



APEGA Discipline Committee Decision

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Date of Hearing: March 5, July 12 and 13, 2018

Date of Decision: October 18, 2018

APEGA Discipline Case Number: 17-008-FH

**IN THE MATTER OF A HEARING OF THE DISCIPLINE COMMITTEE OF THE
ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS
OF ALBERTA**

Pursuant to the Engineering and Geoscience Professions Act,
being Chapter E-11 of the Revised Statutes of Alberta 2000
Regarding the Conduct of MR. RICHARD BALLIANT, P.ENG.
and BAL-COMP ENGINEERING LTD.

INTRODUCTION

The first day of the Discipline Committee hearing took place on March 5, 2018 in the Morguard Boardroom, Scotia Place Tower 1. On July 12 and 13, 2018 the Discipline Committee reconvened for the hearing in the Morguard Conference Room “A” on the lower concourse level of Scotia Place, 10060 Jasper Avenue NW in Edmonton, Alberta.

Appearances

The members of the Hearing Panel of the Discipline Committee (“the Hearing Panel”) of the Association of Professional Engineers and Geoscientists of Alberta (“APEGA”):

Ms. Wanda Goulden, P.Eng., P. Geo., Discipline Committee Panel Chair
Mr. Farhan Hanif, P. Eng., Discipline Committee Panel Member
Mr. John Nicoll, P.Eng., Discipline Committee Panel Member

Ms. Katrina Haymond and Ms. Kimberly Precht, Legal Counsel for the Investigative Committee of APEGA (“the Investigative Committee”)



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Mr. Garth Jespersen, APEGA Staff Investigator

Mr. Richard Balliant, P. Eng.

Mr. Jay Galt, Agent for Mr. Balliant (attended only on July 12 and 13, 2018)

Ms. Jessica Vandenberghe, P. Eng., M. Sc., APEGA Director of Enforcement (attended only on March 5, 2018)

Ms. Erum Afsar, P.Eng., APEGA Director of Enforcement (attended only on July 12 and 13, 2018)

Ms. Fiona Vance, Independent Legal Counsel for the Hearing Panel of the APEGA Discipline Committee (attended only on March 5, 2018)

Mr. David Jardine and Ms. Aman Athwal, Independent Legal Counsel for the Hearing Panel of the APEGA Discipline Committee (attended only on July 12 and 13, 2018)

Opening of the Hearing - March 5, 2018

1. The parties advised the Hearing Panel that there was no objection to the constitution of the Hearing Panel and no objections of a jurisdictional nature.
2. Mr. Balliant requested an adjournment of the hearing. The Hearing Panel heard from Mr. Balliant as to the reasons for his adjournment request and the Investigative Committee's position on Mr. Balliant's adjournment request.
3. Mr. Balliant explained that he was no longer represented by legal counsel (as of that morning), he was not prepared to proceed with the hearing, and he believed he could get new legal counsel within 30 days.
4. Ms. Haymond requested that two documents be entered for the record as exhibits. The first document was correspondence between counsel for the Investigative Committee and Mr. Curtis Long of Major Case Law, who was Mr. Balliant's former legal counsel (Exhibit 1). The second document was a letter dated March 5, 2018 from Mr. Long to Charlene Scharf at APEGA (Exhibit 2).
5. Ms. Haymond submitted that she was surprised by the adjournment request and had not heard any compelling reason from Mr. Balliant as to why an adjournment should be granted. The Investigative Committee opposed the request for an adjournment and asked that the hearing proceed.
6. The Hearing Panel considered whether proceeding with the hearing would create any breach of fairness to Mr. Balliant and balanced this concern against the need for the



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hearing to proceed in an efficient manner. The Hearing Panel noted that this was Mr. Balliant's first request for an adjournment and that Mr. Balliant's former legal counsel Mr. Long had written a letter the morning of the hearing stating that he was "uninstructed" and not prepared to proceed.

It also noted that Mr. Balliant had a right to be represented by legal counsel and would not have the opportunity to retain new legal counsel if the hearing proceeded immediately. For these reasons, the Hearing Panel granted the adjournment. However, the Hearing Panel directed Mr. Balliant to inform the Discipline Committee Staff by the end of the day on April 11, 2018 of the name of his new legal counsel and informed Mr. Balliant that if he did not provide the name of his new legal counsel by that time, the Discipline Committee Staff would proceed with scheduling a new hearing date. Mr. Balliant said he understood.

7. The hearing was adjourned. Mr. Balliant did not provide the name of new legal counsel by April 11, 2018 and the hearing was then scheduled for July 12 and 13, 2018.

Opening of the Hearing – July 12, 2018

Preliminary Matters

8. The parties advised the Hearing Panel that there was no objection to the constitution of the Hearing Panel and no objections of a jurisdictional nature.
9. A Binder of the Investigative Committee's documents, including a Document Index and 82 Tabs of documents was entered by consent as Exhibit 3.
10. The transcripts from the Appeal Board hearing held on January 20, 2017 were entered as Exhibit 4.

Opening Statement by Ms. Haymond

11. Ms. Haymond submitted that this hearing arises from issues concerning Mr. Balliant that were brought to the attention of the Investigative Committee as a result of complaints submitted by an individual ("the complainant"), a former employee of Bal-Comp Engineering Ltd., in May 2011.
12. The complaint (Tab 2, Exhibit 3) raised two key concerns with Mr. Balliant and Bal-Comp Engineering Ltd.. First, that there was an alleged failure to pay wages that were owing to the Complainant and second, that there was a failure to make certain payments to Canada Revenue Agency ("CRA"). The complaint was received by Mr. Ross Plecash, who was the Director of Investigation with APEGA at that time. There are number of preliminary communications between Mr. Plecash and the parties that occurred before



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the complaint was referred to the Investigative Committee and ultimately to a panel to conduct an investigation.

13. An investigation was commenced, but it was stalled at various times because Mr. Plecash was trying to encourage or facilitate a resolution of the issues with the parties. It was determined that a resolution was not possible and in 2015, it was determined that the complaint needed to be disposed of in some fashion.
14. At this time, Mr. Plecash was no longer employed with APEGA and the original members of the panel who had been investigating were no longer on the Investigative Committee. Therefore, a new panel was appointed consisting of new panel members. The new panel issued their report in December 2015 recommending termination of the complaint by the Complainant (Tab 78, Exhibit 3). The recommendation for termination of the complaint was accepted, and the Complainant was informed of the decision by way of letter on May 27, 2016.
15. The Complainant appealed the decision of the Investigative Committee to dismiss the complaint against Mr. Balliant. The appeal was heard by the Appeal Board in January 2017. The Appeal Board overturned the Investigative Committee's decision and directed that this matter proceed to a hearing (Tab 79, Exhibit 3).
16. Ms. Haymond noted that the background in this case is important because there has been some delay in getting this matter to a hearing. The charges that are before the Hearing Panel are contained in the Notice of Hearing (Tab 1, Exhibit 3) and the charges in the Notice of Hearing relate to the concerns that were identified by the Appeal Board during the appeal hearing and in the decision issued by the Appeal Board.
17. At the outset, Ms. Haymond indicated that in preparing for the hearing, the Investigative Committee determined that they did not have sufficient evidence to proceed with Charge 6 in the Notice of Hearing and Mr. Long, who was counsel for Mr. Balliant on March 5, 2018, was notified of same.
18. As a result, the Investigative Committee was proceeding with Charges 1 to 5 in the Notice of Hearing. Ms. Haymond then outlined the witnesses that she intended to call and discussed the definition of unprofessional conduct in section 44 of the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (the "EGP Act") and Rules of Conduct 3, 4 and 5 of APEGA's *Code of Ethics*.
19. She concluded by submitting that the Hearing Panel would need to determine, on a balance of probabilities, whether the Charges in the Notice of Hearing had been proven and whether the proven allegations constituted unprofessional conduct as per the definition in the *EGP Act*.



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Opening Statement by Mr. Galt

20. Mr. Galt advised that he was not a lawyer but was a friend of Mr. Balliant and would be helping Mr. Balliant present his case. Mr. Galt advised that they intended to show that Mr. Balliant's conduct met or exceeded the expectations of how a Professional Engineer should conduct themselves and their business in society, among contractors, employees and clients.
21. Mr. Galt submitted that the timeline of the Complainant's employment will show that there were a significant number of misrepresentations by the Complainant to Mr. Balliant. The Complainant failed to carry out the roles and responsibilities of employment and as a result of the Complainant's failings, significant financial damage and reputational damage has been caused to Mr. Balliant and his company.
22. With respect to the charge relating to the filings with CRA, Mr. Galt acknowledged that Mr. Balliant did have an obligation to provide documentation to CRA; however, that was one of the obligations of the Complainant as an employee of Bal-Comp Engineering Ltd., when the individual was employed.

The Charges

23. The charges were as follows:
 1. Mr. Balliant in his capacity as principal of Alberta 1470646 Ltd. (the "Company") failed to ensure that source deductions for CPP, income tax, and EI that were deducted from the 2009 earnings of the Complainant, a former employee, were remitted to the Canada Revenue Agency in a timely fashion, or at all.
 2. On or about October 2009 to February 2010, Mr. Balliant in his capacity as principal of the Company, inappropriately and falsely assured the Complainant that they would receive payment for wages owed to the Complainant, particulars of which include one or both of the following:
 - a. Provided such assurances when it was unknown whether the Company would be able to satisfy its obligations to its employees; and
 - b. Provided such assurances for the purpose of persuading the Complainant to continue their employment, for the benefit of the Company.
 3. Mr. Balliant in his capacity as principal of the Company, failed to comply or take



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adequate steps to comply with an Order issued by Employment Standards, dated July 13, 2010, which required the Company to pay the Complainant the sum of \$41,461.61 to compensate the Complainant for outstanding wages, vacation pay, and termination pay owed to them by the Company.

4. On or about May 2011 to December 2015, Mr. Balliant failed to cooperate or to adequately cooperate with the investigation being conducted on behalf of the Investigative Committee, particulars of which include one or more of the following:
 - a. Failed to provide a substantive written response to the complaint, despite requesting and being granted numerous extension to provide a written response;
 - b. Failed to provide a copy of the Professional Practice Management Plan for Bal-Comp Engineering Ltd., as requested; and
 - c. Failed to provide other papers, documents, or records in his possession related to the complaint, including but not limited to tax documentation.
5. On or about November 2, 2011, inappropriately requested that the investigation be held in abeyance, particulars of which include:
 - a. Suggested or implied that the correct amount owing to the Complainant had not yet been finally determined, despite such a determination having been made in accordance with the Order issued by Employment Standards, dated July 13, 2010; and/or
 - b. Suggested or implied that the Order may be subject to appeal, even though Mr. Balliant did not file an appeal within the required deadline.
6. During the investigation, Mr. Balliant inappropriately provided contradictory and/or misleading information to APEGA as to whether the Complainant resigned or was terminated from their employment with the Company on or about February 2, 2010.

IT IS FURTHER ALLEGED that the above-referenced conduct constitutes unprofessional conduct as set out in section 44(1) of the *Engineering and Geoscience Professions Act*, and/or contravenes section 32.1 of the Bylaws, and/or contravenes one or more of Rules 3, 4, and 5 of APEGA's *Code of Ethics*.



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Witnesses called at the Hearing

24. The Hearing Panel heard evidence from the following witnesses:

July 12, 2018

- a. Mr. Garth Jespersen, APEGA Staff Investigator
- b. An individual, the Complainant
- c. Mr. Richard Balliant, P. Eng.

July 13, 2018

- a. Mr. Richard Balliant, P. Eng. (continuation of direct evidence and cross- examination)
- b. Ms. Marilyn Balliant, Mr. Balliant's wife

Exhibits entered during the hearing

25. The following Exhibits were entered at the hearing:

Exhibit 1 – Correspondence with Mr. Balliant's legal counsel (Mr. Curtis Long)

Exhibit 2 – Letter from Curtis Long to C. Scharf at APEGA dated March 5, 2018

Exhibit 3 – A binder containing 82 tabs of the Investigative Committee's documents

Exhibit 4 – Transcript from the Appeal Board Hearing

Exhibit 5 – Complaint to Employment Standards date stamped February 12, 2010

Exhibit 6 – Resume of the Complainant

Exhibit 7 – Document Package submitted by Mr. Balliant

Exhibit 8 – Correspondence package prepared by Independent Legal Counsel for the Hearing Panel of the APEGA Discipline Committee



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Decision on the Charges of Unprofessional Conduct

Introduction and Standard of Proof

26. The Hearing Panel heard evidence from four witnesses, including the investigated member, Mr. Balliant, P.Eng., over two days. It also reviewed all the documents contained in the Exhibits entered at the hearing and considered the final submissions made by Ms. Haymond and Mr. Galt.
27. Rather than summarizing all the evidence in detail, the Hearing Panel intends to provide a detailed discussion of the evidence under each of the Charges set out below.
28. In coming to its decision in this matter, the Hearing Panel recognizes that the onus is on the Investigative Committee to prove the factual allegations made in the Charges contained in the Notice of Hearing to satisfy the “balance of probabilities” standard of proof. This standard of proof requires that any allegation be proven as more probable than not. If some or all of the factual allegations are proven, the Investigative Committee must also establish on the same balance of probabilities standard of proof that the proven allegations constitute unprofessional conduct or unskilled practice by Mr. Balliant.
29. This decision will therefore review the allegations, and the particulars of the allegations, set out in each Charge and consider whether the evidence establishes whether it is more probable than not that each factual allegation has been proven as required by the balance of probabilities standard of proof. Based on its conclusions on the factual allegations, the Hearing Panel will then consider whether any proven allegations constitute unprofessional conduct or unskilled practice.

Charge 1 - Mr. Balliant in his capacity as principal of Alberta 1470646 Ltd. failed to ensure that source deductions for CPP, income tax, and EI that were deducted from the 2009 earnings of the Complainant, a former employee, were remitted to the Canada Revenue Agency in a timely fashion, or at all.

30. The Hearing Panel finds that Charge 1 is not factually proven and therefore does not constitute unprofessional conduct under section 44(1) of the *EGP Act*.
31. Mr. Jespersen testified that this charge was part of the original complaint by the Complainant but, in reviewing the file, there was no documentary evidence there was a failure to remit source deductions to CRA by Mr. Balliant. The Complainant did provide copies of two Personal Property Registry (“PPR”) searches later on from the Government of Alberta for Mr. Balliant (Tab 68, pages 422 and 426, Exhibit 3). However, there was no information on the PPR searches of the nature of the debt owing to “Her Majesty the Queen in the Right of Canada Edmonton Tax Services”.



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32. There was no information on these documents as to what the debt was for, what the debt related to or how it related to a failure to pay source deductions to CRA. Further, the amounts owing were not itemized, and there was no information as to whether the amounts owing were for personal or business. Although the Complainant did not want to move forward with this part of his complaint because he did not have enough evidence, the Appeal Board had concerns, so it is a charge in this matter.
33. Mr. Balliant testified that he did not knowingly withhold source deductions from CRA, but rather he was unable to pay the source deductions to CRA. Mr. Balliant stated that he has since entered into an agreement with CRA for the debt that he owes to CRA, and that part of the debt he owes to CRA includes source deductions that were not remitted. The Hearing Panel notes that there is no evidence that the source deductions in the agreement relate to or include the Complainant's 2009 source deductions. Mr. Balliant's agreement with CRA is not a record in these proceedings.
34. The Hearing Panel finds that, other than Mr. Balliant's acknowledgement that he was unable to pay CRA, there is insufficient evidence that he failed to ensure that source deductions for CPP, income tax, and EI were deducted from the 2009 earnings of the Complainant and remitted to CRA in a timely fashion, or at all.
35. Further, the Hearing Panel finds that there was no documentary evidence in support of this allegation other than the PPR searches. However, the PPR searches are general in nature and provide no detail. The Complainant's testimony on this allegation was ambiguous and not specific to this specific allegation, in that he recalled Mr. Balliant not paying CRA "the money he was supposed to".
36. The Hearing Panel has therefore determined that the factual allegations made in Charge 1 have not been proven on a balance of probabilities.

Charge 2 - On or about October 2009 to February 2010, Mr. Balliant in his capacity as principal of Bal-Comp Engineering Ltd., inappropriately and falsely assured the Complainant that he would receive payment for wages owed to the Complainant, particulars of which include one or both of the following:

- a. **Provided such assurances when it was unknown whether the Company would be able to satisfy its obligations to its employees; and**
- b. **Provided such assurances for the purpose of persuading the Complainant to continue his employment, for the benefit of the Company**



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37. The Hearing Panel finds that Charge 2 is not factually proven and therefore does not constitute unprofessional conduct under section 44(1) of the EGP Act.
38. The Complainant testified that they have been a Certified General Accountant since 2001. On July 20, 2009, the Complainant began their employment with Bal-Comp Engineering Ltd. as the Controller and Chief Financial Officer. In this role, they were responsible for the finances of the company. They testified that Mr. Balliant was in financial difficulty prior to their employment, and Mr. Balliant had told them of his financial difficulties.
39. The Complainant explained that they did not get paid after their probationary period ended on October 20, 2009, and they spoke to Mr. Balliant about not being paid. The Complainant testified that Mr. Balliant gave them assurances that they would be paid. Mr. Balliant told them about some of the ways he was trying to secure additional financing and assured The Complainant that they would be paid. The Complainant testified that they continued to come to work even though they were not being paid because they felt that if he showed some loyalty it would be a “good thing to do”. In his testimony, the Complainant acknowledged that they were also trying to assist Mr. Balliant in obtaining financing.
40. Mr. Balliant testified that, at that time, he was involved in more than one law suit. In one of the law suits against one of his clients, the parties had entered into a settlement agreement and the settlement agreement provided that his client would pay him \$3.2 million dollars. Mr. Balliant explained that he believed he would get some payment in the next week from the settlement agreement, and he thought that he would be able to pay everyone. However, the client did not fulfil the terms of the settlement agreement, as the client had a judgment against them from CRA for 19.2 million dollars. Mr. Balliant testified that the Complainant was aware of the law suits and the circumstances of this settlement agreement and how it impacted the company. The Complainant knew how important it was for the company to get refinancing, and the Complainant assured Mr. Balliant that they could get refinancing with his contacts.
41. Mr. Balliant stated that he has always wanted to pay the Complainant, but he has not been able to because he has not collected money that is owed to him and his current receivables are encumbered.
42. The allegation in Charge 2 is that Mr. Balliant in his capacity as principal of Bal-Comp Engineering Ltd., “inappropriately and falsely” assured the Complainant that they would receive payment for wages owed to the Complainant. This means that the Hearing Panel must consider whether the Investigative Committee has proven that it is more probable than not that he gave assurances that were “inappropriate and false” and his conduct was “inappropriate and false”.



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43. Counsel for the Investigative Committee commented on the term “falsely” used in Charge 2. Ms. Haymond submitted that “falsely” simply means inaccurately. She submitted that, in this case, Mr. Balliant provided assurances to the Complainant that they would get paid and that was false because the Complainant never got paid.
44. The Hearing Panel does not find that the Investigative Committee has proven that it is more probable than not that Mr. Balliant “falsely” assured the Complainant that they would receive payment for wages owed to them. In the opinion of the Hearing Panel, the term “falsely” as used in Charge 2 must mean more than “inaccurate”, particularly when the word is used as part of an allegation of unprofessional conduct. In this context, the Hearing Panel finds that the word “falsely” implies some degree of deliberation or intent and when the Hearing Panel considers Mr. Balliant’s testimony, this was not the case.
45. Mr. Balliant’s testimony at the hearing did not seem to suggest that he intended to deliberately or intentionally assure the Complainant that they would receive payment for wages when that was not accurate. Instead, the evidence showed that Mr. Balliant truly believed that he would get some money to pay the Complainant, and Mr. Balliant intended to pay the complainant once he received payment from the settlement agreement or a client. For instance, Mr. Balliant explained that there was \$3.2 million dollars in settlement funds that would be coming to his company and would have allowed him to pay outstanding debts, including the Complainant. Mr. Balliant may have been overly optimistic in his thinking, but the Hearing Panel finds that he did not “falsely” assure the Complainant that they would receive payments for wages.
46. Further, the Hearing Panel notes that the Complainant is a Certified General Accountant, and they were the Controller of Bal-Comp Engineering Ltd. for three months before they were not paid by Mr. Balliant. For those three months, the Complainant was handling the finances of the company and in their testimony, the Complainant acknowledged that they knew the company’s financial situation and was told about the company’s financial situation by Mr. Balliant. The Complainant also testified that they knew the company would need refinancing and that they were involved in assisting Mr. Balliant in securing some refinancing. Both the Complainant and Mr. Balliant agreed that at the end of October 2009, there was no money for the company to pay its employees.
47. Given the Complainant’s education and the time they spent with the company, the Hearing Panel finds that they had an understanding of the financial matters of the company and was well aware of the company’s financial difficulties. Notwithstanding the information that the Complainant had, they chose to continue working for Mr. Balliant. The Hearing Panel notes that no one works for free, and therefore, it would be fair to conclude that the Complainant must have thought there was some money that would be coming at



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some point, otherwise they would not have stayed with the company for as long as they did.

48. The Hearing Panel has therefore determined that the factual allegations and particulars made in Charge 2 have not been proven on a balance of probabilities.

Charge 3 - Mr. Balliant in his capacity as principal of Bal-Comp Engineering Ltd., failed to comply or take adequate steps to comply with an Order issued by Employment Standards, dated July 13, 2010, which required Bal-Comp Engineering Ltd. to pay the Complainant the sum of \$41,461.61 to compensate the Complainant for outstanding wages, vacation pay, and termination pay owed to them by Bal-Comp Engineering Ltd.

49. The Hearing Panel finds that the Investigative Committee has proven on a balance of probabilities that Mr. Balliant, in his capacity as principal of Bal-Comp Engineering Ltd., failed to comply or take adequate steps to comply with an Order issued by Employment Standards against Bal-Comp Engineering Ltd. dated July 13, 2010 (Tab 3, page 12, Exhibit 3).
50. It is undisputed that Employment Standards issued an Order dated July 13, 2010 requiring Bal-Comp Engineering Ltd., as the Complainant's former employer, to pay \$41,461.61 to the Complainant for outstanding wages, vacation pay, and termination pay owed to the Complainant (Tab 3, page 12, Exhibit 3). It is also undisputed that Mr. Balliant, on behalf of Bal-Comp Engineering Ltd., did not appeal this Order issued by Employment Standards and that that Order was filed with the Court of Queen's Bench on November 22, 2010, and became a judgment of the Court of Queen's Bench.
51. Mr. Balliant testified that he did make some payments to Employment Standards in connection with the Order (see for example Tab 62, Exhibit 3), but he could not recall how many payments he had made. He recalled likely paying a couple thousand dollars towards the Order, but acknowledged that he stopped making payments because his company did not have the funds to do so. Therefore, the majority of the amount owing under the Order remains outstanding.
52. Based on the evidence reviewed and heard by the Hearing Panel, Mr. Balliant failed to comply or take adequate steps to comply with an Order issued by Employment Standards. The Hearing Panel accepts that Mr. Balliant and Bal-Comp Engineering Ltd. were experiencing financial difficulties and did not have the funds to pay the Order in full; however, the factual determination to be made by the Hearing Panel is whether Mr. Balliant took adequate steps to comply with the Order and in his dealings with Employment Standards.
53. The records before the Hearing Panel reveal that in October 2010, after the time to appeal



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the Order had passed, Mr. Balliant continued to dispute the amount owing under the Order with Employment Standards (Tab 28, pages 223-226, Exhibit 3). The records further reveal that Mr. Balliant's communications with Employment Standards in determining a payment arrangement were sporadic, and that there was no sustained follow up by Mr. Balliant with Employment Standards. For instance, the Order was filed November 22, 2010 and Carol Benjamin, with iQOR for Employment Standards, writes to Mr. Plecash on April 18, 2012, stating that she never received a "solid offer" from Mr. Balliant and that Mr. Balliant had made comments that payments would be made, but there was never any follow through by him (Tab 32, pages 247-248, Exhibit 3). She expressed in her email that, in her communications with Mr. Balliant, he seized the opportunity to complain about both his personal and professional circumstances.

54. In addition, the records show that there was no direct communication by Mr. Balliant with the Complainant until 2012, and even then, Mr. Balliant failed to respond to the Complainant, who was asking for a status update (Tab 30, Exhibit 3).
55. As a Professional Engineer, Mr. Balliant had duty to communicate with both Ms. Benjamin and the Complainant to keep them advised of the status of his attempts to comply with the Order. If Mr. Balliant disagreed with the Order he had a right to appeal the Order. However, he did not appeal the Order and once the Order was in place, he had a professional obligation to address this Order and to communicate on a timely basis. He failed to meet this professional obligation.
56. The Hearing Panel has therefore determined that the factual allegations made in Charge 3 have been proven on a balance of probabilities. The Hearing Panel must therefore determine if the proven factual allegations constitute unprofessional conduct.

Has the Investigative Committee Proven Unprofessional Conduct in respect to Charge 3?

i. The Position of the Parties

57. Ms. Haymond noted that this charge does not arise directly from the practice of engineering but from Mr. Balliant's role as director and shareholder of Bal-Comp Engineering Ltd.. Ms. Haymond submitted that this charge involves private financial disputes, and cautioned that APEGA cannot be seen as a "bill collector" for private disputes. However, she advised that the question for the Hearing Panel, in this case, relates to how Mr. Balliant conducted himself and whether he acted appropriately and took adequate steps to comply with the Employment Standards Order.
58. Ms. Haymond suggested that Mr. Balliant continued to dispute the total amount owing to the Complainant, even though the Employment Standards Order was a final



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judgment. Further, Mr. Balliant's communications with iQOR and later on with the Complainant in 2012, showed a failure to respond by Mr. Balliant.

59. Ms. Haymond then referred briefly to certain cases in her materials and referred to the case of *Erdmann v Complaints Inquiry Committee*, 2013 ABCA 147, where a chartered accountant was found to have acted unprofessionally in her personal disputes with a property manager of her residential condominium and with the condominium's property manager. She noted that the Alberta Court of Appeal stated that "private behaviour that derogates from the high standards of conduct essential to the reputation of one's profession cannot be condoned."
60. Ms. Haymond also referred to the case of the *College of Physicians and Surgeons of Alberta v Ali*, 2017 ABCA 422, where a physician failed to comply with his obligations as a bankrupt person. An order in bankruptcy had been issued to a physician, and there was some evidence that he had not fulfilled the order. At the hearing, the physician argued that the failure to fulfil the order had nothing to do with his practice as a physician. The Hearing Tribunal found that there was a nexus between the physician's conduct and his profession because he had submitted claims for services that he had provided to Alberta Health Care where he had underrepresented the amount of income he was earning. The Hearing Tribunal found that there was a concern that his conduct harmed the integrity of the profession because bankruptcy proceedings were open to the public and in that proceeding, it was known he was a physician. The Court of Appeal upheld the Hearing Tribunal's findings.
61. Ms. Haymond submitted that there are two situations involving off-duty conduct which most often result in a finding of unprofessional conduct. The first is where the conduct is more reprehensible when it is committed by a member of the profession as compared to a member of the general public. The second is where the conduct is in some way connected to the practice of the profession. Mr. Balliant's conduct is conduct where an engineer is acting as an employer and has failed to comply or take adequate steps to comply with an Order issued by Employment Standards. This conduct is worse because Mr. Balliant is a member of the profession. His conduct fell below what is expected from a member of the profession. Ms. Haymond clarified that this charge is not only about the failure to pay but about how Mr. Balliant conducted himself in his dealings with Employment Standards and the Complainant.
62. Mr. Galt acknowledged that following through on the Order was not done in a timely manner but explained that given Mr. Balliant's personal and professional circumstances at the time, he could not and did not have the mental capacity or the resources to handle the Employment Standards matter. Mr. Galt noted that Mr. Balliant did make an effort to settle with the Complainant and emphasized that APEGA should not be used as a private "bill collector".



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ii. Decision of the Hearing Panel

63. In the opinion of the Hearing Panel, the EGP Act is an act for the protection of the public and should be interpreted broadly to accomplish that objective. This means that in appropriate cases, an engineer or geoscientist can be disciplined for unprofessional conduct that does not arise directly from the practice of engineering or geoscience.
64. The Hearing Panel finds, in this case, that while Mr. Balliant's conduct in Charge 3 did not arise directly out of a practice issue, it was connected to the fact that Mr. Balliant's company (Bal-Comp Engineering Ltd.), of which Mr. Balliant was a director and shareholder, was the Complainant's employer. There is a connection between Mr. Balliant's conduct as an employer and the practice of the engineering profession and Mr. Balliant being a Professional Engineer. The Hearing Tribunal finds that they are closely connected and that this is a matter of professional ethics.
65. The Hearing Panel has determined that in Mr. Balliant's dealings with Employment Standards, Mr. Balliant represented himself as a Professional Engineer and in those dealings with Employment Standards, failed to take adequate steps to comply with the Order issued by Employment Standards. Mr. Balliant should have taken more responsibility as a Professional Engineer for an employment matter that involved his company and a former employee. Mr. Balliant acknowledged that following through on the Order was not done in a timely manner. The Hearing Panel found that Mr. Balliant should have been more responsive to Employment Standards, rather than not responding to their communications for long periods of time or continuing to dispute an Order that was final.
66. The Hearing Panel finds that when a Professional Engineer presents himself as a Professional Engineer and is the employer or the director and owner of the employer of former employees, who have involved Employment Standards, the Professional Engineer must be held to ethical and professional standards set out in the Rules of Conduct contained in the *Code of Ethics*. Rule of Conduct 3 requires that a Professional Engineer "shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities." Rule of Conduct 5 requires that a Professional Engineer "shall uphold and enhance the honour, dignity and reputation of their profession".
67. The Hearing Panel accepts Mr. Balliant's evidence about his personal and professional circumstances at the time. However, the non-responsiveness of Mr. Balliant to Employment Standards, a government agency, followed by communications by Mr. Balliant disputing an Order that he had an opportunity to appeal but did not, were conduct that did not meet the requirements of integrity, honesty, fairness and objectivity required by Rule of Conduct 3. Further, Mr. Balliant's conduct failed to meet Rule of Conduct



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3 when he made an offer to Employment Standards but gave no specifics of the offer to move the matter forward in a meaningful way. Moreover, these actions, taken by an individual representing himself as a Professional Engineer failed to uphold the honour, dignity and reputation of the profession as required by Rule of Conduct 5. Such conduct is detrimental to the public, as it can be seen as failing to respond to a legal process that involved Mr. Balliant's employee.

68. In the opinion of the Hearing Panel, the proven factual allegations in Charge 3 prove on a balance of probabilities that Mr. Balliant breached both Rule of Conduct 3 and Rule of Conduct 5.
69. In the opinion of the Hearing Panel, this proven conduct and these proven breaches of the *Code of Ethics* are serious enough to constitute unprofessional conduct under section 44 of the *EGP Act*. In particular, the Hearing Panel finds that this proven conduct is detrimental to the best interests of the public [section 44(1)(a)], contravenes the *Code of Ethics* [section 44(1)(b)] and harms or tends to harm the standing of the profession generally [section 44(1)(c)].
70. Mr. Balliant could have responded in a timelier manner to Employment Standards, but he did not. As the Complainant's employer, a director of a permit holder and a Professional Engineer, Mr. Balliant had an obligation to pay his employees and to respond to Employment Standards. The Hearing Panel notes that this charge is not about the fact that Mr. Balliant did not pay the full amount owing under the Order. Rather this charge relates to a professional's obligation to respond and take adequate steps to comply with an Order issued by Employment Standards.
71. The Hearing Panel therefore finds that Charge 3 has been proven and that Mr. Balliant has engaged in unprofessional conduct.

Charge 4 - On or about May 2011 to December 2015, Mr. Balliant failed to cooperate or to adequately cooperate with the investigation being conducted on behalf of the Investigative Committee, particulars of which include one or more of the following:

- a. **Failed to provide a substantive written response to the complaint, despite requesting and being granted numerous extensions to provide a written response;**
- b. **Failed to provide a copy of the Professional Practice Management Plan for Bal-Comp Engineering Ltd., as requested; and**
- c. **Failed to provide other papers, documents, or records in his**



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possession related to the complaint, including but not limited to tax documentation.

72. The Hearing Panel finds that the Investigative Committee has proven on a balance of probabilities that Mr. Balliant failed to adequately cooperate with the investigation being conducted on behalf of the Investigative Committee. There are three particulars alleged in respect to Charge 4, and the Hearing Panel finds that each particular has been proven on a balance of probabilities.
73. Mr. Balliant was notified of the Complainant's complaint by Mr. Plecash, the former Director of Investigations, on May 4, 2011 (Tab 4, page 16, Exhibit 3). Mr. Balliant was issued a Notice of Investigation and attached to the Notice of Investigation was a Notice to Produce Documents (Tab 5, Exhibit 3). In the Notice to Produce Documents, the Investigative Committee requested that certain documents be provided by Mr. Balliant no later than June 27, 2011 (Tab 5, page 25, Exhibit 3). The Notice to Produce Documents requested that the following documents be provided:
- a. A written response to the complaint;
 - b. A copy of the Professional Practice Management Plan ("PPMP") for BAL-COMP ENGINEERING LTD., as required under Section 48(1)(d) of the *Engineering, Geological and Geophysical Professions Act Regulations*, and
 - c. All papers or other documents or records, in your possession, related to the complaint filed regarding your conduct.
74. For particular 4a, the Hearing Panel finds that Mr. Balliant failed to provide a substantive written response to the complaint by the Complainant, despite Mr. Balliant requesting, and being granted, numerous extensions to provide a written response.
75. Based on the records, Mr. Plecash and Mr. Balliant exchanged several emails where Mr. Plecash informed Mr. Balliant that he had a duty to respond to the Investigative Committee (Tab 6, page 29, Exhibit 3). Mr. Balliant requested an extension of 90 days in order to allow him time to gather supporting documentation on his position that this was a civil matter and not a matter for APEGA (Tab 7, page 32, Exhibit 3). An extension was granted to Mr. Balliant until September 30, 2011 (Tab 7, Page 32, Exhibit 3); however, Mr. Balliant missed that deadline and did not provide a response.
76. On October 23, 2011, Mr. Balliant wrote to Mr. Plecash requesting to have the matter adjourned because he considered the matter to be a civil matter and frivolous (Tab 9, Page 43, Exhibit 3). The request by Mr. Balliant was not granted, and Mr. Plecash



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suggesting that he provide a written response to the complaint.

77. On November 2, 2011, Mr. Balliant emailed Mr. Plecash (Tab 10, page 50, Exhibit 3). Mr. Jespersen testified that Mr. Balliant's response on November 2, 2011 was not a substantive response to the allegations in the complaint but rather Mr. Balliant restating his arguments on why he considered the matter to be a civil matter. The Hearing Panel reviewed Mr. Balliant's response and finds Mr. Balliant's response on November 2, 2011 was not a substantive response to the allegations in the complaint. Mr. Balliant was interviewed on April 17, 2012 (Tab 27, Exhibit 3). During the interview with Mr. Balliant, Mr. Plecash asked Mr. Balliant about the three items that were requested in the Notice to Produce Documents that had not yet been provided. Mr. Balliant replied that he had not read the document (Tab 27, page 210 line 30, Exhibit 3).
78. Based on the transcript from the interview, Mr. Balliant undertook to provide the documents by the end of April 2012, a date which Mr. Balliant suggested and agreed to (Tab 27, page 214, Exhibit 3).
79. The Hearing Panel finds that Mr. Balliant did not provide a response by April 30, 2012. Instead, Mr. Balliant wrote an email to Mr. Plecash on April 30, 2012 stating that he required until the end of the week to complete his response (Tab 36, Exhibit 3).
80. Mr. Balliant did not provide a written response by the end of the week. On May 9, 2012 Mr. Balliant wrote to Mr. Plecash stating that a number of issues had come up that had affected his ability to provide a response, and he stated that he was taking Friday off to complete the response (Tab 38, page 88, Exhibit 3).
81. A response was not received by Friday, so Mr. Plecash wrote to Mr. Balliant on May 23, 2012 stating that they had not received documents and further delay would result in Mr. Plecash requesting Mr. Balliant's immediate suspension (Tab 38, page 287, Exhibit 3).
82. Mr. Balliant did participate in a further interview with the Investigative Committee on September 18, 2012 (Tab 54, Exhibit 3), but Mr. Balliant did not provide a written response to the complaint. At this interview, Mr. Plecash raised concerns about Mr. Balliant's failure to cooperate with the investigation (Tab 54, page 358 at line 27, Exhibit 3). During this discussion, Mr. Plecash stated that there were a number of times that Mr. Balliant had made a commitment to meet, to discuss something and that he had failed to follow through.
83. The Hearing Panel accepts Mr. Jespersen's evidence that Mr. Balliant never provided a substantive response to the complaint.



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84. For particulars 4b and 4c, the Hearing Panel finds that Mr. Balliant failed to provide a copy of the PPMP for Bal-Comp Engineering Ltd., as requested, and failed to provide other papers, documents or records in his possession related to the complaint, including but not limited to tax documentation.
85. Mr. Jespersen testified that Mr. Balliant did not provide a copy of his PPMP for Bal-Comp Engineering Ltd., and he did not provide any documents or papers or records that related to the complaint filed by the Complainant. The Hearing Panel accepts Mr. Jespersen's evidence and notes that there is no copy of a PPMP for Bal-Comp Engineering Ltd. in the records before the Hearing Panel and no other papers, documents or records that were provided by Mr. Balliant to the Investigative Committee relating to the complaint.
86. Although Mr. Balliant testified that he thinks the documents were provided to APEGA but that they were probably not provided in the proper format, because of his personal and professional circumstances at the time, the Hearing Panel finds that, on a balance of probabilities, Mr. Balliant did not provide any of the documents requested.
87. The Hearing Panel has therefore determined that the factual allegations made in Charge 4 and the particulars have been proven on a balance of probabilities. The Hearing Panel must therefore determine if the factual allegations constitute unprofessional conduct.

Has the Investigative Committee Proven Unprofessional Conduct with respect to Charge 4?

i. The Position of the Parties

88. Ms. Haymond submitted that the duty to cooperate is enshrined from the governing legislation at section 49 of the EGP Act. It provides the investigation panel with the authority to require the investigated person to produce documents for the purposes of an investigation. Section 32.1 of the EGP Act Bylaws imposes an obligation on professional members to respond to those communications. There is certainly a statutory basis for requiring a member's cooperation, and there is also a common law duty on members to cooperate. It is one of the fundamental obligations that members have. The members' cooperation is required in order for the Investigative Committee to do its job. In this case, Mr. Balliant was given many chances to provide the information requested and never did.
89. Mr. Galt did not make any submissions in relation to this charge; however, he did emphasize Mr. Balliant's personal and professional circumstances that were ongoing at the time that this complaint was made by the Complainant.



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ii. Decision of the Hearing Panel

90. The EGP Act provides:

Evidence for preliminary investigation

49(1) An investigation panel may

- (a) require the investigated person or any other member of the Association to produce any plans, drawings, detailed drawings, specifications, reports, books, papers, or other documents or records in that person's possession or control, and [...]

91. In addition, the EGP Act Bylaws provide:

Onus to respond

32.1 Professional members, licensees, permit holders, life members, professional licensees, provisional licensees, members in training, joint firms, or certificate holders, shall respond promptly and appropriately to any duly served communication of a regulatory nature received from the Association that contemplates a reply. [emphasis added]

92. The Hearing Panel finds that Mr. Balliant's conduct contravened the EGP Act and Bylaws and demonstrated that he failed to adequately cooperate with the investigation conducted by the Investigative Committee. Members of self-regulating professions must be prepared to submit to the regulatory body's jurisdiction.

93. The Hearing Panel finds that Mr. Balliant's conduct was unprofessional based on his failure to provide a substantive written response to the complaint, failure to provide a PPMP and failure to provide other documents, despite requests for extensions that were granted.

94. There is a duty for a member of APEGA to cooperate with the regulator. Mr. Balliant breached that duty. It is unprofessional conduct when a member fails to assist the Investigative Committee in its ability to conduct a preliminary investigation into a complaint by a member of the public. Failing to adequately cooperate promptly and provide records to the Investigative Committee restricts the regulatory body in fulfilling its duties and in preserving the public's confidence in the engineering profession. Mr. Balliant acknowledged in his testimony that he has a duty to cooperate as a member of APEGA with an investigation and to respond to requests that are made of him. However, the evidence shows that while he may acknowledge that duty, he breached the duty through his



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failures to cooperate and to produce a reply and the requested documents.

95. The Hearing Panel finds that Mr. Balliant's non-responsiveness and failure to adequately cooperate were deliberate. Mr. Balliant chose to respond to repeated requests for a substantive response and for documents with an email stating that the matter was a civil matter and it should be dismissed. Mr. Balliant breached his duty to cooperate and respond in a timely manner, or at all. When a member does not respond or fails to adequately cooperate with the investigation, it reflects poorly on the profession and prevents the Investigative Committee from carrying out its duties to protect the public by investigating complaints
96. In the opinion of the Hearing Panel, this proven conduct is serious enough to constitute unprofessional conduct under section 44 of the *EGP Act*. In particular, the Hearing Panel finds that this proven conduct is detrimental to the best interests of the public [section 44(1)(a)] and harms or tends to harm the standing of the profession generally [section 44(1)(c)].
97. The Hearing Panel therefore finds that Charge 4 has been proven and that Mr. Balliant has engaged in unprofessional conduct.

Charge 5 - On or about November 2, 2011, inappropriately requested that the investigation be held in abeyance, particulars of which include:

- a. **Suggested or implied that the correct amount owing to the Complainant had not yet been finally determined, despite such a determination having been made in accordance with the Order issued by Employment Standards, dated July 13, 2010; and/or**
 - b. **Suggested or implied that the Order may be subject to appeal, even though Mr. Balliant did not file an appeal within the required deadline.**
98. The Investigative Committee submitted that based on the evidence before the Hearing Panel, this allegation was likely not factually proven on a balance of probabilities and would therefore not constitute unprofessional conduct.
99. The Hearing Panel agrees and finds that this charge has not been factually proven on a balance of probabilities and therefore does not amount to unprofessional conduct under section 44(1) of the *EGP Act*.
100. The Hearing Panel notes that there was an Order issued by Employment Standards dated July 13, 2010 which required Bal-Comp Engineering Ltd. to pay the Complainant



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money to compensate him for outstanding wages, vacation pay and termination pay (Tab 3, page 12, Exhibit 3). Mr. Balliant did not appeal this Order by the required deadline.

101. Although the Order was final and the appeal period had passed, Mr. Balliant's communications at Tabs 9 and 10 of Exhibit 3 do not suggest or imply that the correct amount owing to the Complainant had not yet been finally determined and do not suggest or imply that the Order may still be subject to appeal. Rather, based on Mr. Balliant's communications with Mr. Plecash and Mr. Balliant's evidence at the hearing, the language and terminology used in the communications in November 2011 reflect more of what was going on at the time. Mr. Balliant testified in response to Charge 5, that he was being investigated at that time, there was an insolvency matter and there were further discussions ongoing where he thought that if he made an offer, they could "work it out". The Hearing Panel accepts Mr. Balliant's evidence on this point.
102. The Hearing Panel has therefore determined that the factual allegations and particulars made in Charge 5 have not been proven on a balance of probabilities.

Charge 6 - During the investigation, Mr. Balliant inappropriately provided contradictory and/or misleading information to APEGA as to whether the Complainant resigned or was terminated from their employment with the Company on or about February 2, 2010.

103. The Investigative Committee withdrew this charge at the outset of the hearing on March 5, 2018 hearing. Therefore, it was not necessary for the Hearing Panel to consider this charge and make a determination.

Conclusion

104. For the reasons set out in this decision, the Hearing Panel has found that Charges 3 and 4 in the Notice of Hearing have been proven on a balance of probabilities and that the proven Charges constitute unprofessional conduct.
105. In respect to Charges 1, 2, and 5 the Hearing Panel has determined that these Charges have not been proven on a balance of probabilities and these allegations are dismissed.
106. The Hearing Panel is prepared to receive submissions from the Investigative Committee and Mr. Balliant concerning what orders, if any, should be made by the Hearing Panel in respect of its finding of unprofessional conduct. The Hearing Panel directs that the parties advise Ms. Erum Afsar, APEGA Director of Enforcement, within two weeks from the receipt of this decision, whether they wish to provide written submissions on possible orders or whether they wish to make these submissions at a further oral hearing. Once these responses are received, the Hearing Panel will provide further directions regarding the procedure for making the submissions.



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Dated this 18 day of October, 2018

On behalf of the Hearing Panel of the APEGA Discipline Committee

Handwritten signature of Ms. Wanda Goulden in blue ink.

Ms. Wanda Goulden, P.Eng., P. Geo.
Discipline Committee Panel Chair

Handwritten signature of Mr. Farhan Hanif in black ink.

Mr. Farhan Hanif, P. Eng., Discipline
Committee Panel Member

Handwritten signature of Mr. John Nicoll in blue ink.

Mr. John Nicoll, P.Eng., Discipline
Committee Panel Member