



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: July 20, 2022

Discipline Case Number: 22-008

**IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT
AND
IN THE MATTER OF THE CONDUCT OF BRIAN MCCLURE, P.ENG.**

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

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has investigated the conduct of Mr. Brian McClure, P.Eng. (Mr. McClure or the Registrant) with respect to allegations of unprofessional conduct and unskilled practice pursuant to s. 44(1) of the *Engineering and Geoscience Professions Act (Act)*.

The investigation related to a disciplinary proceeding initiated against Mr. McClure, P.Eng., by Engineers & Geoscientists British Columbia (EGBC).

PLEASE NOTE: The EGBC Decision mentioned in this RDO is not attached. The EGBC Decision (File No.T19-054) can be found on the EGBC website, in its entirety, under Discipline Hearings & Notices (effective Date May 9, 2022). The relevant sections of the EGBC Decision have also been provided in point form in sections 27 and 28 of this order.

A. COMPLAINT

1. The complainant referred the matter to APEGA's Investigative Committee on May 1, 2020, after becoming aware that the Registrant may have engaged in unprofessional conduct and/or unskilled practice of the profession in the Province of British Columbia, contrary to s. 44(1) of the *EGP Act*, by virtue of his role as the registered professional responsible for the structural design of Danbrook One (the Building), an 11 storey, 90 unit rental building located in Langford, B.C. (the City).



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B. AGREED STATEMENT OF FACTS

As a result of the investigation, it is agreed by and between the Investigative Committee and The Registrant that:

Background:

2. The Registrant is a senior structural engineer registered in Alberta, B.C., and Ontario.
3. The Registrant is based in B.C.
4. The Registrant has been in good standing with APEGA since becoming a professional member of APEGA in 1998, and was a professional member registered with APEGA during the relevant time.
5. The Registrant was the registered professional responsible for the structural design of the building located at 2766 Claude Road, Langford, B.C.
6. In April 2019, EGBC notified the City that EGBC had received a professional conduct complaint regarding the Registrant's engineering involvement with the Building.
7. On December 3, 2019, EGBC informed the City that there was sufficient evidence based on their internal review to launch a formal investigation by the EGBC Investigation Committee regarding concerns over the structural integrity of the building, and specifically whether the building's structural design and as-built structure meet engineering requirements.
8. On December 12, 2019, the EGBC Investigation Committee passed a motion to investigate the Registrant with respect to services he provided as the structural engineer of record for the Building.
9. The City immediately engaged the services of [Name Withheld] ("the Consulting Firm") to undertake a forensic engineering investigation to consider the structural safety performance of the Building.
10. On December 20, 2019, the Consulting Firm submitted its independent engineering report (Consulting Firm Report) to the City regarding the structural integrity and safety of the Building. The Consulting Firm Report stated that certain aspects of the building's structural design and its as-built structure did not meet engineering requirements and were not sufficient to mitigate risks to life safety of the tenants. The report identified life safety concerns regarding both the gravity system and the lateral system, the latter of which affected how the building performed in a seismic event, as well as a number of non-compliances with the BC Building Code.



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11. As a result, the City revoked the building permit for the Building.
12. On January 16, 2020, a notice to vacate was issued by the Building manager [Name Withheld] to the remaining occupants.
13. As part of the McClure Investigation, [Name Withheld] (the Investigator), a member of the EGBC Investigation Subcommittee, prepared reports on the field reviews conducted during the construction of the Building (the "Investigator FR Report") and the non-seismic elements of the design of the Building (the "Investigator NSE Report"), respectively dated July 14, 2020, and February 2, 2021.
14. On June 3, 2021, EGBC conducted an investigative interview with the Registrant.
15. On June 30, 2021, [Name Withheld] (the "Expert") delivered an expert report regarding the structural design of the Building (the "Expert Report"). The Expert Report was commissioned by EGBC to assist in the conduct of the Investigation.

Protecting the Public in Alberta

16. Upon receiving the complaint in May 2020, an APEGA Investigation Panel (the Panel) was appointed. The Panel recognized that the EGBC investigation was early stage; it was not the intention of the Panel to conduct a concurrent parallel investigation of the same allegations already under investigation by EGBC.
17. The Panel's focus while the EGBC investigation unfolded was to ensure the protection of the public in Alberta; accordingly, the Panel initiated an open, ongoing and cooperative dialog with the Registrant regarding his practice in Alberta.
18. The Registrant informed the Panel that the Building was unlike any project he had done previously; all of his past and present projects in Alberta are mid-rise (4-6 storey) wood frame structures on concrete foundations/parking structures. The Registrant confirmed that he had never designed a high-rise building in Alberta; further, the Registrant undertook to inform the Panel if any Alberta projects outside his specialty area rose.
19. Based on this dialog, and a May 28, 2020, confirmation from EGBC that EGBC had no immediate plans to impose conditions on the Registrant's right to practice in B.C., the Panel had no immediate concern for public safety in Alberta while the EGBC investigation progressed.
20. Between May 2020 and May 2022, the Registrant provided periodic updates on the progress of the EGBC investigation to the Panel.



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EGBC Interim Order

21. On October 23, 2021, the Registrant informed the Panel that the EGBC investigation had been completed, but the disciplinary decision was still several months away.
22. The Registrant further advised the Panel that on October 1, 2021, EGBC published an Interim Order directing that any projects for which the Registrant was responsible must undergo independent third-party reviews. The Registrant advised the Panel that he was complying with this order.
23. The Panel reviewed the Order and noted the third-party reviews were not limited to B.C. projects; accordingly, the public in Alberta remained protected.

EGBC Consent Order

24. On April 21, 2022, the Registrant informed the Panel that he was negotiating a Consent Order with EGBC which would result in the Registrant being struck from the EGBC registry.
25. On May 25, 2022, the Registrant provided the Panel with a copy of the EGBC Consent Order. The order was published on EGBC's website on June 2, 2022.
26. A copy of the executed EGBC Consent Order (dated May 9, 2022), is attached to this Recommended Discipline Order as **Appendix A**.
27. The detailed list of citations and admissions to unprofessional conduct by the Registrant are outlined in Paragraph 4 of the EGBC Consent Order (see **Appendix A**). Summary:
 - Deficient design drawings: certain aspects of the seismic design of the Building do not comply with the 2012 British Columbia Building Code and CAN/CSA A23.3-04 Design of Concrete Structures (lists 9 specific defects)
 - Deficient design drawings: certain aspects of the design of the gravity load resisting system of the Building do not comply with the 2012 BCBC (lists 9 specific defects)
 - The existence of the above noted design defects demonstrates incompetence
 - Failing to undertake adequate design process: improperly relied on the design of the Building's core that was performed by his colleague, [Name Withheld] (the "Colleague"); failed to review the Colleague's design; failed to identify major



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deficiencies in the Colleague's design's design of the Building's seismic elements; dimensions on the Structural Drawings materially differed from the Building's architectural record drawings; design loads listed on the Structural Drawings do not account for all required loading conditions; failed to maintain complete project documentation; failed during the design process to ensure that regular, documented checks of the Structural Design for the Building occurred; failed to ensure that an independent review of the Structural Design for the Building was completed and properly documented prior to construction.

- Failed to perform a sufficient number of field reviews; failed to properly document field reviews, including by failing to properly document instances where the as-built conditions of the Building differed from the Structural Design for the Building
 - Improperly signed and sealed Schedule B and Schedule C-B Letters of Assurance, confirming that the Structural Design for the Building substantially complied with the 2012 BCBC in circumstances where the design did not comply.
 - Failed to take adequate steps to address serious concerns about the Building's structural design that were brought to his attention by [Name Withheld] (the "Vendor") in November 2017 while the Building was under construction.
 - In his July 26, 2019 response to a May 27, 2019 letter from EGBC requesting that Mr. McClure respond to the allegations made against him, he falsely represented to EGBC that [Name Withheld] (the "Colleague's company") had asked the Vendor that had reached out to the Colleague's company to communicate serious concerns with the Building's structural design as a professional courtesy after one of its principals reviewed structural drawings for the Building
28. The detailed disposition/sanctions imposed on the Registrant are outlined in Paragraphs 5 through 11 of the EGBC Consent Order (see Appendix A). Summary:
- The Registrant's registration in EGBC is cancelled effective of the date of this Order.
 - The Registrant agrees not to apply for reinstatement of practicing status for a period of two years after the Cancellation Date.



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- If the Registrant wishes to apply for reinstatement of practicing status with EGBC, in addition to complying with all requirements mandated by the Bylaws of EGBC and as deemed required by the EGBC Credentials Committee, he must provide:
 - o a letter of explanation as to why he wishes to reinstate status as a practicing Professional Registrant;
 - o a declaration that he has read and is familiar with applicable standards, policies, plans and practices established by the government or by Engineers and Geoscientists BC, including applicable professional practice guidelines and advisories that are relevant to his intended practice;
 - o a letter of explanation as to how he has maintained practice competency, including through the completion of continuing education;
 - o professional references, in a number satisfactory to the Credentials Committee and who are able to attest to his good character, good reputation and practice competency;
 - o a current professional record of his work experience;
 - o evidence of the successful completion of the Engineers and Geoscientists BC Professional Practice Examination, at his own expense;
 - o evidence of completion of the Professional Engineering and Geoscience Practice in BC Online Seminar, at his own expense; and
 - o evidence that he has completed continuing education instruction in the following subject areas: structural engineering requirements under the most recent edition of the British Columbia Building Code; Canadian Standard A23.3 for the design of concrete structures; and Canadian Standard S16:19 for the design of steel structures

- If the Registrant's practicing status is reinstated with EGBC at any time in the future, he agrees to undergo a practice review conducted by the Audit and Practice Review Committee, and pay the costs associated with the practice review, within six months of his reinstatement with EGBC. The precise timing and process of which will be determined by the Audit and Practice Review Committee.



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- The Registrant will pay a fine in the amount of \$25,000.
- The Registrant will pay \$32,000 to EGBC as a contribution towards the legal and investigative costs incurred in this matter.

29. The Registrant's cooperation with the APEGA investigation was exemplary.

C. CONDUCT BY THE REGISTRANT

30. The Registrant freely and voluntarily admits that at all relevant times he was an APEGA Registrant and thereby, was bound by the *Engineering and Geoscience Professions Act* and the *APEGA Code of Ethics*.

31. The Registrant acknowledges that the conduct described above constitutes unprofessional conduct as defined in Section 44(1) of the *Act*:

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,*
- d) *displays a lack of knowledge of or lack of skill or judgement in the practice of the profession, or*
- e) *displays a lack of knowledge of or lack of skill or judgement 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 unskilled practice of the profession or unprofessional conduct, whichever the Discipline Committee or the Appeal Board finds.

32. The Registrant acknowledges that the conduct described above is conduct that is detrimental to the best interests of the public, contravenes a code of ethics as established under the regulations, harms or tends to harm the standing of the profession generally, and displays a lack of skill in the practice of the profession, contrary to Section 44(1)(a), (b), (c) and (d) of the *Act*.



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33. The Registrant further acknowledges and admits that his conduct was also contrary to Rules of conduct 1, 2 and 4 of the APEGA Code of Ethics, which states:
1. *Professional engineers, geologists and geophysicists shall, in their areas of practice, hold paramount the health, safety and welfare of the public and have regard for the environment.*
 2. *Professional engineers, geologists and geophysicists shall undertake only work that they are competent to perform by virtue of their training and experience.*
 4. *Professional engineers, geologists and geophysicists shall comply with applicable statutes, regulations and bylaws in their professional practices.*

D. ORDERS

34. On the recommendation of the Investigative Committee and by agreement of Mr. Brian McClure, P.Eng. with that recommendation, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders pursuant to s. 63 of the Act that:
- a) The Registrant shall be reprimanded for his conduct and this order shall serve as the reprimand.
 - b) The Registrant's registration in the Association of Professional Engineers and Geoscientists of Alberta (APEGA) is cancelled effective the date this Order is approved by the Discipline Committee Case Manager (the "Cancellation Date").
 - c) The Registrant agrees not to apply for reinstatement of practicing status for a period of two years after the Cancellation Date.
 - d) If the Registrant wishes to apply for reinstatement of practicing status with APEGA, in addition to complying with all requirements mandated by the Act, Regulations and Bylaws of APEGA and as stipulated by Council on recommendation of the Practice Review Board, he must provide:
 - i. a letter of explanation as to why he wishes to reinstate status as a practicing Professional Registrant;
 - ii. a declaration that he has read and is familiar with applicable standards, policies, plans and practices established by the government or by APEGA, including applicable professional practice guidelines, standards and bulletins that are relevant to his intended practice;



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- iii. a letter of explanation as to how he has maintained practice competency, including through the completion of continuing education;
- iv. a current professional record of his work experience;
- v. evidence of the successful completion of the National Professional Practice Exam (NPPE), at his own expense; and
- vi. evidence that he has completed continuing education instruction in the following subject areas:
 - 1) Structural engineering requirements under the most recent edition of the Alberta Building Code;
 - 2) Canadian Standard A23.3 for the design of concrete structures; and
 - 3) Canadian Standard S16:19 for the design of steel structures
- e) The Registrant shall provide the Director, Enforcement, within thirty (30) days of the date this order is approved by the Discipline Committee Case Manager, written confirmation that his stamp has been surrendered to the Membership Administrator, APEGA Outreach & Product Services.
- f) This matter and its outcome will be published by APEGA as deemed appropriate and such publication will name the Registrant.

I, Mr. Brian McClure, P.Eng., acknowledge that before signing this Recommended Discipline Order, I consulted with legal counsel regarding my rights or that I am aware of my right to consult legal counsel and that I hereby expressly waive my right to do so. I confirm that I agree to the facts and admissions as set out above in this Recommended Discipline Order, and that I agree with the Orders that are jointly proposed.

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



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Signed,

BRIAN MCCLURE, P.Eng.
Registrant

KEVIN WILLIS, P.Eng.
Panel Chair, APEGA Investigative Committee

D.F. COX, P.Eng.
Case Manager, APEGA Discipline Committee

Date: July 20, 2022