



APEGA Appeal Board Decision

The Appeal Board's purpose is to provide registrants and the public full protection of their statutory right of appeal and right to natural justice, in accordance with the [Engineering and Geoscience Professions Act](#), through review of decisions and actions by the Discipline Committee, Practice Review Board, Investigative Committee or Board of Examiners. For more information, please visit www.apega.ca/enforcement/discipline-decisions.

Date of Hearing: May 20, 2022

Date of Decision: July 6, 2022

APEGA Appeal Case Number: 19-016-FH

**IN THE MATTER OF the Engineering and Geoscience Professions Act and THE APPEAL
by Mr. Ameer Bakheet, from a decision of the APEGA Discipline Committee in the matter
of conduct of Mr. Ameer Bakheet.**

HEARING PANEL:

Heather Kennedy, P.Eng.	(Panel Chair)
Lisa Dechaine, P.Eng.	(Panel Member)
Mark Ewanishin, P.Eng.	(Panel Member)
Larry Staples, P.Eng.	(Panel Member)
Harold Neth	(Public Member)

INDEPENDENT LEGAL COUNSEL FOR THE APPEAL BOARD:

Natalie Tymchuk, Emery Jamieson LLP
Jas Sadhra, Emery Jamieson LLP

APPEARANCES:

Ameer Bakheet, acting on his own behalf
Kimberly Precht, Field Law LLP, Legal Counsel for Investigative Committee
Brian Anderson, APEGA Staff Investigator

Summary

The Appeal Board of the Association of Professional Engineers and Geoscientists of Alberta (the Appeal Board) (APEGA) has considered this appeal and, pursuant to section 69(3)(b) of the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (the Act), confirms the decisions of the Discipline Committee (DC) for the reasons specified in this decision. The appeal is therefore dismissed.



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Background

- [1] This is an appeal by Mr. Ameer Bakheet, pursuant to section 67 of the Act. Mr. Bakheet has appealed the findings and sanctions levied against him by the DC.
- [2] In March of 2018, an investigation was opened by the Investigative Committee (IC) regarding the conduct of Mr. Bakheet and certain tall wall designs with which he was involved. The IC was made aware of Mr. Bakheet's designs through the investigation of another matter involving Mr. Bakheet's employer, (Company A), and its owner, (Member A).

Investigation

- [3] In April 2018, a Notification of Investigation was issued to Mr. Bakheet requesting further information about his role at Company A, the scope of his work on a specific project, a letter he had authenticated and, his experience in tall wall design. Later, the IC specifically requested examples of tall wall designs from Mr. Bakheet which were not done for Company A. Mr. Bakheet responded indicating that he was unable to provide any examples as he was previously employed in an inspector role which did not involve design. However, he provided a summary of the various documents he read related to wood design prior to his employment with Company A.
- [4] In June 2018, Mr. Bakheet was interviewed by an APEGA Staff Investigator and Panel Chair. During the interview, he provided information regarding his education and employment background along with specifics about the type of work he completed with Member A and Company A.
- [5] Due to the ongoing investigation of Company A and Member A, there was an interim Responsible Member appointed for Company A. The interim Responsible Member reviewed Mr. Bakheet's work and identified various issues with his tall wall designs.
- [6] In August 2019, the IC Panel determined that it had sufficient evidence of unskilled practice and/or unprofessional conduct and the matter was referred to the DC for a formal hearing.

Disciplinary Committee Hearing

- [7] The DC issued a Notice of Discipline Hearing to Mr. Bakheet in January 2021. The hearing was scheduled for February 10 and 11, 2021. The following amended charges were before the DC:



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- [a] On or between January 1 and June 5, 2018, Ameer Bakheet (“Bakheet”) engaged in unskilled practice by authenticating professional documents providing generic repair detail advice and options for load bearing walls that had not been constructed or damaged, particulars of such professional documents include the following:
- a. “Interior Damaged Load Bearing Walls Repair Detail” letter for [Address A]
Authentication: February 6, 2018
- [b] On or between January 1 and June 5, 2018, Bakheet engaged in unskilled practice by authenticating professional documents without appropriate understanding of the contents of the documents, particulars of such professional documents include the following:
- [Particulars a. – b. and e. – s. have not been reproduced]
- [c] On or between January 1 and June 5, 2018, Bakheet engaged in unskilled practice in the design of tall walls exceeding 11’6” in height, including by doing one or more of failing to include the correct height of the walls, failing to include any or appropriate connection details to columns, headers, and sill plates, and failing to include any or appropriate step down foundation details, particulars of such unskilled design include the following:
- [Particulars a. – d. have not been reproduced]
- [d] On or between January 1 and June 5, 2018, Bakheet engaged in unskilled practice in the design of tall walls exceeding 11’6” in height by incorrectly stating that stairs provide lateral support, particulars of such unskilled designs including the following:
- [Particulars a. – k. have not been reproduced]
- [8] The IC alleged that this conduct constituted unprofessional conduct as set out in section 44(1) of the Act, and/or that it contravened section 32.1 of the Bylaws and/or one or more of Rules of Conduct 1 through 5 of APEGA’s *Code of Ethics*.
- [9] The hearing of this matter before the DC started on February 10, 2021. Mr. Bakheet appeared without legal counsel and the DC confirmed with Mr. Bakheet that he was ready to proceed without legal representation.
- [10] In addition to the IC, the DC also heard from three witnesses during the hearing. These three witnesses were an APEGA Staff Investigator, Mr. Bakheet and an expert witness. The hearing concluded on February 11, 2021.



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Discipline Committee Decisions

- [11] After the hearing, the DC issued a decision dated July 16, 2021 (the Conduct Decision) where it found that Charges 2, 3 and 4 were proven on a balance of probabilities and, constituted unprofessional conduct and unskilled practice. Although the DC found that Mr. Bakheet's conduct related to Charge 1 was also factually proven, the DC concluded that it did not amount to unprofessional conduct or unskilled practice.
- [12] The Conduct Decision also outlined that the DC was prepared to receive submissions on sanctions and, requested the parties to provide input regarding whether the submissions should be provided in written form or verbally at another hearing.
- [13] In response to the Conduct Decision, the parties agreed to provide written submissions regarding sanctions. The IC and Mr. Bakheet both provided submissions. Mr. Bakheet's submission also addressed concerns or questions that he had about the hearing and specifically the testimony of the IC's expert witness. The IC responded briefly requesting the DC to disregard Mr. Bakheet's submissions which challenged the allegations against him or the findings of the DC. Mr. Bakheet was reminded of his right to appeal once the DC had completed its process. The IC also indicated that they did not object to the DC considering Mr. Bakheet's representations about his financial capacity as it related to sanctions and costs.
- [14] The DC issued a decision dated November 10, 2021 (the Sanctions Decision), which included the following orders:
- a) Mr. Bakheet shall receive a reprimand for his conduct and the Hearing Panel's written decisions shall serve as the reprimand;
 - b) Mr. Bakheet shall pay a fine of \$2,000;
 - c) Mr. Bakheet shall pay a portion of the costs of the hearing in the amount of \$10,000;
 - d) The fine and costs ordered in paragraphs (b) and (c) shall be payable within one year of the Discipline Committee's written decision on sanction;
 - e) Mr. Bakheet will not be eligible to apply for reinstatement as an APEGA member until he has paid the fine and costs ordered in paragraphs (b) and (c);



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- f) If Mr. Bakheet is reinstated as an APEGA member, he will be restricted from the practice of structural engineering with respect to any construction subject to Part 9 of the National Building Code of Canada, until he has successfully completed an engineering course in wood design at a university or technical institute, such as Steel and Wood Design (NAIT CIVL 2310) or Structural Wood Design (SAIT CIVL 358), to the satisfaction of the Director, Enforcement. With respect to this order:
 - i. Mr. Bakheet shall be responsible for registering for this course and for any fees and costs associated with it;
 - ii. Upon successful completion of the course, Mr. Bakheet shall provide proof of same to the Director, Enforcement;
 - iii. Mr. Bakheet shall not practice structural engineering with respect to any construction subject to Part 9 of the National Building Code of Canada until the restriction on his practice has been lifted.

- g) Mr. Bakheet shall present evidence that he has successfully completed a course in professional ethics, such as Practice of the Engineering Profession (University of Alberta, ENGG 600) to the Director, Enforcement, within 12 months of the date of his reinstatement as an APEGA Member. Mr. Bakheet shall be responsible for registering for this course and any fees and costs associated with it. If Mr. Bakheet fails to provide the required evidence to the Director, Enforcement, he will be suspended until the course is successfully completed.

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



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Appeal

- [15] Mr. Bakheet initially indicated his intent to appeal on August 25, 2021 after receiving the DC's Conduct Decision. At that time, APEGA responded to Mr. Bakheet that his request for appeal could not be accepted until the DC had completed its process.
- [16] After receiving the DC's Sanctions Decision on November 16, 2021, Mr. Bakheet submitted his request for appeal on December 16, 2021, noting that he was appealing both the Conduct Decision and the Sanctions Decision. In his appeal request, he raised the following grounds of appeal:
- [a] The DC relied heavily on the report provided by the IC's expert witness and did not consider Mr. Bakheet's arguments. This was despite the expert witness making errors or incorrect assumptions related to forces and how wood buildings are impacted by wind loads.
 - [b] Specific to allegation #3, the expert witness made incorrect calculations and or assumptions related to wind load and that led him to incorrectly state that the connections were inadequate.
 - [c] Specific to allegation #4, the expert witness incorrectly assumed that the stairs supported the wind load and was confused about purpose of lateral bracing.
 - [d] The IC's attitude was 'strange' and it held design documents submitted by Mr. Bakheet without "passing them on to technical people to review".
- [17] In his Request for Appeal, Mr. Bakheet did not specifically mention that he was disputing the Sanctions Decision. However, based on the matters addressed by Mr. Bakheet in the course of this appeal, the Appeal Board has understood that he is appealing both the Conduct and Sanctions Decisions.
- [18] The IC did not appeal the DC's decisions.
- [19] An appeal hearing was held via videoconference by a five-person panel of the Appeal Board on Friday, May 20, 2022.



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Preliminary Matter - New Evidence

- [20] Early in the appeal hearing, Mr. Bakheet indicated that he had drawn three sketches which he intended to refer to during his submissions for the Appeal Board to consider. The Appeal Board Panel Chair adjourned the hearing briefly to allow the IC's legal counsel and representative an opportunity to review the sketches and provide the IC's position on whether they should be considered by the Appeal Board. After reviewing the sketches, IC legal counsel submitted that the sketches were new, not previously provided to the IC, and that they should not be considered due to a lack of diligence on Mr. Bakheet's part for not providing them earlier. The IC's legal counsel also cited the established test for the admission of fresh evidence on appeal outlined in *Palmer v. The Queen*, [1980] 1. S.C.R. 759., and recently applied by the Alberta Court of Appeal in *Essa v APEGA*, 2021 ABCA 116, articulated as follows
- [a] the evidence should generally not be admitted, if by due diligence, it could have been adduced at the hearing;
 - [b] the evidence must bear upon a decisive or potentially decisive issue in the hearing;
 - [c] the evidence must be credible in the sense that it is reasonably capable of belief; and
 - [d] the evidence, if believed, could reasonably, when taken with the other evidence, be expected to have affected the result.
- [21] Mr. Bakheet was also invited to provide submissions as to why the Appeal Board should accept and consider such new evidence. Mr. Bakheet submitted that the sketches are a visual aid intended to help the Appeal Board understand his verbal submissions regarding the technical matters and that 'a picture is worth a thousand words'.
- [22] The Appeal Board adjourned to deliberate. Upon its return, the Appeal Board informed the parties that it would allow Mr. Bakheet to refer to the sketches during his submissions but that it would decide what weight would be given to the sketches, if at all, at the conclusion of the appeal hearing.
- [23] The Appeal Board continued with the appeal hearing. Over the course of the appeal hearing, it became apparent that the sketches submitted by Mr. Bakheet were essentially visual aids which assisted him in explaining his arguments regarding his designs and the opinion of the expert witness, rather than new evidence.



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Standard of Review

- [24] As submitted by the IC, the appropriate standard of review in a professional conduct appeal is reasonableness, for the grounds of appeal relating to the DC's findings on conduct and its decision on sanctions. In such a review, the Appeal Board must determine whether the DC's decisions:
- [a] are justifiable, transparent and intelligible,
 - [b] fall within a range of possible, acceptable, legally defensible outcomes; and
 - [c] demonstrate an apparent line of analysis as to how the facts and the law were applied.
- [25] For issues of procedural fairness, instead of applying a standard of review, the Appeal Board must determine whether the disciplinary proceedings were fair.

Decision and Order

- [26] On an appeal under section 67 of the Act, the Appeal Board can:
- [a] make any findings relating to the conduct of the investigated person that it thinks ought to have been made by the DC,
 - [b] quash, confirm or vary the finding or order of the DC or substitute or make a finding or order of its own; or
 - [c] refer the matter back to the DC for further consideration.
- [27] In addition, the Appeal Board may order the investigated person to pay all or part of the costs of an appeal.
- [28] After reviewing the record that was before the DC, the decisions issued by the DC, and the submissions made by the parties in this appeal, the Appeal Board confirms the DC's findings that Mr. Bakheet's conduct relating to charges 2, 3 and 4 constituted unprofessional conduct, as set out in section 44(1) of the EGP Act.
- [29] The Appeal Board further confirms the orders made by the DC in its Sanctions Decision in their entirety.



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Reasons

Procedural Fairness

- [30] Mr. Bakheet argued that that the DC hearing was unfair because the DC appeared to prefer the expert witness's evidence over his evidence, which Mr. Bakheet claimed should not have occurred since there was only one expert witness and he had erred in his calculations. Further, Mr. Bakheet submitted that it was unfair that the expert witness did not have an opportunity to review Mr. Bakheet's written response (which included several pages of calculations) to the expert's report well in advance of Mr. Bakheet's cross-examination of the expert and, had the expert reviewed Mr. Bakheet's response submission and calculations before the hearing, he may have been more amenable to answering Mr. Bakheet's in a more favourable manner.
- [31] The Appeal Board has reviewed the transcripts from the DC hearing and finds that the hearing was procedurally fair. Firstly, Mr. Bakheet was given an opportunity to call his own witnesses, he chose not to call anyone else with expert technical knowledge in the matters at issue. Secondly, Mr. Bakheet was given a sufficient opportunity and in fact did cross-examine the expert witness on tall wall designs and related technical matters. The expert witness provided evidence that suggested that even with the shorter timeline, he had the time needed and he had considered Mr. Bakheet's written response and calculations.
- [32] The Appeal Board does not find that the DC unfairly relied on the expert witness's evidence. Expert witnesses may be called on to provide technical opinion and information to assist the decision-making process. Here, Mr. Bakheet, was provided the expert witness's resume and credentials and was given an opportunity to test his qualifications. Mr. Bakheet agreed that the witness was an expert and accepted his qualifications as an expert in tall wall design with no objection. Once accepted as an expert, the expert witness provided his opinion evidence which included evidence of what he thought, believed or inferred with respect to the facts of this case which were within the scope of his expertise. The DC was entitled to rely upon this expert evidence in making its decision.
- [33] Mr. Bakheet also alleged that IC legal counsel acted unfairly by not providing the expert witness a copy of a written response to the expert report prepared by Mr. Bakheet before the DC hearing date. The Appeal Board notes that Mr. Bakheet was provided the expert report around January 15, 2021. Mr. Bakheet provided his written response a day or two before the hearing. Arguably, there was no obligation for the IC's legal counsel to provide the expert witness with Mr. Bakheet's response before the hearing. In any event, during the DC hearing, the expert witness was given time to review Mr. Bakheet's response and calculations so that he could answer Mr. Bakheet's questions with more familiarity and Mr. Bakheet was able to cross-examine the expert witness with reference to the response



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and calculations. At no point did Mr. Bakheet request an adjournment or additional time to conduct his cross-examination. Ultimately, as explained above, the Appeal Board finds that it was fair.

- [34] During this appeal, Mr. Bakheet has taken a further opportunity to raise the matters noted in the written response and calculations that he had put to the expert witness during the DC hearing, which the Appeal Board has considered.

Conduct Decision

- [35] The DC found that Mr. Bakheet's conduct regarding Charge 2 constituted unprofessional conduct, considering that he authenticated documents, namely letters pertaining to exterior wall cladding systems, without understanding their contents and when the letters required no structural engineering input. The Appeal Board concludes that the DC decision regarding Charge 2 was reasonable. The DC appropriately considered the evidence before it. Even in the course of this appeal, Mr. Bakheet has continued to demonstrate a lack of understanding regarding the potential negative effects of authenticating documents that do not require authentication. A professional engineer shall only authenticate documents which they have thoroughly reviewed, or directly supervised the engineering work and is accepting professional responsibility for the engineering involved in the document.
- [36] Mr. Bakheet's submissions in this appeal focused on Member A having requested that he authenticate certain letters. Mr. Bakheet still has not shown an appreciation for the risk to the public that could occur when a professional engineer authenticates a document to "make it look more official" while the engineer does not understand its contents. The DC was reasonably able to conclude that Mr. Bakheet did not realize the importance and intent of authentication. Authentication conveys a message that the engineer has accepted professional responsibility for the engineering contents of the document and agrees with it. This was not the case here. Mr. Bakheet needs to realize the intent of authentication and adjust his practice accordingly.
- [37] The DC found that Mr. Bakheet's conduct relating to Charge 3 constituted unprofessional conduct and unskilled practice because the drawings were missing important information such as connection details, the correct height of the tall walls and the step foundational details. The DC further determined that Mr. Bakheet's failure to ensure and provide the necessary information on his drawings demonstrated a lack of judgment and understanding of the profession. The Appeal Board concludes that the DC decision regarding Charge 3 is reasonable. The evidence before the DC demonstrated that Mr. Bakheet did not appropriately judge the level of detail and information needed to ensure that his designs were safely implemented and able to perform as intended.



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- [38] Having sound judgment and focusing on essential details are key elements to a skilled engineering practice. Mr. Bakheet has focused his appeal on the expert witness's testimony pertaining to technical matters and alleged errors in the expert's assumptions which, even if Mr. Bakheet was correct, would have little bearing on the charges against him. In reference to the sketches submitted during the appeal hearing, Mr. Bakheet repeated various arguments before the Appeal Board which he had argued before the DC regarding the expert witness's responses to questions about the soundness of the tall wall designs. These arguments miss the point of the charges and the concerns with Mr. Bakheet's practice failures.
- [39] Mr. Bakheet has argued, and the IC has agreed, that there was no evidence of significant structural design flaws in his tall wall designs. However, Mr. Bakheet has not addressed the DC's conclusion that his designs lacked certain required details. As noted by the DC, a wall design may fall under the scope of a building code. In such cases, there is a prescribed design which has been established as standard. However, if an engineer is preparing an alternate design, the engineer must demonstrate or prove that the alternate design is equal or superior to the prescribed design. The Appeal Board accepts that an alternate design could be as effective as the prescribed design. However, both types of designs must contain enough information to demonstrate how the design will or will not work in a certain situation and that it can be constructed.
- [40] Mr. Bakheet's designs did not include sufficient detail to fully understand how the designs would work. During the DC hearing, he agreed that some of the detail references and connection details in his tall wall designs were improper, inaccurate or insufficient. The DC reasonably found that Mr. Bakheet's designs lacked clarity. For instance, how the connection was to be executed and the connection details were not sufficiently defined for the builder or supplier.
- [41] It also appears from the information before the Appeal Board that Mr. Bakheet watched several educational videos on wood design and reviewed his designs in more detail and provided supplemental information for his designs only after he faced disciplinary proceedings. In other words, he worked backwards to demonstrate that his designs would not necessarily fail after the issues with his work were raised. An engineer is expected to put public safety as paramount in their work, not just for the purposes of defending against disciplinary proceedings. The assumptions, references, calculations and technical details that Mr. Bakheet was able to cite during the investigative and disciplinary hearing process should have been accurately and clearly detailed in his design packages to ensure the wall would be built as per the intended design.



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- [42] Charge 4 relates to a note that appeared on designs authenticated by Mr. Bakheet, suggesting that stairs provided lateral support to the walls. In his arguments before the Appeal Board, Mr. Bakheet again took issue with the expert witness's opinion regarding the capacity of the stairs to laterally brace the tall wall. However, these arguments did not address the basis for the DC's finding regarding Charge 4. The DC found that the note in the designs was inaccurate, considering that Mr. Bakheet confirmed he had designed the walls so they would not require support from the stairs. Mr. Bakheet's evidence before the DC was that he left the note in the designs because another engineer had asked him not to remove it.
- [43] The DC found that Mr. Bakheet demonstrated unprofessional conduct and unskilled practice by authenticating the designs with the notation despite his knowledge that the walls did not rely on the stairs for lateral support. The Appeal Board finds this conclusion was reasonable. Further in this regard, the DC observed that the notation could have significant implications for future construction as anyone who would want to modify the structure would believe that the stairs provided laterals support for the wall.
- [44] Again, when an engineer authenticates a drawing or document, the engineer is conveying that they personally understand it and agree with it. As the engineer who authenticated the tall wall designs, Mr. Bakheet was responsible to ensure they contained sufficient and accurate details of how a builder was meant to implement his engineering advice, including in regard to his notations, regardless of whether other engineers wanted the inaccurate notations to remain in the design.
- [45] For the reasons noted above, the Appeal Board concludes that the DC's Conduct Decision was reasonable.

Sanctions Decision

- [46] Mr. Bakheet focused his appeal arguments on the issues surrounding the Conduct Decision and provided little explanation of his appeal of the sanctions that the DC had issued. However, during the appeal hearing, Mr. Bakheet confirmed that he was appealing sanctions c), e), f) and g) of the Sanctions Decision. Mr. Bakheet's appeal submissions did not separately address his reasons for appealing each sanction but he did mention that his financial situation would make paying costs difficult.
- [47] The record indicates that Mr. Bakheet was invited by the DC to address the sanctions that the IC had requested and the Appeal Board is satisfied that Mr. Bakheet was given a reasonable opportunity to respond regarding sanctions.



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- [48] The Appeal Board concludes that the DC's Sanctions Decision is reasonable and proportionate considering the unskilled practice and unprofessional conduct displayed by Mr. Bakheet. The DC clearly noted in the Sanctions Decision how it took Mr. Bakheet's financial circumstances into consideration. The Appeal Board further finds that Mr. Bakheet has not raised any issue which would warrant any variation of the sanctions ordered.
- [49] The Appeal Board would like to address order f) of the Sanctions Decision, which specifically restricts Mr. Bakheet from practicing structural engineering within Part 9 of the National Building Code of Canada until he fulfills the order. The Appeal Board particularly agrees with the DC that Mr. Bakheet requires additional formal training in wood design before he can practice further in this area. The Appeal Board also notes the importance of Mr. Bakheet completing a course in professional ethics as a condition of reinstatement pursuant to order g) of the Sanctions Decision, to assist him in understanding the ethical dimensions of his professional responsibilities.
- [50] The Appeal Board will publish its decision in a manner that identifies Mr. Bakheet.
- [51] The Appeal Board has not yet ordered costs with respect to this appeal and reserves the jurisdiction to do so. If the IC wishes to make submissions on costs of this appeal, written submissions must be submitted to the Appeal Board by July 20, 2022. When submissions are received from the IC, they will be provided to Mr. Bakheet for his review and response.

Dated this 6th day of July 2022

On behalf of the Hearing Panel of the APEGA Appeal Board

Heather Kennedy, P.Eng.
Chair, Appeal Board Panel

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Mr. Jay Nagendran, P.Eng., Registrar and CEO
Mr. John Corriveau, P.Eng., Deputy Registrar and CRO
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