



APEGA Recommended Discipline Order

APEGA members and permit holders are required to practise engineering and geoscience skillfully, ethically, and professionally. They must meet all prescribed requirements and follow all applicable legislation and regulations, such as the [Engineering and Geoscience Professions Act, General Regulation, Code of Ethics, and APEGA bylaws](#). Investigation and enforcement—followed by, when necessary, judgment based on a fair hearing of the facts—are requirements of ours in service to the public interest. For more information, please visit www.apega.ca/enforcement/discipline-decisions.

Date: December 15, 2021

Discipline Case Number: 21-022

**IN THE MATTER OF A RECOMMENDED DISCIPLINE ORDER 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. BEN LEE, P.Eng.

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has investigated the conduct of Mr. Ben Lee, P.Eng. (“the Registrant”) with respect to a complaint initiated by [Name Withheld] (the Complainant), dated March 13, 2019, (the “Complaint”).

A. THE COMPLAINT

The Complainant alleges that the Registrant engaged in unprofessional conduct and/or unskilled practice, as defined at s. 44(1) of the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (*EGP Act*) with respect to his role on the NavSha Project, with the primary focus of the Registrant providing engineering services for the oil and gas waste heat and geothermal portion of the project.

The Investigative Committee’s investigation focused on the following allegation (Allegation #2) which can be summarized as follows:

Whether the Registrant displayed a lack of judgment as specified by s. 44 (d) Engineering and Geoscience Professions Act, RSA 2000, c E-1 in his dealings with the Complainant. Specifically, Mr. Lee:

- a) failed to ensure that the Complainant, as a prospective client, was explicitly advised that they had not successfully engaged Mr. Lee’s services as an engineer; and



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- b) ought to have provided clarity of the lack of a contract for services to the Complainant as a professional courtesy to provide clarity to a potential client regarding expectations and possible deliverables.

The Investigative Committee investigated four additional allegations outlined in the Complaint. The Investigative Committee determined that there was insufficient evidence of unskilled practice/unprofessional conduct in relation to those allegations.

B. AGREED STATEMENT OF FACTS

(i) Background:

1. The Registrant has been an APEGA Member since 2010.
2. The Registrant is a registered P.Eng. in both Alberta and British Columbia.
3. The Registrant works in Calgary, Alberta and specializes in process engineering, chemical engineering, mechanical engineering (heat transfer, thermos fluids) and engineering projects.
4. The Registrant holds a Bachelor Eng. Aerospace Engineering (2004) from Carlton University.
5. The Registrant has fully cooperated with the APEGA investigation.

(ii) Facts Relating to the Allegations:

Whether the Registrant displayed a lack of judgment as specified by s. 44 (d) Engineering and Geoscience Professions Act, RSA 2000, c E-1 in his dealings with the Complainant. Specifically, Mr. Lee:

- a) failed to ensure that the Complainant, as a prospective client, was explicitly advised that they had not successfully engaged Mr. Lee's services as an engineer; and
 - b) ought to have provided clarity of the lack of a contract for services to the Complainant as a professional courtesy to provide clarity to a potential client regarding expectations and possible deliverables.
6. On May 23, 2018, the Complainant met with the Registrant to discuss the NavSha Project with the primary focus on engineering services for the oil and gas waste heat and geothermal portion of the project. After their discussion, the Complainant felt



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they and the Registrant were on the same page. There was no written contract at that point, or at any time, between the Complainant and the Registrant.

7. The Complainant felt there was no need for a contract, as no money had changed hands at this point. The Registrant was open to continuing the preliminary project discussions with the Complainant.
8. The Complainant felt the only document that required agreement and signatures was a Non-Disclosure Agreement (NDA). The Complainant and the Registrant exchanged emails and later signed an NDA.
9. The Complainant subsequently believed they had a verbal agreement in place with the Registrant to provide engineering services as a result of their previous meetings and subsequent email communications.
10. The Complainant required the Registrant to provide engineering technical deliverables (carbon omissions turning into energy) pursuant to the verbal contract. The Registrant did not provide the Complainant with the professional engineering services or project documents the Complainant believed they had agreed upon.
11. The Registrant did not provide engineering service deliverables to the Complainant, as no contract was agreed upon or signed by the parties.
12. The Registrant believed he was engaged in project discussions to determine if a contract could be crystalized, however that never occurred. All communications and meetings with the Complainant were solely related to a speculative business opportunity that did not move past the preliminary stages.
13. The Registrant acknowledges he is required to ensure that a prospective client may not have previous experience with employing the services of a professional member, and therefore he must have ensured the Complainant was aware of the obligations required of professional members. The Registrant acknowledges that he made an error in judgement by failing to clearly manage client expectations for the project is contrary to:

Section 2.1 (Professions) of the *Apega Guideline for Ethical Practice, v2.2, February 2013* which states:

In the generic sense, a profession is a learned calling with specialized



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knowledge. This knowledge is applied with experienced judgement in the context of recognized social responsibilities.

A profession renders services based upon advanced knowledge, skill and judgement, which the public takes on trust.

Section 4.2.1 (Scope of Responsibility) of the *Apega Guideline for Ethical Practice, v2.2, February 2013* which states:

Before accepting assignments, professionals should ensure that their clients and employers understand the extent of the members' professional responsibilities. Defining the extent of the members' professional responsibilities and developing a scope of services essentially entails listing the specified tasks envisioned within the term of engagement and the delivery of performance expectations associated with the various tasks."

Depending on the size and complexity of the employment organization and/or project, it may be necessary to define the specific technical discipline of activity and the skills expected or required to undertake the commission effectively. The scope of services can also indicate potential or future scope for the individual based on performance of services or the extension of project requirements.

C. CONDUCT BY THE REGISTRANT

14. The Registrant freely and voluntarily admits that at all relevant times he was a professional member of APEGA and was thus bound by the *EGP Act* and the *APEGA Code of Ethics*.
15. The Registrant acknowledges that the conduct described above constitutes unprofessional conduct as defined in section 44(1) of the *EGP Act*:

Section 44(1) Any conduct of a professional member, licensee, permit holder, certificate holder or member-in-training that in the opinion of the Discipline committee or the Appeal Board,

- (a) *is detrimental to the best interests of the public;*
- (b) *contravenes a code of ethics of the profession as established under the regulations;*
- (c) *harms or tends to harm the standing of the profession generally;*



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- (d) *displays a lack of knowledge of or a lack of skill or judgment in the practice unskilled practice of the profession.*
- (e) *displays a lack of knowledge or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of the profession.*

Whether or not that conduct is disgraceful or dishonorable, constitutes either

16. The Registrant acknowledges that the conduct described above is conduct that is detrimental to the best interests of the public, displays a lack of judgement in the carrying out of any duty or obligation undertaken in the practice of the profession, contrary to Section 44(1)(d) of the Act.

D. RECOMMENDED ORDERS WITH RESPECT TO THE REGISTRANT

17. On the recommendation of the Investigative Committee, and by agreement of the Registrant with that recommendation, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:
- a) The Registrant shall be reprimanded for his conduct and this order shall serve as the reprimand.
 - b) The Registrant shall provide written confirmation to the Director, Enforcement within thirty (30) days of being notified that the Recommended Order has been approved, by the Discipline Committee Case Manager, that he has reviewed the following APEGA publications, and that he will comply with requirements therein:
 - (i) APEGA Guideline for Ethical Practice, v2.2, February 2013 (Section 4.2.1 - Scope of Responsibility)
 - (ii) APEGA Guideline Concepts of Professionalism v1.0, September 2004 (Section 3.4 – Public Expectations)

If there are extenuating circumstances, the Registrant may apply to the Director, Enforcement, for an extension prior to the noted deadlines.

- c) The Registrant shall provide the Director, Enforcement within six (6) months of the date this order is approved by the Discipline Committee Case Manager, proof of successful completion (passing grade) of a University-level course



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in ethics to be determined by the Director, Enforcement, such as ADL 213 Ethics for Professional Practice (University of Calgary Continuing Education). The noted course shall be completed at the Registrant's expense. If there are extenuating circumstances, the Registrant may apply to the Director, Enforcement for an extension prior to the deadline. If the noted course is no longer available on approval of this order, at the discretion of the Director, Enforcement, another ethics related course may be substituted.

- d) If the Registrant fails to provide the Director, Enforcement with proof that he has completed the requirements noted above in Paragraph 16 (b) & (c) within the timelines specified, the Registrant shall be suspended from the practice of engineering until the requirements are met.
- e) This matter Registrant and its outcome will be published by APEGA as deemed appropriate and such publication will name the Registrant.

IN WITNESS WHEREOF the undersigned agrees with the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct in its entirety.

Signed,

MR. BEN LEE, P. Eng.

MR. WILLIE SATTLEGGGER, P.Geol.
Panel Chair, APEGA Investigative Committee

MR. ROBERT SWIFT, P.Eng.
Case Manager, APEGA Discipline Committee

Date: December 15, 2021