



Guideline for Human Rights Issues in Professional Practice

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The Association of Professional Engineers,
Geologists and Geophysicists of Alberta

FOREWORD

This document is an update of the document *entitled Human Rights Issues in Professional Practice – A Guideline*, originally issued in 1997. The document was revised to update references, to recognize changes in legislation and to have it conform to the current style for guidelines and practice standards.

An APEGGA guideline presents procedures and practices that are recommended by APEGGA. In general, an APEGGA Member should conform to the recommendations in order to be practising in accordance with what is deemed to be acceptable practice. Variations may be made to accommodate special circumstances if they do not detract from the intent of the guideline.

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 *shall* is used to indicate requirements that must be followed (*shall equals is required to*). The word *may* is used to indicate a course of action permissible within the limits of the guideline (*may equals is permitted*).

PARTICIPANTS

APEGGA's Practice Standards Committee (PSC) publishes practice standards and guidelines to promote high levels of professional service. The subcommittee of the PSC that developed the original guideline included the following members:

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APEGGA's Practice Standards Committee reviewed the subsequent revisions in October 2005.

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TABLE OF CONTENTS

1	OVERVIEW	1
1.1	Scope	1
1.2	Purpose	1
1.3	Definitions	1
2	APEGGA HUMAN RIGHTS POLICY	2
3	POLICY IMPLEMENTATION	2
4	DISCRIMINATION AND HARASSMENT	3
4.1	DISCRIMINATION	3
4.1.1	Direct Discrimination	3
4.1.2	Adverse Effect Discrimination	3
4.1.3	Systemic Discrimination	3
4.2	HARASSMENT	4
5	DIVERSITY ISSUES	4
5.1	ISSUES FOR WOMEN	5
5.2	ISSUES FOR ABORIGINAL PEOPLE	5
5.3	ISSUES FOR PEOPLE WITH DISABILITIES	6
5.4	ISSUES FOR NEWCOMERS	6
6	COMPLAINT PROCEDURE	6
	APPENDIX A - HUMAN RIGHTS ACTS	8
	APPENDIX B - EXAMPLES OF DISCRIMINATION	9

1 OVERVIEW

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. As professionals, APEGGA members are expected to behave in a manner that exemplifies and supports fair and unbiased treatment of others.

APEGGA 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. APEGGA members are encouraged to be proactive in improving the workplace environment for all employees, clients, and associates and in addressing issues such as discrimination and harassment. Members should note that, in some circumstances, employers, unions, and associations can be held responsible for the behaviour of their employees and/or members.

1.1 SCOPE

This guideline sets forth APEGGA's human rights policy and encourages APEGGA members to be proactive towards protection of human rights in the work place.

This guideline is an interpretive document that amplifies the *Engineering, Geological and Geophysical Professions Act* and the *Code of Ethics*. It is not a legal document and is not intended to supersede or replace federal or provincial human rights legislation. It presents a standard of professional conduct that all members are expected to adopt.

1.2 PURPOSE

This purpose of this guideline is to clarify APEGGA's expectations of its members with respect to human rights issues in professional practice.

1.3 DEFINITIONS

For the purposes of this guideline, the following terms and definitions apply.

Association

The Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA).

Discrimination

This means treating people differently because of some particular attribute such as race, gender or religion. A simple test for discrimination asks, "Would an individual be treated in this manner if he or she weren't ... (e.g., aboriginal, female)". Human rights acts prohibit discrimination on specific grounds (see Appendix A).

Harassment

This is a particular type of discrimination. It occurs when a person is subjected to any unwanted behaviour that offends, demeans, or humiliates.

Prejudice

An opinion formed without taking time and care to judge fairly, often based on incomplete and stereotyped information.

Members

Individual persons and permit holders registered under the *Engineering, Geological and Geophysical Professions Act*.

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. 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 work place.

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. This 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.

Workplace Environment

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

2 APEGGA HUMAN RIGHTS POLICY

APEGGA affirms the fundamental principle that all persons have the intrinsic human right to be treated fairly and with dignity. As professionals, APEGGA members are expected 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 APEGGA member is unacceptable and constitutes unprofessional conduct.

3 POLICY IMPLEMENTATION

The expectation that APEGGA members will 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 APEGGA members should:

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

Members who are responsible for establishing organizational policies, or who can influence those policies, should take action to:

- provide a workplace that fosters mutual respect and good interpersonal relations,
- establish human rights policies in their organizations,
- establish policies to prohibit discrimination and harassment,

- establish effective procedures to deal with incidents, 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. APEGGA professionals are encouraged to take advantage of this source of information.

4 DISCRIMINATION AND HARASSMENT

4.1 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 discrimination may occur in many forms, some blatant, others subtle. Human rights commissions define three types of discrimination that may invade the workplace. These are discussed below. Examples that help clarify the various types of discrimination are included in Appendix B.

4.1.1 Direct Discrimination

In this instance 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” evaporate.

4.1.2 Adverse Effect Discrimination

This type of 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.

4.1.3 Systemic Discrimination

This form of 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 may become obstacles that keep 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 wellbeing or career advancement of a certain group of people within the business system.

4.2 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 can take many forms, such as sexually suggestive comments or gestures and/or unwanted physical contact, including physical or sexual assault. Harassment also can include verbal abuse and intimidation as well as the displaying of racist, sexist or other offensive material.

Harassment can consist of a single serious incident, but more often involves a series of unwanted incidents over a period of time.

In the workplace, harassment creates a hostile or poisoned work environment. 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 members' responsibility 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, unions and associations may be held responsible for the behaviour of their members, particularly if they have not taken adequate steps to provide a discrimination-free workplace. 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.

5 DIVERSITY ISSUES

The people entering the workplace 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 in order to allow all individuals to contribute to the best of their abilities within their organizations.

APEGGA members 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 APEGGA members 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.

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

5.1 ISSUES FOR WOMEN

Women are entering the workforce in increasing numbers and the character of the workplace is changing as a result. Many organizations are taking steps to accommodate women, remove barriers, and enable them to contribute to their full potential.

Women are under-represented in the engineering, geological and geophysical 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.

5.2 ISSUES FOR ABORIGINAL PEOPLE

The culture and history of aboriginal people in Canada are distinct. Existing aboriginal and treaty rights of the aboriginal peoples in Canada are recognized and affirmed in the *Constitution Act, 1982*.

In working with aboriginal people, 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.

5.3 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.

5.4 ISSUES FOR NEWCOMERS

Newcomers to our country arrive with a wide variety of expectations, abilities and needs. Many of them come from a culture which has 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, APEGGA members should take steps to facilitate their participation in their workplaces and to ensure that their human rights are not violated.

6 COMPLAINT PROCEDURE

Section 2 outlines APEGGA policy with respect to human rights. Individuals who believe that they have been treated in a manner that is in violation of this policy may file a complaint with APEGGA.

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 and/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 a member of APEGGA, you may file a complaint with APEGGA at any time.

APEGGA will investigate a complaint after:

- the person or firm against whom the complaint is being made has been informed and appropriate documentation is submitted with the complaint to substantiate an investigation.

APEGGA investigates conduct that fits within the definition of unprofessional conduct or unskilled practice contemplated in the *EGGP Act*. Unprofessional conduct is any conduct, whether an act or omission, on the part of a professional member, licensee, permit holder, certificate holder or member-in-training, that:

- is detrimental to the best interests of the public,
- contravenes the Code of Ethics, or
- harms or tends to harm the standing of the profession generally.

Rule 3 of the *Code of Ethics* requires Members to conduct themselves toward other professionals, employees, and others with integrity, honesty, fairness and objectivity.

Complaints will 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 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 Investigative Committee recommends a formal hearing by the Discipline Committee of the Association, the Discipline Committee may hear witnesses and require production of documents related to the complaint. Members 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 APEGGA's Discipline Committee may order a reprimand, require the investigated person to take counselling, and/or suspend or revoke the person's registration, or issue other appropriate orders.

Rule 5 of the *Code of Ethics* require members to uphold and enhance the honour, dignity and reputation of their professions. Specifically, professionals are expected to have proper regard for the human rights of others, with the understanding that complaints concerning personal conduct outside professional life may be investigated.

APPENDIX A - HUMAN RIGHTS ACTS

Governments throughout Canada have enacted legislation that seeks to eliminate discrimination, particularly within the workplace. In Alberta, all employers (including corporations, unions, professional organizations and the Crown) are governed either by Alberta's or Canada's human rights act. Employers, unions and associations may be held liable for the actions of their employees and/or members.

The Canadian and Albertan human rights acts 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, some pipelines, etc.) to serve a national interest are under the jurisdiction of Canada's act. Those employers with businesses in Alberta are subject to Alberta's act. Each of the human rights acts is administered by a human rights commission that has authority to act in its own area of jurisprudence. Within their own jurisdictions both human rights acts are **primacy** legislations. This means that the enacted human rights acts supersede all other laws of that jurisdiction, unless expressly declared by an act of Legislature/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 APEGGA should determine which statute is applicable to them and familiarize themselves with the content. As of October 2005, the listed prohibited grounds of discrimination with respect to employment practises, job advertisements and applications, and membership in trade unions, employers' organizations, or occupational associations were:

Prohibited Grounds	Alberta	Federal
Race or Colour	Yes	Yes
Religious Beliefs	Yes	Yes
Gender (male/female/transgender, including pregnancy or childbirth)	Yes	Yes
Physical or Mental Disability (including drug and alcohol dependencies)	Yes	Yes
Age	Yes (18+)	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
Legal Source of Income	Yes	No
Sexual Orientation	Yes	Yes
Pardoned Conviction	No	Yes

For more information contact the respective human rights commission. ¹

¹ Alberta Human Rights and Citizenship Commission, available URL: www.albertahumanrights.ab.ca . Canadian Human Rights Commission, available URL: www.chrc-ccdp.ca .

APPENDIX B - EXAMPLES OF DISCRIMINATION

DIRECT DISCRIMINATION

The Alberta Human Rights and Citizenship Commission summarized one case as follows:

"A recent Alberta arbitration case² addressed drug and alcohol testing. The employer terminated Mr. Graham's employment because he refused to take a drug and alcohol test after an accident at the job site. The arbitration board said that refusal to take a drug and alcohol test does not automatically lead to termination of employment and ordered the employer to reinstate Mr. Graham in his job. The board stated that the employer should have suspended Mr. Graham and undertaken a complete investigation, which would have almost certainly resulted in Mr. Graham being cleared from blame for the accident at the job site."

ADVERSE EFFECT DISCRIMINATION

Every employee at a company is expected to work Monday through Friday. One employee, because of his religious beliefs cannot work on Easter Monday. No other employee has this problem. Even though the rule applies to all workers, it only has an "adverse effect" on one. The employer is required to accommodate the employee, but only to the point of "undue hardship" to the business. The employee could be asked to make up the time on Saturday, at regular rates of pay.

SYSTEMIC DISCRIMINATION

In 1981, Action Travail des Femmes lodged a complaint with the Canadian Human Rights commission. The complaint read: "Action Travail des Femmes has reasonable grounds to believe that CN Rail in the St. Lawrence Region has established or pursued a policy or practice that deprives or tends to deprive a class of individuals of employment opportunities because they are female."

The complaint was a complaint of systemic discrimination practiced against an identifiable group. In the St. Lawrence Region, a few women worked as dispatchers for CN, but there were no women employed in the "yard" (the road 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 has discriminated against women in the St. Lawrence region 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.

2 *In the Matter of a Grievance of Charles Bernard Graham, Alberta Arbitration Board, May 25, 2004.*

CN Rail appealed this decision to the Federal Court of Appeal, which ruled the Tribunal did not have authority to impose a hiring quota. However, 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.