

IN THE MATTER OF *THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT* AND IN THE MATTER OF AN INVESTIGATION RESPECTING **James C. Hum, P.Eng.:**

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**DECISION AND ORDER**

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**MEMBERS OF THE HEARING PANEL:**

Grant Gingara, P.Eng. – Chair of the Hearing Panel

Dwaine Entner - Public Appointee

Connor Wright, P.Eng.

Don George, P.Eng.

Cory Belyk, P.Geo.

**COUNSEL FOR INVESTIGATION COMMITTEE:**

Lyle Jones, P.Eng., LL.B.

**COUNSEL FOR MEMBER:**

None Appeared

**COUNSEL FOR DISCIPLINE COMMITTEE:**

Ron Pearson, P.Eng., J.D.

**REPORT OF THE HEARING PANEL APPOINTED AND EMPOWERED BY THE DISCIPLINE COMMITTEE OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF SASKATCHEWAN PURSUANT TO SECTIONS 33, 34, AND 35 OF THE CURRENT ENGINEERING AND GEOSCIENCE PROFESSIONS ACT, AND SECTION 22(4) OF THE CURRENT ENGINEERING AND GEOSCIENCE PROFESSIONS REGULATORY BYLAWS, TO HOLD A HEARING INTO THE CONDUCT OF JAMES C. HUM, P.ENG.**

**The Complaint**

The following complaints were made by the Investigation Committee of the Association of Professional Engineers and Geoscientists of Saskatchewan (“*The Association*”) pursuant to the provisions of Subsection 32(3)(a) of *The Engineering and Geoscience Professions Act* (herein known as “*The Act*”) with respect to the conduct/competence of James C. Hum, P.Eng.:

1. Mr. James C. Hum’s design of posts and associated anchorages were deficient, and that the design of guardrail did not comply with the BC Building Code and applicable CSA/CGSB 12.20-M89 standard amounting to professional incompetence as defined by section 29 of *The Act* and his conduct was not in compliance with the standard of practice expected of a professional engineer contrary to the provisions of subsection 20(2)(b) of *The Regulatory Bylaws*: offer services, advise on or undertake professional assignments only in areas of their competence and practice in a careful and diligent manner.
2. Mr. James C. Hum’s inspection of an existing lock block retaining wall was deficient, his opinion expressed as to its construction was based on insufficient data and analysis amount to professional incompetence as defined by section 29 of *The Act* and his conduct was not in compliance with the standard of practice expected of a professional engineer contrary to the provisions of subsection 20(2)(b) of *The Regulatory Bylaws*: offer services, advise on or undertake professional assignments only in areas of their competence and practice in a careful and diligent manner.
3. Mr. James C. Hum’s design of a 21 foot high retaining wall was deficient and lacked necessary detail; that there were deficiencies in the design of a house with respect to seismic loads; and that there was insufficient geotechnical analysis with respect to the stability of the excavated slopes amounting to professional incompetence as defined by section 29 of *The Act* and his conduct was not in compliance with the standard of practice expected of a professional engineer contrary to the provisions of subsection 20(2)(b) of *The Regulatory Bylaws*: offer services, advise on or undertake professional

assignments only in areas of their competence and practice in a careful and diligent manner.

4. The design of the attachment of the sign to the building sealed by Mr. James C. Hum was deficient and that an incorrect analysis had been used amounting to professional incompetence as defined by section 29 of *The Act* and his conduct was not in compliance with the standard of practice expected of a professional engineer contrary to the provisions of subsection 20(2)(b) of *The Regulatory Bylaws*: offer services, advise on or undertake professional assignments only in areas of their competence and practice in a careful and diligent manner.

#### Particulars:

On September 5, 2013 Mr. James C. Hum, P.Eng. was found guilty of unprofessional conduct by a Discipline Committee Panel of the Association of Professional Engineers and Geoscientists of British Columbia (APEGBC) under authority of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, C. 116.

The allegations of incompetence and unprofessional conduct against the member James C. Hum, P.Eng. by APEGBC are found in four Amended Notices of Inquiry dated 24 May 2013. The four Notices pertain to separate matters and arise from separate complaints to APEGBC. They are referred to as the “Guardrail Matter”, the “House Matter”, the “Wall Matter” and the “Sign Matter.”

The findings of the Discipline Committee Panel of APEGBC are found in the Discipline Panel Order on Penalty and Costs dated August 27, 2013.

#### The Discipline Committee

At its meeting held on November 3, 2016, the Discipline Committee received reports from the Investigation Committee and appointed Grant Gingara, P.Eng., Dwaine Enter, Connor Wright, P.Eng., Cory Belyk, P.Geo., Don George, P.Eng. to constitute a Hearing Panel to hear the complaints against James C. Hum, P.Eng.

#### The Discipline Hearing

A notice of Discipline Hearing attached as Exhibit “1” was served to James C. Hum, P.Eng. pursuant to the current *Engineering and Geoscience Professions Act* (herein known as “*The Act*”) and the current *Engineering and Geoscience Professions Bylaws* (herein known as “*The Bylaws*”), with respect to the above complaints.

The Discipline Hearing was convened at **10:00 am** on **November 23, 2016** at the Royal Executive Suites, 4025 Albert Street, Regina, Saskatchewan, Canada, S4S 3B6.

The Investigation Committee was represented by **Lyle Jones, P.Eng., LL.B.** and **Chris Wimmer, P.Eng., FEC**, Director, Professional Standards.

Royal Reporting Services Ltd. provided a court recorder, and the proceedings were recorded. The court recorder was **Chantalle Stapelton**.

Mr. Jones advised the Hearing Panel that formal Proof of Service of the Notice of the Discipline Hearing to James C. Hum, P.Eng. had not yet been received by the Association. Mr. Jones advised that he had been in contact with James C. Hum, P.Eng. who had advised him that he had been served and neither he nor Counsel would be attending the Discipline Hearing. Mr. Jones asked James C. Hum, P.Eng. to provide written confirmation of service by email, which had not been received by the commencement of the hearing. Mr. Jones asked for, and was granted, a 30-minute recess to allow time to contact James C. Hum, P.Eng.

The recess began at 10:12 am.

The Panel reconvened at 10:45 am.

Mr. Jones advised that he had left a message for James C. Hum, P.Eng. at his office. Mr. Jones indicated that he was satisfied that service had been effected for the following reasons:

1. Mr. Jones had received a verbal confirmation from James C. Hum, P.Eng.;  
and
2. The bailiff firm had confirmed service with, and forwarded their invoice to,  
The Association.

Mr. Jones gave an undertaking to provide the Affidavit of Service from the bailiff to the Panel upon receipt.

After a brief deliberation, the Hearing Panel concluded that there was reasonable Proof of Service and decided to proceed with the Discipline Hearing on the understanding that any final disposition would be conditional upon receiving the Affidavit of Service. An email confirming service was received from James C. Hum, P.Eng. during the course of the Discipline Hearing.

The following Exhibits were entered into evidence and are appended hereto:

1. Notice of Discipline Hearing dated October 27, 2016.
2. Email from Janice Spraggs, dated November 1, 2016 confirming that James C. Hum, P.Eng. had been personally served and a copy of invoice from Canadian Process Serving Inc. dated November 11, 2016.
3. Report to the Discipline Committee from the Investigation Committee on file 33-13-02, dated October 25, 2016.

4. Certificate of APEGS' Registrar dated January 14, 2015 re: Council motion passed October 11, 2013 to investigate the conduct of James C. Hum, P.Eng.
5. APEGBC Determination dated August 12, 2013.
6. APEGBC Discipline Panel Order on Penalty and Costs dated September 5, 2013.
7. Memorandum from Robert H. McDonald, P.Eng., Director of Membership and Legal Services dated September 12, 2014 ("Threshold Analysis").
8. Letter from Robert McDonald, P.Eng., MBA, LL.B., FEC, FGC(Hon), FCSSE, Executive Director & Registrar to James C. Hum, P.Eng. dated August 4, 2016 – Notice of Pre-Hearing Conference.
9. Letter from Rusti-Ann Blanke to Chris Wimmer, P.Eng., FEC Director of Professional Standards – Mediator Report on Mediation.
10. Email from James C. Hum, P.Eng. to Mr. Jones confirming receipt of Notice of Hearing, dated November 23, 2016.
11. Decision and Order of the APEGS Hearing Panel dated January 22, 2015.

***Summary of Evidence as Determined by the Hearing Panel***

The whole of the evidence available to the Hearing Panel is contained in Exhibits 1 thru 11. These documents confirm the actions of James C. Hum, P.Eng., which are alleged by the Investigation Committee to constitute professional misconduct and professional incompetence.

**Evidence Presented as Determined by the Hearing Panel**

Evidence introduced during the Hearing is contained in Exhibits 1 thru 11 which are attached to this Decision and Order.

**Analysis and Judgment**

Section 29 of *The Act* defines professional incompetence as follows:

"Professional incompetence is a question of fact, but the display by a member of:

- (a) a lack of knowledge, skill or judgment; or
- (b) a disregard for the welfare of members of the public served by the profession;

of a nature or to an extent that demonstrates that the member is unfit to continue in the practice of the profession, is professional incompetence within the meaning of this Act."

AND

Section 30 of *The Act* defines professional misconduct as follows:

"Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonorable, is professional misconduct within the meaning of this Act if:

- (a) it is harmful to the best interests of the public or the members;
- (b) it tends to harm the standing of the profession;
- (c) it is a breach of this Act or the Bylaws, or
- (d) it is a failure to comply with an order of the investigation committee, the discipline committee or council."

The Panel adopts the analysis, including that of called-upon expert witnesses, and judgement contained in the:

1. APEGBC Determination dated August 12, 2013;
2. APEGBC Discipline Panel Order on Penalty and Costs dated September 5, 2013; and
3. APEGS Decision and Order dated January 22, 2015.

### **Professional Incompetence**

There were four cases of James C. Hum, P.Eng.'s conduct examined by APEGBC. These cases were referred to as:

1. The Guardrail Matter;
2. The Wall Matter;
3. The House Matter; and
4. The Sign Matter.

The APEGBC Discipline Panel found that in the:

1. Guardrail Matter, the design of the guardrail did not comply with the BC Building Code and applicable CSA standards;
2. Wall Matter, James C. Hum, P.Eng.'s inspection was deficient and his opinion was based on insufficient data and analysis;
3. House Matter, the design of a retaining wall was grossly deficient and lacked necessary detail, there were deficiencies in the design with respect to seismic loads and that there was insufficient geotechnical analysis with respect to the stability of excavated slopes; and
4. Sign Matter, the design of the attachment of the sign to the building was deficient and incorrect analysis had been used.

The APEGBC Discipline Panel found that James C. Hum, P.Eng. was guilty of Unprofessional Conduct in his design, and to be non-compliant with the practice expected of a Professional Engineer practicing in BC undertaking similar works at that time. The Saskatchewan Act does not use the terminology “Unprofessional Conduct”. However, the Association’s Hearing Panel is of the view that James C. Hum, P.Eng.’s conduct in BC falls within the definition of “Professional Incompetence” under *The Act*. The APEGS Discipline Hearing Panel finds that James C. Hum, P.Eng.’s actions in BC displayed a:

- Lack of knowledge, skill and judgement; and
- Disregard for the welfare of members of the public served by the Profession of a nature and extent that the member is unfit to continue in the practice of Professional Engineering in Saskatchewan.

The Hearing Panel found that Mr. James C. Hum, P.Eng. is guilty of Professional Incompetence within the meaning of Section 29 of *The Act*.

### **Professional Misconduct**

Section 20(2) of *The Regulatory Bylaws* states:

“...Members and Licensees shall...

(b) offer services, advice on or undertake professional assignments only in areas of their competence and practice in a careful and diligent manner...”

The Discipline Hearing Panel is of the view that James C. Hum, P.Eng.’s conduct, as evidenced above, was in violation of Section 20(2)(b) of *The Regulatory Bylaws*.

Under Section 30(c) of *The Act*, a breach of the Act or the Bylaws is defined as Professional Misconduct, and therefore, James C. Hum, P.Eng. is guilty of Professional Misconduct.

The Hearing Panel accepted the following as additional evidence of Professional Misconduct:

1. On August 8, 2016, **James C. Hum, P.Eng.** received a registered letter dated August 4, 2016 from Robert McDonald, P.Eng., MBA, LL.B., FEC, FGC(Hon), FCSSE, Executive Director and Registrar, notifying him of a Pre-Hearing Conference of September 15, 2016. In Exhibit 9, Rusti-Ann Blanke, an independent mediator, in her report, advised that James C. Hum, P.Eng., did not appear and that in her opinion, James C. Hum, P.Eng. was provided ample opportunity to participate in the mediation Pre-Hearing Conference. She stated that he chose not to make contact with any of the parties; and
2. James C. Hum, P.Eng. personally confirmed receipt of the Notice of Discipline Hearing dated 27 October 2016 via email exchange with Mr. Jones. James C. Hum, P.Eng. failed to appear at the hearing on November 23, 2016, either in person or represented by Counsel.

James C. Hum, P.Eng.'s failure to appear or otherwise to respond to the process is further evidence of Professional Misconduct and the Hearing Panel has concluded that Professional Misconduct has been proven.

### **Decision and Order**

The Hearing Panel has found that both professional incompetence and professional misconduct were proven against **James C. Hum, P.Eng.** The following orders of the hearing panel, on the facts of this case, would be applicable to **James C. Hum, P.Eng.**, for proof of either professional incompetence or professional misconduct. The Hearing Panel has not made additional orders because both professional incompetence and professional misconduct were proven. Therefore the disposition under Section 29 *The Act* and the disposition under Section 30 of *The Act* shall be the same and concurrent.

The Hearing Panel orders as follows:

1. **James C. Hum, P.Eng.** is hereby reprimanded for professional incompetence and professional misconduct.
2. **James C. Hum, P.Eng.** is hereby suspended as a member of the Association of Professional Engineers and Geoscientists of Saskatchewan, and is hereby prohibited from using the title "Professional Engineer" and/or "P.Eng.", pending:
  - a) Compliance with existing disciplinary orders of APEGBC resulting in his being eligible for reinstatement as a member of APEGBC without conditions;
  - b) Compliance with existing disciplinary orders of APEGS and other jurisdictions resulting in his being eligible for reinstatement as a member in those jurisdictions without conditions;
  - c) Attendance at the Association's Law & Ethics Seminar and successful completion of the Association's Professional Practice Exam or similar exam administered by a Canadian Provincial Association of Professional Engineers, acceptable to the Association by December 31, 2017.
3. **James C. Hum, P.Eng.** is hereby ordered to pay a share of the investigation and discipline costs to the Association to a maximum amount of \$10,000, to be paid within 90 days of the date of this order, in accordance with Section 35(1)(2)(a)(ii) of *The Act*.
4. That the particulars of this disposition and sentencing be published in *The Professional Edge*, with names.



Failure to comply with any of the foregoing orders of the Hearing Panel shall disqualify **James C. Hum, P.Eng.** from being eligible to apply for re-instatement of his membership in the Association of Professional Engineers and Geoscientists of Saskatchewan and he shall remain suspended until the orders have been complied with.

Respectfully submitted and ordered on behalf of the Discipline Committee at  
Regina, Saskatchewan, Canada, this 8th day of December 2016.

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Grant Gingara, P.Eng. - Chair, Hearing Panel

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Dwaine Entner, Public Appointee - Member, Hearing Panel

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Cory Belyk, P.Geo. - Member, Hearing Panel

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Don George, P.Eng. - Member, Hearing Panel

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Connor Wright, P.Eng. - Member, Hearing Panel

Please refer to attached page for signatures.

Failure to comply with any of the foregoing orders of the Hearing Panel shall disqualify James C. Hunt, P.Eng. from being eligible to apply for re-instatement of his membership in the Association of Professional Engineers and Geoscientists of Saskatchewan and he shall remain suspended until the orders have been complied with.

Respectfully submitted and ordered on behalf of the Discipline Committee at

Regina, Saskatchewan, Canada, this 8<sup>th</sup> day of December 2016.

  
Gary Garbutt, P.Eng. - Chair, Hearing Panel

  
Dennis Hamer, Public Appearance - Member, Hearing Panel

  
Cory Belyk, P.Eng. - Member, Hearing Panel

  
Don George, P.Eng. - Member, Hearing Panel

  
Connor Wright, P.Eng. - Member, Hearing Panel