

IN THE MATTER OF *THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT* AND IN THE MATTER OF AN INVESTIGATION RESPECTING [MEMBER], P.ENG.

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**DECISION AND ORDER**

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**MEMBERS OF THE HEARING PANEL:**

David Rezansoff, P.Geo. – Chair of the Hearing Panel

Dwaine Entner - Public Appointee

Grant Gingara, P.Eng.

Brian AuCoin, P.Eng.

**COUNSEL FOR INVESTIGATION COMMITTEE:**

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

**COUNSEL FOR MEMBER:**

Scott Hopley, LL.B.

**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, 1997 TO HOLD A HEARING INTO THE CONDUCT OF [MEMBER], P.ENG.**

**The Complaint**

The following complaint was made by the Investigation Committee of the Association of Professional Engineers and Geoscientists of Saskatchewan (herein known as *the Association*) with respect to the conduct of [Member], P.Eng.

[Member], P.Eng., published a paper without giving due credit to [the complainant] contrary to subsection 20(2)(e) of *The Engineering and Geoscience Professions Regulatory Bylaws* requiring members to “conduct themselves with fairness, courtesy and good faith towards clients, colleagues, employers and others, give credit where it is due and accept, as well as give, honest and fair professional criticism.”

**Particulars**

[Member], P.Eng. published the paper in [publication 1], published by the [publisher 1]. [Member] did not list [the complainant] as one of the authors of the [publisher 1] publication nor was [the complainant] acknowledged in the [publisher 1] publication.

**The Discipline Committee**

At its meeting held on November 3, 2016, the Discipline Committee received a formal complaint from the Investigation Committee and appointed David Rezansoff, P.Geo., Dwaine Entner, Grant Gingara, P.Eng. and Brian AuCoin, P.Eng. to constitute a Hearing Panel to hear the complaints against [Member], P.Eng.

**The Discipline Hearing**

A notice of Discipline Hearing was served on [Member], P.Eng. pursuant to the current *Engineering and Geoscience Professions Act* (herein known as “*The Act*”) and the current *Engineering and Geoscience Professions Bylaws, 1997* (herein known as “*The Bylaws*”), with respect to the above complaints.

The Discipline Hearing was convened at 10:00 am on November 24, 2016 at the Executive Royal Hotel, 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 APEGS Director, Professional Standards.**

[Member], P.Eng. was present and was represented by **Scott Hopley, LL.B.**

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

### **Evidence Presented to the Hearing Panel**

The following Exhibits were entered into evidence with the consent of both parties:

1. Certificate of APEGS Registrar re: Membership of [Member], P.Eng. dated July 11, 2016.
2. Email from [the complainant] to Chris Wimmer dated April 2, 2014, written request for investigation.
3. Memo from Robert McDonald, P.Eng., Director of Membership and Legal Services (Threshold Analysis), dated June 25, 2014.
4. Memo from Erin Moss-Tressel, P.Eng. dated February 4, 2015.
5. List of Documents Considered by the Investigation Committee.
6. Letter from Dennis K. Paddock, P.Eng, Executive Director & Registrar, to **[Member], P.Eng.** dated February 4, 2016 – Notice of Pre-Hearing Conference.
7. Report to the Discipline Committee from the Investigation Committee on file 33-14-01, dated October 25, 2016.
8. Affidavit of Service of Notice of Hearing, dated November 22, 2016.
9. Submission on behalf of **[Member], P.Eng.**, dated November 23, 2016.
10. Agreed Statement of Conduct, dated August 19, 2016.
11. Joint Submission as to Disposition, dated August 19, 2016.

The Agreed Statement of Conduct contained an admission by the member of the conduct alleged, and that such conduct constitutes Professional Misconduct. The member, through counsel, acknowledged guilt, with an explanation to the effect that the complainant's contribution was not significant and therefore the normal protocol for academic writing would not require co-authorship or similar acknowledgement. The Hearing Panel then recessed to consider the evidence entered by the parties in

order to determine whether Professional Misconduct was proven within the meaning of *The Act*.

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

The whole of the evidence available to the Hearing Panel was presented as Exhibits #1 to #10, which included an Agreed Statement of Conduct (Exhibit #10). These documents confirm the actions of **[Member], P.Eng.** which are alleged by the Investigation Committee to constitute Professional Misconduct.

### **Analysis and Judgment**

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."

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

- "...Members and Licensees shall...
- (e) conduct themselves with fairness, courtesy and good faith towards clients, colleagues, employees and others; **give credit where it is due** and accept, as well as give, honest and fair professional criticism;..."

### **Complaint**

[Member], P.Eng. submitted an academic paper which included references which previously appeared in a joint paper authored by [Member], P.Eng. and [the complainant]. [Member], P.Eng., failed to acknowledge the contribution of [the complainant] to the submitted academic paper.

The Hearing Panel considered the evidence presented in addition to the conduct admitted to by [Member], P.Eng. The Hearing Panel made a determination that [Member], P.Eng. was in breach of Section 20(2)(e) of *The Regulatory Bylaws* and this breach constituted Professional Misconduct as defined in Section 30(c) of *The Act*.

The decision of the Hearing Panel was rendered at the time of the hearing. Additional documents listed on Exhibit #5 were requested for the purposes of disposition of the matter. These included:

- [publisher 1] Decision;
- [employer] Decision;
- Comments to the APEGS Investigation Committee from [professor] – [academic institute]; and
- Submissions from Merchant Law Group, previous legal counsel to [Member].

The Investigation Committee and the member were asked for Submissions as to Disposition and they provided Exhibit #11 – Joint Submission as to Disposition, which was entered into evidence at that time.

The Hearing Panel reserved sentencing and adjourned the Hearing.

### **Decision and Order**

In the Joint Submissions as to Disposition, the Investigation Committee and the member cited Casey, *Regulation of Professions*, 2005 – Release 1, Section 14.2, Purposes of Sentencing, pages 14-5 to 14-9.

The Hearing Panel acknowledges that the fundamental purpose of sentencing for Professional Misconduct is the protection of the public.

The Hearing Panel also considered the following factors when determining its sentence:

- there was no prior disciplinary action by the Association for similar behaviour conducted by **[Member], P.Eng.**;
- gravity of the conduct;
- risk to public safety;
- specific deterrence of the member from engaging in further misconduct;
- general deterrence of other members of the profession from engaging in similar misconduct;
- rehabilitation of the member;
- punishment of the member; and
- denunciation by the profession of the conduct.

The Hearing Panel also considered mitigating circumstances:

- member's experience;
- history of the member's professional conduct; and
- member's acknowledgement of responsibility.

Having taken into account all of the above, the Hearing Panel orders as follows:

1. **[Member], P.Eng.** is hereby reprimanded for professional misconduct.

2. That the particulars of this Disposition and Sentence shall be published in *The Professional Edge*, without names.

It should be noted that the Hearing Panel was disappointed that, as the Agreed Statement of Conduct was an act of Professional Misconduct pursuant to Section 20(2)(e) of *The Regulatory Bylaws* and as defined in Section 30(c) of *The Act*, the Joint Submission as to Disposition did not include a requirement for **[Member], P.Eng.** to attend the Association's Law and Ethics Seminar and successfully complete the Association's Professional Practice Exam, or similar exam administered by a Canadian Provincial Association of Professional Engineers. The Hearing Panel recommends future Joint Submissions as to Disposition consider such sentences where the member has agreed to a plea of Professional Misconduct.

In addition, the Hearing Panel would expect future Joint Submissions as to Disposition to consider costs appropriate to the investigation and discipline proceedings.

Respectfully submitted and ordered on behalf of the Discipline Committee at

Regina, Saskatchewan, Canada, this 12<sup>th</sup> day of December 2016.

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David Rezansoff, P.Geo. - Chair, Hearing Panel

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Dwayne Entner, Public Appointee - Member, Hearing Panel

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Brian AuCoin, P.Eng. - Member, Hearing Panel

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