

HUMAN RIGHTS AND DIVERSITY

APEGBC PROFESSIONAL PRACTICE GUIDELINES

V1.0

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■ FOREWORD

The Professional Practice Guidelines published by the Association of Professional Engineers and Geoscientists of British Columbia (APEGBC) provide guidance on professional practice and conduct for APEGBC members.

■ DEFINITIONS

The following definitions are specific to these guidelines. All references in the text to these terms are italicized in the first instance.

APEGBC professional

A member or a licensee of the association.

Association

The Association of Professional Engineers and Geoscientists of British Columbia (APEGBC).

Discrimination

Treating people differently because of a personal characteristic such as race, gender, religion, or disability.

Diversity

The inclusion of different types of people—such as people of different genders, sexual orientations, races, cultures, religions, physical, or mental ability—in a group or organization.

Harassment

A particular type of discrimination that occurs when a person is subjected to any unwanted behaviour that offends, demeans, or humiliates. See also *sexual harassment*.

Reasonable accommodation

Changes to work responsibilities, the work environment or the way things are usually done in order to allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other individuals in the workplace.

Sexual harassment

Unwanted sexual advances, unwanted requests for sexual favours, and other unwanted verbal or physical conduct of a sexual nature that offends, demeans, or humiliates an individual on the basis of sex. See also *harassment*.

Unprofessional conduct

Conduct that does not meet the standard expected through the application of the APEGBC Code of Ethics or is a marked departure from the standard to be expected of an APEGBC professional; it does not include minor or inadvertent failure to comply with professional standards.

Workplace environment

All of the objects, people, circumstances, and the atmosphere—mental, moral, or physical—surrounding a person in the performance of the job.

■ 1.0 INTRODUCTION

1.1 PURPOSE

The purpose of these guidelines is to provide education to APEGBC professionals regarding human rights and diversity issues that are relevant in professional practice. The guidelines are not intended and should not be construed as providing legal advice to APEGBC professionals.

1.2 ROLE OF THE ASSOCIATION

APEGBC recognizes the importance of fostering a *workplace environment* that welcomes all of the increasingly diverse members of our society and enables them to contribute to their full potential. APEGBC encourages its members and licensees to be proactive in improving the workplace environment for all employees, clients and associates and in addressing issues such as *discrimination* and *harassment*.

1.3 SCOPE

The dynamics involved in a professional's relationships with other professionals, clients, employees, and other associates can include power, authority, control, and trust. These integral characteristics require a heightened awareness and understanding of the issues associated with such relationships. APEGBC professionals are expected to behave in a manner that exemplifies and supports the fair and courteous treatment of others, as required by Principle 7 of the APEGBC Code of Ethics.

These guidelines:

- Set forth APEGBC's human rights statement policy and encourage APEGBC professionals to be proactive in protecting human rights and fostering diversity in the workplace environment, and
- Are not intended as legal advice, but as a concise summary of contemporary human rights issues that are relevant to professional practice.

1.4 ACKNOWLEDGEMENTS

These guidelines have been prepared by Gilbert Larocque, CD, P.Eng., LLB, FEC, Associate Director, Professional Practice, of the Association of Professional Engineers and Geoscientists of British Columbia, based on materials gratefully received from the Association of Professional Engineers and Geoscientists of Alberta.

These guidelines were reviewed by the APEGBC Leadership Team.

■ 2.0 GUIDANCE FOR PROFESSIONAL PRACTICE

2.1 HUMAN RIGHTS LEGAL FRAMEWORK

In British Columbia, all employers (including corporations, societies, partnerships, unions, and government entities) are governed by either the federal *Canadian Human Rights Act*, RSC 1985, c. H-6, or the *British Columbia Human Rights Code*, RSBC 1996, c. 210.

The jurisdiction of the *Canadian Human Rights Act* is over all federally regulated activities. The jurisdiction of the *British Columbia Human Rights Code* is over all activities in British Columbia that are not federally regulated.

Corporations may be vicariously liable for the actions of their officers or employees in controversies regarding discrimination.

2.2 APEGBC HUMAN RIGHTS STATEMENT

APEGBC affirms the fundamental principle that all persons have the intrinsic human right to be treated fairly and with dignity. The *association* expects APEGBC professionals to conduct themselves in a manner that promotes and encourages recognition of this right. Any discrimination, harassment, or intimidation that violates the human rights of others is improper and offensive. Any such action perpetrated or condoned by an APEGBC professional is unacceptable and may constitute *unprofessional conduct* or a breach of the APEGBC Code of Ethics.

As such, all APEGBC professionals are encouraged to respect the human rights of others, and to:

- Be proactive in understanding human rights issues,
- Be familiar with applicable laws,
- Take action where appropriate to protect human rights, and

- Be vigilant against discrimination and harassment.

Furthermore, all APEGBC professionals who are responsible for establishing organizational policies, or who can influence those policies, should take action to:

- Provide a workplace environment that fosters mutual respect and good interpersonal relations,
- Establish human rights policies within their organizations,
- Establish policies to prohibit discrimination and harassment,
- Establish effective procedures to deal with incidents,
- Foster diversity in the workplace environment, and
- Provide effective education programs for all employees.

Human rights commission offices can be contacted for assistance with creating and implementing effective human rights policies. APEGBC professionals are encouraged to take advantage of these resources of information.

2.3 DISCRIMINATION

Discrimination occurs in the workplace when people are treated differently because of some particular attribute such as race, gender, age, disability, culture or other attribute, including those listed in the human rights codes. Within the workplace environment, discrimination may occur in many forms, some blatant, others subtle. A simple test for discrimination asks, “Would an individual be treated in this manner if he or she were not [e.g., Indigenous, female]?”

2.3.1 Grounds for Discrimination

The *Canadian Human Rights Act* and the *British Columbia Human Rights Code* each list prohibited grounds of discrimination. The listed prohibited grounds of

discrimination with respect to employment practices, job advertisements and applications, and membership in trade unions or employers organizations include:

Prohibited grounds	British Columbia	Federal
Race or Colour	Yes	Yes
Religion	Yes	Yes
Sex (male, female, transgender, including pregnancy or childbirth)	Yes	Yes
Physical or Mental Disability (including drug and alcohol dependencies)	Yes	Yes
Age	Yes	Yes
Ancestry or Place of Origin	Yes	No
National or Ethnic Origin (including linguistic background)	No	Yes
Marital Status	Yes	Yes
Family Status	Yes	Yes
Sexual Orientation	Yes	Yes
Gender Identity or Expression	Yes	No
Political Belief	Yes	No

2.3.2 Types of Discrimination

Prohibited discrimination may be in the form of:

- Direct discrimination,
- Adverse effect discrimination, or
- Systemic discrimination.

Each of these types of discrimination is discussed below.

2.3.2.1 Direct Discrimination

Direct discrimination means differential treatment based openly on a protected ground, where, for example, an employer expressly denies employment on the basis of an individual's race or physical disability.

Example 1 – Direct Discrimination (Physical Disability)

After being diagnosed with cataracts, an employee went on disability leave. It was expected that her condition would grow worse very quickly, and that she would have little or no vision left after two years. After three years it became apparent that the diagnosis had been overly pessimistic, and her vision was deemed good enough for her to be able to return to work. When she attempted to return to her previous job, the employer refused her. The British Columbia Human Rights Tribunal, the BC Supreme Court and the BC Court of Appeal successively held that the employer's refusal to return the employee to work was adverse treatment and that her disability had been a factor in the refusal.

Boehringer Ingelheim (Canada) Ltd. v. Kerr, 2011 BCCA 266.

2.3.2.2 Adverse Effect Discrimination

Adverse effect discrimination results from a policy or rule that appears to treat all individuals equally, but in reality results in legally prohibited discrimination against an individual or group of individuals. Identifying adverse effect discrimination requires assessing the effect that the application of a policy or rule will have on individuals, beyond the express or apparent purpose of the policy or rule.

Example 2 – Adverse Effect Discrimination (Employer Policies)

Every crew person working in a fast-food restaurant was expected to meet the employer's hand-washing policies, which called for, among other requirements, crew persons to wash their hands at least once an hour. The employee developed a form of hand dermatitis that was aggravated by the frequent hand-washing, to the point where the employee could no longer work and went on long-term disability. The employer failed to inform itself of the nature and extent of the disability of the employee and to perform an evaluation of accommodations for a possible return to work. The British Columbia Human Rights Tribunal found that the employee's complaint was justified and that she was entitled to monetary compensation to cover various costs arising from the loss of employment.

Datt v. McDonald's Restaurants of Canada Ltd. (No. 3), 2007 BCHRT 324.

2.3.2.3 Systemic Discrimination

Systemic discrimination refers to patterns of behaviour or practices that are part of the structure of an organization and that cause discrimination. This type of discrimination is not random; it is based on established and often widely accepted behavioural norms.

Example 3 – Systemic Discrimination (Employment Opportunities)

Action Travail des Femmes lodged a complaint of systemic discrimination practised against an identifiable group. A few women worked as dispatchers for CN Rail, but there were no women employed in the "yard," which was the path to better pay and career advancement. Women were not encouraged to apply for yard work, and if they did, their applications were not seriously considered.

A Canadian Human Rights Tribunal ruled that CN Rail had discriminated against women who were seeking employment in traditional blue-collar jobs. The Tribunal found that CN Rail's recruitment, hiring and promotion policies prevented and discouraged women from working in blue-collar jobs. The Tribunal ordered CN Rail to hire one woman in every four new hires into blue-collar positions until the representation of women reached 13%, which is the national percentage for women working in equivalent jobs.

CN Rail appealed this decision to the Federal Court of Appeal, which ruled the Tribunal did not have authority to impose a hiring quota. When the matter was placed before the Supreme Court of Canada, the decision of the Federal Court was overturned. The Supreme Court ruled the Tribunal may order adoption of a special program designed to prevent the same or similar (discriminatory) practice from occurring in the future. The measures ordered by the Tribunal were designed to break a continuing cycle of systemic discrimination against women. An employment equity program, such as the one ordered by the Tribunal, is an attempt to ensure that future applicants and workers from the affected group will not face the same barriers as those that blocked their forebearers.

Action Travail des Femmes v. Canadian National Railway Company [1987] 1 SCR 1114.

2.4 HARASSMENT

Harassment is a particular type of discrimination. It occurs when a person is subjected to any unwanted behaviour that offends, demeans or humiliates. It includes, but is not limited to, verbal abuse and intimidation, as well as the displaying of racist, sexist or other offensive materials.

Harassment also can take many forms, such as sexually suggestive comments or gestures or unwanted physical contact, including physical or sexual assault. *Sexual harassment* is particularly offensive when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or when submission to or rejection of such conduct by an individual affects the individual's employment.

Harassment can involve a single serious incident, but more often consists of a series of unwanted incidents over a period of time. In the workplace environment, harassment creates a hostile or poisoned work atmosphere. It interferes with the quality of work and can affect an individual's personal life. Many individuals live with the threat of being forced out of a job, fired, or denied promotions or other work-related benefits. Even jokes that cause awkwardness or embarrassment can undermine a person's self-esteem and can lead to a wide range of stress-related illnesses. Individuals often feel intimidated, humiliated, and degraded. Harassment is not harmless, funny, or trivial. It is the responsibility of all APEGBC professionals to be aware of how their behaviour affects others. Behaviour that is unwelcome and unwanted or makes others feel uncomfortable may result in harassment allegations.

In addition, employers may be held responsible for the behaviour of their employees, particularly if employers have not taken adequate steps to provide a discrimination-free workplace environment. Under the principle of vicarious liability, the Supreme Court of Canada has found that the employer may be responsible for the actions of its employees.¹ Lack of awareness may not eliminate this potential liability. Employers are responsible for providing a harassment-free work environment for all employees, clients, and other associates. An effective policy regarding harassment can significantly reduce an employer's or association's liability should a complaint ever be made or filed. Prompt and appropriate response to such a complaint can further reduce liability.

2.5 DIVERSITY

2.5.1 Diversity Considerations

People entering the workforce today come from many different demographic groups. This variety brings opportunities for businesses and professions. The diverse points of view thus available bring added creativity and innovation, improve decision-making, and create a competitive advantage. Society's increasing diversity will influence the professions, workplaces, and relationships with associates. Members should seek to understand the viewpoints of others and develop joint ways of dealing with issues. New behavioural norms that welcome diverse groups are required in the workplace environment in order to allow all individuals to contribute to the best of their abilities within their organizations.

¹ *Bazley v. Curry* [1999] 2 SCR 534.

² Engineers Canada, *Welcoming Workplaces: Diversity in the Engineering* Profession*, undated.

APEGBC professionals are encouraged to work to improve the workplace environment and eliminate barriers to acceptance and advancement while maintaining fair and just treatment for all.² Many APEGBC professionals and their organizations have already taken significant action and made substantial improvements. However, eliminating these barriers and improving the workplace environment is an area where continuous improvement is in order and where the professions have an opportunity to demonstrate leadership.

The following sections illustrate the issues facing several of the diverse groups in our society.

2.5.1.1 Diversity Considerations Related to Women

Women are under-represented in the engineering and geoscience professions, especially at the senior levels. Societal expectations and stereotypes have kept many women from even attempting to enter the professions. Within some of our professional workplaces, barriers to the acceptance and advancement of women still exist. Among these are:

Direct discrimination:

Some women have been denied the opportunity to practice, even though fully qualified. The rationalizations given for such treatment have ranged from a presumed inability to be effective in field work to concern over women's ability to effectively balance home and work responsibilities.

Systemic discrimination:

Our professions have been dominated by men, and so the role models and understood norms for successful professionals have been largely masculine. Many women entering the profession have had to adapt to these masculine standards to be successful or risk isolation from their male colleagues.

Harassment:

Women can be subjected to harassment, both deliberate and inadvertent, which impacts the likelihood of them staying in our professions. Harassment based on gender reduces women's ability to progress through their careers, and harms the reputation and credibility of the professions.

2.5.1.2 Diversity Considerations Related to Sexual Orientation and Gender Identity

With the coming into effect of the *Canadian Charter of Rights and Freedoms*³ in 1985 as section 15 of the *Constitution Act, 1982*, the legal situation related to sexual orientation changed substantially. Although the Charter does not specify sexual orientation as a prohibited ground of discrimination, the courts interpreted it broadly and considered sexual orientation as an analogous ground to the personal characteristics listed in section 15(1)—namely, race, national or ethnic origin, colour, religion, sex, age, and mental or physical disability. The enactment of *An Act to amend the Canadian Human Rights Act*⁴ in 1996 officially made sexual orientation a prohibited ground of discrimination. The early recognition of discrimination that was of greatest significance to gay and lesbian individuals gradually widened to include bisexual and transgender persons. Related issues include the denial of accommodations and housing, the denial of services by both public bodies and private sector organizations (such as food services and retail services), harassment in the workplace, loss of employment, denial of permits and licences, denial of training, and denial of promotion.

³ *Canadian Charter of Rights and Freedoms*, s. 15 of the *Constitution Act, 1982*.

⁴ *An Act to amend the Canadian Human Rights Act*, SC 1996, c. 14.

2.5.1.3 Diversity Considerations Related to Indigenous People

The culture and history of Indigenous peoples in Canada are distinct. Existing Indigenous and treaty rights of the Indigenous peoples in Canada are recognized and affirmed in the *Constitution Act, 1982*. In working with Indigenous peoples, it is important to appreciate that different processes and ways of conducting business may apply and that customs may vary from community to community. Respect is an integral part of Indigenous culture, and developing mutual respect and understanding takes time. Listening with patience and honouring community elders are also important cultural norms.

2.5.1.4 Diversity Considerations Related to Persons with Disabilities

Persons with disabilities have faced significant barriers to employment and fair treatment. These barriers can be attitudinal or physical. Attitudinal barriers exist because of the assumptions made about what persons with disabilities can and cannot do. Many are uncomfortable with individuals who have some form of disability and are unsure of how to behave around them. The physical and attitudinal barriers often can be removed or eased by some kind of accommodation or education. There are agencies and associations that can provide more information on overcoming the range of barriers that may exist in the workplace.

The Supreme Court of Canada has ruled that an employer must take “reasonable steps” in making accommodations so that people do not suffer discrimination. Such a ruling empowers human rights commissions to impose the legal duty of *reasonable accommodation* in the workplace.⁵

⁵ *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, 2008 SCC 43.

2.5.1.5 Diversity Considerations Related to Newcomers

Newcomers to our country arrive with a wide variety of expectations, abilities, and needs. A significant number of them come from cultures that have significantly different behavioural norms from those in Canada. In addition, their ability in the use of English may be quite limited. While these factors may make it more difficult to communicate or to develop understanding, it is important that these people be treated fairly and with dignity. Where appropriate, APEGBC professionals should take steps to facilitate their participation in their workplaces and to ensure that their human rights are not violated.

2.6 COMPLAINT PROCEDURE

APEGBC has a process for taking complaints against APEGBC professionals in relation to allegations that any APEGBC professional has not practised professional engineering or professional geoscience in accordance with the standards of the professions, including aspects of practice related to human rights and respect for others that could constitute unprofessional conduct or a breach of the APEGBC Code of Ethics.

Principle 1 of the Code of Ethics requires members to hold paramount the safety, health and welfare of the public, and to promote health and safety within the workplace. Principle 7 of the Code of Ethics requires APEGBC professionals to conduct themselves with fairness, courtesy and good faith toward clients, colleagues and others.

A complaint may be submitted by a complainant to APEGBC, whether or not the matter of the complaint has already been examined by an employer’s internal complaint review process or by a human rights commission. Complainants should

be aware that, unlike the decisions they generate, the results of a human rights commission's investigations are not matters of public record. Similarly, the results of internal company or agency investigations are not likely to be available. If the APEGBC Investigation Committee recommends a formal hearing by the APEGBC Discipline Committee, the Discipline Committee may hear witnesses at a public hearing.

Complainants should also be aware that frivolous or malicious complaints could themselves be considered forms of harassment.

Dealing with harassment and discrimination

If you are harassed or discriminated against, do not ignore it. The following steps are recommended for dealing with discrimination and harassment:

1. Make it clear to the person that his or her actions are not welcome.
2. Document your concerns. Keep a written record of incidents, including dates, time, place, and witnesses.
3. If you feel you have been discriminated against or harassed at work, notify the person identified in your firm's discrimination and harassment policy. In the absence of a policy, you should talk to that person's supervisor or another senior person in the company.
4. If your complaints to the individual or the employer do not yield satisfactory results, you may wish to file a complaint with the appropriate human rights commission.
5. If you feel you have been discriminated against or harassed by an APEGBC professional, you may file a complaint with APEGBC at any time.

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Professional Engineers
and Geoscientists of BC

THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF BRITISH COLUMBIA
200 – 4010 Regent Street, Burnaby, British Columbia V5C 6N2
T: 604.430.8035 E: apeginfo@apeg.bc.ca APEG.BC.CA