

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

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**DECISION AND ORDER**

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**MEMBERS OF THE HEARING PANEL:**

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

Wendell Patzer - Public Appointee

Trevor Chadwick, P.Eng.

Don George, P.Eng.

Grant Gingara, P.Eng.

**COUNSEL FOR INVESTIGATION COMMITTEE:**

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

**COUNSEL FOR 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 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 MR. BEHNAM TORKAN, 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 **Mr. Behnam Torkan, P.Eng.**

**Count 1:**

**Mr. Behnam Torkan, P.Eng.** published a structural review bearing his professional seal and signature which contained calculations found to be in error, contrary to subsection 20(2)(b) of *The Bylaws*.

**Count 2:**

**Mr. Behnam Torkan, P.Eng.** failed to comply with an order of the Investigation Committee, contrary to subsection 30(d) of *The Act*.

**Particulars**

1. **Behnam Torkan’s** published report titled “Structural Review re: Aluminum Railing Loading Calculations” dated August 2014 contained structural engineering calculation errors and incorrect engineering assumptions in multiple sections throughout the document. The report included the statement “the purpose of the report is to describe the loading and analyze the behavior of the railing under given loads and recommending guidelines in the installation processes of the railing system.”
2. **Behnam Torkan** was ordered by the Investigation Committee in writing dated July 25, 2017 to provide revised documentation that included corrections to the mistakes identified in the report and to provide a complete review and resubmission of the design calculations with corrections to calculations and resolution of inconsistencies in logic and units. **Behnam Torkan** failed to fully comply with the said order within the time frame specified.

### The Discipline Committee

The Discipline Committee received a report from the Investigation Committee and appointed Brian AuCoin, P.Eng., Wendell Patzer (Public Appointee), Trevor Chadwick, P.Eng., Don George, P.Eng. and Grant Gingara, P.Eng. to constitute a Discipline Hearing Panel to hear the complaint against **Mr. Behnam Torkan, P.Eng.**

### The Discipline Hearing

A notice of Discipline Hearing attached as Exhibit A was served to **Mr. Behnam Torkan, P.Eng.** pursuant to *The Act* and *The Bylaws*, with respect to the above complaint.

The Discipline Hearing was convened at 10:00 am on November 28, 2018 at the Delta Bessborough, 601 Spadina Crescent East, Saskatoon, Saskatchewan, Canada S7K 3G8.

The Investigation Committee was represented by **Lyle Jones, P.Eng., LL.B, Chris Wimmer, P.Eng., FEC, FGC(Hon)** APEGS Director, Professional Standards and **Dr. Metro Hrabok, P.Eng.**, member of the Investigation Committee.

**Mr. Behnam Torkan, P.Eng.** was not present and was not represented by counsel, either in person or on the pre-arranged teleconference at the start of the hearing.

Royal Reporting Services Ltd. provided a court recorder, and the proceedings were recorded. The court recorder was Dorothy Bagan.

**Mr. Behnam Torkan, P.Eng.** arrived approximately 15 minutes into the Discipline Hearing, and was not represented by counsel.

An explanation of the Discipline Hearing procedures was provided to **Mr. Behnam Torkan, P.Eng.** **Mr. Behnam Torkan, P.Eng.** was asked if there were any preliminary matters or objections to be raised prior to moving forward. **Mr. Behnam Torkan, P.Eng.** made a preliminary objection to the effect that the Discipline Hearing should not proceed if the complainant Kris Jara was not present.

### Consideration of the Preliminary Objection

Section 32(1) of the Act states: “where an investigation committee is requested by the council to consider a complaint or is in receipt of a written complaint alleging that a member’s conduct constitutes misconduct or professional incompetence, the committee shall:

- (a) review the complaint; and
- (b) investigate the complaint by taking any steps it considers necessary ...

The Investigation Committee received a complaint in writing from Kris Jara, which is referred to below as Exhibit E. After the Investigation Committee completed its investigation, a formal complaint was forwarded to the Discipline Committee, which resulted in the hearing.

Section 34(15) of the Act states: “The person, if any, who made the complaint pursuant to section 32:

- (a) is to be advised orally or in writing by the registrar of the date, time and place of the hearing; and
- (b) subject to subsection (17), is entitled to attend the hearing.

Although Section 34(15) permits the person who made the complaint to attend the hearing, it does not require that person to attend.

Accordingly, the Hearing Panel overruled the preliminary objection of the **Mr. Behnam Torkan, P.Eng.** and allowed the hearing to continue.

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

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

- A. Notice of Discipline Hearing dated September 10, 2018;
- B. Acknowledgement of Service of Notice of Hearing, dated October 17, 2018, by William McCabe Freedman, Process Server for Canadian Processing Serving Inc.;
- C. Notice of the Pre-Hearing Conference, dated February 21, 2018;
- D. Acknowledgement of Service of Notice of the Pre-Hearing Conference, dated March 13, 2018 by William McCabe Freedman, Process Server for Canadian Processing Serving Inc.;
- E. Complaint from Kris Jara dated November 25, 2014, including copies of:
  - a. Invoice for services from **Behnam Torkan** to Fairway Building Products, L.P. dated August 22, 2014, and
  - b. Report by **Ben Torkan** “Structural Review Re: Aluminum Railing Loading Calculations”, dated August 2014 and stamped with **Benham Torkan, P.Eng.’s** APEGS professional engineer seal;
- F. Formal Report to the Discipline Committee from the Investigation Committee on file 33-14-07, dated August 8, 2018.
- G. Certificate of APEGS Registrar re: Membership of **Behnam Torkan, P.Eng.** dated November 23, 2018;
- H. Memo from Robert McDonald, P.Eng., Deputy Registrar (Threshold Analysis), dated February 9, 2015;
- I. Letter from Margaret Ball, P.Eng., Chair of the Investigation Committee, dated July 25, 2017 to **Behnam Torkan, P.Eng.** requesting documentation;
- J. Response from **Behnam Torkan, P.Eng.** (labeled Document 6), no date, the Investigation Committee noted that it was received in the APEGS office on January 23, 2015;
- K. Another response from **Behnam Torkan, P.Eng.** (labeled Document 10), no date;

- L. Letter from Margaret Ball, P.Eng., Chair of the Investigation Committee, dated April 13, 2018 to **Behnam Torkan, P.Eng.** informing the member that the Pre-Hearing Conference was completed, in the member's absence;
- M. Report from expert witness dated November 13, 2017, regarding interview with himself, Erin Moss, P.Eng., Chair of the Investigation Committee, and Chris Wimmer, P.Eng. (APEGS Director of Professional Standards) dated July 25, 2017 to **Behnam Torkan, P.Eng.**; and
- N. Hand drawn line-diagrams submitted to the Investigation Committee, no date (reported to have been received November 27, 2018).

**Mr. Behnam Torkan, P.Eng.** pled "Not Guilty" to both Counts as presented in the report of the Investigation Committee (Exhibit F).

There was no Agreed Statement of Facts submitted to the Discipline Hearing Panel.

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

The evidence available to the Discipline Hearing Panel was presented as Exhibits A through N and through the testimony of witnesses.

**Dr. Metro Hrabok, P.Eng.** was sworn in as a witness. Counsel for the Investigation Committee then asked him to present his credentials to qualify him as an expert witness. **Dr. Hrabok, P.Eng.** described his education and work experience along with previous experiences as an expert witness in Courts of Law. **Dr. Hrabok, P.Eng.** was accepted as an expert witness by **Mr. Behnam Torkan, P.Eng.** and the Discipline Hearing Panel.

It was the opinion of **Dr. Hrabok, P.Eng.**, that the report prepared by **Mr. Behnam Torkan, P.Eng.** was deficient in that it did not include free body or equilibrium drawings and that calculations were not up to engineering standards. The report did not provide any context as to the intended use of the report, nor its limitations. In summary, the report lacked figures, justification on why there was no differentiation of classes of structures and information on how the railings would be connected to the structure.

**Mr. Behnam Torkan, P.Eng.** was given the opportunity to cross-exam the expert witness, but chose not to do so.

The Investigation Committee rested its case.

**Mr. Behnam Torkan, P.Eng.** was affirmed as a witness and gave evidence in his defence. The evidence presented by **Mr. Behnam Torkan, P.Eng.** was to affirm that he is a well trained Professional Engineer, with relevant experience.

The counsel for the Investigation Committee cross-examined **Mr. Behnam Torkan, P.Eng.** Through the cross-examination, it was brought to the attention of the Discipline Hearing Panel and admitted by **Mr. Behnam Torkan, P.Eng.** that his report was deficient for the following reasons:

- (a) The report did not give details on how the railings were to be connected to the structure and there were no installation restrictions (such as connection details provided by others) noted in the report;
- (b) The report did not limit the type of applications for which the railings could be safely installed. **Mr. Behnam Torkan, P.Eng.** stated that the railings were unsuitable for high rise applications, but this was not expressly stated in his report.
- (c) There were errors in the report, it was rushed, incomplete and poorly put together.
- (d) The report did not adequately describe assumptions.

**Mr. Behnam Torkan, P.Eng.** acknowledged that he was aware that his report would be relied on by contractors for use in installing the handrail.

After completion of cross examination by the Investigation Committee, **Mr. Behnam Torkan, P.Eng.** rested his case.

Final submissions and closing arguments were received from the Investigation Committee and **Mr. Behnam Torkan, P.Eng.**

### **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)(b) of *The Bylaws* states:

"...offer services, advise on or undertake professional assignments only in areas of their competence and practice in a careful and diligent manner."

### **Deliberations**

The Discipline Hearing Panel considered the evidence presented at the hearing including all documents identified as exhibits and the testimony of the witnesses.

The hearing panel was persuaded by the witness for the Investigation Committee and by the admissions of **Mr. Behnam Torkan, P.Eng.** that Exhibit E (b) Report by **Ben Torkan** "Structural Review Re: Aluminum Railing Loading Calculations", dated August 2014 and stamped with **Behnam Torkan, P.Eng.**'s APEGS professional

engineer seal, was seriously flawed. The fundamental concern of the Hearing Panel is that **Mr. Behnam Torkan, P.Eng.** had full knowledge that his report would be used and relied upon by Saskatchewan contractors. There was no information given in the report as to how the railings should be connected to structures and there was nothing in the report to warn users of the report that such connections should be engineered by others. There was no limitation in the report to warn that the railings were unsuitable for high rise applications. It was troubling to hear **Mr. Behnam Torkan, P.Eng.** acknowledge in the report that there were errors, it was rushed, it was incomplete and it was poorly put together. This falls short of the behavior expected of Professional Engineers and constitutes Professional Misconduct.

Finally, **Mr. Behnam Torkan, P.Eng.**'s lengthy delay in responding to the reasonable enquiries of the **APEGS** Investigation Committee and failure to provide meaningful information in a timely manner constitutes a separate count of Professional Misconduct. Those granted the privilege of practicing Professional Engineering in Saskatchewan owe a duty to their professional regulator to acknowledge and respond to reasonable requests received from the Investigation Committee of **APEGS**.

The Discipline Hearing Panel determined that **Behnam Torkan, P.Eng.** was in breach of Section 30(d) of *The Act* and Section 20(2(b)) of *The Bylaws* and this breach constituted Professional Misconduct as defined in Section 30 of *The Act*. The decision of the Discipline Hearing Panel was rendered at the time of the hearing.

The Investigation Committee and the member were asked for Submissions as to Disposition. The Investigation Committee provided recommendations as to disposition. The member took responsibility for his mistake and requested leniency in the Discipline Hearing Panel's decision.

### **Decision and Order**

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

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

- gravity of the offences;
- 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 Discipline Hearing Panel also considered mitigating circumstances:

- the member’s acknowledgement of responsibility;
- the member’s plea for leniency in the financial penalty; and
- the impact of the decision on the member’s employability as a Professional Engineer.

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

1. **Behnam Torkan, P.Eng.** is hereby reprimanded for Professional Misconduct.
2. As **Behnam Torkan, P.Eng.** is not currently a member of the Association, he shall not be allowed to apply for reinstatement until the later of: one year from the date of the Discipline Hearing (November 28, 2018), or after having met the following conditions:
  - A. successfully completing the APEGS Law & Ethics Seminar and passing the APEGS Professional Practice Exam (PPE), or equivalent courses and exams in other Canadian jurisdictions, approved by APEGS;
  - B. successfully completing upper year structural engineering courses approved by APEGS at a Canadian Engineering Accreditation Board (CEAB) accredited university, in:
    - i. Structural Steel Design (CSA S16),
    - ii. Reinforced Concrete (CSA A23.3), and
    - iii. the National Building Code of Canada, specifically related to structural engineering;
  - C. successfully completing the Engineers and Geoscientists British Columbia “Working in Canada” seminar and providing written confirmation to the Association that he has done so;
  - D. satisfactorily completing a competency assessment by completing competency categories 5, 6.1, 6.2 and 6.3 of the APEGS Competency-Based Assessment system<sup>1</sup> and the requirements set out therein (all validators are to be Professional Engineers, licensed in Canada).  
Competency categories 5, 6.1, 6.2 and 6.3 are as follows:

**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.

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<sup>1</sup> **Behnam Torkan, P.Eng.** is advised to refer to the document “Competency Assessment Guide\_APEGS\_V10” found on the APEGS website: [https://www.apegs.ca/Portal/Sites-Management/FileDownload/DataDownload/34702/Competency%20Assessment%20Guide\\_APEG\\_S\\_v10/pdf/1/1033](https://www.apegs.ca/Portal/Sites-Management/FileDownload/DataDownload/34702/Competency%20Assessment%20Guide_APEG_S_v10/pdf/1/1033)



- 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.

**6. Social, Economic, Environmental and Sustainability**

(minimum overall competence level: 2)

Key Competencies

- 6.1 Demonstrate an understanding of the safeguards required to protect the public and the methods of mitigating adverse impacts.
  - 6.2 Demonstrate an understanding of the relationship between the engineering activity and the public.
  - 6.3 Understand the role of regulatory bodies on the practice of engineering.
- E. paying a fine to the Association of \$5,000 for Charge 2; and
  - F. paying a portion of the costs of the Discipline Hearing to the Association in the amount of \$3,500.
- 3. Once all the above orders are met, **Behnam Torkan, P.Eng.**, would be eligible to apply for re-instatement.
  - 4. In addition, the Decision and Order of the Discipline Hearing Panel shall be published with names on the APEGS website, in *The Professional Edge* and *eEdge*.

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

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

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Wendell Patzer, Public Appointee - Member, Hearing Panel

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Trevor Chadwick, P.Eng. - Member, Hearing Panel

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

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