

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

DECISION AND ORDER

MEMBERS OF THE HEARING PANEL:

Brian AuCoin, P.Eng. – Chair of the Hearing Panel

Wendell Patzer - Public Appointee

Don George, P.Eng.

Satya Panigrahi, P.Eng.

Jaime Tratch, P.Eng.

COUNSEL FOR INVESTIGATION COMMITTEE:

Louis Brown, LL.B.

COUNSEL FOR MEMBER:

James Lane, 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 (HEREIN REFERED TO AS “THE ACT”), AND SECTION 22(4) OF THE CURRENT ENGINEERING AND GEOSCIENCE PROFESSIONS REGULATORY BYLAWS (HEREIN REFERED TO AS “THE BYLAWS”), 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.**

Count 1:

Member, P.Eng. misinformed the <<Regulatory Agency>> during an investigation about the extent of construction at the <<Client>> waterworks on or about November 6, 2012, contrary to subsections 30(a), (b) and (c) of *The Act*.

Count 2:

Member, P.Eng. advised representatives of <Client>> and the subcontractor, to not talk to the government during the <<Regulatory Agency>>’s investigation, contrary to subsections 30(a), (b) and (c) of *The Act*.

Count 3:

Member, P.Eng. failed to immediately report to the <<Regulatory Agency>> any known or anticipated upset conditions or events at or affecting the <<Client’s>> waterworks that could adversely affect the quality of water produced by the waterworks, contrary to subsections 30(a), (b) and (c) of *The Act*.

Particulars

1. The <<Regulatory Agency>> initiated an investigation, and as part of their investigation interviewed Member, P.Eng. After water was pumped through the <<Client’s>> altered waterworks without proper disinfection the <<Regulatory Agency>> specifically asked if the reservoirs had been installed, if the filters had been installed, whether any piping or valving had been installed and **Member, P.Eng.** replied “no” to all.
2. Pursuant to the investigation by the <<Regulatory Agency>>, <<Client>> representatives and the subcontractor were interviewed. Each individual indicated in the interview that **Member, P.Eng.** told them not to talk to anyone from the government, but to contact [the member] instead.
3. **Member, P.Eng.** made representations to the <<Client>> that **Member, P.Eng.** and [the member's] employer firm (“the firm”) would oversee everything and that the <<Client>> would get good value from **Member, P.Eng.** and the firm.

Water was pumped through the <<Client's>> altered waterworks without proper disinfection. **Member, P.Eng.** has a legislated duty to so report pursuant to subsection 37(1) of the *Water Regulations*, 2002 of Saskatchewan, the regulation in force at the time.

A Precautionary Drinking Water Advisory was subsequently issued. The Health Region also issued an Emergency Boil Water Order due to positive E.coli in the water sample.

The Discipline Committee

At its meeting held on June 23, 2017, the Discipline Committee received a report from the Investigation Committee and appointed Brian AuCoin, P.Eng., Don George, P.Eng., Satya Panigahi, P.Eng., Jaime Tratch, P.Eng. to constitute a Hearing Panel to hear the complaints against Member, P.Eng. Wendell Patzer (Public Appointee) was subsequently added to the Hearing Panel after [the member's] appointment as the Association's Discipline Committee Public Appointee was confirmed by Order in Council.

The Discipline Hearing

A notice of Discipline Hearing attached as Exhibit B was served to **Member, P.Eng.** pursuant to *The Act* and *The Bylaws*, with respect to the above complaints.

The Discipline Hearing was convened at 10:00 am on October 30, 2017 at the Executive Royal Hotel, 4025 Albert Street, Regina, Saskatchewan, Canada S4S 3B6.

The Investigation Committee was represented by **Louis A. Browne, LL.B** and **Chris Wimmer, P.Eng., FEC, FGC(Hon)** APEGS Director, Professional Standards.

Member, P.Eng. was present by telephone and was represented by **James R. Lane, LL.B.** who was also present by telephone.

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

Evidence Presented to the Hearing Panel

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

- A. Agreed Statement of Facts dated October 2, 2017, signed by Louis A. Browne, LL.B., legal counsel for the Association Investigation

Committee and James R. Lane, LL.B., legal counsel for the member, **Member, P.Eng.**, including the following appendices:

- a. Certificate of APEGS Registrar re: Membership of **Member, P.Eng.** dated October 16, 2017;
 - b. Formal Complaint from the <<Regulatory Agency>>, dated April 25, 2014;
 - c. Memo from Robert McDonald, P.Eng., Director of Membership and Legal Services (Threshold Analysis), dated June 25, 2014; and
 - d. Report to the Discipline Committee from the Investigation Committee on file 33-14-02, dated March 7, 2017.
- B. Letter from Robert H. McDonald, P.Eng, MBA, LL.B., FEC, FGC(Hon), FCSSE, Executive Director & Registrar, to **Member, P.Eng.** dated May 30, 2017 – Notice of Discipline Hearing, including:
Q.Acknowledgement of Service of Notice of Hearing, dated June 15, 2017, by James R. Lane, LL.B.; and
R.Notice of Pre-Hearing Conference from Robert H. McDonald, P.Eng, MBA, LL.B., FEC, FGC(Hon), FCSSE, Executive Director & Registrar, to the **Member, P.Eng.**, dated January 24, 2017.
- C. Joint Submission as to Disposition, dated October 2, 2017, signed by Louis A. Browne, LL.B., legal counsel for the Association Investigation Committee and James R. Lane, LL.B., legal counsel for the member, **Member, P.Eng.**

The Agreed Statement of Facts contained an admission by the member of the conduct alleged for Count #1 and Count #2, and that such conduct constituted Professional Misconduct. The member acknowledged guilt to those two counts.

Count #3 wasn't specifically discussed in the Agreed Statement of Facts, but Counsel for the Investigation Committee advised the Hearing Panel that, in view of the guilty pleas for Count #1 and Count #2, that the Investigation Committee would not be pursuing Count #3.

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 A and B, which included an Agreed Statement of Facts (Exhibit A). 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 Bylaws* states:

"...Members and Licensees shall...

- (a) hold paramount the safety, health and welfare of the public and the protection of the environment and promote health and safety within the workplace;
- (b) offer services, advise on or undertake professional assignments only in areas of their competence and practice in a careful and diligent manner;
- ...
- (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;..."

Deliberations

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 Sections 20(2)(a), (b) and (e) of *The Bylaws* and this breach constituted Professional Misconduct as defined in Sections 30(a), (b) and (c) of *The Act*. The decision of the Hearing Panel was rendered at the time of the hearing.

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

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:

- gravity of the offence;
- risk to public safety;
- specific deterrence of the member from engaging in further misconduct;
- general deterrence of other members of the profession;
- rehabilitation of the offender;
- punishment of the offender;
- denunciation by society of the conduct; and
- range of sentences in other cases.

The Hearing Panel also considered mitigating circumstances:

- member's age and experience;
- history of the member's professional conduct;
- member's acknowledgement of responsibility;
- previous service history of the member; and
- member's good character.

Having taken into account all of the above, the Hearing Panel accepted the Joint Submission as to Disposition and made the following orders:

1. The license of **Member, P.Eng.** shall be suspended for one year, from the date of the Discipline Hearing (October 30, 2017);
2. **Member, P.Eng.** shall successfully complete the Law & Ethics seminar and pass the Saskatchewan Professional Practice Exam (PPE);
3. The Decision and Order of the Hearing Panel shall be published on the APEGS website, in *The Professional Edge* and *eEdge*, without names. **Member, P.Eng.** shall be referred to as "*The Member*" in all publications; and
4. Costs shall be assessed to a maximum of \$25,000, of which 50% shall be paid by **Member, P.Eng.**

Once all of the above orders are met, **Member, P.Eng.** would be eligible to apply for re-instatement.

In considering whether or not publication should be with or without names, the Hearing Panel considered the following:

- **Member, P.Eng.** acknowledged that [the member] is retiring and not intending to practice in the future; and
- **Member, P.Eng.**'s age.

The Hearing Panel wishes to make it clear that this decision is not intended to set a precedent with respect to the publication of names. Future similar cases may include decisions to publish with names should the case-specific circumstances warrant.

Respectfully submitted and ordered on behalf of the Discipline Committee at Regina, Saskatchewan, Canada, this 14th day of November 2017.

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

Wendell Patzer, Public Appointee - Member, Hearing Panel

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

Satya Panigrahi, P.Eng. - Member, Hearing Panel

Jaime Tratch, P.Eng. - Member, Hearing Panel