PROFESSIONAL PRACTICE
GUIDELINES

HUMAN RIGHTS AND DIVERSITY
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# GUIDELINES UPDATES

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<tr>
<td>1.0</td>
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1.0 FOREWORD

The Professional Practice Guidelines published by the Association of Professional Engineers and Geoscientists of British Columbia (APEGBC) present procedures and practices that are recommended by APEGBC. To practice in accordance with what is deemed to be acceptable practice, APEGBC members and licensees should generally conform to the recommendations contained within the guidelines. If they do not detract from the intent of the guidelines, variations may be made to accommodate special circumstances.

Guidelines use the word 'should' to indicate that among several possibilities, one is recommended as particularly suitable without necessarily mentioning or excluding others; or that a certain course of action is preferred but not necessarily required; or that (in the negative form) a certain course of action is disapproved of but not prohibited ('should' equals 'is recommended that'). The word 'must' is used to indicate requirements that are mandatory and must be followed ('must' equals 'is required to'). The word 'may' is used to indicate a course of action permissible within the limits of the guidelines ('may' equals 'is permitted').

2.0 DEFINITIONS

For the purposes of these guidelines, the following terms and definitions apply.

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 some personal particular attribute such as race, gender or religion.

Diversity
The inclusion of different types of people - such as people of different genders, sexual orientations, races, cultures, religions - in a group or organization.

Harassment
A particular type of discrimination which occurs when a person is subjected to any unwanted behaviour that offends, demeans or humiliates. See also sexual harassment.
Prejudice
An opinion formed without taking time and care to judge fairly, often based on incomplete and stereotyped information.

Reasonable accommodation
A legal duty requiring that, in some cases, policies, rules, conditions or agreements that impact on work must be altered when a person requires accommodation in order to obtain work or maintain employment.

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 and is established when there is a marked departure from the standard to be expected of a competent professional; it does not include minor or inadvertent failure to comply with professional standards.

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

3.0 INTRODUCTION

3.1 Purpose
The purpose of these guidelines is to clarify APEGBC’s expectations of its members and licensees with respect to human rights issues and diversity in professional practice.

3.2 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.

APEGBC professionals should note that, in some circumstances, employers can be held responsible for the behaviour of their employees.
3.3 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 fair and unbiased treatment of others.

These guidelines;

- set forth APEGBC’s human rights policy and encourage APEGBC professionals to be proactive towards protection of human rights and the fostering of diversity in the workplace environment;
- are an interpretive document that amplifies the Engineers and Geoscientist Act and the Code of Ethics;
- are not a legal document and are not intended to supersede or replace federal or provincial human rights legislation; and
- present a standard of professional conduct that all APEGBC professionals are expected to adopt.

3.4 Acknowledgements

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

The Guidelines were reviewed by;

- the APEGBC Leadership Team; and
- (organizations and prominent reviewers to be added following the consultation process).

4.0 GUIDANCE FOR PROFESSIONAL PRACTICE

4.1 APEGBC Human Rights Policy

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* have a professional responsibility to respect the human rights of others, and to:

- be proactive in understanding human rights issues;
- be familiar with applicable legislation;
- take action where appropriate to protect human rights; and
- be vigilant against *discrimination* and *harassment*.

### 4.2 Policy Implementation

*APEGBC professionals* must respect the human rights of others and take action to protect those rights has been clearly articulated in the foregoing policy statement. In all aspects of their professional practice *APEGBC professionals* should:

- be proactive in understanding human rights and *diversity* issues;
- become familiar with applicable provincial and federal human rights legislation;
- take action to protect human rights; and
- be vigilant against *discrimination* and *harassment*.

*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 this source of information.
4.3 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. First Nation, female)?"

4.3.1 Types of Discrimination

Human rights acts prohibit discrimination on specific grounds. Human rights commissions have moreover recognized and defined three types of discrimination that may invade the workplace environment. They are:

- direct discrimination;
- adverse effect discrimination; and
- systemic discrimination.

These types of discrimination are discussed below.

4.3.2 Direct Discrimination

Direct discrimination occurs, with intent, because a person possesses some attribute against which there is prejudice. Weak excuses may be invented to justify the discrimination, but under scrutiny, these "rationalizations" usually prove secondary to the actual reason(s) motivating the position or actions taken.

Example 1 – Direct Discrimination (Physical Disability)

After being diagnosed with cataracts, the employee went on disability leave. Three years later, her prognosis improved and she was found able to return to work. The employer refused. 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 the disability was a factor in the refusal.

Boehringer Ingelheim (Canada) Ltd. v. Kerr, 2011 BCCA 266.
4.3.3 Adverse Effect *Discrimination*

Adverse effect *discrimination* occurs when policies, rules, conditions or union agreements are applied to all employees. Usually there is no intent to discriminate against anyone; however, as every employee is expected to comply regardless of individual circumstances, *discrimination* may occur.

**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, amongst other requirements, for 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 and evaluation into accommodation 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.

4.3.4 Systemic *Discrimination*

Systemic *discrimination* is based on principles or practices that are inherent in a system. The system may be a business, a profession, or any other organized way of behaving in society. The *discrimination* is not casual or random; it is based on established and often-widely accepted behavioural norms. These established norms might become obstacles that keep some people from participating fully in the system or group, and limit their ability to contribute. In business, practices such as recruitment, hiring, and promotion policies are so entrenched and accepted as part of the norm that the employer may not realize the practices tend to block, limit, or prevent the economic well-being or career advancement of a certain group of people within the business system.

**Example 3 – Systemic *Discrimination* (Employment Opportunities)**

Action Travail des Femmes lodged a complaint of systemic *discrimination* practiced against an identifiable group. A few women worked as dispatchers for CN, 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
A Canadian Human Rights Tribunal ruled that CN Rail has 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 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 that blocked their forbearers.


### 4.4 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 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 a victim's personal life. Many victims live with the threat of being forced out of a job, fired, or being 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. Victims 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 they 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. 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.

4.5 DIVERSITY

4.5.1 Diversity Considerations

People entering the workforce today come from many different demographic groups. This variety brings opportunity for our businesses and professions. The diverse points of view now available may 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.

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. Many APEGBC professionals and their organizations have already taken significant action and made substantial improvements. Eliminating these barriers and improving the workplace environment is, however, an area where continuous improvement is in order and where the professions have an opportunity to demonstrate leadership.

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1 Bazley v Curry [1999] 2 SCR 534.
2 Engineers Canada, Welcoming Workplaces: Diversity in the Engineering* Profession, undated
The following sections illustrate the issues facing several of the diverse groups in our society.

4.5.2 Issues for Women

Women have entered the workforce in increasing numbers and the character of the workplace environment has changed as a result. Many organizations have taken steps to accommodate women, remove barriers, and enable them to contribute to their full potential.

Women are under-represented in the engineering and geoscience professions, especially at the senior levels. In the past, societal expectations and stereotypes have kept many women from even attempting to enter the professions. In addition, there have been some barriers to the acceptance and advancement of women within our own professional workplaces. 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 their 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.

- **Harassment:** Some women have been harassed, both deliberately and inadvertently, on the basis of gender differences. Situations like these contribute to women’s lack of progression and/or early departure from the workforce. In addition, they harm the reputation and credibility of the professions.

4.5.3 Issues related to Sexual Orientation

With the coming into effect of the *Canadian Charter of Rights and Freedom* in 1985 as section 15 of the *Constitution Act, 1982*, the legal situation related to sexual orientation changed substantially. Although it does not specify sexual orientation as a prohibited ground of discrimination, the courts interpreted the Charter 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

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3 *Canadian Charter of Rights and Freedom*, s. 15 of the *Constitution Act, 1982*. 
of An Act to amend the Canadian Human Rights Act\(^4\) in 1996 officially made sexual orientation a prohibited ground for 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 licenses; denial of training and denial of promotion.

### 4.5.4 Issues for First Nations People

The culture and history of First Nations people in Canada are distinct. Existing aboriginal and treaty rights of the First Nations in Canada are recognized and affirmed in the Constitution Act, 1982. In working with First Nations, 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 aboriginal culture, and developing mutual respect and understanding takes time. Listening with patience and honouring community elders are also important cultural norms.

### 4.5.5 Issues for People with Disabilities

People 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 people with disabilities can and cannot do. Many are uncomfortable with those who have some form of disability and are unsure 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 which 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.\(^5\)

### 4.5.6 Issues for Newcomers

Newcomers to our country arrive with a wide variety of expectations, abilities and needs. A significant number of them come from cultures which have significantly

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\(^5\) 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.
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.

### 4.6 Complaint Procedure

Section 4.1 of these Guidelines outlines APEGBC's policy with respect to human rights and *diversity*. Individuals who believe that they have been treated in a manner that is in violation of this policy may file a complaint with APEGBC on the grounds that it constitutes *unprofessional conduct* or a breach of the APEGBC Code of Ethics.

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<th>Dealing with harassment and discrimination</th>
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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.

APEGBC has an investigation process that will take action if it is found that members are not practising professional engineering or professional geoscience in accordance with the standards of the professions, including aspects of practice related to human rights and respect of others which could constitute *unprofessional conduct* or a breach of the APEGBC Code of Ethics. APEGBC will investigate a complaint - typically after the person against whom the complaint is being made has been informed - and appropriate documentation is submitted with the complaint to substantiate an investigation.
Rule 1 of the Code of Ethics require members to hold paramount the safety, health and welfare of the public, and to promote health and safety within the workplace. Specifically, APEGBC professionals are expected to have proper regard for the human rights of others. Rule 7 of the Code of Ethics requires APEGBC professionals to conduct themselves with fairness, courtesy and good faith towards clients, colleagues and others.

Complaints may be investigated whether or not they have 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 of the Association, the Discipline Committee may hear witnesses and require production of documents related to the complaint. APEGBC professionals should be aware that discipline hearings are normally open to the public, unless ordered to be closed by the Discipline Committee.

Complainants should also be aware that frivolous or malicious complaints could themselves be considered forms of harassment. After making a finding of unprofessional conduct, the APEGBC Discipline Committee may order a reprimand, require the investigated person to take counselling, and/or suspend or cancel the person's registration, or issue other appropriate orders.

5.0 REFERENCES

Legislation


Case Law

Supreme Court of Canada


*Bazley v Curry* [1999] 2 SCR 534.


British Columbia Court of Appeal

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

British Columbia Human Rights Tribunal

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

Documents from Other Regulators/Associations


Compilations


Books


Governments throughout Canada have enacted legislation that seeks to eliminate *discrimination*, particularly within the workplace. In British Columbia, all employers (including corporations, unions, professional organizations and the Crown) are governed either by the *Canadian Human Rights Act*, RSC 1985, c. H-6 or the British Columbia *Human Rights Code*, RSBC 1996, c. 210. Employers may be held liable for the actions of their employees.

The *Canadian Human Rights Act* and the British Columbia *Human Rights Code* are distinct pieces of legislation, each independent of the other with neither taking precedence over the other. Each act has its own area of jurisprudence. Employers whose businesses are registered in provinces across Canada (e.g. airlines, banks) to serve a national interest are under the jurisdiction of the [Canadian Act](https://www.canada.ca/en/chrc/about/statutes/). Those employers with businesses in British Columbia are subject to British Columbia's *Code*. Each of the human rights legislation is administered by a human rights commission or tribunal that has authority to act in its own area of jurisprudence.

Within their own jurisdictions both human rights acts have primacy, meaning that the enacted human rights act supersedes all other laws of that jurisdiction, unless expressly declared by an act of Legislature or Parliament. The acts are similar, but not identical, and both title and contents change from time-to-time as each jurisdiction reviews its legislation. Members of APEGBC should determine which statute is applicable to them and familiarize themselves with the content. As of April 2016 [check and update immediately prior to APEGBC Council approval], the listed prohibited grounds of discrimination with respect to employment practices, job advertisements and applications, and membership in trade unions, or employers' organizations were:
## APPENDIX A - HUMAN RIGHTS LEGISLATION

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<th>Prohibited Grounds</th>
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<td>Religion</td>
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<td>Sex (male, female, transgender including pregnancy or childbirth)</td>
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<td>Physical or Mental Disability (including drug and alcohol dependencies)</td>
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More information on the human rights commission/tribunal is available at:

- British Columbia Human Rights Tribunal - [http://www.bchrt.bc.ca/](http://www.bchrt.bc.ca/); and