulation provides the following:
  - (1) A stamp or seal issued to a professional member or licensee must at all times remain under that person's direct control [ . . . ]
  - (2) No person shall permit a stamp or seal to be physically located in a manner that would allow it to be used by a person other than the professional member [ . . . ] to whom it was issued.
76. The Hearing Panel considered the following evidence in determining whether Mr. Mills had lost control of his stamp or seal contrary to section 54 of the Regulation.
77. On May 2, 2018, the Chair of the Investigation Panel and the APEGA Staff Investigator conducted an interview with Mr. Mills as part of the investigation of the initial complaint. At that interview, Mr. Mills stated that he joined APEGA in 1987, that he had worked in the industry for almost 40 years, and that he had never used the seal. Further, he stated that when he went to use his seal in late 2017, he could not find it, so he ordered a new one.



## APEGA Discipline Decision

78. In email correspondence with the APEGA Staff Investigator in late 2018, Mr. Mills indicated that he believed his old stamp was subject to a matrimonial property order. Mr. Mills testified at the hearing that in approximately 2011, his property was divided as part of a matrimonial separation and boxed up. In that process, Mr. Mills said he lost track of where the stamp went. He indicated that it was possible that the stamp was in a box in his possession, as he had not completely unpacked all the boxes.
79. In his written submissions, Mr. Mills stated that there was no evidence of a loss of “direct control” of the stamp or seal, and that he had not “permitted the stamp to be physically located in a manner that would allow it to be used by a person other than the professional member ... to whom it was issued.” Lastly, Mr. Mills submitted that the Chair of the Investigation Panel mistakenly stated that, during the May 2, 2018 interview, Mr. Mills admitted that he had lost his stamp.
80. The Hearing Panel finds that at some point between 2012 and 2018, or thereabouts, Mr. Mills lost control of his stamp contrary to section 54 of the Regulation. Under section 54, a professional member has an obligation to maintain direct control over their stamp or seal. Mr. Mills’ evidence at the hearing is that sometime around 2011 his belongings were divided and packed into boxes pursuant to a court order. He said, “as far as I know, the stamp is still under my control, I just don’t know where it is.” He noted that he still had boxes that had not been opened, so it is possible that the stamp is in one of those boxes. The evidence indicated that Mr. Mills did not recover his lost stamp but ordered a new stamp.
81. The Hearing Panel finds that the stamp is not and has not been under Mr. Mills’ direct control since the time it was lost, as required by section 54(1) of the Regulation. In the view of the Hearing Panel, “direct control” necessarily requires that Mr. Mills have knowledge of the stamp’s whereabouts. Without knowledge of the stamp’s location, Mr. Mills cannot assert control over it.
82. During the hearing, Mr. Mills argued that a loss of control implies that someone else has used the stamp, and that there is no evidence that another person had used his stamp. The Hearing Panel notes that section 54 does not limit the obligation to situations where others might use the stamp. Therefore, proof of use by another person is not required for the Hearing Panel to find that Mr. Mills lost direct control over his stamp.

### Decision of the Hearing Panel as to Whether Unprofessional Conduct is Proven

83. In written submissions, the Investigative Committee stated that in losing control of the stamp, Mr. Mills failed to comply with section 54 of the Regulation and necessarily breached Rule of Conduct 4, which requires professional members to comply with applicable statutes, regulations and bylaws in their professional practices. The Investigative Committee further submitted that Mr. Mills’ breach of Rule of Conduct 4 constitutes unprofessional conduct under section 44(1)(b) of the Act.



## APEGA Discipline Decision

84. Mr. Mills stated that it is XYZ Law Firm, and not the Investigative Committee, that alleges his conduct contravenes Rule of Conduct 4. Therefore, Mr. Mills submitted that based on the absence of any evidence for Charge 2, and on the basis that the charges were fabricated by XYZ Law Firm, there is no basis for a finding of unprofessional conduct.
85. The Hearing Panel finds that the factually proven conduct under Charge 2 constitutes unprofessional conduct. The expectation of professional members is that they maintain direct control over their stamp, and that they report any loss to APEGA. In failing to do so, Mr. Mills breached Rule of Conduct 4, which amounts to unprofessional conduct under section 44(1)(b) of the Act. The Hearing Panel finds no merit to support Mr. Mills' allegation that the Charge was fabricated by XYZ Law Firm and dismisses this argument in its entirety.

**Charge 3 - Mr. Mills failed to properly authenticate one or more of the following reports, contrary to section 78 of the Act, section 54 of the Regulation, and the APEGA Practice Standard for Authenticating Professional Documents, or any of them:**

- a. **The Two Geological Reports;**
- b. **The Third Geological Report;**
- c. **The Geological Report Addendum.**

### Decision of the Hearing Panel as to Whether the Conduct is Factually Proven

86. The Hearing Panel considered the three geological reports and the addendum in evidence, and observed that none of these documents bore Mr. Mills' stamp or seal. Mr. Mills submitted the unauthenticated reports to the County as part of its consultation processes, and further sought an Order from the Court of Queen's Bench of Alberta requiring the County to officially recognize his maps. Mr. Mills indicated that in seeking this Order, he did stamp maps and attached them to his affidavit of May 14, 2018. He was able to stamp these maps once he received a new stamp from APEGA.
87. The Hearing Panel considered whether the three geological reports and the addendum were documents that required a stamp or seal. The Investigative Committee argued that the geological reports should have been authenticated, as the reports comprised professional geological work for others to rely upon.
88. During his interview with the Investigative Panel on May 2, 2018, Mr. Mills indicated that he had prepared the geological reports as a professional geologist, and that the reports said "professional geologist." However, when asked whether he considered applying his seal to the geological reports, Mr. Mills responded, "I never used a seal."



## APEGA Discipline Decision

89. Section 78(1) of the Act, titled “Use of stamps, seal, permit number”, states
- 78(1) A professional member, licensee or restricted practitioner shall, in accordance with the regulations,
- (a) sign documents or records, and
  - (b) stamp or seal documents or records.
90. Section 54 of the Regulation, titled “Use of stamps and seals issued to members” states
- 54(1) A stamp or seal issued to a professional member or licensee must at all times remain under that person’s direct control and must be applied by the professional member or licensee or by a person acting under the professional member’s or licensee’s immediate and direct control to all final plans, specifications, reports or documents of a professional nature
- (a) that were prepared by the professional member or licensee or under the professional member’s or licensee’s supervision and control [...]
  - (2) No person shall permit a stamp or seal to be physically located in a manner that would allow its use by a person other than the professional member or licensee to whom it was issued.
91. The Investigative Committee submitted that the APEGA Practice Standard for Authenticating Professional Documents (“Authentication Standard”) stands for the principle that authentication of professional documents serves the public interest by providing a clear and unique indicator that an APEGA licensed professional has completed or reviewed the work.
92. Further, at section 1.3 of the Authentication Standard, “Geoscience document” is defined as “a document that expresses geological or geophysical work, typically as a result of an interpretation, analysis or design process, such as seismic programs, maps, cross-sections and reports.” “Professional document” is defined as “an engineering document or a geoscience document in any form or medium [ . . . ]. Referred to in the Act and Regulations as ‘document of a professional nature.’” The Investigative Committee submitted that these definitions support its position that Mr. Mills failed to authenticate documents of a professional nature which required authentication.
93. Mr. Mills argued that the geological reports were prepared for public hearings as informative pieces prepared for general information. He stated that such items should not be authenticated, as per section 3.3 “What not to stamp” of the Authentication Standard.



## APEGA Discipline Decision

94. The Hearing Panel finds, on a balance of probabilities, that Mr. Mills failed to properly authenticate the three geological reports and the addendum, as none of these documents bore Mr. Mills' stamp or seal. Mr. Mills' failure to properly authenticate the three geological reports and the addendum was contrary to section 78 of the Act and section 54 of the Regulation and was not in compliance with the Authentication Standard that was in effect in 2017.
95. The Hearing Panel finds that Mr. Mills' three geological reports and the addendum were professional documents that required authentication. Although the reports were prepared for public hearings, they fall within the definition of "geoscience document" and "professional document" according to the Authentication Standard. Mr. Mills continued referring to the documents as his "geological reports" and signed the three geological reports and the addendum as a "professional geologist." If Mr. Mills did not want the documents to be relied upon, he should have indicated that in writing on the reports.
96. The Hearing Panel considered whether the three geological reports and the addendum fall under section 3.3. of the Authentication Standard. The Hearing Panel finds that they do not. Section 3.3 of the Authentication Standard indicates that informative pieces prepared for general information include technical journal articles, conference papers, magazine articles, and slide presentations. These documents are not considered to be final documents on which someone would be expected to take action, and therefore should not be authenticated.
97. Having found that the particulars were proven on a balance of probabilities, the Hearing Panel went on to consider whether this amounted to unprofessional conduct.

### Decision of the Hearing Panel as to Whether Unprofessional Conduct is Proven

98. In its written submissions, the Investigative Committee took the position that by failing to authenticate the three geological reports and the addendum in Charge 3, Mr. Mills breached Rule of Conduct 3, and that this breach amounted to unprofessional conduct under subsections 44(1)(b), (d), and (e) of the Act. With respect to subsections 44(1)(d) and (e), the Investigative Committee submitted that Mr. Mills displayed a lack of judgment in the practice of the profession and in carrying out duties undertaken in the practice of the profession.
99. Rule of Conduct 3 states that "professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities." In its written submissions, the Investigative Committee did not indicate how Mr. Mills' error in failing to properly authenticate the three geological reports and the addendum lacked integrity, honesty, fairness, or objectivity. As such, the Hearing Panel finds that Rule of Conduct 3 and section 44(1)(b) of the Act have not been breached.





## APEGA Discipline Decision

100. The Hearing Panel does find, however, that Mr. Mills' factually proven conduct displays a lack of judgment in the practice of the profession, and a lack of judgment in carrying out the duties undertaken in the practice of the profession. Mr. Mills should have authenticated the geological reports before submitting them in the County's consultation process for the public to rely upon.
101. Mr. Mills submitted that it was XYZ Law Firm and not the Investigative Committee who alleged a breach of Rule of Conduct 3, and there was no basis for the breach. He argued that similarly, XYZ Law Firm fabricated the alleged breach of section 44(1)(d) and (e). He further argued that in making the charge against him, XYZ Law Firm possessed Mr. Mills' copyrighted documents independent of the Investigative Committee, which amounted to a conflict of interest. Mr. Mills alleged that counsel's actions, purported to be under the Act, were not made in good faith.
102. The Hearing Panel finds that the Investigative Committee has proven Charge 3 on a balance of probabilities. In failing to stamp the three geological reports and the addendum when required, Mr. Mills breached section 44(1)(d) and (e). There is a proven basis for this breach.

**Charge 4 - Mr. Mills accused an APEGA Permit Holder, Company B, of mistakenly or deliberately producing false and misleading maps, reports, and documents, without first consulting anyone at Company B to attempt to determine the relevant facts.**

### Decision of the Hearing Panel as to Whether the Conduct is Factually Proven

103. During the County's public hearing process, Mr. Mills became concerned that several documents prepared by Company B for the County's public hearing process contained errors or omissions. The APEGA staff investigator testified before the Hearing Panel and pinpointed 13 statements made by Mr. Mills that related to the particulars of Charge 4.
104. In his sworn testimony, Mr. Mills indicated that at the time he made the statements against Company B, he was not familiar with the name of the company and was unaware that they were an APEGA permit holder. He stated that the documents prepared by Company B did not contain any stamps or permit numbers, or any evidence that there was a professional geoscientist or engineer involved. During cross-examination, he confirmed that he was aware that the APEGA website allows individuals to search for permit holders, but that it had not occurred to him to inquire whether Company B was a permit holder that way.
105. Mr. Mills testified that several waterbodies were "omitted" from the Company B documents. Mr. Mills confirmed that the title of his third geological report "Geological Report Regarding False Mountain View County Maps and Documents and Bylaw Number LU4317" was intended to catch a person's eye. He stated that he was essentially issuing a warning to the public that Company B was preparing materials that were deliberately false, or contained mistakes or omissions based on a lack of skill or knowledge.





## APEGA Discipline Decision

106. He confirmed that in his view, Company B omitted intentionally and unintentionally relevant scientific information, and that they are responsible for breaking the law, and specifically the *Municipal Government Act* and the local Land Use Bylaw. He accused Company B of deliberately obfuscating the public record by putting these materials in during the public hearing process.
107. Mr. Mills expressed several times that the safety of the public was paramount, and therefore it was fair that his third geological report have a shocking title. He confirmed his belief that allegations cannot be baseless, and that his making the accusations against Company B in a public forum was appropriate.
108. Mr. Mills confirmed that he received the Biophysical Impact Assessment through the litigation discovery process in fall of 2017. Subsequently, he called the Company B office. He confirmed that he had not made any inquiries prior to this phone call to determine whether a professional member was involved in preparing the documents. Mr. Mills stated that at the time he made the allegations against Company B during the County's public hearing process, he was primarily concerned with the short deadlines to prepare submissions.
109. The Hearing Panel noted that proof of Charge 4 particulars A and B was uncontested, as Mr. Mills submitted that they were "reasonably correct."
110. In the view of the Hearing Panel, the evidence establishes on a balance of probabilities that he accused Company B of mistakenly or deliberately producing false and misleading maps, reports, and documents, without first consulting anyone at Company B of the relevant facts.

### Decision of the Hearing Panel as to Whether Unprofessional Conduct is Proven

111. Next, the Hearing Panel went on to consider whether Mr. Mills' conduct amounted to unprofessional conduct.
112. The Investigative Committee referenced APEGA's Guideline for Ethical Practice, which outlines a professional member's ethical obligations when reviewing the work of another professional. The Investigative Committee noted that, in this case, the work prepared by Company B was not prepared by a professional engineer or geoscientist, and therefore the Guideline was not directly applicable. However, they suggested that the Guideline provided helpful principles that should be considered in light of Mr. Mills' conduct.
113. Section 4.5.3 "Reviewing the Work of Other Professionals" states:  
  
a professional should not call into question the professional conduct or technical competence of another professional member without first consulting that member to attempt to determine the relevant facts.



## APEGA Discipline Decision

114. The Investigative Committee submitted that a professional member is not prohibited from expressing concerns with events occurring in the public sphere, but that before doing so, they are expected to exercise a degree of due diligence with respect to the contents and audience of their statements. They submitted that there was an onus on Mr. Mills to ensure that he was not directing untrue accusations against another professional member.
115. The Investigative Committee suggested that Mr. Mills' failure to take steps to consult with Company B before making his public accusations was reckless and irresponsible. They submitted that his conduct towards Company B is conduct that harms or tends to harm the standing of the profession generally, and amounts to unprofessional conduct under section 44(1)(c) of the Act.
116. Mr. Mills also referred to the APEGA Guideline for Ethical Practice at section 4.5.3 and submitted that because there was no evidence that the documents prepared by Company B were prepared by a professional engineer or geoscientist, he had no obligation to consult with a permit holder.
117. Mr. Mills noted that it was not until the County's disclosure during the legal action that Mr. Mills interpreted the documents to be manufactured on a template from Company B. Thereafter, he consulted with personnel at Company B in an attempt to determine the facts surrounding the manufacture of the documents. Further, Mr. Mills submitted that there is no basis that the above conduct constitutes unprofessional conduct or unskilled practice of the profession.
118. In the opinion of the Hearing Panel, Mr. Mills' failure to confirm Company B's status as an APEGA Permit Holder before commenting on their work in a public forum, in these circumstances, is not conduct that harms or tends to harm the standing of the profession.
119. As indicated by the Investigative Committee, the work that Mr. Mills criticized was not prepared by a professional engineer or geoscientist, and therefore Mr. Mills was not obliged under APEGA's Guideline for Ethical Practice to consult because there was no professional member to consult with about their work. Further, none of Company B's reports had any identifying features indicating a permit to practice or that a professional member was involved. Company B's reports were also not stamped or authenticated. The Guideline for Ethical Practice does not require professional members to contact and advise a Permit Holder before reviewing and evaluating their work. Therefore, Mr. Mills had no obligation to confirm whether Company B was a permit holder.
120. The Hearing Panel would note that Mr. Mills' statements about Company B's documents were shocking, but that the Investigative Committee did not lead evidence as to whether they were in fact false. Nonetheless, the egregiousness of his statements is not the factual conduct alleged to be unprofessional conduct. The Charge to be determined by the Hearing



## APEGA Discipline Decision

Panel is whether Mr. Mills' failure to consult with a Permit Holder before criticizing their work in a public forum amounts to unprofessional conduct. For the reasons above, the Hearing Panel finds that this failure does not amount to unprofessional conduct, as it has not been proven on a balance of probabilities that it harms the standing of the profession.

### **Charge 5 – On one or more occasions in or around the period between August 2, 2018 and November 18, 2018, Mr. Mills demanded payment by APEGA for services not requested by APEGA.**

#### Decision of the Hearing Panel as to Whether the Conduct is Factually Proven

121. Charge 5 arose out of a second complaint made by APEGA's Deputy Registrar and Chief Regulatory Officer regarding Mr. Mills' demands for payment with respect to his reports that had been obtained by the Investigation Committee during their investigation of the first complaint.
122. As part of the investigation, the Investigative Committee obtained the three geological reports and the addendum related to the County's initial complaint. In a letter faxed to the Investigative Committee's counsel on May 14, 2018, Mr. Mills indicated that he was providing a proprietary report, and that if he were to send it to APEGA, he would be invoicing them \$8,000.00.
123. As the APEGA staff investigator testified, APEGA obtained the geological report in issue directly from the County. Mr. Mills was notified of this by email on July 31, 2018. On August 2, 2018, Mr. Mills sent an invoice to APEGA for \$8,400. The attached cover letter indicated that the report was proprietary, and payment was requested forthwith. Further, Mr. Mills indicated that he would hold APEGA liable for all costs sustained as the result of the "apparently 'sham' investigation."
124. On September 4, 2018, Mr. Mills sent a second "duplicate" invoice to APEGA for the amount of \$8,400.00, which was titled "Final Demand." In the attached letter, Mr. Mills indicated that if payment was not received forthwith, he would proceed with a Court application for compensation and would be requesting court costs.
125. On November 10, 2018, Mr. Mills sent a third invoice in the amount of \$51,870.00 to APEGA's Registrar and CEO. This total was alleged to reflect APEGA's "unauthorized use" of Mr. Mills' proprietary geological reports.
126. On November 18, 2018, Mr. Mills sent an additional invoice to APEGA's Registrar and CEO for "damages in tort" totaling \$12,537.00. The total was calculated by multiplying a claimed 68 hours and 14 minutes by a rate of \$175.00 per hour, plus GST. The invoice does not provide details about the hours claimed.
127. In his sworn testimony, the APEGA staff investigator stated that APEGA had not used Mr. Mills' geological reports outside of the disciplinary process.



## APEGA Discipline Decision

128. In written submissions, Mr. Mills noted that particulars A – F appear reasonably correct, but that particular G was incorrect as APEGA obtained and possessed his proprietary reports contrary to Part 5 of the Act. Mr. Mills also indicated that he did not demand payment for services not requested by APEGA.
129. Mr. Mills stated that APEGA came into possession of his geological reports via the County in 2017 and 2018. He stated that copyright exists in those documents, and that APEGA's use is apparently inconsistent with section 49 of the Act. He stated that his claim for copyright infringement is apparently valid by virtue of section 82(1) of the Act.<sup>4</sup>
130. The Hearing Panel accepts the evidence of the APEGA staff investigator that Mr. Mills' geological reports were not used outside of the disciplinary process, and therefore finds, in or around the period between August 2, 2018 and November 18, 2018, that Mr. Mills demanded payment from APEGA for services that were not requested by APEGA. On the invoices sent to APEGA, Mr. Mills indicated that the geological reports and recommendations were prepared "amicus curiae." Mr. Mills has been forthright about his belief that as an amicus curiae, no one needed to ask him to perform the work.
131. The Hearing Panel finds that the Investigative Committee did not request or commission services from Mr. Mills. Mr. Mills was required to comply with APEGA's investigation of the complaints made against him, and further to this, the Investigative Committee obtained the geological reports from the County. Despite the fact that APEGA had not requested his services, Mr. Mills continued to demand payment from APEGA. Given this finding, the Hearing Panel went on to consider whether this conduct amounted to unprofessional conduct.

### Decision of the Hearing Panel as to Whether Unprofessional Conduct is Proven

132. Mr. Mills submitted that his conduct as described in particulars B through F is consistent with the Act, and with the *Copyright Act*, and is thereby lawful and in the public interest. He also submitted that this conduct promotes the standing of the profession generally.
133. Further, Mr. Mills submitted that legal counsel for the Investigative Committee expanded upon initial charges of unprofessional conduct, and fabricated particulars of charges when alleging that his conduct constituted unprofessional conduct and is contrary to the Act and the Rules of Conduct contained in the *Code of Ethics*. He argued that there was no basis for either of the complaints or investigations against him, and likewise there was no evidence or basis for any of the Charges contained in the Notice of Hearing.

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<sup>4</sup>As the Hearing Panel noted in its decision on the preliminary issues, which was given orally at the hearing, the Act specifically provides in section 49(1)(a) that the investigated person produce any plans reports, books, papers and other documents or records in that person's possession or control. Further, Mr. Mills provided his geological reports to the County in the context of a public hearing process, and the Panel is not persuaded that there is any evidence to support an allegation of a breach of copyright.



## APEGA Discipline Decision

134. The Investigative Committee submitted that APEGA protects the public interest by receiving and investigating complaints, and where there is sufficient evidence, by presenting evidence at disciplinary hearings to determine whether a professional member has engaged in unprofessional conduct or unskilled practice. In the course of doing so, the Investigative Committee and APEGA generally came to possess Mr. Mills' reports. Mr. Mills was required to cooperate with the investigation process, and his demands for payment are baseless.
135. Further, the Investigative Committee submitted that Mr. Mills did not conduct himself in a fair or objective manner by demanding payment from APEGA for the geological reports. His conduct does not uphold and enhance the dignity and reputation of the profession and undermines the ability of the profession to serve the public interest. The Investigative Committee suggested that his conduct was even more egregious, given that Mr. Mills' conduct was directed towards his own regulator without any justification. On this basis, the Investigative Committee submitted that Mr. Mills' conduct amounted to unprofessional conduct under section 44(1)(a), (b), and (c) of the Act.
136. The Hearing Panel finds the arguments of the Investigative Committee persuasive, and therefore accepts that Mr. Mills' conduct amounts to unprofessional conduct under the Act. Mr. Mills' conduct was particularly egregious, as he alleged 'sham' investigations by APEGA in his correspondence without providing any evidence.
137. Further, his repeated conduct of invoicing for services not requested was also directed towards his regulator. Throughout his dealings with the APEGA, Mr. Mills failed to act reasonably with fairness and objectivity, and his approach throughout was devoid of professionalism. He further failed to uphold the reputation of the profession, as the egregious nature of his conduct reflects poorly on the profession of geoscience.

### Sanction

138. The Hearing Panel directed the parties to advise APEGA Staff whether they wished to provide written submissions on sanction or whether they wished to make their submissions at an oral hearing.
139. The parties elected to make written submissions. The Investigative Committee provided written submissions on sanction dated June 25, 2021. Mr. Mills provided written submissions dated July 23, 2021. The Investigative Committee submitted a brief reply to Mr. Mills' submissions, dated August 6, 2021.
140. The Hearing Panel met by videoconference on August 27, 2021 to consider the written submissions on sanctions from the parties.



## APEGA Discipline Decision

141. At the meeting of August 27, 2021, the Hearing Panel determined they needed additional information from the parties on two issues: what alternatives, if any, the Investigative Committee would propose as sanctions in place of cancellation, if the Hearing Panel determines cancellation is not appropriate; and the impact that a significant costs order would have on Mr. Mills.
142. The Investigative Committee provided written submissions to the request, dated October 13, 2021. Mr. Mills provided written submissions to the request, dated October 9, 2021 and a further response, dated October 19, 2021.
143. The Hearing Panel met by videoconference on November 8, 2021 to consider all written submissions on sanction.

### Written Submissions of the Investigative Committee

144. The Investigative Committee began its written submissions by noting the findings of the Hearing Panel on the merits.
145. Based on the proven unprofessional conduct, the Investigative Committee requested the Hearing Panel make the following orders pursuant to sections 63 and 64 of the Act:
  - a. A reprimand for Mr. Mills' conduct, with the written decision serving as the reprimand;
  - b. Cancellation of Mr. Mills' registration;
  - c. 80% of the costs of the hearing.
146. The Investigative Committee recognized that cancellation is the most serious sanction available to the Hearing Panel but submitted that Mr. Mills has shown himself to be ungovernable. In the absence of mitigating factors, the Investigative Committee submitted that cancellation was the only sanction that properly protects the public interest.
147. The Investigative Committee then reviewed the factors listed in paragraph 35 of *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630, which should be taken into consideration by a discipline tribunal in determining an appropriate sanction. The Investigative Committee submitted the following:
  - a) The nature and gravity of the proven allegations – The Hearing Panel described the conduct relating to Charges 1 and 5 as “egregious” and “devoid of professionalism”. Mr. Mills' demands were baseless and contained inflammatory statements and threats of legal action. The repetitive nature of his conduct reflects poorly on the profession of geoscience and undermines the ability of the profession to serve the





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public interest. These charges are extremely serious and should weigh heavily in the determination of sanction

Charge 2 falls at the less serious end of the spectrum, as there was no evidence anyone else had the opportunity to use the stamp.

Charge 3 falls somewhere in the middle of the spectrum. Professional members should be clear whether their work is intended to be relied upon and proper authentication is one way to provide that.

- b) The age and experience of the offending member – Mr. Mills has been a registered member of APEGA since 1987. His age and experience are not mitigating factors.
- c) Presence or absence of prior complaints or convictions – Mr. Mills has no previous findings of unprofessional conduct or unskilled practice.
- d) Number of times the offence occurred – Charges 1 and 5 show a continuing pattern of behaviour. Repeated admonitions from the County, APEGA and their respective legal counsel did not deter Mr. Mills from his continued behaviour.
- e) Mr. Mills' role in acknowledging what has occurred – Mr. Mills is unable or unwilling to recognize that his conduct was unjustified. He only sees the issues from his perspective. However, members are entitled to deny conduct and defend themselves, so this is a neutral factor. The inability or unwillingness to take responsibility is relevant to the question of whether Mr. Mills is ungovernable.
- f) Other serious financial or other penalties suffered as a result of the allegations – Any penalties Mr. Mills has suffered, including the Court's costs order against him, were self-inflicted and should not be considered in determining sanction.
- g) Impact of the incident on affected persons – Both the County and APEGA were forced to divert time and resources to respond to Mr. Mills' repeated baseless demands. Mr. Mills also maligned the conduct and intentions of many individuals, including formal complaints against others. This conduct further indicates a pattern of ungovernable conduct toward his regulator.
- h) Presence or absence of mitigating circumstances – the Investigative Committee is unaware of any mitigating circumstances that the Hearing Panel should consider.
- i) The need to promote deterrence – the Hearing Panel should consider both specific and general deterrence in its sanction. Any order short of cancellation is unlikely to





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deter Mr. Mills from repeating the conduct. The evidence and the Hearing Panel's decision do not indicate any basis for believing a remedial order could satisfactorily address Mr. Mills' conduct.

Given the highly unusual nature of Charges 1 and 5, the Investigative Committee suggest there was not a strong need for general deterrence, as most professional members would not conduct themselves in this manner.

- j) The need to maintain the public's confidence in the integrity of the profession – The public must have confidence that APEGA takes unprofessional conduct seriously. Where remedial orders are not appropriate, the public must have confidence that APEGA will not allow the professional member to continue to practice.
- k) Degree to which the conduct was outside the range of permitted conduct – Charges 1 and 5 fell far outside the expectations for professional members.
- l) The range of sentence in similar cases – Because this was a highly unusual case, the Investigative Committee was unable to identify any similar cases for comparison.

Apart from the lack of discipline history, there were no mitigating factors that would support lenience in sanction.

148. The Investigative Committee submitted that based on the evidence presented in the hearing and considering his conduct in these proceedings, Mr. Mills meets the test for ungovernability. They referred to three decisions that deal with ungovernability in professional regulation: *Kuny v College of Registered Nurses of Manitoba*<sup>5</sup>, *Ahluwalia v College of Physicians and Surgeons (Man)*<sup>6</sup>, and *College of Physicians and Surgeons of Saskatchewan v Ali*<sup>7</sup>. They submitted these cases established that:

- a. A finding of ungovernability is based on a case-by case analysis, with the guiding principle being the public interest;
- b. A person is “ungovernable” if the nature, duration, and repetitive character of the person’s misconduct demonstrates an inability to respond appropriately to the regulator authority;
- c. The factors to consider are:
  - i. The nature, duration, and repetitive character of the misconduct;

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<sup>5</sup>2017 MBCA 111

<sup>6</sup>2017 MBCA 15

<sup>7</sup>2016 SKQB 42



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- ii. Any prior discipline history;
  - iii. Any character evidence;
  - iv. The existence or lack of remorse;
  - v. The degree of willingness to be governed;
  - vi. Medical or other evidence that explains the misconduct;
  - vii. The likelihood of future misconduct, having regard to any treatment undertaken or remedial efforts;
  - viii. Ongoing cooperation to address the outstanding matters that are the subject of the misconduct
149. The Investigative Committee submitted that Mr. Mills resistance and obstruction during the investigation process, his conduct related to Charge 5, and behaviour during the hearing reflect an attitude and a pattern of behaviour warranting an ungovernability finding.
150. They suggested a lack of discipline history does not preclude a finding of ungovernability. Mr. Mills has shown no recognition or understanding of the seriousness of his conduct and there is no evidence he will change his behaviour. Rather, there is evidence he intends to pursue this inappropriate course of conduct. The Investigative Committee submitted that Mr. Mills has demonstrated he is ungovernable and that the only proper response is cancellation.
151. On the issue of costs, the Investigative Committee provided a summary of the estimated costs of the hearing and advised that the total anticipated costs incurred by the Investigative Committee and the Discipline Committee are in the range of \$165,000<sup>8</sup>. The Investigative Committee requested an order that Mr. Mills pay 80% of the hearing costs, with discretion regarding the time to pay.
152. The Investigative Committee referred to three decisions of the Alberta Court of Appeal dealing with costs in professional discipline matters: *Zuk v Alberta Dental Association and College*<sup>9</sup>, *Lysons v Alberta Land Surveyors Association*<sup>10</sup>, and *K.C v College of Physical Therapists of Alberta*<sup>11</sup>. It submitted that these cases established the following principles:

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<sup>8</sup>A Statement of Costs was attached to the Investigative Committee's written submissions as Appendix B. The Investigative Committee's hearing costs to date exceeded \$100,000 and the Discipline Committee's costs to date were nearly \$53,000. This did not include the costs of the sanction portion of the hearing.

<sup>9</sup>2018 ABCA 270.

<sup>10</sup>2017 ABCA 7.

<sup>11</sup>1999 ABCA 253.



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- a) The purpose of a costs order in a professional conduct hearing is not to punish the professional member, but rather to allow the professional regulatory body to recoup some of the expenses incurred in the proceedings;
  - b) Requiring a professional to pay all or a portion of hearing and investigation costs is a common part of professional disciplinary sanctions;
  - c) The factors that are relevant when considering whether to award costs include the conduct of the parties, the seriousness of the charges, and the reasonableness of the amounts;
  - d) Costs order, like sanctions for misconduct, must be individualized to the circumstances of the investigated person;
  - e) Costs orders must be sensitive to a member's financial circumstances;
  - f) Costs orders delivering a "crushing financial blow" must be scrutinized; and
  - g) A tribunal should consider whether a large costs award may deny "an investigated person a fair chance to dispute allegations of professional misconduct."
153. The Investigative Committee also referred to the *Jaswal* case which suggests the following factors are relevant in determining whether to exercise the discretion to order payment of costs:
- a) The degree of success, if any, of the member in resisting any or all of the charges;
  - b) The necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing;
  - c) Whether the persons presenting the case could reasonably have anticipated the result based on what they knew prior to the hearing;
  - d) Whether the member cooperated and offered to facilitate proof through admissions; and
  - e) The financial circumstances of the member and the degree to which his financial position has already been affected by other aspects of any penalty imposed.
154. Based on these principles, the Investigative Committee submitted that:
- a. Seriousness of the charges – Charges 1 and 5 involved egregious conduct that was devoid of professionalism.



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- b. Degree of success in resisting the charges – Mr. Mills successfully resisted one of the charges against him, so he should not be required to pay 100% of the hearing costs. Since four out of five charges were proven, Mr. Mills should be required to pay 80% of the hearing costs.
- c. Necessity of calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing – Mr. Mills' approach to the proceedings contributed to expense. Mr. Mills' preliminary objections took up most of the first hearing day. These included objections to the jurisdiction of the Investigative Committee and Discipline Committee to proceed, the involvement of the Investigative Committee's legal counsel and a request to call a large number of witnesses about matters irrelevant to the proceedings. Mr. Mills unnecessarily complicated the hearing by insisting that the entire disclosure package be entered into evidence and raising irrelevant and inflammatory matters. The underlying facts of this matter were uncontroversial and could have been efficiently addressed, but Mr. Mills' unwillingness to acknowledge the Investigative Committee's role in the Hearing made that impossible.
- d. Whether the outcome could reasonably have been anticipated – The outcome could reasonably be anticipated. Attempting to invoice parties for work that was never requested was unjustified. There was no doubt Mr. Mills failed to maintain control of his stamp.
- e. Whether Mr. Mills cooperated with the investigation and offered to facilitate proof by admissions – Mr. Mills did not cooperate with the investigation. Mr. Mills did not offer to facilitate proof by admission.
- f. Mr. Mills' financial circumstances and the degree to which his financial position has been affect by other penalties imposed – The Investigative Committee was unaware of Mr. Mills' financial circumstances, so it was not sure how to weigh this factor. They recognized that because of the significant sum sought, the Hearing Panel should set out a realistic payment schedule.

### Written Submissions of Mr. Mills on Sanction

155. Mr. Mills devoted a significant portion of his submissions to correcting what he perceived as errors and omissions in the decision on the merits. Mr. Mills has a right to appeal to the Appeal Board after the Hearing Panel has issued its decisions. The Hearing Panel did not consider submissions that related to the Hearing Panel's findings on the merits, as the Hearing Panel was not prepared to revisit its previous findings.



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156. Mr. Mills submitted that s. 64(1)(a) of the Act permits the Hearing Panel to order the investigated person to pay all or part of the costs of the hearing in accordance with the Bylaws. Part 13 of the Bylaws at s. 36(f) references “fees payable to the solicitor acting on behalf of the Association in the proceedings.” Because there were two solicitors acting on behalf of the Investigative Committee at the hearing, it is unlawful.
157. Mr. Mills noted that the County recovered their costs with the cost award from the Judicial Review applications. Therefore, the impact of his actions was not as severe as the Investigative Committee represented.
158. Mr. Mills submitted that the absence of any case precedent similar to his behaviour is because his conduct was lawful, and therefore would never be brought before a tribunal or court.
159. Mr. Mills submitted that his behaviour was exemplary throughout to the proceedings. There was no evidence that he displayed an attitude of utter defiance towards APEGA.
160. Mr. Mills submitted that APEGA’s referenced legal costs of \$165,000 were abhorrent. He suggested it is unconscionable that APEGA would pay thousands of dollars per hour in legal costs to vilify a member for the purported loss of their APEGA stamp.
161. Mr. Mills disputed that the preliminary objections formed part of the Hearing.
162. Mr. Mills submitted that he was successful in resisting all the charges, that his potential witnesses were not called, that he cooperated throughout the process, and that his financial position has been affected because of the complaint.
163. Mr. Mills submitted that the complaints filed were without basis and that several of the investigations were a sham. He impugned several individuals for their involvement in the investigation and hearing process.
164. He then concluded that, given his success and the fact the prosecution was in bad faith that APEGA reimburse him for his costs and expenses incurred in defending himself against the false allegations and charges.
165. Further, he requested an additional costs award equivalent to approximately \$165,000. He continued to demand payment for the use of his copyrighted materials.

### Reply Submissions of the Investigative Committee

166. In their reply submissions dated August 6, 2021, the Investigative Committee responded to Mr. Mills’ submissions with the following:
  - a. That sanction submissions are not an opportunity to challenge the Hearing Panel’s findings of unprofessional conduct.



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- b. That the costs order the Investigative Committee seeks is high but justified in the circumstances.
- c. That the way Mr. Mills approached the hearing justified involving both a senior and junior lawyer to represent the Investigative Committee.
- d. That preliminary matters constitute part of the hearing.
- e. That Mr. Mills' suggestion that the aim of the hearing was to vilify him for losing his APEGA stamp is disingenuous, as the Investigative Committee was clear that Charges 1 and 5 were the most egregious.
- f. That the absence of similar cases does not impact the Hearing Panel's authority to impose a sanction in this matter.
- g. That Mr. Mills' submissions on sanction further illustrate his ungovernability.
- h. That there is neither a basis nor authority for sanctions or costs orders against parties other than Mr. Mills. The Act does not permit such orders.

### **Further Submissions requested from the parties**

167. After their meeting on August 27, 2021, the Hearing Panel requested further submissions on two issues:
- a. what alternatives, if any, the Investigative Committee would propose as sanction in place of cancellation, if the Hearing Panel determines cancellation is not appropriate; and
  - b. the impact that a significant costs order would have on Mr. Mills.
168. On October 9, 2021, Mr. Mills responded to the Hearing Panel's request; however, he failed to address the issue of what impact a significant costs order would have on him. Rather, he reiterated most of his earlier submissions disputing the decision on the merits and estimated that the total compensation he is owed should exceed \$1,000,000.
169. On October 13, 2021, the Investigative Committee responded to the Hearing Panel's request. They submitted that Mr. Mills has consistently demonstrated a complete lack of insight into his conduct, the lawfulness of the Hearing, and the legitimate roles of the individuals involved. His response to the Hearing Panel's inquiry further supports that conclusion, as he failed to address the issue the Hearing Panel put to him.



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170. After considering the matter, the Investigative Committee's position remained that Mr. Mills is ungovernable and that there is no reasonable alternative to cancellation.
171. On October 19, 2021, Mr. Mills confirmed he had no additional comments to make.

### **Decision of the Hearing Panel on Sanctions and Costs**

172. The Hearing Panel agrees with the Investigative Committee that Mr. Mills consistently demonstrated a lack of insight into his conduct. Mr. Mills made arguments concerning the lawfulness of the hearing that show a fundamental misunderstanding of the discipline process and the discipline provisions of the Act. As noted by the Investigative Committee, Mr. Mills continues to make these arguments in his submissions on sanctions and fails to recognize that the Hearing Panel has found his conduct to be serious unprofessional conduct.
173. Mr. Mills' repeated demands for payment from the County and APEGA when no services were requested was serious conduct that did not meet the standards required of a professional geoscientist. His stated belief that the Investigative Committee and the Hearing Panel could not make use of reports he prepared as part of the discipline process without breaching his copyright in the reports is both unfounded and concerning. Further, his actions and his failure to understand the complaint and discipline process reflect poorly on the profession of geoscience and undermines the ability of the profession to serve the public interest.
174. There was a substantial range in the nature and gravity of the conduct proven to have occurred. The Hearing Panel agrees with the submissions of the Investigative Committee that Charges 1 and 5 were the most concerning. Repeatedly demanding payment for services that were never requested is egregious and devoid of professionalism. However, Charges 2 and 3 were on the less serious end of the spectrum. They warrant sanction but not to the level of the other charges.
175. The Hearing Panel noted that Mr. Mills was a member in good standing since 1987. He has no previous findings of either unprofessional conduct or unskilled practice. This was his first appearance before a hearing panel. The Hearing Panel considered this to be a mitigating factor.
176. Mr. Mills repeatedly demonstrated that he did not appreciate the significance of his conduct or understand that his actions were unprofessional. In each of his submissions on sanction, he sought to "correct" the record of what occurred, suggesting he was successful in refuting all the charges, even though that was not correct.
177. The Hearing Panel believes it is important that Mr. Mills and other members of the profession appreciate that APEGA will not tolerate such conduct. Significant sanctions are required to make this clear to Mr. Mills.





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### Ungovernability/Cancellation

178. The first important issue is whether, as alleged by the Investigative Committee, Mr. Mills is ungovernable.
179. The Hearing Panel is not prepared to find Mr. Mills to be ungovernable and subject to cancellation based on this hearing.
180. The Hearing Panel appreciated the submissions that the Investigative Committee made outlining the standard for ungovernability. The Hearing Panel understands that such a finding is made on a case-by-case basis with the public interest as the guiding principle. A member is ungovernable, if the nature, duration, and repetitive character demonstrates an inability to respond appropriately to their regulator.
181. The Hearing Panel has examined the nature of Mr. Mills' conduct both before and during the hearing. While Mr. Mills made clear that he felt there was no basis for the hearing, he did participate in the hearing. Mr. Mills challenged the basis of the hearing and the role of the legal counsel involved based on a faulty interpretation of the Act. He made allegations concerning the conduct of various individuals that were unfounded and reflected his interpretation of the facts and the law that are clearly wrong. His submissions to the Hearing Panel were lengthy and he often failed to address the actual issues raised in Notice of Hearing focussing instead on irrelevant facts and issues. While the conduct was difficult to deal with and complicated the hearing, the Hearing Panel does not find it reflected a refusal to participate in the hearing.
182. The duration and repetitiveness of Mr. Mills' behaviour continued throughout the Hearing process and is apparent on a review of the transcript. There must be significant sanctions to make clear to Mr. Mills that his behaviour is unacceptable and unprofessional and must change. Based on his submissions on sanctions, it is possible that Mr. Mills will not undertake the reflection and change in behaviour that is required. If that happens, and Mr. Mills displays similar behaviour going forward, this could result in a future finding of ungovernability.
183. The Hearing Panel agrees with the Investigative Committee that a lack of prior history of ungovernability or unprofessional conduct does not preclude a finding of ungovernability in a first hearing. However, the lack of any evidence of prior unprofessional conduct is still a factor that the Panel should consider. This is the first instance of any such behaviour after a long career. When considered in that context, the lack of any prior discipline history weighed heavily for the Panel against a finding of ungovernability.
184. Given its finding that it has not been proven that Mr. Mills is ungovernable, the Hearing Panel determined that cancellation fell outside the reasonable range of sanctions for this hearing.



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### Suspension

185. The Hearing Panel finds that a 3-month suspension is appropriate to denounce Mr. Mills' repetitive demands of the County and APEGA. Given the nature of the unprofessional conduct that has been found in respect to Charges 1 and 5, a suspension is necessary to demonstrate to Mr. Mills, the public and other members of the profession that the unprofessional conduct in this case was very serious. A suspension of this length is a very serious sanction. It is intended to send a strong message to Mr. Mills, the public and other members of the profession that such behaviour is not acceptable and will not be tolerated.

### Reprimand

186. The Hearing Panel finds that a reprimand is appropriate to address Mr. Mills' failure to maintain control of his stamp and his failure to authenticate reports. The Hearing Panel finds that a reprimand will make clear that this was unacceptable and unprofessional conduct but will recognize that this conduct was less serious than the unprofessional conduct found in Charges 1 and 5.

### Fine

187. The Hearing Panel finds that a fine of \$1,000 is appropriate to further confirm the serious and inappropriate nature of Mr. Mills' failure to authenticate reports. The combination of the reprimand and the fine of \$1,000 provide a suitable sanction for Charges 2 and 3.
188. The Hearing Panel further finds that a fine of \$9,000 is appropriate given the egregious conduct of Mr. Mills' repeated demands for payment as set out in Charges 1 and 5. The Hearing Panel believes that the combination of a three-month suspension and a fine of \$9,000 will make clear to Mr. Mills and other members of the profession that conduct of this nature is unprofessional and will have serious consequences.
189. The Hearing Panel also finds that the aggregate proposed fine of \$10,000 is appropriate in the circumstances and is the largest fine allowed under the Act. The size of the total fine reflects the fact that Mr. Mills engaged in serious unprofessional conduct. If the fine is not paid within 12 months, Mr. Mills will be suspended pursuant to section 64 of the Act until he has paid the fine and if the fine has not been repaid within a further period of 12 months, Mr. Mills' registration will be cancelled.

### Costs

190. The Hearing Panel has found that four of the five charges in the Notice of Hearing have been proven. It is therefore appropriate that Mr. Mills pay some portion of the costs of the hearing. The Investigative Committee has requested that Mr. Mills be ordered to pay 80%



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of the costs of the hearing which are estimated to date to be approximately \$165,000. The Investigative Committee acknowledges that these costs are high but suggests that the conduct of Mr. Mills prolonged the investigation and hearing and substantially increased the costs incurred.

191. Despite a direct request from the Hearing Panel, Mr. Mills failed to provide any information about his personal financial circumstances and the effect that a large costs order may have on him. Instead, he repeated his arguments suggesting that he had proven that none of his conduct was unprofessional. He suggested that he should be awarded costs which he ultimately suggested could be as high as \$1,000,000. This provided further evidence of Mr. Mills' refusal to accept the validity of the Hearing Tribunal's decision, but it did not assist the Hearing Panel in determining the amount of costs that should be assessed against Mr. Mills.
192. The Hearing Panel accepts that the investigation and this Hearing arose because of Mr. Mills' conduct and Mr. Mills added to the costs through his actions during the hearing. As such, he should be responsible for a portion of the costs. The question that must be determined is the appropriate portion of costs to order in this case.
193. The Hearing Panel finds the following factors support a lower costs order:
  - a. Mr. Mills was successful in defending himself against one of the five Charges;
  - b. he is entitled to defend himself against the Charges and should not be punished for doing so; and
  - c. the amount proposed of approximately \$132,000 is very large and could be a crushing financial blow to any geoscientist.
194. The Hearing Panel finds the following factors support Mr. Mills being responsible for a portion of the costs:
  - a. Mr. Mills extended the hearing and increased costs by raising four preliminary issues that were each unsuccessful; and
  - b. Mr. Mills complicated the hearing by insisting the entire disclosure package be entered as evidence and by his frequent raising of irrelevant issues.
195. In its final analysis, the most significant factor for the Hearing Panel is that the costs ordered must not create a crushing financial burden. While the Hearing Panel accepts that the costs were incurred, and the costs were increased by the actions of Mr. Mills, it is concerned that payment of costs and fines totalling more than \$142,000<sup>12</sup> would be a crushing financial burden for Mr. Mills.



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196. Considering all the factors, the Hearing Panel finds that an order requiring Mr. Mills to pay \$40,000 of the costs of the hearing is fair, appropriate, and reasonable in the circumstances. This will mean that Mr. Mills must pay costs and fines in the amount of \$50,000 which is a very substantial amount for an individual. While this means that APEGA will bear a substantial portion of the costs, the Hearing Panel believes that a costs order of \$40,000 will require Mr. Mills to pay significant costs and fines while recognizing that sometimes payment of all the costs incurred in a hearing by the individual will impose too high a burden on the individual.
197. The Hearing Panel orders that the costs of \$40,000 must be paid within 12 months on such terms as are acceptable to the Director, Enforcement. If the costs are not paid within 12 months, Mr. Mills will be suspended until the costs are paid and if the costs are not paid within 24 months his registration will be cancelled.

### Conclusion

198. For the reasons set out above, the Hearing Panel makes the following orders pursuant to sections 63 and 64 of the Act:
- a) Mr. Mills shall receive a reprimand for his conduct and the Hearing Panel's written decisions shall serve as the reprimand;
  - b) Mr. Mills shall be suspended for a period of 3 months from the date of this decision;
  - c) Mr. Mills shall pay fines of \$1,000 and \$9,000 for total fines of \$10,000, payable within 12 months of the Discipline Committee's written decision on sanction on such terms as are acceptable to the Director, Enforcement;
  - d) Mr. Mills shall pay a portion of the costs of the hearing in the amount of \$40,000, payable within 12 months on such terms as are acceptable to the Director, Enforcement;
  - e) If the fines or costs ordered in paragraphs (c) and (d) are not paid within 12 months of this written decision, Mr. Mills will be suspended pursuant to section 64 of the Act until he has paid the fines and costs. If he has not paid the fines and costs within 24 months, his registration will be cancelled.
  - f) The Hearing Panel's Decision shall be published or circulated as follows:

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<sup>12</sup>This calculation is based on 80% of costs of \$165,000 (\$132,000) and fines of \$10,000.



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- i. A written summary of the decision will be published by APEGA in a medium that the Director, Enforcement deems appropriate and in a manner that identifies Mr. Mills; and
- ii. If any member of the public or any other professional organization inquires with APEGA as to whether Mr. Mills was the subject of a discipline hearing or was found guilty of any charges under the Act, APEGA shall be at liberty to provide a complete copy of the Hearing Panel's Decision.

Signed,

**JOHN NICOLL, P.ENG.**  
Panel Chair, APEGA Discipline Committee

**ROBERT SWIFT, P.ENG.**  
Panel Member, APEGA Discipline Committee

**TOM GREENWOOD-MADSEN, P.ENG.**  
Panel Member, APEGA Discipline Committee

**NEIL JAMIESON, P.ENG.**  
Panel Member, APEGA Discipline Committee

**MURIEL DUNNIGAN,**  
Public Member, APEGA Discipline Committee