



APEGA Discipline Committee Decision

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Date of Hearing: January 25 – 29, 2021

Date of Merits Decision: October 18, 2021

Date of Sanction Decision: February 16, 2022

Date of Sanction Decision Addendum: January 12, 2023

Case No.: 19-003-FH

**IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT
AND
IN THE MATTER OF THE CONDUCT OF JAN KORZENIOWSKI, P.ENG.**

Pursuant to the Engineering and Geoscience Professions Act,
being Chapter E-11 of the Revised Statutes of Alberta 2000
Regarding the Conduct of Jan Korzeniowski, P.Eng.

1. Under the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (the “Act”), a Hearing Panel of the Discipline Committee of the Association of Professional Engineers and Geoscientists of Alberta (“APEGA”) held a hearing regarding the conduct of Jan Korzeniowski, P.Eng. The hearing took place virtually via video conferencing on January 25 – 29, 2021 to comply with APEGA’s Standing Order (Statutory Meetings in the APEGA Offices during COVID-19).
2. 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 confirmed that the Court Reporter would complete the official record of the proceedings, and that there would be no other recordings permitted.
3. The Hearing Panel noted that Mr. Korzeniowski was not present. Investigative Committee Counsel advised the Hearing Panel that they were not aware of any legal counsel or other representative for Mr. Korzeniowski.



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4. Investigative Committee Counsel provided a correspondence package on behalf of the Investigative Committee, which was marked as Exhibit 1. The Director, Enforcement also presented a correspondence package for the Hearing Panel, which included an email and attached Notice of Hearing that was sent to Mr. Korzeniowski on December 16, 2020.¹ The second correspondence package was provided to Investigative Committee Counsel via email and was marked as Exhibit 2.
5. Investigative Committee Counsel noted that prior to the hearing, Mr. Korzeniowski said he did not intend to attend the hearing. The Director, Enforcement confirmed that APEGA staff had received some communication from him in the week previous, which included a medical note from his doctor dated January 20, 2021. However, since that time, APEGA staff had not received any email or phone communication from Mr. Korzeniowski.
6. The Hearing Panel briefly adjourned the hearing. At this time, APEGA staff attempted to contact Mr. Korzeniowski to determine if he would attend the hearing.
7. When the hearing reconvened, the Director, Enforcement advised that an APEGA staff member had spoken with Mr. Korzeniowski. Mr. Korzeniowski confirmed that as per the letter from his doctor, he was not able to attend or participate in the hearing, nor did he plan to do so.

Preliminary Matters

8. Investigative Committee Counsel advised that there were no objections to either the jurisdiction or the constitution of the Hearing Panel. They then indicated that they intended to make submissions as to whether the hearing should proceed in the absence of Mr. Korzeniowski. Investigative Committee Counsel acknowledged that a decision to proceed in the absence of a member whose conduct is in issue should not be made lightly. They stated that the Hearing Panel should consider the reasons supporting a further adjournment as well as the reasons against a further adjournment.
9. Investigative Committee Counsel acknowledged that the Hearing Panel had the discretion to adjourn the hearing when a member does not attend. They referred the Hearing Panel to the case of *Senjule v Law Society of Upper Canada*, which listed a number of factors to be considered in decisions regarding whether to adjourn:

¹See Exhibit 2, Tab 23. The Notice of Hearing is also included in Exhibit 1, Tab 17.



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Factors which may support the denial of an adjournment may include a lack of compliance with prior court orders, previous adjournments that have been granted to the applicant, previous peremptory hearing dates, the desirability of having the matter decided and a finding that the applicant is seeking to manipulate the system by orchestrating delay. Factors which may favour the granting of an adjournment include the fact that the consequences of the hearing are serious, that the applicant would be prejudiced if the request were not granted, and a finding that the applicant was honestly seeking to exercise his right to counsel and had been represented in the proceedings up until the time of the adjournment request. In weighing these factors, the timeliness of the request, the applicant's reasons for being unable to proceed on the scheduled date and the length of the requested adjournment should also be considered.²

10. In light of the *Senjule* factors, Investigative Committee Counsel argued that the following supported a decision by the Hearing Panel to proceed in Mr. Korzeniowski's absence:
 1. the significant history of delay in this case supported refusal of an adjournment;
 2. the medical information provided by Mr. Korzeniowski was insufficient to support an adjournment;
 3. Mr. Korzeniowski had recently participated in civil proceedings with the complainants, R.R. and M.R. (collectively the "Complainants"), which supported a refusal of an adjournment; and
 4. a decision to adjourn would be against the public interest and negatively impact APEGA's role and reputation as a regulator.

History of the Matter

11. Investigative Committee Counsel made submissions regarding the history of the matter, which in the view of the Investigative Committee, involved a significant history of delay. In the following paragraphs, the Hearing Panel has summarized the substance of their submissions, as well as the sequence of events as provided in the correspondence documents contained in Exhibits 1 and 2.

²2013 ONSC 2817 at para 24.



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12. The complaint against Mr. Korzeniowski was initially referred to the Discipline Committee for a formal hearing in March 2019. As early as July 2019, Mr. Korzeniowski had indicated to the Investigative Committee that he had medical issues. In September 2019, Mr. Korzeniowski indicated to the Investigative Committee that he would not be in a position to attend a hearing until the end of April 2020 due to his medical conditions, and he provided them with a Certificate of Absence.
13. In the view of the Investigative Committee, the documentation provided by Mr. Korzeniowski at that time was inadequate to support his request for an adjournment. The Investigative Committee emailed Mr. Korzeniowski requesting information from his treating physician. Mr. Korzeniowski said that he would not provide medical details, and that his treating physicians were not aware of the disciplinary proceedings. At this time, he had not provided any information from any treating physician to the Investigative Committee.
14. Eventually, a hearing was scheduled into this matter for February 3 – 7, 2020. The Discipline Committee sent a Notice of Discipline Hearing to Mr. Korzeniowski dated November 21, 2019, which stated the following:

The hearing is therefore set for February 3 to 7, 2020 and will proceed on those dates unless you provide a detailed report from your physicians advising that:

1. the physicians are aware of these discipline proceedings;
 2. the physicians have determined that you are not fit to attend the discipline hearing on February 3 to 7, 2020, and stating the specific reasons why you cannot participate in the hearing;
 3. whether the hearing could proceed if certain specified accommodations were made for yourself and, if so, identifying those accommodations required;
 4. whether your medical condition is preventing you from working as a professional engineer; and
 5. an indication of when you will be fit to resume practice and attend the hearing.
15. The hearing was adjourned on January 28, 2020, at Mr. Korzeniowski's request, on the basis of medical reasons. He did not provide the medical information required by the Discipline Committee in the November 21, 2019, Notice of Hearing.



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16. In the Notice of Adjournment, the Discipline Committee indicated specific information that Mr. Korzeniowski was required to provide for any further adjournments made on the basis of medical reasons. The Notice of Adjournment stated the following:

Please note that once scheduled, the hearing will proceed. In order for an adjournment to be considered again, based on medical reasons, the specific questions as asked by the Investigative Committee Legal Counsel must be directly answered. The questions are listed again below and were sent to you via email on September 19, 2019:

1. Is your treating physician aware of these disciplinary proceedings? If so, what information has been provided about the disciplinary proceedings?
2. Has your treating physician assessed you to determine whether you are fit to attend a disciplinary hearing and to identify any functional limitations affecting you?
3. Is there a reasonable prospect that your health will improve so that you can participate in a hearing [. . .]?
4. Has your treating physician considered whether your current condition can be accommodated in a hearing, for example by having shorter hearing days?

Please note the medical note you currently provided at this time would not be sufficient to adjourn the rescheduled hearing.

17. Mr. Korzeniowski indicated that his earliest availability for a hearing would be May 2020.
18. Some delays did occur after that time due to the COVID-19 pandemic. Then, between June 15 and September 7, 2020, APEGA staff emailed Mr. Korzeniowski three times to inquire about possible hearing dates for October. Mr. Korzeniowski did not respond until September 8, 2020, at which time he indicated that he would be visiting his doctor in the following week and would be in a better position to assess his condition after that. He also stated that he was “not in a condition to go through the APEGA investigation.”
19. On September 18, 2020, the Director, Enforcement wrote to Mr. Korzeniowski informing him that as of that date, he had not provided responses to the questions included in the November 19, 2019, Notice of Hearing or the January 28, 2020, Notice of Adjournment. They stated that there would be no guarantee of any further adjournments and that if Mr. Korzeniowski did not attend the hearing, the Discipline Committee was entitled to proceed in his absence.



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20. In December 2020, Mr. Korzeniowski did provide the Director, Enforcement with a General Laboratory Requisition form completed by his treating physician, Dr. H., and an appointment schedule. However, neither of the documents provided a response to the Discipline Committee's questions included in the January 28, 2020, Notice of Adjournment.
21. At this time Mr. Korzeniowski indicated that he was unable to provide further medical information because his condition related to the side effects of his medical treatment, which could not be determined by any laboratory tests and could not be evaluated to determine his mental and physical conditions.
22. The Director, Enforcement issued a Notice of Hearing on December 16, 2020, which scheduled the hearing for January 25 – 29, 2021. The Discipline Committee also provided a letter which reiterated the questions from the January 28, 2020 Notice of Adjournment, and informed Mr. Korzeniowski that the requested information and responses would be required for any further adjournment based on medical reasons.
23. On January 5, 2021, APEGA staff sent a Microsoft Teams invitation to Mr. Korzeniowski so that he could attend the hearing virtually. He responded via email and stated that he would not attend the hearing, and that he was trying to get a letter from his physician.
24. On January 8, 2021 the Director, Enforcement advised the parties that at that time there was insufficient evidence for the Discipline Committee to consider an adjournment based on medical reasons, but that the parties could raise any preliminary issues at the hearing. Mr. Korzeniowski responded later that day and reiterated that he would not attend the hearing. In emails to APEGA staff dated January 15 and 19, Mr. Korzeniowski reiterated that he would not attend the hearing due to his health condition.
25. After this review of the communications leading to the present hearing, Investigative Committee Counsel submitted that this case involved a long history of directives from the Discipline Committee to Mr. Korzeniowski as to what information he needed to provide to support an adjournment request, which Mr. Korzeniowski had not complied with. He had been granted a formal adjournment in the past, and there were a number of occasions where scheduling of the hearing was delayed based on comments he made about his medical status. They submitted that, given the long history of delay, there was a very high interest in having the matter decided.
26. Investigative Committee Counsel acknowledged that the evidence did not support a finding by the Hearing Panel that Mr. Korzeniowski was seeking to manipulate the system by orchestrating delay. However, the evidence did suggest that Mr. Korzeniowski lacked respect for the Discipline Committee's jurisdiction to make decisions as to the scheduling of the hearing and whether or not it proceeds.



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Adequacy of Medical Information

27. On January 21, 2021, Mr. Korzeniowski's physician, Dr. H., provided a letter to APEGA staff. The letter did not address all the questions contained in the Discipline Committee's January 28, 2020 Notice of Adjournment.
28. Investigative Committee Counsel submitted that though the letter described some of Mr. Korzeniowski's medical issues and the treatments received, Dr. H's discussion about the side effects of treatment was in general terms and did not indicate that Mr. Korzeniowski was experiencing those side effects. Further, the letter did not indicate how the hearing process could be accommodated to allow Mr. Korzeniowski to participate. Investigative Committee Counsel noted that the virtual hearing process did not require Mr. Korzeniowski to travel, and that he could attend from his home.
29. Further, the letter did not give any indication as to whether the hearing could be rescheduled in a reasonable time. According to the letter, Mr. Korzeniowski's round of treatment was to begin in October 2021, and it could take six months to complete the treatment. It suggested that Mr. Korzeniowski might require an additional year after that time for his symptoms to stabilize. This suggested that the hearing would need to be adjourned into 2022 or 2023.
30. Dr. H.'s letter did not address whether Mr. Korzeniowski was fit to practice as an engineer and did not state that Mr. Korzeniowski was unable to participate in the hearing. Investigative Committee Counsel submitted that in previous correspondence with the Investigative Committee and APEGA staff, Mr. Korzeniowski indicated that he continued to practice engineering.

Recent Participation in Civil Proceedings

31. Investigative Committee Counsel indicated that they wished to call one of the complainants, R.R., to give testimony on narrow issues of fact regarding Mr. Korzeniowski's participation in mediation in the week prior to the hearing. They stated that R.R.'s testimony could call into question the degree to which the Hearing Panel could rely on the January 21, 2021, letter from Dr. H.
32. The Hearing Panel decided to proceed on the preliminary issue without hearing any testimony from R.R. Given that R.R. was one of the complainants in this matter, and that Mr. Korzeniowski was not present to rebut any of R.R.'s testimony, the Hearing Panel felt it would be inappropriate to hear and rely on R.R.'s testimony about potentially confidential negotiations.



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33. As a result of the decision, there was no evidence before the Hearing Panel as to whether Mr. Korzeniowski did or did not participate in mediation with the Complainants. The Hearing Panel gave no weight to this argument in its decision on the preliminary matter.

Public Interest and APEGA's Role as Regulator

34. Investigative Committee Counsel submitted that there is a significant public interest in ensuring that complaints against professional members are heard without undue delay. The public interest should be given significant weight where a professional member repeatedly indicates that he is able to practice if he sees fit, but also indicates that he is not fit to attend a disciplinary hearing. Allowing a further adjournment in this case could have a detrimental impact on the public's perception of APEGA.
35. Investigative Committee Counsel noted that the Complainants have waited years for the complaint to be resolved, and that they had concerns about the scheduling delays. The Investigative Committee's three witnesses were fully prepared to give evidence. They submitted that their concerns spoke to the larger issue of the public's perception of a hearing delayed by request after request.
36. Investigative Committee Counsel concluded by stating that Mr. Korzeniowski had no intention to participate in the hearing and that he had no regard for the decision of the Hearing Panel as to any adjournment. Mr. Korzeniowski had ample time to provide adequate information to the Hearing Panel to support an adjournment but did not do so. He unilaterally decided that he had a sufficient medical basis to be granted an adjournment, and that the adjournment could be indefinite.
37. They submitted that the Hearing Panel may proceed with a hearing in the absence of the investigated person under section 61 of the Act. They suggested that Mr. Korzeniowski was fully aware of when the hearing was scheduled to proceed, and that the Investigative Committee would be making the application to proceed in his absence.

Decision of the Hearing Panel on the Preliminary Issue

38. Based on the correspondence and the Notice of Hearing provided in Exhibits 1 and 2, and the communications of APEGA staff with Mr. Korzeniowski, the Hearing Panel accepted that Mr. Korzeniowski had been properly served and was aware of the hearing held into his conduct.
39. The Hearing Panel noted, in its review of the correspondence, that Mr. Korzeniowski had not requested to be moved to non-practicing status, and that some of the correspondence suggested he was in fact continuing to practice engineering.



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40. The Hearing Panel determined that Mr. Korzeniowski knew what specific information was needed to support an adjournment based on medical reasons, and he had nearly a year to provide that information. Further, the Discipline Committee had informed Mr. Korzeniowski that it was authorized to proceed in his absence if he chose not to attend the hearing, that the hearing could be accommodated if he so required, and that he could raise any preliminary issues at the hearing.
41. While the Hearing Panel accepted that Mr. Korzeniowski did in fact have a health condition, they had significant concerns about the safety and interests of the public, if Mr. Korzeniowski did indeed continue to practice engineering. As such, the Hearing Panel decided to proceed with the hearing.
42. To give Mr. Korzeniowski the opportunity to attend the hearing, the Hearing Panel elected to adjourn the hearing until Wednesday, January 27, 2021 at 10:00 a.m. They advised the Director, Enforcement to inform Mr. Korzeniowski of their decision, and that he was welcome to attend. Further, because the Hearing Panel recognized that he was ill, they directed the Director, Enforcement to request information and make any accommodations that Mr. Korzeniowski would need to attend the remainder of the hearing.

January 27, 2021

43. When the hearing commenced, the Director, Enforcement advised that they had contacted Mr. Korzeniowski to inform him of the Hearing Panel's decision. They provided a document summarizing communications with Mr. Korzeniowski since the beginning of the hearing on January 25, 2021, and his advice that he would not be attending the hearing. After reviewing this information, the Hearing Panel directed that the hearing should proceed.

Opening Statement by Investigative Committee Counsel on January 27, 2021

44. Investigative Committee Counsel advised that the issues concerning Mr. Korzeniowski's conduct were brought to the attention of the Investigative Committee as a result of a complaint submitted by R.R. and M.R. on behalf of their company (the "Client"). The complaint related to Mr. Korzeniowski's involvement in preparing and assisting the Complainants' applications for approval of storm drainage, waterworks, and wastewater systems on the Client's RV park resort development (the "Development").
45. The charges against Mr. Korzeniowski were listed in the Notice of Hearing, and Mr. Korzeniowski had not entered a plea with regard to any of the charges. Investigative Committee Counsel submitted that it was appropriate to assume that Mr. Korzeniowski did not admit to any of the allegations. Though Mr. Korzeniowski was a compellable witness in the proceedings, his evidence was not required to prove the charges.



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46. Investigative Committee Counsel indicated that the Investigative Committee intended to call three witnesses. A Binder of the Investigative Committee's documents, including an Index of Documents and 92 Tabs of documents was also entered as Exhibit 3.

The Charges

47. At the outset of the hearing, the Investigative Committee withdrew particular a. under Charge 2.³ The amended Charges were as follows:
1. In or around the period between March 4, 2016 and April 22, 2016, Jan Korzeniowski, P. Eng. failed to provide an adequate response to one or more requests from Alberta Environment and Parks ("AEP") for additional information, calculations, substantiation of calculations or assumptions, or any of them, in relation to a Storm Water Management Plan ("SWMP") Mr. Korzeniowski prepared and submitted on behalf of the Client as part of an Application for Registration to Construct and Operate a Municipal Storm Drainage System ("Storm Drainage Application") for the Client's RV Resort (the "Development"), particulars of which include one or more of the following:
 - a. Mr. Korzeniowski failed to provide adequate information on how he established the pre and post-development flows used in the SWMP;
 - b. Mr. Korzeniowski failed to provide substantive support for his assumption or calculation that 50% of the storm water generated at the site would infiltrate into the local soils as a result of the Best Management Practices proposed in the SWMP; and
 - c. Mr. Korzeniowski failed to provide adequate calculations for the volumes proposed to be stored in the infiltration fences proposed in the SWMP.

³Investigative Committee Counsel indicated that particular a. under Charge 2 indicated that Mr. Korzeniowski designed waterworks and wastewater systems using as-built information for the systems that were installed by the Client. In the view of the Investigative Committee, this allegation was not supported by the evidence. For this reason, the Investigative Committee withdrew particular a. under Charge 2.



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2. In or around the period between October 6 and 8, 2014, Mr. Korzeniowski signed and stamped submissions to AEP certifying that the design for the waterworks system and the wastewater system for the Development complied with all of the requirements specified in the Standards and Guidelines for Municipal Waterworks, Wastewater, and Storm Drainage Systems (“SGMWWSDS”) for the construction of the water distribution, wastewater collection and storm water collection system, without adequately identifying deviations from the SGMWWSDS with respect to the pipe cover burial depth, particulars of which include the following:

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- b. On or about October 6, 2014, Mr. Korzeniowski submitted to AEP an application for approval of a municipal waterworks system for the Development (“Waterworks Application”), which included an acknowledgment and certification signed and stamped by Mr. Korzeniowski certifying that the design complied with all requirements specified in the SGMWWSDS;
- c. In the Waterworks Application, Mr. Korzeniowski did not clearly identify that the pipe cover burial depth for the water distribution mains was less than the minimum depth specified in the SGMWWSDS;
- d. On or about October 8, 2014, Mr. Korzeniowski submitted to AEP an application for approval of a municipal wastewater system for the Development (“Wastewater Application”), which included an acknowledgment and certification signed and stamped by Mr. Korzeniowski certifying that the design complied with all the requirements specified by the SGMWWSDS; and
- e. In the Wastewater Application, Mr. Korzeniowski did not clearly identify that the pipe cover burial depth for the wastewater mains was less than the minimum depth specified in the SGMWWSDS.

3. On or about March 26, 2015, Mr. Korzeniowski signed and stamped submissions to AEP with respect to the Waterworks Application and the Wastewater Application in which he identified a deviation from the requirements specified in the SGMWWSDS for the construction of the water distribution, wastewater collection and storm water collection system with respect to pipe cover burial depth, but failed to provide a sufficiently detailed explanation to justify such deviation.



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4. In or around the period between August 9, 2014 and March 26, 2015, Mr. Korzeniowski failed to take adequate steps to inform the Client of the risk that AEP would not approve the Waterworks Application or the Wastewater Application due to the deviation from the minimum pipe cover burial depth specified in the SGMWWSDS.
5. In or around the period between August 28, 2014 and October 6, 2014, Mr. Korzeniowski failed to take adequate steps to clearly inform or caution the Client that it was improper to commence installation of the waterworks and wastewater systems without approval having been granted by AEP.
6. In communications to the Client or on behalf of the Client, or both, in or around the period between March 22, 2015 and July 4, 2016, Mr. Korzeniowski challenged the professionalism or competence, or both, of AEP personnel including members of APEGA, particulars of which include one or more of the following:
 - a. In one or more emails to the Client, Mr. Korzeniowski stated or implied that delays or difficulties they were facing with the Storm Drainage Application were because of a lack of relevant expertise by the AEP personnel (including APEGA members) at the Lethbridge office, or deliberate delay tactics by AEP personnel at the Lethbridge office, or improper influence on AEP personnel by Alberta Parks;
 - b. In one or more emails to the Client, Mr. Korzeniowski stated or implied that the Director (an APEGA member) would not make an impartial decision on the Storm Drainage Application;
 - c. In an email to a senior AEP employee, Mr. Korzeniowski stated or implied that AEP was not following the requirements of the Water Act with respect to the Storm Drainage Application, and that AEP was being controlled by Alberta Parks;
 - d. Even before the Director made a decision on the Storm Drainage Application, Mr. Korzeniowski encouraged the Client to proceed with a legal challenge to the Director's decision on the Storm Drainage Application;
 - e. In relation to such legal challenge, Mr. Korzeniowski provided the Client with proposed submissions to the Environmental Appeals Board in which he stated or implied one or more of the following:
 - i. The Director's conclusion that the Storm Drainage Application was incomplete was not based on sound technical or legal judgment;



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- ii. The Director's review of the Storm Drainage Application was not impartial;
- iii. The Director intentionally over-interpreted their jurisdiction under the *Water Act*;
- iv. The Director "usurped the position of a final expert and authority in the design of storm water management systems";
- v. The Director's requests for detailed information and drawings with respect to the SWMP were not for a valid purpose and were designed to fail the Development;
- vi. The Director, along with other APEGA members who directly contributed to the Director's decision, did not have adequate technical competence to review the Storm Drainage Application;
- vii. AEP's technical reviews of the SWMP were designed to fail the Storm Drainage Application;
- viii. AEP was conspiring with Alberta Parks and Lands to fail the Development.

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

Witnesses Called at the Hearing

48. The Hearing Panel heard evidence from the following witnesses at the hearing:
 - a. R.R., one of the Complainants
 - b. J.C., P.Eng., Water Administration Engineer at AEP
 - c. J.W., P.Eng., Municipal Approvals Engineer at AEP



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Exhibits Entered During the Hearing

49. The following Exhibits were entered at the hearing:

Exhibit 1 – Correspondence package prepared by the Investigative Committee containing 26 Tabs

Exhibit 2 – Correspondence package prepared by APEGA Discipline Committee staff containing 39 Tabs

Exhibit 3 – Investigative Committee's index of documents containing 92 Tabs

Exhibit 4 – Correspondence and notes of conversations between Mr. Korzeniowski and APEGA staff from January 25 & 26, 2021

Exhibit A – For Identification – Table of Concordance for Charge 6 submitted by the Investigative Committee

Decision regarding Unskilled Practice or Unprofessional Conduct

Introduction and Standard of Proof

50. The Hearing Panel heard evidence from three witnesses, over three days. It also reviewed all the documents contained in the Exhibits, which were entered at the hearing. The Hearing Panel also considered the submissions made by the Investigative Committee at the hearing.

51. In coming to its decision in this matter, the Hearing Panel recognizes that the onus is on the Investigative Committee to prove the factual particulars of the Charges contained in the Notice of Hearing to satisfy the “balance of probabilities” standard of proof. This standard of proof requires that any particular be proven as more probable than not. If some or all of the particulars are proven, the Investigative Committee must also establish on the same balance of probabilities that the proven particulars constitute unprofessional conduct or unskilled practice.

Charge 1 – In or around the period between March 4, 2016 and April 22, 2016, Mr. Korzeniowski failed to provide an adequate response to one or more requests from AEP for additional information, calculations, substantiation of calculations or assumptions, or any of them, in relation to a SWMP Mr. Korzeniowski prepared and submitted on behalf of the Client as part of the Storm Drainage Application for the Development, particulars of which include the following:



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- a. **Mr. Korzeniowski failed to provide adequate information on how he established the pre and post-development flows used in the SWMP;**
- b. **Mr. Korzeniowski failed to provide substantive support for his assumption or calculation that 50% of the storm water generated at the site would infiltrate into the local soils as a result of the Best Management Practices proposed in the SWMP; and**
- c. **Mr. Korzeniowski failed to provide adequate calculations for the volumes proposed to be stored in the infiltration fences proposed in the SWMP.**

Decision as to Whether the Conduct is Factually Proven

52. First, the Hearing Panel considered whether the factual elements of Charge 1 were proven on a balance of probabilities. The Hearing Panel heard evidence from J.C., who has been employed as a water administration engineer with AEP for 9 years. They have been a member of APEGA for 11 years, and a professional member since 2018. In their role as a water administration engineer, they process applications for approvals and licences under the *Water Act*. In 2015 and 2016 they processed applications made by Mr. Korzeniowski on behalf of the Client.
53. J.C. explained that when an application under the *Water Act* is received, it must meet the requirements listed in section 37 to be marked complete. Section 37(4) contains a condition that, if required by the AEP Director, consent must be obtained when the land related to an approval is not owned by the applicant. Water administration engineers like J.C. review the application's technical elements. They make recommendations to the Director as to whether the application should be rejected or approved, and the Director makes the final decision.
54. Mr. Korzeniowski first prepared and submitted a Master Drainage Plan and SWMP (together, the "Storm Drainage Application") to the AEP for approval on February 27, 2015. Due to several difficulties with the application, he submitted a revised Storm Drainage Application to the AEP dated August 19, 2015 (Exhibit 3, Tabs 14 and 15).
55. Mr. Korzeniowski included a number of storm water management elements in the SWMP such as swales, gravel or sand infiltration trenches, and grass in adjacent green spaces (the "Best Management Practices"). By use of the Best Management Practices, Mr. Korzeniowski indicated in the SWMP that 50% of the storm water generated at the Development site would infiltrate into the local soils (the "50% Infiltration Rate").



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56. Under the system outlined in the Storm Drainage Application, excess storm water from the Development site would be discharged into the nearby reservoir. Because the water would be discharged across lands not owned by the Client, AEP required written consent from the affected landowners. AEP also required written consent from the owner of the reservoir for any change in flows into the reservoir, which was Alberta Parks, and specifically the Operations Infrastructure Branch. J.C. gave Mr. Korzeniowski and R.R. some contacts for them to make regarding that consent.
57. In October 2015, R.R. asked AEP about a possible exception to the consent requirement, as they were having difficulty obtaining consent from downstream landowners. J.C. consulted with the AEP Director, K.M. They decided that in order to waive the requirement, the discharge of storm water as contemplated in the SWMP could not have any negative impact on the downstream lands.
58. J.C. emailed Mr. Korzeniowski and said that having storm water volumes for storm events for both pre and post-development ("Pre and Post-Development Flows") could support the fact that downstream landowners were not negatively impacted as a result of the SWMP. In an email dated October 20, 2015, Mr. Korzeniowski did provide volumes for Pre and Post-Development Flows, but did not provide any information as to how he determined the figures.
59. On March 4, 2016, J.C. sent a letter to R.R. and Mr. Korzeniowski which summarized a number of issues that needed to be addressed to move the Storm Drainage Application to completion. The letter identified the most significant issues with the design as firstly, the use of the Best Management Practices to reduce water quantity, which had limited effectiveness according to the AEP's Stormwater Management Guidelines. This made it difficult for AEP to accept the 50% Infiltration Rate. The second significant issue was that the Storm Drainage Application lacked any end-of-pipe management practices.
60. Mr. Korzeniowski responded to J.C. by email on March 7, 2016. He referred to the 50% Infiltration Rate. However, Mr. Korzeniowski's response did not substantiate the 50% Infiltration Rate.
61. J.C. responded to Mr. Korzeniowski's email on March 14. They indicated that AEP did not agree with the assumption of the 50% Infiltration Rate in light of the chosen Best Management Practices, and that the chosen rate appeared "to be completely arbitrary and without justification." Further, they stated "we require substantive support for your assumption [of the 50% Infiltration Rate] as a result of the added [Best Management Practices]. We require a specific response to adequately support your assumptions and calculations."



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62. In his letter of March 21, 2016, Mr. Korzeniowski attempted to justify some of the Best Management Practices. He did provide the storm water volumes for the infiltration trenches. However, in J.C.'s view, there was not sufficient justification for the numbers provided, and AEP was unable to replicate the calculated volumes. Mr. Korzeniowski did not substantiate the 50% Infiltration Rate or his calculations for Pre and Post-Development Flows.
63. On April 1, 2016, J.C. sent a letter that identified a number of outstanding technical deficiencies identified in previous correspondence. Again, they requested calculations for the storm water volumes proposed to be stored in the infiltration trenches, and calculations for the 50% Infiltration Rate. J.C. wrote that if by April 15 the deficiencies had not been addressed, and either consent from the downstream landowners had not been received or Mr. Korzeniowski was unable to demonstrate that the downstream landowners were not affected, the application would be deemed incomplete.
64. On April 4, 2016, in a private email to R.R., Mr. Korzeniowski stated that "From my side, I will not produce any more calculations, drawings and different solutions."
65. In an email to R.R. that same day, K.M. reiterated the calculations and information that J.C. had requested, which remained outstanding. Mr. Korzeniowski was cc'd on this correspondence.
66. Mr. Korzeniowski responded to K.M. on April 14, 2016. He did not provide calculations for the Pre and Post-Development Flows or provide a basis for the assumption of the 50% Infiltration Rate. He did not provide calculations for the storm water volumes of the infiltration trenches either.
67. On April 22, 2016, K.M. responded to Mr. Korzeniowski in a letter and indicated that there were substantial questions regarding the technical design of the Development, and that there were unresolved technical issues. AEP staff marked the application as incomplete, returned the application to R.R. and Mr. Korzeniowski, and closed the file. K.M. advised Mr. Korzeniowski and R.R. that they could reapply.

Submissions of the Investigative Committee on Unprofessional Conduct or Unskilled Practice

68. The Investigative Committee submitted that the factually proven conduct under Charge 1 is an issue of professional conduct. They referenced APEGA's Concepts of Professionalism, which recognizes the following at section 2.1 "Specialized Technical Knowledge":

Often, there are a variety of factors and several acceptable solutions when solving problems. Decision-makers must be able to identify and evaluate possible alternatives [...]



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The Investigative Committee submitted that it is critical that professional members be able and willing to explain to decision-makers how they arrived at a particular solution.

69. Similarly, APEGA's Guideline for Ethical Practice, section 4.1.1 "Holding Paramount" states the following:

During the early stages of a project, for instance environmental approvals, it is each professional's responsibility to present factually, objectively, and clearly the expected impacts and consequences. Society should then be able, through its regulatory bodies or political processes, to make an informed decision to proceed, or not.

70. The Investigative Committee suggested that in failing to provide the information requested by the AEP, Mr. Korzeniowski failed to comply with Rules of Conduct 1 and 3, which provide the following:

1 Professional engineers and geoscientists shall, in their areas of practice, hold paramount the health, safety and welfare of the public and have regard for the environment.

3 Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.

71. In the view of the Investigative Committee, by failing to provide the information requested by AEP, which was needed to allow AEP to determine whether or not the applications could proceed without the downstream landowners' consent, Mr. Korzeniowski failed to comply with Rule of Conduct 1. With respect to Rule of Conduct 3, the Investigative Committee submitted that Mr. Korzeniowski's proven conduct also reflected a lack of objectivity in his dealings with AEP.

Decision of the Hearing Panel on Unprofessional Conduct or Unskilled Practice

72. The Hearing Panel noted that particulars a. and c. alleged that Mr. Korzeniowski failed to provide "adequate" information and "adequate" calculations. Professionals may disagree as to the "adequacy" of information or calculations, and there may not be precise clarity as to what constitutes adequate information or adequate calculations. The Hearing Panel also noted that there was no information about whether Mr. Korzeniowski's calculations had been done using software or were done manually, which might affect his ability to reproduce calculations.



APEGA Discipline Committee Decision

73. Specifically, with respect to particular c., the correspondence at Exhibit 3, Tab 46 showed that Mr. Korzeniowski did provide calculations for the volumes of storm water to be stored in the infiltration trenches. Though AEP was not able to replicate the calculated volumes, Mr. Korzeniowski did provide calculations as requested. While the response may not have satisfied AEP, this is not sufficient to determine that “adequate calculations” were not provided and that this constituted unprofessional conduct or unskilled practice.
74. Finding unprofessional conduct or unskilled practice based on a disagreement between professional members on what constitutes “adequate calculations” would require further evidence to establish that the calculations provided were so far below the standard required of professional member that they constituted unprofessional conduct or unskilled practice. In the absence of this evidence, the Hearing Panel finds that particulars a. and c. were not proven on a balance of probabilities.
75. In respect to particular b., the Hearing Panel agreed that Mr. Korzeniowski provided only limited information to support his assumption of the 50% Infiltration Rate. It was reasonable for AEP to request additional information to support this assumption or calculation and to determine that they had not received sufficient information on this point.
76. However, the Hearing Panel finds that it was not proven on a balance of probabilities that Mr. Korzeniowski’s failure to provide sufficient substantive support for his assumption of the 50% Infiltration Rate was a failure to hold paramount the health, safety and welfare of the public, or a failure to have regard for the environment.
77. In addition, the Hearing Panel finds that it was not proven on a balance of probabilities that Mr. Korzeniowski’s conduct demonstrated a failure to conduct himself with integrity, honesty, fairness or objectivity in his professional activities.
78. As a result, the Hearing Panel has determined that the actions of Mr. Korzeniowski in relation to particular b. are not sufficient to support a finding of unprofessional conduct or unskilled practice.
79. Based on the analysis set out in the preceding paragraphs, the Hearing Panel finds that Charge 1 was not proven on a balance of probabilities.

Charge 2 - In or around the period between October 6 and 8, 2014, Mr. Korzeniowski signed and stamped submissions to AEP certifying that the design for the waterworks system and the wastewater system for the Development complied with all of the requirements specified in the SGMWWSDS for the construction of the water distribution, wastewater collection and storm water collection system, without adequately identifying deviations from the SGMWWSDS with respect to the pipe cover burial depth, particulars of which include the following:



APEGA Discipline Committee Decision

- b. On or about October 6, 2014, Mr. Korzeniowski submitted to AEP the Waterworks Application, which included an acknowledgment and certification signed and stamped by Korzeniowski certifying that the design complied with all requirements specified in the SGMWWSDS;**
- c. In the Waterworks Application, Mr. Korzeniowski did not clearly identify that the pipe cover burial depth for the water distribution mains was less than the minimum depth specified in the SGMWWSDS;**
- d. On or about October 8, 2014, Mr. Korzeniowski submitted to AEP the Wastewater Application, which included an acknowledgment and certification signed and stamped by Korzeniowski certifying that the design complied with all the requirements specified by the SGMWWSDS;**
- e. In the Wastewater Application, Mr. Korzeniowski did not clearly identify that the piper cover burial depth for the wastewater mains was less than the minimum depth specified in the SGMWWSDS;**

Decision as to Whether the Conduct is Factually Proven

- 80. The particulars of Charge 2 relate firstly to the Waterworks Application that Mr. Korzeniowski submitted to AEP for approval on October 6, 2014 and secondly, to the Wastewater Application he submitted for approval on October 8, 2014. Both applications were before the Hearing Panel at Tabs 57 and 58 of Exhibit 3.
- 81. The Hearing Panel heard evidence from J.W., who has been employed as a municipal approvals engineer with AEP and been a member of APEGA since 2011. As a municipal approvals engineer, J.W. reviews mainly water and wastewater or storm water applications to ensure compliance with *Environmental Protection and Enhancement Act* and the SGMWWSDS.
- 82. J.W. provided background on the SGMWWSDS, which apply to the construction of municipal water distribution, wastewater collection and storm water collection systems. J.W. explained that the SGMWWSDS contain both standards and guidelines. The standard is binding and contains requirements for all applications, while the guideline sets out best practices. If an application submitted to the AEP does not meet a guideline but the engineer is able to provide justification, the application may be approved.
- 83. J.W. indicated that sections 1.9.2.1 and 3.3.1.6 of the SGMWWSDS are standards. Section 1.9.2.1 "Mains" provides:



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To prevent freezing and damage due to frost, pipes shall have a minimum cover above the crown of the pipe of:

1. 2.5 m; or
 2. The depth of frost penetration for the location based on the coldest three years during the past 30 years, or, where this period of record is not available, the coldest year during the past 10 years with an appropriate safety factor.
84. Section 3.3.1.6 “Frost Protection” states: “Frost protection criteria for sewers is the same as for water mains (see Section 1.9.2.1 for details).”
85. R.R. testified that when Mr. Korzeniowski submitted the Waterworks Application and the Wastewater Application on October 6 and 8, 2014, the construction of those systems was well underway, and some of the trenches containing pipes for those systems would have been backfilled. Prior to submission of the applications, Mr. Korzeniowski attended at the development site on to inspect the trenches and the pipes that had been installed.
86. J.W. received and reviewed Mr. Korzeniowski’s submitted applications. In their testimony, they noted that Mr. Korzeniowski had signed and stamped the “Engineer’s Acknowledgement” pages to certify that the systems complied with the requirements in the SGMWWSDS. Mr. Korzeniowski did not identify any deficiencies or deviations from the SGMWWSDS in the applications.
87. The Hearing Panel noted that the engineers’ acknowledgement sheets in both applications included the following notation:
- For projects that do not comply with all of the Standards and Guidelines please submit a detailed explanation of the deficiency and why it is necessary.
88. J.W. confirmed that his office does not typically do a site visit for these types of applications, and that it relies heavily on the consulting engineer’s professional designation, designs, and stamps. The office places a high level of trust on the stamp, and typically will not redo an engineer’s work. If an application lists a deviation, it will be brought to the Director who will decide on the deviation.
89. When J.W. reviewed the Wastewater Application, they saw the drawing numbered 103TR-D, and noted that the pipe earth cover was described as 1.2 metres. The SGMWWSDS requires pipe earth cover to be 2.5 metres. There was no clear mention anywhere else in the application as to the depth of pipe earth cover. J.W. testified that typically a wastewater application will contain 4 or 5 drawings showing the earth coverage at different locations along the pipe.



APEGA Discipline Committee Decision

90. Based its review of the documents in Exhibit 3 and the testimony of J.W., the Hearing Panel finds that particulars b. – e. were proven on a balance of probabilities. The SGMWWSSDS required a pipe earth cover of 2.5 metres, and R.R. had buried the wastewater and waterworks systems at 1.2 metres. Mr. Korzeniowski was aware of this fact.
91. Despite his knowledge of the depth of the waterworks systems, Mr. Korzeniowski did not adequately identify the deviation on the engineer's acknowledgement sheets. He did not clearly identify that the pipe cover burial depth was less than the minimum depth required in the SGMWWSSDS on either the Waterworks Application or the Wastewater Application. He signed and stamped acknowledgements and certifications certifying that the designs complied with all the requirements specified in the SGMWWSSDS when he was, or should have been, aware of the failure to comply with the requirements regarding the depth of the waterworks and wastewater systems.

Submissions of the Investigative Committee on Unprofessional Conduct or Unskilled Practice

92. The Investigative Committee submitted that the factually proven conduct amounted to unprofessional conduct or unskilled practice. In their view, a professional engineer ought to understand the significance of applying their stamp to an engineer's acknowledgement sheet, and that in submitting it to a regulatory body, a professional member should only sign and stamp a document for which they are professionally responsible when they are satisfied that that document is complete and correct.
93. Investigative Committee Counsel also referred to APEGA's Guideline for Environmental Practice at Guideline #8:

Professional Members shall comply with regulatory requirements and endeavor to exceed or better them by striving toward the application of best available cost-effective technologies and procedures [...] They shall ensure that proper documentation of adherence to environmental procedures, protocols and regulations is maintained, and that relevant information be provided to regulatory agencies in a timely fashion.
94. They submitted that Mr. Korzeniowski failed to meet that expectation with respect to the engineer's acknowledgement sheets he authenticated and submitted to AEP in October 2014.
95. Lastly, the Investigative Committee submitted that Mr. Korzeniowski's conduct under this Charge was contrary to Rules of Conduct 1, 3, 4 and 5. Rules of Conduct 4 and 5 provide the following:



APEGA Discipline Committee Decision

4 Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices.

5 Professional engineers and geoscientists shall uphold and enhance the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.

96. Investigative Committee Counsel referred again to APEGA's Guideline for Ethical Practice at section 4.1.1. They advised that in the view of the Investigative Committee, when a professional member certifies that a standard has been met, when it has not, the professional member's conduct undermines the ability of the profession to serve the public interest.

Decision of the Hearing Panel on Unprofessional Conduct or Unskilled Practice

97. The Hearing Panel finds that the factually proven conduct amounts to unprofessional conduct. With respect to Rule of Conduct 1, Mr. Korzeniowski's failure to identify deviations to the SGMWWSDS in the engineer's acknowledgment sheets failed to hold paramount the health, safety and welfare of the public. The AEP approval process serves a public interest purpose, and a failure to bring deviations to the standards to the AEP's attention could have had harmful effects to the public.
98. With respect to Rule of Conduct 3, Mr. Korzeniowski's conduct did not demonstrate integrity, and was not honest conduct. The Hearing Panel also found that Rule of Conduct 4 had been breached. The evidence showed that Mr. Korzeniowski was aware of the SGMWWSDS, which required pipes to be buried at a depth of 2.5 metres. He also knew that R.R. had buried the pipes at a depth of 1.2 metres and had even inspected the trenches and pipes. Mr. Korzeniowski failed to comply with the statutes, regulations and bylaws that required he comply with SGMWWSDS, and required him to identify deviations on the engineer's acknowledgement sheets. Mr. Korzeniowski did not do so and thereby breached Rule of Conduct 4.
99. In respect of Rule of Conduct 5, the actions of Mr. Korzeniowski in providing a false certification by failing to identify the deviations from the requirements of the SGMWWSDS failed to uphold the honour, dignity and reputation of the profession. The public, government bodies and profession must be able to rely upon the certifications provided by professional members and this requirement was not met by Mr. Korzeniowski.
100. The proven particulars and the proven breaches of Rules of Conduct 1, 3, 4 and 5 are very serious breaches of the standard required of a professional member. In the opinion of the Hearing Panel these proven breaches clearly amount to unprofessional conduct. The Hearing Panel therefore finds that Charge 2 is proven in full and that the Charge and the proven particulars constitute unprofessional conduct.



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Charge 3 - On or about March 26, 2015, Mr. Korzeniowski signed and stamped submissions to AEP with respect to the Waterworks Application and the Wastewater Application in which he identified a deviation from the requirements specified in the SGMWWSDS for the construction of the water distribution, wastewater collection and storm water collection system with respect to pipe cover burial depth but failed to provide a sufficiently detailed explanation to justify such deviation.

Decision as to Whether the Conduct is Factually Proven

101. For Charge 3, there were no particulars listed, and so the Hearing the Panel considered the factual elements alleged in the wording of the charge. Specifically, the factual elements related to replacement pages Mr. Korzeniowski submitted to the AEP on March 26, 2015, for his previously submitted Waterworks Application and Wastewater Application. The replacement pages were before the Hearing Panel at Tab 60 of Exhibit 3.
102. J.W. testified that after they received the initial applications, which did not identify any deficiencies or deviations from the SGMWWSDS, they emailed Mr. Korzeniowski to request clarifications regarding the pipe earth coverage. Mr. Korzeniowski confirmed that the design did not provide for 2.5 metres of earth cover, and he provided replacement engineer's acknowledgement sheets identifying the deviations.
103. The replacement pages for both the Wastewater Application and the Waterworks Application indicated that the wastewater and waterworks systems were designed with 1.2 metre earth cover because they would only operate seasonally. J.W. testified that seasonal operation is not listed as an exception in the SGMWWSDS for pipe burial depth requirements.
104. In an email dated April 5, 2015, Mr. Korzeniowski described additional reasons why he considered the 1.2 metre earth cover to be appropriate, and he stated, "your insistence that the water and sewer pipes at [the Development] should be buried 2.5 meters could lead to a very risky and expensive operation [...]" J.W. disagreed with this statement, though they did acknowledge that the deeper burial depth could result in higher initial construction costs.
105. Mr. Korzeniowski emailed J.W. on May 5, 2015, with additional arguments as to why the shallow burial depth was appropriate. J.W. confirmed that in his opinion, the response contained insufficient information to justify the deviation under another permissible exception.
106. On June 22, 2015, K.M. emailed M.R. indicating that the current design with a 1.2 metre earth cover for the wastewater system did not conform to the 2.5 metre requirement in the SGMWWSDS, and that the application would be rejected if a design complying with the requirements was not provided by July 22, 2015. Ultimately, the application was rejected.



APEGA Discipline Committee Decision

107. Based on the evidence above, the Hearing Panel finds that the factual elements of Charge 3 are proven. Mr. Korzeniowski did submit the replacement pages to AEP, in which he identified deviations from the requirements specified in the SGMWWSDS for the construction of the water distribution, wastewater collection and storm water collection system. He also provided additional reasons that he suggested justified the deviation from the requirements in the SGMWWSDS.
108. The Hearing Panel accepts J.W.'s testimony that the information provided in Mr. Korzeniowski's email responses was not considered sufficient by AEP Staff and the Director to justify the deviation under the AEP regime.
109. The Hearing Panel notes that this is not a case where Mr. Korzeniowski failed to provide any response. He provided some information, which was not deemed sufficient for the purposes of the AEP.

Submissions of the Investigative Committee on Unprofessional Conduct or Unskilled Practice

110. The Investigative Committee submitted that Mr. Korzeniowski's conduct under Charge 3 constitutes unprofessional conduct. Investigative Committee Counsel submitted that it is critical that professional members provide clear and complete information to the decision-makers, including regulatory bodies, who make decisions on behalf of society. In failing to do so, Mr. Korzeniowski acted contrary to Rule of Conduct 1.
111. The Investigative Committee also alleged that Mr. Korzeniowski's conduct was contrary to Rule of Conduct 3. They suggested that it was likely difficult in the circumstances for Mr. Korzeniowski to conduct himself in an objective manner, because as of March 2015, he was aware that the trenches had already been backfilled, and if the AEP did not approve the pipe burial depth deviation, the consequences for the Client were potentially disastrous.

Decision of the Hearing Panel on Unprofessional Conduct or Unskilled Practice

112. In the view of the Hearing Panel, Mr. Korzeniowski's factually proven conduct did not rise to the level of unskilled practice or unprofessional conduct. In this case, the Hearing Panel has accepted that Mr. Korzeniowski's explanations regarding the deviation from the SGMWWSDS were not sufficient for the purposes of the AEP. However, the fact that an amount of information submitted by a professional member is considered insufficient by an approving authority for the purposes of an application process does not, in itself, prove either unprofessional conduct or unskilled practice.



APEGA Discipline Committee Decision

113. As discussed by the Hearing Panel in respect to Charge 1, professionals may disagree as to the “adequacy” or “sufficiency” of information or calculations. There is no existing bright line that distinguishes an “insufficient” number of details from a “sufficient” number of details, and the Hearing Panel does not intend to set out a bright line rule. What is clear is that a professional member must provide some details or some explanation for their professional work when a decision-maker requests that they do so, to assist the decision-maker in performing their public interest role.
114. With respect to the deviation that Mr. Korzeniowski noted on the replacement pages, he did provide some reasons as to why he thought it was justified. The circumstances were such that the justification was not accepted by J.W. on behalf of the AEP. Mr. Korzeniowski did discharge his obligation to provide some reasons for his position that the deviation from the SGMWWSDS, even though his reasons may not have been correct under the SGMWWSDS. For these reasons, the Hearing Panel finds that Mr. Korzeniowski’s conduct does not breach Rule of Conduct 1.
115. The Hearing Panel also finds that Mr. Korzeniowski’s factually proven conduct does not breach Rule of Conduct 3. It was not prepared to infer that Mr. Korzeniowski necessarily acted dishonestly or without objectivity, just because he had a potential motive to do so. While Mr. Korzeniowski may have known of the serious consequences for the Client, he may also have genuinely believed in the reasons he offered to J.W. as justification for the deviation. On the evidence before it, and on a balance of probabilities, the Hearing Panel is not prepared to find that Mr. Korzeniowski acted without integrity, honesty, fairness or objectivity.

Charge 4 - In or around the period between August 9, 2014 and March 26, 2015, Mr. Korzeniowski failed to take adequate steps to inform the Client of the risk that AEP would not approve the Waterworks Application or the Wastewater Application due to the deviation from the minimum pipe cover burial depth specified in the SGMWWSDS.

Decision as to Whether the Conduct is Factually Proven

116. There were no particulars listed under Charge 4, and so the Hearing the Panel considered the factual elements alleged in the wording of the charge. The Hearing Panel specifically considered the documents at Tabs 65 – 71 of Exhibit 3.
117. As early as July 18, 2014, R.R. indicated to Mr. Korzeniowski that they planned to install water and sewer services at a depth of 4 feet (or 1.2 metres), because the RV Park would operate seasonally. At this time, R.R. was not aware of any standard or guideline that precluded them from installing the services at this depth. When Mr. Korzeniowski responded via email, he did not comment on R.R.’s proposed burial depth.



APEGA Discipline Committee Decision

118. While R.R. was responsible for physically installing the waterworks and wastewater systems, Mr. Korzeniowski was responsible for inspecting the installation to ensure it was done properly and followed his engineering design. Specifically, Mr. Korzeniowski would inspect at a time when the trenches had been dug and the pipes laid in the trenches, but before R.R. did any backfilling.
119. On September 2 and 3, 2014, R.R. again told Mr. Korzeniowski via email that they intended to dig pipe trenches 4.5 feet deep. Mr. Korzeniowski did not respond to the suggested pipe burial depth, but indicated that, horizontally, pipes must be 2.5 metres apart. He wrote that in a previous project, he had been unable to get approval for a deviation from this requirement.
120. As part of his response, Mr. Korzeniowski emailed R.R. an excerpt of the SGMWWSDS. Sections 1.9.2.1 “Mains” and 3.3.1.6 “Frost Protection” were included in the excerpt.⁴ R.R. testified that they did not take notice of these sections, as the subject of Mr. Korzeniowski’s correspondence was the horizontal separation of the water and sewer mains, a detail where Mr. Korzeniowski identified to R.R. that his proposed plan was not consistent with the SGMWWSDS. Mr. Korzeniowski did not draw R.R.’s attention to sections 1.9.2.1 or 3.3.1.6, or the pipe earth cover requirements.
121. Mr. Korzeniowski attended at the development site on September 20, 2014, and inspected the trenches and the pipes that had been installed. R.R. testified that Mr. Korzeniowski came to inspect the installation on that date so that R.R. could begin backfilling. Mr. Korzeniowski did not identify any issues, and at no point during his contract work with the Client did he tell R.R. that the SGMWWSDS required a pipe burial depth of 2.5 metres.
122. When Mr. Korzeniowski submitted the Waterworks Application and the Wastewater Application to AEP for approval on October 6 and 8, 2014, the construction of those systems was well underway. R.R. testified that some of the trenches would have been backfilled at that time. They recalled that they had completely backfilled the trenches before receiving AEP’s decision on the applications. Mr. Korzeniowski did not express any concerns to R.R. about installing the systems or backfilling the trenches before AEP issued an approval.
123. R.R. explained that at the time, they thought that an engineer’s stamp indicated an approval. If anything, they considered the AEP approval to be a mere formality that he would receive after an engineer stamped the documents. They did not have any discussions with Mr. Korzeniowski about the AEP application and submission process.

⁴See the wording of these sections at paragraphs 83 and 84.



APEGA Discipline Committee Decision

124. R.R. also testified that Mr. Korzeniowski did not inform them of the risk that the Waterworks Application and the Wastewater Application might not be approved by AEP. Further, Mr. Korzeniowski did not tell them that the wastewater and waterworks system designs deviated from the pipe burial depth requirements in the SGMWWSDS.
125. Ultimately, AEP did reject the Waterworks Application and the Wastewater Application because of the pipe burial depth deviation. As a result, the Development had to be rezoned, which precluded the land from being subdivided into separate lots. This fundamentally changed the plans for Development to have individually owned lots, and required the Client to take on significantly increased responsibilities.

Submissions of the Investigative Committee on Unprofessional Conduct or Unskilled Practice

126. The Investigative Committee submitted that Mr. Korzeniowski's conduct under this Charge amounted to unprofessional conduct or unskilled practice. They referred to APEGA's Guideline for Environmental Practice, which states at Guideline #5:

[Professional members] should acknowledge the role of various decision-makers in determining technical feasibility for evaluating the economic viability of projects. They should acknowledge the importance of all relevant technical, economic, environmental and social information to the ultimate decision-makers.

127. They also referred to APEGA's Guideline for Ethical Practice, section 4.4.1:

Professionals should maintain adequate knowledge of the law relating to their area of practice [. . .] It is important to not unnecessarily jeopardize the project or follow a course of action that is detrimental to the public interest.

128. The Investigative Committee submitted that failing to inform R.R. of the risk that the Waterworks Application and the Wastewater Application might not be approved unnecessarily jeopardized the Development project, and effectively frustrated the Complainants' opportunity to have the systems approved by AEP, given the timing of when the trenches were backfilled.
129. The Investigative Committee suggested that the evidence demonstrated Mr. Korzeniowski was well aware that the Complainants were installing the systems and backfilling the trenches while the AEP approval remained outstanding. In that context, the Investigative Committee suggested that the possibility that the approval would not be granted was critically important information that Mr. Korzeniowski should have ensured his client understood.



APEGA Discipline Committee Decision

130. While the Client did find an alternative solution so that they did not need to dig up the waterworks and wastewater systems, the alternative solution required them to make fundamental changes to the Development, including to the ownership structure. This change required the Client, as the developer, to take on significantly increased and ongoing responsibilities with respect to the Development.
131. The Investigative Committee submitted that Mr. Korzeniowski's conduct constituted unprofessional conduct as the Complainants are members of the public, and he acted in a way that was detrimental to their best interests.
132. Investigative Committee Counsel indicated that Mr. Korzeniowski's proven conduct also constituted a major lapse in judgment in the practice of the profession and was contrary to Rules of Conduct 3 and 5. Under Rule of Conduct 3, honesty includes providing complete information. Mr. Korzeniowski's failure to do so had significant and not unforeseeable consequences for his client. Rule 5 requires professional members to enhance the honour and dignity of the profession and the failure to disclose very important information to his clients breached this responsibility.

Decision of the Hearing Panel on Unprofessional Conduct or Unskilled Practice

133. The Hearing Panel has considered the evidence of R.R. It has also reviewed all the documents relating to this issue and communications with R.R. There is no record in any of the documents of any warning by Mr. Korzeniowski of the potential risk that the failure to comply with the depth requirements might result in the rejection of the Waterworks Application and the Wastewater Application. There is no evidence that the significance of this issue was ever raised by Mr. Korzeniowski with his client.
134. Mr. Korzeniowski attended at the site while the systems were being installed and he was aware of the depth at which they were installed but there is no evidence of any conversations with his client or any documents to suggest that he discussed these risks with his clients.
135. The Hearing Panel finds that the factual allegations in Charge 4 have been proven on a balance of probabilities. No steps were taken to advise the Client of the potential risk of lack of approval for the deviation from the minimum pipe cover burial depth required by the SGMWWSDS.



APEGA Discipline Committee Decision

136. The Hearing Panel finds that this failure to advise the Client breached Rule of Conduct 3 by demonstrating a lack of integrity, honesty and fairness that was owed to the Client. The deviation raised a serious risk of rejection by the approving authority and Mr. Korzeniowski chose not to discuss this with his client. There was also a proven breach of Rule of Conduct 4 in that the applicable requirements of the SGMWWSDS were not being complied with. Mr. Korzeniowski was aware of this fact but did not discuss it with the Client.
137. The Hearing Panel finds that Rule of Conduct 5 was also breached. The failure by Mr. Korzeniowski to advise the Client of the serious risk of rejection failed to uphold and enhance the honour and dignity and reputation of the profession. The Client was entitled to be advised of the risks and this breach was serious and had significant consequences for the Client.
138. The Hearing Panel also considered whether this conduct breached Rule of Conduct 1 by failing to hold paramount the health, safety and welfare of the public and by failing to have regard for the environment. While the Hearing Panel recognized that there were potential consequences of a failure to meet the depth requirements in placing the pipe for the Waterworks Application and the Wastewater Application, it felt that this particular Charge was better dealt with through the findings of breaches of Rules of Conduct 3, 4 and 5.
139. The Hearing Panel finds that the proven facts and the proven breaches of Rules of Conduct 3, 4 and 5 are serious and constitute unprofessional conduct.

Charge 5 - In or around the period between August 28, 2014 and October 6, 2014, Mr. Korzeniowski failed to take adequate steps to clearly inform or caution the Client that it was improper to commence installation of the waterworks and wastewater systems without approval having been granted by AEP.

Decision as to Whether the Conduct is Factually Proven

140. The evidence described in paragraphs 116 – 125 is also applicable to Charge 5.
141. While Charge 5 is similar to Charge 4, Investigative Committee Counsel distinguished Charge 5 from Charge 4. They suggested that the primary focus of Charge 4 was the business risk to the Complainants, and the allegation that Mr. Korzeniowski should have informed the Complainants that it was improper to commence installation of the wastewater and waterworks systems, given the risk to their business if the AEP did not approve the applications.



APEGA Discipline Committee Decision

142. They acknowledged that Charge 5 is similar, but suggested that it concerns the Complainants' legal obligations. They referred specifically to sections 60 and 61 of the *Environmental Protection and Enhancement Act*, which prohibits a person from commencing or continuing any activity that requires approval before that approval is granted. The allegation under Charge 5 is that Mr. Korzeniowski should have informed the Complainants that it was improper to commence installation of the wastewater and waterworks systems, given their legal obligations under the *Environmental Protection and Enhancement Act*.
143. Based on the evidence before it, the Hearing Panel finds that the conduct alleged is factually proven. Mr. Korzeniowski did not advise the Complainants that it was improper to commence installing the waterworks and wastewater systems before receiving approval from AEP, and he did not inform them that they had a legal obligation to wait for this approval. This is a clear requirement and Mr. Korzeniowski should have brought it to the Client's attention. Mr. Korzeniowski was aware from his onsite visit that construction was proceeding but there is no evidence that he advised his client that this construction was premature and should be stopped until the approval was received.

Submissions of the Investigative Committee on Unprofessional Conduct or Unskilled Practice

144. The Investigative Committee submitted that Mr. Korzeniowski's factually proven conduct constitutes unprofessional conduct. Investigative Committee Counsel referred to section 4.4.2 of APEGA's Guideline for Ethical Practice, which states:

Professionals should make responsible provision so that clients and employees under their responsibility have knowledge of and comply with the laws affecting their work.

145. The Investigative Committee submitted that it is not in the best interests of the public to fail to inform a client when they are acting contrary to governing legislation. Therefore, Mr. Korzeniowski's proven conduct was contrary to Rule of Conduct 1.
146. Further, the Investigative Committee suggested that to the extent that Mr. Korzeniowski was contractually responsible for the supervision of construction of the waterworks and wastewater systems, his conduct is also contrary to Rule of Conduct 4.

Decision of the Hearing Panel on Unprofessional Conduct or Unskilled Practice

147. The Hearing Panel finds that Mr. Korzeniowski's proven conduct breached Rules of Conduct 1, 3, 4, and 5.



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148. In failing to advise his client, firstly, not to proceed prior to approval from the AEP, and secondly, to stop construction until the approval from the AEP, Mr. Korzeniowski failed to hold paramount the health, safety and welfare of the public and failed to have regard for the environment as required by Rule of Conduct 1. The basic purpose of the AEP approval process is to protect the public interest and the environment. Bypassing that approval process by commencing construction prior to receiving an approval is a serious failure to respect the public interest and the environment. The Hearing Panel therefore finds that Mr. Korzeniowski's conduct breached Rule of Conduct 1.
149. Mr. Korzeniowski knew or should have known that no construction should commence until the AEP approval was received. His failure to advise his clients that their actions in commencing construction prior to AEP approval were improper was a breach of his duty under Rule of Conduct 3 to act with integrity, honesty, fairness and objectivity. As professional member, he had an obligation to inform and caution his clients that their actions were improper. His failure to do so was therefore a serious breach of Rule of Conduct 3.
150. Mr. Korzeniowski also breached Rule of Conduct 4. He inspected the trenches and supervised construction of the waterworks and wastewater systems even though he knew the Waterworks and Wastewater Applications had not been approved by the AEP. He knew that that this ongoing construction was in breach of the applicable statutes, regulations and requirements, yet he failed to take any steps to advise his clients that they were required to wait for the AEP approval. This was a serious breach of Rule of Conduct 4.
151. The Hearing Panel find that Mr. Korzeniowski's conduct undermined the dignity and reputation of the engineering profession, and thus the ability of the engineering profession to serve the public interest contrary to Rule of Conduct 5. in failing to advise the Client that construction could not start prior to AEP approval Mr. Korzeniowski failed in his duty to uphold and enhance the honour and dignity of the profession and failed to serve the public interest.
152. The Hearing Panel finds that the breaches of Rules of Conduct are serious and that these breaches constitute unprofessional conduct.

Charge 6 - In communications to the Client or on behalf of the Client, or both, in or around the period between March 22, 2015 and July 4, 2016, Mr. Korzeniowski challenged the professionalism or competence, or both, of AEP personnel including members of APEGA, particulars of which include one or more of the following



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- a. In one or more emails to the Client, Mr. Korzeniowski stated or implied that delays or difficulties they were facing with the Storm Drainage Application were because of a lack of relevant expertise by the AEP personnel (including APEGA members) at the Lethbridge office, or deliberate delay tactics by AEP personnel at the Lethbridge office, or improper influence on AEP personnel by Alberta Parks;
- b. In one or more emails to the Client, Mr. Korzeniowski stated or implied that the Director (an APEGA member) would not make an impartial decision on the Storm Drainage Application;
- c. In an email to a senior AEP employee, Mr. Korzeniowski stated or implied that AEP was not following the requirements of the *Water Act* with respect to the Storm Drainage Application, and that AEP was being controlled by Alberta Parks;
- d. Even before the Director made a decision on the Storm Drainage Application, Mr. Korzeniowski encouraged the Client to proceed with a legal challenge to the Director's decision on the Storm Drainage Application;
- e. In relation to such legal challenge, Mr. Korzeniowski provided the Client with proposed submissions to the Environmental Appeals Board in which he stated or implied one or more of the following:
 - i. The Director's conclusion that the Storm Drainage Application was incomplete was not based on sound technical or legal judgment;
 - ii. The Director's review of the Storm Drainage Application was not impartial;
 - iii. The Director intentionally over-interpreted their jurisdiction under the *Water Act*;
 - iv. The Director "usurped the position of a final expert and authority in the design of storm water management systems";
 - v. The Director's requests for detailed information and drawings with respect to the SWMP were not for a valid purpose and were designed to fail the Project;
 - vi. The Director, along with other APEGA members who directly contributed to the Director's decision, did not have adequate technical competence to review the Storm Drainage Application;



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- vii. **AEP’s technical reviews of the SWMP were designed to fail the Storm Drainage Application;**
- viii. **AEP was conspiring with Alberta Parks and Lands to fail the Project.**

Decision as to Whether the Conduct is Factually Proven

153. Charge 6 concerned communications made by Mr. Korzeniowski to his client and communications made on behalf of his client, where he challenged the professionalism and/or competence of AEP personnel, which included a number of APEGA members. The Hearing Panel reviewed the correspondence documents in Tabs 72 – 84 of Exhibit 3. These statements were summarized by the Investigative Committee in Exhibit A “Table of Concordance”.
154. This Table sets out some of the statements made by Mr. Korzeniowski in Tabs 72 – 84.

March 22, 2015	“We are dealing with individuals without directly related background to water, wastewater, storm drainage and ground water, and this is the problem.”
September 11, 2015	“Either AE Lethbridge Office does not know how to handle the application, or... There is a deliberate [sic] delay/obstruction tactic to eliminate a competition to the Parks Campground.” “Did [J.] lost control over the approval process or he is overruled or ignored by the others involved and why? Someone behind the scene may be pulling some strings.”
January 14, 2016	“...I think this is the last chance to get the approval. But we have to indicate that a legal challenge is considered. Please comment.”
January 28, 2016	Some of the requests made by AE are highly questionable from engineering and legal point of view” “It is clear that Alberta Parks controls the Alberta Environment handling of the Storm Water Management Application by making unrealistic, unnecessary and impossible to implement requirements” “Alberta Parks is clearly in competition with the Applicant as it previously indicated to have a keen interest in making the Little Bow River Campground a “ <u>money making operation</u> ”. Hence, the statement of concerns with unrealistic and impossible to implement demands”
February 23, 2016	“If we show [K.M.’s] comments that she is right we lose the battle. She will say that the report is not adequate and we have to redo the report but what we will change to satisfy her. This is a professional opinion and I need her to explain her comments, this is being right or wrong and either she wins or we win. There is no time for pleasing her because she will use it to her advantage as she presented herself at the meeting. She did not come to the meeting to compromise.”



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April 4, 2016	In an email to R.R., Mr. Korzeniowski indicated that he would have to draft a covering letter to Environmental Appeals Board (“EAB”) “to indicate that we responded in sufficient detail[] to AE comments and concerns but we did not receive proper technical justification for their disagreements and refusals to issue approval for the proposed storm water management plan.”
April 6, 2016	In an email to R.R., in reference to AEP’s knowledge of soil hydraulic properties and analyses, Mr. Korzeniowski stated “the Department clearly displays lack of it.”
June 21, 2016	<p>Mr. Korzeniowski provided a draft letter to R.R. with proposed submissions for appeal to the EAB, which contained the following:</p> <p>It is “evident that AE and Alberta Parks and Land conspired to fail the proposed development.”</p> <p>“The technical reviews by AE are design to fail the application, by using the Stormwater Drainage Guidelines in a ‘blind folded manner’. The AE staff reviewing the SWMP did not apply appropriate relevant technical knowledge and experience. This is also confirmed by the technical reviews of the applications for waterworks and wastewater system which was rejected by AE.”</p>
July 4, 2016	<p>Mr. Korzeniowski provided a draft letter to R.R. with proposed submissions for appeal to the EAB, which contained the following:</p> <p>“The Director’s decision that the [application] submitted on February 27, 2015 is incomplete, is not based on sound technical and legal judgement, and the Director’s competence and good intention to the Application review and approval are challenged.”</p> <p>“The Director extended its professional competence and legal authority beyond good reasons and responsibility to act impartially in reviewing the Application. The Director usurped the position of a final expert and authority in design of storm water management systems...”</p> <p>“The Director impartiality in this case is questionable as the Director’s approach to review the Application suggests conspiracy with Alberta Parks and Lands to fail the proposed project.”</p> <p>“The Director’s requirements for detailed calculations and drawings are designed to fail the project and not to ensure properly functional storm water management system.”</p> <p>“In order to establish the Director’s adequate technical competence to review the Application I request the following information from the Director, J.C., J.W., [...] and any other person who directly contributed to the Director’s decision:</p> <ul style="list-style-type: none"> • Subjects taken and credits (marks) record from the University which issued the engineering diploma. • Current and complete resume of employment from the time of graduation to present. • Information submitted to APEGGA for registration.” <p>“The Director is involved in intentional and over interpretation of applicable <i>Water Act</i> rules.”</p>



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155. Having reviewed the statements contained in the correspondence at Tabs 72 – 84 of Exhibit 3, the Hearing Panel accepts that Mr. Korzeniowski did make statements challenging the professionalism and competence of AEP personnel, including J.C. and J.W., who were members of APEGA. These statements were made to R.R., and on behalf of R.R. and the Client.
156. In respect to particular 6 a., there were emails from Mr. Korzeniowski to the Client that suggested lack of relevant expertise by AEP personnel at the Lethbridge office and suggested that there were deliberate delay tactics by AEP personnel at the Lethbridge office or possible improper influence on AEP by Alberta Parks. Aside from the allegations made by Mr. Korzeniowski, there are no documents that support these allegations. Both J.W. and J.C. testified and denied these allegations. The Hearing Panel therefore finds that this particular has been proven on a balance of probabilities.
157. In respect to particular 6 b., the draft letter provided by Mr. Korzeniowski to R.R. by email on July 4, 2016, clearly questioned both the impartiality and the competence of the AEP Director and proposed making these statements in submissions to the Environmental Appeals Board. Once again, there are no documents or evidence produced that support these allegations. The Hearing Panel therefore finds that this particular has been proven on a balance of probabilities.
158. In respect to particular 6 c., Tab 77 of Exhibit 3 is an email from Mr. Korzeniowski with copies to J.W., J.C. and K.M. The email ends with a series of "Conclusions" which contain two statements that Alberta Environment "does not follow the *Water Act* requirements ..." and that "withholding of the Groundwater Diversion Licence under the *Water Act* ... is not permitted under the *Water Act*." The Conclusions also state that "It is clear that Alberta Parks controls the Alberta Environment handling to the Storm Water Management Application by making unrealistic, unnecessary and impossible to implement requirements". These statements were clearly made by Mr. Korzeniowski to AEP staff and no evidence or documents were produced that support these allegations. The Hearing Panel therefore finds that this particular has been proven on a balance of probabilities.
159. In respect to particular 6 d., the Hearing Panel finds that particular d. was not proven on a balance of probabilities. Particular d. alleged that Mr. Korzeniowski encouraged his client to proceed with a legal challenge to the Director's decision on the Storm Drainage Application.
160. The evidence before the Hearing Panel was that on January 14, 2016, Mr. Korzeniowski emailed R.R. and stated "...I think this is the last chance to get the approval. But we have to indicate that a legal challenge is considered. Please comment." The Director made the decision to reject the Client's Storm Drainage Application on April 22, 2016. In the opinion of the Hearing Panel, this statement does not amount to an encouragement for the Client to proceed with a legal challenge to the Director's decision. There was nothing improper in discussing the possibility that the Client might choose to exercise its right to take legal action.



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161. On April 4, 2016, Mr. Korzeniowski emailed the complainants several statements referring to a legal case, and his willingness to prepare submissions for legal proceedings. However, these statements neither encouraged nor discouraged a lawsuit. Rather, in his statements, Mr. Korzeniowski suggested that if the Client were to proceed with a lawsuit, he was willing to be involved in the preparation of the Client's case. In the view of the Hearing Panel, this does not amount to encouragement of a lawsuit. It is not unprofessional to offer to assist a client if the client chooses to commence legal action.
162. In respect to particular 6 e., there are seven particular concerns set out as subsections of particular 6 e. These allegations are based on documents prepared by Mr. Korzeniowski for R.R. on June 21, 2016 (Tab 83 of Exhibit 3) and July 4, 2016 (Tab 84 of Exhibit 3). The Hearing Panel has reviewed these documents and finds that there are statements in these documents which support each of the subsections of particular 6 e. The Hearing Panel therefore finds that particular 6 e. and all of its subsections have been proven on a balance of probabilities.

Submissions of the Investigative Committee on Unprofessional Conduct or Unskilled Practice

163. The Investigative Committee submitted that Mr. Korzeniowski's statements described in the particulars under Charge 6 constituted unprofessional conduct.
164. Investigative Committee Counsel referred to section 4.5.2 of APEGA's Guideline for Ethical Practice:
- Conduct toward all others in the practice of the profession, including other professional engineers and geoscientists should be courteous, fair, and in good faith
165. They also referred to section 4.5.3 in suggesting that a professional member has some obligation to take steps to ensure that their criticism is legitimate:
- Professionals should undertake an assignment to critique the work of another professional engineer or geoscientist that calls into question the professional conduct or technical competence of that individual only with the knowledge of and after communication with that individual such that the reviewer is fully apprised of all relevant information
166. The Investigative Committee acknowledged that some communications from Mr. Korzeniowski to R.R. and to AEP did amount to legitimate criticism. However, the comments specifically in issue under Charge 6 amounted to unprofessional conduct when these comments were made to Mr. Korzeniowski's client and on the behalf of his client. Mr. Korzeniowski did not treat the personnel at AEP with courtesy or fairness.



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167. The Investigative Committee suggested Mr. Korzeniowski's focus on winning arguments led him to make assumptions and statements about AEP personnel that were not warranted. Investigative Committee Counsel indicated that making these types of comments to a client about other members of the profession is conduct that harms or tends to harm the standing of the profession generally and is contrary to Rules of Conduct 3 and 5.

Decision of the Hearing Panel on Unprofessional Conduct or Unskilled Practice

168. In the opinion of the Hearing Panel, Mr. Korzeniowski's proven conduct in relation to Charge 6 and its subsections constitutes unprofessional conduct. Mr. Korzeniowski made serious allegations concerning the competence and integrity of the AEP personnel in the materials he provided to his client. The materials he provided to his client were intended to be used as part of submissions in an Environmental Appeals Board appeal. No evidence was provided to support these serious allegations concerning the AEP staff. In making these comments about the AEP staff, Mr. Korzeniowski breached Rule of Conduct 3 by failing to conduct himself with integrity, honesty, fairness and objectivity. He also breached Rule of Conduct 5 as his comments in his capacity as a professional member did not uphold the honour, dignity and reputation of the profession. These breaches are serious and constitute unprofessional conduct under section 44(1) of the Act.

Decision of the Hearing Panel on Sanctions

169. The parties elected to make written submissions. The Investigative Committee provided their submissions on November 22, 2021. Mr. Korzeniowski provided his written submissions on December 2, 2021. The Hearing Panel met by videoconference on December 16, 2021 to consider the written submissions from the parties.

Written Submissions of the Investigative Committee

170. The Investigative Committee began its written submissions by noting the findings of the Hearing Panel on the merits (the "Merits Decision").
171. Based on this proven unskilled practice and unprofessional conduct, the Investigative Committee requested the Hearing Panel make the following orders pursuant to sections 63 and 64 of the Act:
- a) Mr. Korzeniowski shall receive a reprimand, and the Discipline Committee's written decision shall serve as the reprimand;
 - b) Mr. Korzeniowski shall pay a fine of \$5,000;
 - c) Mr. Korzeniowski shall pay two thirds of the hearing costs;



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- d) The fine and costs ordered in paragraphs (b) and (c) shall be payable within 24 months of the Discipline Committee's written decision on sanction;
 - e) Mr. Korzeniowski shall be suspended until he has provided the Director, Enforcement with evidence of:
 - i. Successful completion of a university-level course in professional ethics, such as Practice of the Engineering Profession (University of Alberta, ENGG 600), at Mr. Korzeniowski's expense; and
 - ii. Successful completion of the National Professional Practice Examination, at Mr. Korzeniowski's expense;
 - f) If Mr. Korzeniowski fails to comply with the requirements of paragraph (e) within 12 months of the Discipline Committee's written decision on sanction, his registration shall be cancelled; and
 - g) This matter and its outcome will be published by APEGA as deemed appropriate and such publication shall name Mr. Korzeniowski.
172. The Investigative Committee noted that Mr. Korzeniowski's lack of engagement in the discipline proceedings made it difficult to craft a remedial sanction. They submitted that in light of the Discipline Committee's findings, there should be significant limitations or at least significant oversight on Mr. Korzeniowski's practice until remedial steps have been taken. The Investigative Committee suggested that if the Discipline Committee does not consider a suspension to be warranted, the following orders would be appropriate alternatives to proposed orders (e) and (f):
- e) Mr. Korzeniowski shall be required to practice under direct, personal supervision of a professional engineer with appropriate qualifications, acceptable to the APEGA Director, Enforcement, until Mr. Korzeniowski has provided the Director, Enforcement with evidence of:
 - i. Successful completion of a university-level course in professional ethics, such as Practice of the Engineering Profession (University of Alberta, ENGG 600), at Mr. Korzeniowski's expense; and
 - ii. Successful completion of the National Professional Practice Examination, at Mr. Korzeniowski's expense;



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- f) If Mr. Korzeniowski fails to comply with the requirements of paragraph (e) within 12 months of the Discipline Committee's written decision on sanction, he shall be suspended until he complies with the requirements of paragraph (e)
173. With respect to publication, the Investigative Committee submitted that publication is the norm with professional disciplinary decisions, as it provides transparency and accountability. Further, the Investigative Committee requested that the Complainants receive a full copy of the Discipline Committee's Merits Decision and this decision on sanctions (the "Sanctions Decision").
174. The Investigative Committee then reviewed the factors listed in *Jaswal v Newfoundland (Medical Board)*⁵, which should be considered by a discipline tribunal in determining an appropriate sanction. The Investigative Committee submitted the following:
- The nature and gravity of the proven allegations – In the Investigative Committee's view, the findings against Mr. Korzeniowski are very serious. He failed to uphold his professional obligations to his Client, to AEP as a decision-maker, to the public, and to other members of the profession. The Investigative Committee reviewed the Hearing Panel's findings regarding Charges 2, 4, 5 and 6, and noted that Mr. Korzeniowski's breaches of the Rules of Conduct were extremely serious and had significant consequences for the Client.
 - The age and experience of the offending member – Senior members of a profession bear a higher professional obligation. Mr. Korzeniowski is a senior member of the profession, and as such, his age and experience are not a mitigating factor for his failures in judgment.
 - Presence or Absence of Prior Complaints or Convictions – APEGA has previously made one finding of unprofessional conduct against Mr. Korzeniowski. On September 7, 2018, Mr. Korzeniowski entered a Recommended Discipline Order in which he admitted that he supplied potable water storage tanks that did not comply with the requirements of AEP's Standards and Guidelines for Construction and Design of Water Works Facilities ("SGCDWWF").

The Investigative Committee submitted that there are similarities between the conduct at issue in the previous Recommended Discipline Order and the case at hand. However, the Investigative Committee also advised that the Hearing Panel should consider that the Recommended Discipline Order was issued after the conduct at issue in these proceedings had already occurred. Mr. Korzeniowski did not have an opportunity to learn from the Recommended Discipline Order before he engaged in the conduct at issue in these proceedings.

⁵1996 CanLII 11630 at paragraph 35 (NL SCTD).



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- Number of Times the Offence Occurred – The proven conduct in Charges 2, 4, and 5 related to a single underlying issue: the deviation from the SGMWWSDS with respect to pipe cover burial depth included in the Wastewater and Waterworks Applications. The Investigative Committee said that this is a slight mitigating factor with respect to these three distinct findings of unprofessional conduct.

In contrast, the Investigative Committee submitted that the proven conduct in Charge 6 occurred over a period of more than a year. Throughout this time, Mr. Korzeniowski blamed AEP personnel and attacked their competence and integrity. The Investigative Committee submitted that the repeated nature of this conduct warranted a more serious sanction.

- The Member's Role in Acknowledging What Has Occurred – There is no evidence that Mr. Korzeniowski recognized and took responsibility for the shortcomings in his approach to the deviations from the pipe cover burial depth requirements in the SGMWWSDS; the Hearing Panel's findings with respect to Charge 6 demonstrate that Mr. Korzeniowski blamed AEP personnel for the difficulties that his Client had in moving the Development forward.

The Investigative Committee then advised that the Hearing Panel should not treat a failure to admit conduct or take responsibility as an aggravating factor, as members are innocent until proven guilty. Mr. Korzeniowski's decision to defend himself and to insist that the Investigative Committee prove the Charges is not an aggravating factor.

- Impact of the Incident on Affected Persons – The impact on Mr. Korzeniowski's Client was serious. The Investigative Committee submitted that his repeated aspersions of AEP personnel negatively impacted the Complainants' perception of the AEP personnel involved.

Mr. Korzeniowski's conduct under Charges 4 and 5 had a permanent impact on the Client's plans for the Development, which required the Client to take on significantly increased responsibilities. Had Mr. Korzeniowski properly communicated to his Client the risks of commencing development prior to an AEP approval, the Client could have avoided or mitigated negative impacts.

The Investigative Committee also submitted that Mr. Korzeniowski's conduct contributed to significant delays. As his Client was unable to open the Development and recoup investment, the Complainants were significantly impacted financially and personally.



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- The Need to Promote Deterrence – There are two types of deterrence. Firstly, specific deterrence suggests that the imposed orders ought to deter the specific member from repeating the conduct in the future. Secondly, general deterrence suggests that imposed orders ought to deter other members of the profession from engaging in similar conduct. The Investigative Committee emphasized that the Hearing Panel’s sanctions orders should demonstrate to Mr. Korzeniowski that his conduct was unacceptable, that he is not entitled to disregard AEP standards or withhold relevant information from decision-makers like AEP, and his ongoing aspersions of AEP personnel in communications to his Client were profoundly unprofessional. The Investigative Committee recommended that a significant fine and either a suspension or practice with supervision requirement would be appropriate for purposes of deterrence.
- The Need to Maintain the Public’s Confidence in the Integrity of the Profession – The Complainants had confidence in Mr. Korzeniowski as professional engineer. When Mr. Korzeniowski acted unprofessionally, he also impugned the reputations of other APEGA members. It is important that members of the public, including the Complainants, have confidence that Mr. Korzeniowski will not let down other clients in similar ways. For this reason, the Investigative Committee submitted that the Hearing Panel should impose a suspension or requirement for supervised practice until Mr. Korzeniowski takes significant remedial steps.

Further, the Investigative Committee considered these proposed orders essential because of the lack of respect Mr. Korzeniowski showed for APEGA’s jurisdiction over the disciplinary proceedings.

- Degree to Which the Conduct was Outside the Range of Permitted Conduct – In the view of the Investigative Committee, Mr. Korzeniowski’s conduct was far outside the range of permitted conduct. They noted that it is fundamental and basic that professional engineers are required to comply with applicable standards, provide relevant information to decision makers, and advise their clients of the same. Further, while there is an important place for valid criticism between professionals, making serious, unsubstantiated allegations to a client about other professions cannot be condoned.
- The Range of Sentence in Similar Cases – The Investigative Committee provided two cases at paragraph 50 of its submissions. The Investigative Committee noted that in both cases, the matter was resolved by admission and agreement, which is a significant mitigating factor. Neither case involved members casting aspersions or blame on other professionals.



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In the latter case, significant limits were placed on the member's practice until remedial steps could be taken. The Investigative Committee submitted that a similar approach is required in this case, because Mr. Korzeniowski chose not to attend the hearing and the Hearing Panel did not have the opportunity to hear directly from him about the events in issue.

175. On the issue of costs, the Investigative Committee provided a summary of the estimated costs of the hearing and advised that the total costs incurred by the Investigative Committee and the Discipline Committee are in the range of \$117,000⁶. This value did not include costs associated with the sanction phase of the hearing. The Investigative Committee requested an order that Mr. Korzeniowski be required to pay two thirds of the hearing costs, which amounted to roughly \$78,000.
176. The Investigative Committee referred to four decisions of the Alberta Court of Appeal dealing with costs in professional discipline matters.⁷ It submitted that these cases established the following principles:
- 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;
 - Requiring a professional to pay all or a portion of hearing and investigation costs is a common part of professional disciplinary sanctions;
 - 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;
 - Costs order, like sanctions for misconduct, must be individualized to the circumstances of the investigated person;
 - Costs orders must be sensitive to a member's financial circumstances;
 - Costs orders delivering a "crushing financial blow" must be scrutinized carefully;

⁶A Statement of Costs was attached to the Investigative Committee's written submissions on sanctions as Appendix A. The Investigative Committee's hearing costs to date were approximately \$80,500 and the Discipline Committee's costs to date were \$36,500.

⁷*Zuk v Alberta Dental Association and College*, 2018 ABCA 270; *Lysons v Alberta Land Surveyors Association*, 2017 ABCA 7; *K.C v College of Physical Therapists of Alberta*, 1999 ABCA 253; *Alsaadi v Alberta College of Pharmacy*, 2021 ABCA 313.



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- A tribunal should consider whether a large costs award may deny “an investigated person a fair chance to dispute allegations of professional misconduct;”
- The Act creates a scheme where only the professional is liable to pay costs, only the Association can recover costs, and the quantum is potentially very high.

177. The Investigative Committee also referred to five factors from the *Jaswal* case that are relevant in determining whether to order payment of costs. Based on these factors, the Investigative Committee submitted the following:

- Seriousness of the charges – the findings against Mr. Korzeniowski are serious.
- Degree of success in resisting the charges – The Hearing Panel found that the factual conduct at issue in Charges 1 and 3 did not amount to unprofessional conduct. However, the factual conduct under Charges 1 and 3 did provide important context for other Charges that were found to constitute unprofessional conduct. In light of these findings, requiring Mr. Korzeniowski to pay two thirds of the hearing costs is reasonable.
- Necessity of calling all the witnesses who gave evidence or for incurring other expenses associated with the hearing – All of the witnesses called were necessary to prove the conduct alleged. Because of Mr. Korzeniowski’s repeated and late adjournment requests, the Investigative Committee was required to re-brief its witnesses, which led to duplicated costs. Further, significant costs were incurred in responding to Mr. Korzeniowski’s adjournment requests. This factor should not support a reduction in hearing costs Mr. Korzeniowski is ordered to pay.
- Whether the outcome could reasonably have been anticipated – The Hearing Panel’s findings on Charges 2, 4, 5 and 6 could have been reasonably anticipated by Mr. Korzeniowski.
- Whether Mr. Korzeniowski Cooperated with the Investigation and Offered to Facilitate Proof by Admissions – Mr. Korzeniowski did not offer to facilitate proof by admissions. His approach to the proceedings increased costs and reflected a lack of respect for the Discipline Committee’s jurisdiction to schedule the hearing and to decide whether it would proceed. At no point did Mr. Korzeniowski provide adequate medical support for his repeated requests to have the hearing postponed, despite clear direction from the Hearing Panel as to what was required. The Investigative Committee further noted that the costs in these proceedings are high but not unreasonable, and it is appropriate for Mr. Korzeniowski to bear a significant portion of those costs.



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- Mr. Korzeniowski's Financial Circumstances and the Degree to which his Financial Position has Been Affected by Other Aspects of Any Penalty Imposed – The Investigative Committee was unaware of Mr. Korzeniowski's financial circumstances but noted that throughout the proceedings he indicated that he was able to work.

Written Submissions of Mr. Korzeniowski on Sanction

178. Mr. Korzeniowski's submissions were wholly focused on rearguing the Merits Decision and the Hearing Panel's related findings. Mr. Korzeniowski also referred to evidence that was not before the Hearing Panel at the merits hearing.
179. Mr. Korzeniowski has a right to appeal to the Appeal Board after the Hearing Panel has issued both its Merits Decision and Sanctions Decision. The Hearing Panel did not consider evidence related to previous findings, or any submissions that re-argue the Merits Decision. The Hearing Panel was not prepared to revisit its findings in the Merits Decision, and only addressed the appropriate sanction given the proven conduct in this case.
180. In his submissions, Mr. Korzeniowski maintained that his interpretation of the SGMWWSDS was correct, that the pipe cover burial depth of 1.2 metres was not a deviation from the SGMWWSDS, and therefore no deviation was needed to be identified on the plans he stamped and submitted. Further, he indicated that AEP ought to have approved the Waterworks and Wastewater Applications, and therefore Mr. Korzeniowski had no obligation to communicate a risk of AEP non-approval to the Client.

Decision of the Hearing Panel on Sanctions and Costs

181. Mr. Korzeniowski's failures to comply with the SGMWWSDS and to identify deviations from those standards as required by AEP did not meet the conduct required of a professional engineer. It is not acceptable conduct for a professional engineer to sign certification sheets confirming that a project meets all requirements when the professional engineer has knowledge to the contrary. As noted in the Merits Decision, the AEP approval process serves a public interest purpose, and a failure to bring deviations to the attention of AEP could have harmful effects on the public.
182. Further, the evidence showed that Mr. Korzeniowski was aware of the deviations from the SGMWWSDS, and that he did not advise his Client that they should wait for an AEP approval before commencing development. This is a very serious finding by the Discipline Committee.



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183. The Hearing Panel recognizes that Mr. Korzeniowski is a self-represented person, and that the hearing process can be technical and complicated to those who are not familiar with it. The Hearing Panel also acknowledges that Mr. Korzeniowski had genuine health concerns that may have affected his ability to participate. However, Mr. Korzeniowski failed to make any efforts to cooperate with the Hearing Panel, Discipline Committee staff, and the Investigative Committee throughout the hearing process. When the Hearing Panel requested information to craft accommodations at the hearing, Mr. Korzeniowski chose to not provide that information. He chose to not comply with the directions of the Hearing Panel regarding information required for adjournments, and elected not to participate when the adjournment was not granted. The Hearing Panel considered this lack of cooperation in determining sanction.
184. The Hearing Panel wants to be clear that its decision to proceed with the hearing in the absence of Mr. Korzeniowski was largely due to concerns about the safety and interests of the public, rather than the sufficiency of any medical evidence provided by Mr. Korzeniowski.
185. The Hearing Panel also notes that Mr. Korzeniowski indicated he continued to practice. Given the fact that Mr. Korzeniowski did not participate in the hearing, and that the Hearing Panel could not assess the degree to which Mr. Korzeniowski may have mitigated any risk caused by his actions, the Hearing Panel considers it appropriate to give substantial weight to the safety and interests of the public in making any orders on sanction.
186. In relation to the factors presented by the Investigative Committee, the Hearing Panel acknowledges that the previous disciplinary matter involving Mr. Korzeniowski occurred after the conduct in issue in these proceedings, and that Mr. Korzeniowski did not have time to learn from his previous conduct. As such, the Hearing Panel assessed this previous conduct as a neutral factor. The Hearing Panel also acknowledges that Charges 2, 4, and 5 arose from a single underlying issue, which is a slightly mitigating factor.
187. However, the impact of Mr. Korzeniowski's conduct was very serious, significantly affected the Client, and constituted serious unskilled practice. The Hearing Panel must send a message to members of the profession and to Mr. Korzeniowski to deter them from engaging in similar conduct. Lastly, the Hearing Panel would note that Mr. Korzeniowski, when presented the opportunity, did not present any evidence or make any written submissions to suggest that the orders sought by the Investigative Committee were unreasonable, or that the orders should be lessened due to any personal circumstances.



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Reprimand

188. The Hearing Panel finds that a reprimand is appropriate to denounce Mr. Korzeniowski's signature of the certification sheets, which confirmed that the Development met all requirements, including the SGMWWSDS, when he had knowledge to the contrary. His conduct constituted a failure to comply with a fundamental practice of engineering. The Hearing Panel finds that a reprimand will assist in deterring similar conduct in the future by Mr. Korzeniowski and by other members of the profession.

Fine

189. The Hearing Panel finds that a fine of \$5,000 is appropriate to further confirm the serious and inappropriate nature of Mr. Korzeniowski's unskilled practice and unprofessional conduct. It will also address Mr. Korzeniowski's lack of appreciation for the importance of complying with prescribed standards and requirements. Fines are punitive measures, so the Hearing Panel is of the view that the fine will deter Mr. Korzeniowski and other members of the profession from engaging in similar conduct and will put them on notice that such conduct has consequences.

Suspension

190. The Hearing Panel finds that a suspension is appropriate in light of the public interest and for purposes of denunciation of Mr. Korzeniowski's conduct. Given the nature of the unprofessional conduct that has been found with respect to the Charges, a suspension is necessary to demonstrate to both Mr. Korzeniowski and the public that the unprofessional conduct and unskilled practice in this case was very serious.
191. The suspension will remain in effect until Mr. Korzeniowski completes educational requirements prescribed by the Hearing Panel. The Hearing Panel acknowledges that a suspension is a very serious sanction, and it is intended to send a strong message the Mr. Korzeniowski, other members of the profession, and the public that conduct of this nature is not acceptable and will not be tolerated.

Required Courses

192. The Hearing Panel finds that it is appropriate that Mr. Korzeniowski be required to complete a course in professional ethics, such as Practice of the Engineering Profession (University of Alberta, ENGG 600), and the National Professional Practice Examination within 12 months of the date of this Sanctions Decision.



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193. Mr. Korzeniowski's failure to comply with the requirements described in the SGMWWSDS and his failure to notify his client of inherent risks of proceeding without an approval suggests a lack of understanding of his obligations as a professional engineer. The requirement that Mr. Korzeniowski complete this course serves educative and remedial purposes and protects the public by ensuring he has the appropriate knowledge of his ethical obligations.

Costs

194. The Hearing Panel gave careful consideration to the costs in this matter, to date, being approximately \$117,000. As demonstrated by the Court of Appeal cases cited by the Investigative Committee, requiring a professional member to pay all or a portion of hearing and investigation costs is a common part of professional disciplinary sanctions, and allows APEGA to recoup some of the expenses incurred in these proceedings. Further, the investigation and the hearing in this matter arose because of Mr. Korzeniowski's conduct. As a result, he should be responsible for a portion of the costs.
195. The Hearing Panel observed that the Investigative Committee did not prove two of the six Charges, which supported a lower costs order. However, the four Charges that were found to be proven and to constitute unskilled practice and unprofessional conduct were very serious. The severity of the Charges supports an order that Mr. Korzeniowski be responsible for a significant portion of the costs.
196. Mr. Korzeniowski did not make any submissions or present any evidence regarding his financial position, or why the amount of costs sought by the Investigative Committee should be lesser. As such, the Hearing Panel did not have any evidence to suggest that the proposed costs order would deliver a "crushing financial blow" to Mr. Korzeniowski.
197. Taking into consideration the above factors, the Hearing Panel finds that an order requiring Mr. Korzeniowski to pay \$78,000 of the costs of the hearing is fair, appropriate and reasonable in the circumstances.

Publication of the Decision

198. The Hearing Panel notes that Mr. Korzeniowski made no submissions with respect to publication of the Hearing Panel's decisions. It accepts the Investigative Committee's submission that publication of decisions in professional disciplinary matters is the norm.



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199. Accordingly, the Hearing Panel finds that its decisions should be available to APEGA members and members of the public in a manner that identifies Mr. Korzeniowski. Publication is important to protect the public interest. It is also important to make clear to the public and the profession that professional engineers and geoscientists must comply with the requirements of applicable standards and guidelines and must notify their client if they believe that the client is proceeding in contravention of the law.
200. The Hearing Panel was cognizant that the Complainants have waited several years for this matter to be resolved and that they wished to receive a full copy of the Hearing Panel's Merits Decision and Sanctions Decision. In the interest of transparency, APEGA staff will provide the Complainants with a copy of the decision posted to APEGA's website as per usual process, and if they wish for the full decision, they may contact the Director, Enforcement and request a copy of the full Merits Decision and the Sanctions Decision.

Conclusion

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

- a) Mr. Korzeniowski shall receive a reprimand, and the Discipline Committee's written decision shall serve as the reprimand;
- b) Mr. Korzeniowski shall pay a fine of \$5,000;
- c) Mr. Korzeniowski shall pay hearing costs in the amount of \$78,000;
- d) The fine and costs ordered in paragraphs (b) and (c) shall be payable within 24 months of the Discipline Committee's written decision on sanction. Mr. Korzeniowski may negotiate a payment plan with the Director, Enforcement, that will provide for payment within 24 months of this written decision on sanction.

If Mr. Korzeniowski fails to pay the fine and costs in paragraphs (b) and (c) within 24 months of this written decision on sanction, he shall be suspended until he has paid the fine and costs in full. Further, if Mr. Korzeniowski has not paid the fine and costs in full within 36 months of this written decision on sanction, his registration with APEGA shall be cancelled.

- e) Mr. Korzeniowski shall be suspended until he has provided the Director, Enforcement with evidence of:



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- i. Successful completion of a university-level course in professional ethics, such as Practice of the Engineering Profession (University of Alberta, ENGG 600), at Mr. Korzeniowski's expense; and
 - ii. Successful completion of the National Professional Practice Examination, at Mr. Korzeniowski's expense;
- f) If Mr. Korzeniowski fails to comply with the requirements of paragraph (e) within 12 months of the Discipline Committee's written decision on sanction, his registration shall be cancelled; and
- g) APEGA will publish a written summary of this decision in a medium deemed appropriate by the Director, Enforcement and such publication shall name Mr. Korzeniowski.

Signed,

CHRIS GOULARD, *P.Eng.*

Panel Chair, APEGA Discipline Committee

DOUG COX, *P.Eng.*

Panel Member, APEGA Discipline Committee

DR. DEAN MULLIN, *PhD., MBA, P.Eng.*

Panel Member, APEGA Discipline Committee

CHRISTINE NEFF, *P.Eng.*

Panel Member, APEGA Discipline Committee



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Addendum to the Sanction Decision

1. On October 18, 2021, the Hearing Panel rendered its decision and found that Mr. Korzeniowski's conduct amounted to unprofessional conduct or unskilled practice. On February 16, 2022, the Hearing Panel rendered its decision on sanctions. At paragraph 37(d) of its decision on sanctions, the Hearing Panel made the following order:
 - d) The fine and costs ordered in paragraphs (b) and (c) shall be payable within 24 months of the Discipline Committee's written decision on sanction. Mr. Korzeniowski may negotiate a payment plan with the Director, Enforcement, that will provide for payment within 24 months of this written decision on sanction.

If Mr. Korzeniowski fails to pay the fine and costs in paragraphs (b) and (c) within 24 months of this written decision on sanction, he shall be suspended until he has paid the fine and costs in full. Further, if Mr. Korzeniowski has not paid the fine and costs in full within 36 months of this written decision on sanction, his registration with APEGA shall be cancelled. [Emphasis added].

2. Following the Appeal Board's decision dated November 18, 2022, the Hearing Panel's decision is varied at paragraph 37(d). Paragraph 37(d) will now provide:
 - d) The fine and costs ordered in paragraphs (b) and (c) shall be payable within 24 months of the Discipline Committee's written decision on sanction. Mr. Korzeniowski may negotiate a payment plan with the Director, Enforcement, that will provide for payment within 24 months of this written decision on sanction.

If Mr. Korzeniowski fails to pay the fine and costs in paragraphs (b) and (c) within 24 months of this written decision on sanction, he shall be suspended until he has paid the fine and costs in full. [Emphasis added].

Signed,

CHRIS GOULARD, P.Eng.
Panel Chair, APEGA Discipline Committee

DOUG COX, P.Eng.
Panel Member, APEGA Discipline Committee

CHRISTINE NEFF, P.Eng.
Panel Member, APEGA Discipline Committee

MURIEL DUNNIGAN
Public Panel Member, APEGA Discipline Committee