



Creative Sanctions

*Improved Public Interest
Improved Regulatory Effectiveness and Efficiency*

To better protect the public interest, creative sanction provisions should be added to the *Engineering and Geoscience Professions Act (EGP Act)* to provide social justice options for the decision-making authorities who can make orders.

Background

- A creative sanction is a non- punitive measure for which practice restrictions or prohibition, or orders for restoration or rehabilitation might be more appropriate.
- Creative sanctions appear in multiple pieces of legislation in Alberta (e.g., *Environmental Protection and Enhancement Act, Occupational Health and Safety Act*, Alberta) and may include:
 - bond or other monetary payment
 - community service orders
 - compensation orders
 - providing specified information
 - publication orders
 - remediation orders
 - stop orders
 - any other measures the court may see fit to secure the offender's good conduct
- Creative sanctions aim to benefit the public and/or victim by restricting or changing the behaviour of the person who has violated the legislation.
- Creative sanction orders are innovative by connecting the violation with the project (or the victim) so the main beneficiary will be the victim and/or the public. The sanction addresses the wrongs that were done.
- The current *EGP Act* and General Regulation do not include creative sanction provisions.
- None of the constituent engineering or geoscience associations in Canada has creative sanction provisions. This is a new concept and modelled on innovative Alberta legislation, such as the *Environmental Protection and Enhancement Act* and the *Occupational Health and Safety Act*.

Why is this important?

- The legislation should explicitly allow for creative sanctions to give APEGA's Discipline Committee, Appeal Board, and the court the flexibility to make creative sanction orders either instead of, or in addition to, other sanctions in the *EGP Act*.
- In some circumstances, creative sanctions may be more appropriate and effective than other sanctions currently contained in the *EGP Act*.
- Creative sanctions can also help improve the overall health of the professions by requiring offenders to participate in activities that will raise the competency and practice of the professions as Members and Permit Holders strive to do their jobs better.
- It is in the public interest that this be available as an option, especially when the violator's conduct affected the public interest.

Proposed legislative change

- It is recommended that the legislation be amended to expand the sanctions that can be imposed:
 - in discipline matters to include creative sanction provisions,
 - by the court against unlicensed title and practice violators to include creative sanction provisions.
- These amendments should adopt provisions similar to what is contained in section 234 of the *Environmental Protection and Enhancement Act* and section 41.1 of the *Occupational Health and Safety Act*.
- Non-compliance with a creative sanction order may result in the suspension of a licence or permit until the order is fulfilled.

Examples of relevant existing legislation

Below are examples of similar provisions found in other pieces of Alberta legislation.

Environmental Protection and Enhancement Act, Alberta

Court Orders Relating to Penalty

Section 234(1) When a person is convicted of an offence under this Act, in addition to any other penalty that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

- prohibiting the offender from doing anything that may result in the continuation or repetition of the offence;
- directing the offender to take any action the court considers appropriate to remedy or prevent any harm to the environment that results or may result from the act or omission that constituted the offence;
- directing the offender to publish, in the prescribed manner and at the offender's cost, the facts relating to the conviction;
- directing the offender to notify any person aggrieved or affected by the offender's conduct of the facts relating to the conviction, in the prescribed manner and at the offender's cost;
- directing the offender to post a bond or pay money into court in an amount that will ensure compliance with any order made pursuant to this section;
- directing the offender to perform community service;
- requiring the offender to comply with any other conditions the court considers appropriate in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.

Occupational Health and Safety Act, Alberta

Additional Powers of Court to Make Directions

Section 41.1(1) Where a person is convicted of an offence against this Act, in addition or as an alternative to taking any other action provided for in this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order directing the person to:

- establish or to revise a policy for the protection and maintenance of the health and safety of workers on the work site
- establish or to revise a training or educational program regarding the health or safety of workers at the work site,
- take specific action to improve health and safety at work sites