

IN THE MATTER OF *THE ENGINEERING AND GEOSCIENCE
PROFESSIONS ACT* AND IN THE MATTER OF AN INVESTIGATION
RESPECTING MEMBER, ENGINEER-IN-TRAINING

DECISION AND ORDER

MEMBERS OF THE HEARING PANEL:

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

Wendell Patzer - Public Appointee

Brian AuCoin, P.Eng.

Robert Court, P.Eng.

Jody Scammell, P.Eng.

COUNSEL FOR INVESTIGATION COMMITTEE:

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

COUNSEL FOR THE MEMBER:

None

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 ENGINEERING AND GEOSCIENCE PROFESSIONS ACT* (HEREIN REFERED TO AS “THE ACT”), AND SECTION 22(4) OF *THE ENGINEERING AND GEOSCIENCE PROFESSIONS REGULATORY BYLAWS, 1997* (HEREIN REFERED TO AS “THE BYLAWS”), TO HOLD A HEARING INTO THE CONDUCT OF MEMBER, ENGINEER-IN-TRAINING

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, Engineer-in-Training**

Count 1:

MEMBER, Engineer-in-Training was alleged to have been caught cheating on the professional practice exam during the May 27, 2017 sitting, contrary to subsection 20(1) of *The Bylaws*.

Particulars

The written memo from the invigilator to the Chair of the APEGS Professional Practice Exam Committee states “At the sitting of the Association of Professional Engineers and Geoscientists of Saskatchewan Principles of Professional Practice Exam held in Regina on Saturday, May 27, 2017 (9am – 12 noon, Queensbury Convention Centre, Evraz Place), a candidate was caught cheating on the exam.” The candidate is identified in the memo as **MEMBER, Engineer-in-Training**, APEGS applicant ##### on the exam sign in sheets.

The Discipline Committee

The Discipline Committee received a report from the Investigation Committee and appointed Grant Gingara, P.Eng., Wendell Patzer (Public Appointee), Brian AuCoin, P.Eng., Robert Court, P.Eng. and Jody Scammell, P.Eng. to constitute a Hearing Panel to hear the complaint against **MEMBER, Engineer-in-Training**.

The Discipline Hearing

A notice of Discipline Hearing attached as Exhibit B was served to **MEMBER, Engineer-in-Training** pursuant to *The Act* and *The Bylaws*, with respect to the above complaint.

The Discipline Hearing was convened at 10:00 am on October 31, 2018 at the DoubleTree Hotel and Conference Centre, 1975 Broad Street, Regina, Saskatchewan, Canada S4P 1Y2.

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

MEMBER, Engineer-in-Training was present, did not have legal counsel and [represented [themselves]].

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

Evidence Presented to the Hearing Panel

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

- A. Report to the Discipline Committee from the Investigation Committee on File 33-17-04 dated August 8, 2018.
- B. Letter from Bob McDonald, P.Eng, Executive Director and Registrar, to **MEMBER, Engineer-in-Training** dated September 10, 2018 – Notice of Discipline Hearing.
- C. Memorandum October 31, 2018 to **MEMBER, Engineer-in-Training**, Investigation Committee Documents, including Acknowledgement of Service of Notice of Hearing, dated September 10, 2018.
- D. Joint Agreed Statement of Facts dated October 31, 2018, signed by Lyle Jones, P.Eng., LL.B., legal counsel for the Association Investigation Committee and **MEMBER, Engineer-in-Training**.
- E. Notice of Pre-Hearing Conference from Robert H. McDonald, P.Eng, Executive Director & Registrar, to **MEMBER, Engineer-in-Training** dated October 16, 2017.
- F. Email from the Chair of the Professional Practice Exam Committee to Chris Wimmer, P.Eng., providing the written complaint in the attachment which was a Memo dated May 30, 2017 to the Chair of the Professional Practice Committee from the staff support to the Professional Practice Exam Committee, Invigilator of the exam held May 27, 2017.
- G. Threshold Review Report dated June 26, 2017.

- H. Certificate of APEGS Registrar re: Membership of **MEMBER, Engineer-in-Training** dated October 24, 2017.
- I. Letter dated July 22, 2017 to Chris Wimmer, P.Eng. from **MEMBER, Engineer-in-Training** admitting the allegation that [the member] used written notes during the Professional Practice Exam.
- J. Copy of Council motion No. 17-145:B passed December 1, 2017 extending registration of **MEMBER, Engineer-in-Training** as an engineer-in-training for two years from December 31, 2017 to December 31, 2019.

The Joint Agreed Statement of Facts contained an admission by the member of the conduct alleged for Count #1 and that such conduct constituted professional misconduct. The member acknowledged guilt to that count.

The Hearing Panel considered 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 to J, which included a Joint Agreed Statement of Facts (Exhibit D). These documents confirm the actions of **MEMBER, Engineer-in-Training** 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(1) of *The Bylaws* states:

"All members and holders of temporary licences shall recognize this code as a set of enduring principles guiding their conduct and way of life and shall conduct themselves in an honourable and ethical manner, upholding the

values of truth, honesty and trustworthiness, and shall safeguard human life and welfare and the environment.”

Deliberations

The Hearing Panel considered the evidence presented in addition to the conduct admitted to by **MEMBER, Engineer-in-Training**. The Hearing Panel made a determination that **MEMBER, Engineer-in-Training** was in breach of Section 20(1) of *The Bylaws* and this breach constituted professional misconduct as defined in Sections 30(b) of *The Act*. The decision of the Hearing Panel was rendered at the time of the hearing.

Shortly after the infraction had been detected, the exam invigilator asked the member to surrender the notes that [the member] had in the exam room. However, the notes were no longer available at that time. The Panel asked the member what was on the notes. [The member] indicated it was mostly spelling of complicated words. [The member] was concerned with getting a lesser grade for incorrect spelling.

The Investigation Committee and the member were asked for Submissions as to Disposition. The Investigation Committee provided a Submission as to Disposition. The member apologized for [the] mistake. [The member] indicated that [The member] did not have much money, is trying to find a job, is the [parent] of four children and that [The member] takes responsibility for the mistake.

Decision and Order

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

The Hearing Panel acknowledged that the fundamental principles 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.

The Hearing Panel wishes to make it clear that it considers cheating on the Professional Practice Exam to be an extremely serious form of professional misconduct. Such behaviour is corrosive to the high standards of integrity expected of professional engineers and professional geoscientists. However, in coming to its decision, the Hearing Panel placed more emphasis on education and rehabilitation than on punishment.

Having taken into account all of the above, the Hearing Panel made the following orders:

1. That **MEMBER, Engineer-in-Training** is hereby reprimanded for professional misconduct;
2. That **MEMBER, Engineer-in-Training** be ineligible to write the Professional Practice Exam and/or apply for registration with APEGS as a professional engineer until the examination provided in the Spring of 2019;
3. That **MEMBER, Engineer-in-Training** satisfactorily complete the “Working in Canada Seminar” offered by Engineers & Geoscientists British Columbia and provide proof of completion to the Registrar prior to attending the APEGS Law & Ethics Seminar and writing the Professional Practice Exam;
4. That as a condition of any application for registration with APEGS as a professional engineer, **MEMBER, Engineer-in-Training** attend the APEGS Law & Ethics Seminar prior to writing and passing the Professional Practice Exam;
5. That **MEMBER, Engineer-in-Training** must satisfactorily complete a competency assessment by completing Competency Categories 2 and 5 of the APEGS competency-based assessment system and the requirements set out therein prior to registration as a professional engineer. Competency Categories 2 and 5 are as follows:
 2. **Communication** (minimum overall competence level: 3)
Key Competencies
 - 2.1 Oral.
 - 2.2 In writing.
 - 2.3 Reading and comprehension.
 5. **Professional Accountability (Ethics & Professionalism)** (minimum overall competence level: 3)
Key Competencies
 - 5.1 Work with integrity, ethically and within professional standards (Indicators: Comply with the Code of Ethics; Apply professional ethics in meeting corporate directives).
 - 5.2 Demonstrate an awareness of your own scope of practice and limitations.
 - 5.3 Understand how conflict of interest affects your practice.

- 5.4 Demonstrate awareness of professional accountability.
 - 5.5 Demonstrate an understanding of appropriate use of the stamp and seal.
 - 5.6 Understand own strengths/weaknesses and know how they apply to one's position.
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- 6. That **MEMBER, Engineer-in-Training** pay the costs of investigation and hearing of \$2,500, to be paid within two years and prior to registration as a professional engineer;
 - 7. That the Decision & Order shall be published on the APEGS website and in *The Professional Edge*, without name.

Respectfully submitted and ordered on behalf of the Discipline Committee at Regina, Saskatchewan, Canada, this 6th day of December 2018.

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

Wendell Patzer, Public Appointee - Member, Hearing Panel

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

Robert Court, P.Eng. - Member, Hearing Panel

Jody Scammell, P.Eng. - Member, Hearing Panel