

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:

Trevor Chadwick, P.Eng. – Chair
Larry Doke – Public Appointee
Robert Court, P.Eng.
Clare O’Dowd, P.Geo.

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 ENGINEERING AND GEOSCIENCE PROFESSIONS ACT*, CHAPTER E-9.3 of the Statutes of Saskatchewan, 1996 as amended (HEREIN REFERRED TO AS THE “ACT”), AND SECTION 22(4) OF *THE ENGINEERING AND GEOSCIENCE PROFESSIONS REGULATORY BYLAWS*, 1997 as amended (HEREIN REFERRED 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 (APEGS) with respect to the conduct of **Member, P.Eng.**

Member, P.Eng. did commit acts of professional misconduct, contrary to the provisions of subsections 30(a), 30(b) and 30(c) of *The Engineering and Geoscience Professions Act*, in that their actions were harmful to the best interests of the public or the members, harmed the standing of the profession, and were a breach of *The Engineering and Geoscience Professions Regulatory Bylaws*, the particulars of which include:

Count 1:

Member, P.Eng. prepared a drawing bearing their professional seal for the deck built and attached to the home at X, Saskatchewan, contrary to subsections 20(2)(a) and 20(2)(b) of *The Engineering and Geoscience Professions Regulatory Bylaws* which requires licensees to hold paramount the safety, health and welfare of the public, and offer services, advise on or undertake professional assignments only in areas of their competence and practise in a careful and diligent manner.

Particulars:

In July 2015, the complainant made an offer for purchase of **Member’s** property in X, Saskatchewan. In promoting the sale of their home, **Member** represented the deck attached to the home as being professionally engineered. The complainant subsequently purchased the home and took possession in August 2015. A drawing of the deck bearing the seal of **Member** was obtained by the purchaser of the home. Following the sale of the home an engineering consultant was engaged to inspect and report on the deck. The consultant declined to certify the structure (the deck) as being suitable for its intended service.

The Discipline Committee

At its meeting held on November 4, 2021, the Discipline Committee received a formal complaint from the Investigation Committee and appointed Trevor Chadwick, P.Eng. (Chair), Larry Doke, Robert Court, P.Eng., Clare O'Dowd, P.Geo., and Daryl Andrew, P.Eng. to constitute a Hearing Panel to hear the complaints against **Member, P.Eng.**

The Discipline Hearing

The Discipline Hearing was convened at 10:00 a.m. on March 23, 2022 via Microsoft Teams electronic meeting.

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

Member, P.Eng. was present and was not represented by legal counsel. The chair advised **Member, P.Eng.** that they had a right to have legal counsel and **Member, P.Eng.** indicated that they were aware of their right to counsel and that they would be proceeding without counsel.

Counsel for the Investigation Committee established jurisdiction by filing proof that a Notice of Discipline Hearing, containing a formal complaint within the meaning of Section 32(3)(a) of the Act, attached as **Exhibits A and B**, had been forwarded to **Member, P.Eng.** pursuant to the Act and the Bylaws. **Member, P.Eng.** verbally acknowledged receipt of the Notice of Hearing within the time limits prescribed by the Act. Attendance at the Microsoft Teams hearing by **Member, P.Eng.** was further evidence of satisfactory service of the Notice of Discipline Hearing and formal complaint upon **Member, P.Eng.**

At the outset of the hearing, **Member, P.Eng.**, inquired as to a potential conflict of interest with Hearing Panel member Daryl Andrew, P.Eng. The Chair dealt with the issue as a preliminary matter and recessed the hearing to confer with other panel members and legal counsel. The Panel concluded that there was no evidence of conflict of interest on the part of Hearing Panel member Daryl Andrew, P.Eng. The basis of the objection was that Daryl Andrew, P.Eng. and the complaining party were employed by the same employer. Daryl Andrew, P.Eng. indicated that the employer has in excess of 2,000 employees and that they did not know the complaining party. Daryl Andrew, P.Eng. also advised that they had no knowledge of the facts or reasons for the hearing. The Panel and Daryl Andrew, P.Eng. agreed that where one party perceives there is a conflict of interest, it should be treated as if there is an actual conflict of interest. Accordingly, Daryl Andrew, P.Eng. recused himself from the Hearing Panel and had no further participation in the hearing process.

Evidence Presented to the Hearing Panel

The following Exhibits were entered into evidence by Counsel for the Investigation Committee and are appended hereto:

- A. Notice of Hearing – forwarded to **Member, P.Eng.** on or about January 17, 2022 and delivered by registered mail on February 17, 2022 (document 1).
- B. Prehearing Reports dated September 30, 2019 and December 20, 2020 (document 3).
- C. Report to the Discipline Committee from the Investigation Committee dated January 2021 (document 2).
- D. Written complaint dated December 2, 2015 (document 4).
- E. Threshold Report dated February 9, 2016 (document 5).
- F. Chronology document 11, with last entry in January of 2022 (document 11).
- G. Communication from **Member, P.Eng.** to APEGS dated March 1, 2016 (document 6).
- H. Judgment of the Court of Queen’s Bench, Docket <reference removed for publication> (document 7).
- I. Property Condition Disclosure Statement dated July 5, 2015 (document 8).
- J. Sealed Sketch dated July 29, 2015 (document 9).
- K. Letter from <consulting engineering firm> dated October 19, 2016 (document 10).

The following Exhibits were entered into evidence by **Member, P.Eng.** and are appended hereto:

- D-1 MLS Listing dated month day, 2015.
- D-2 Email from Realtor dated April 25, 2017.
- D-3 Notice to Remove Conditions dated July 30, 2015.
- D-4 Email from the municipality dated September 8, 2015.
- D-5 Email dated November 13, 2015.
- D-6 Email from APEGS dated October 28, 2020.
- D-7 Letter from <name removed> Law Office dated November 24, 2015 and email reply.

It was agreed by the parties that the verbal comments made by Witness regarding the mistaken submission of the sealed drawings for permit could be entered into evidence.

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 K, Exhibits D-1 to D-7 and the comments made by Witness.

The Hearing Panel made the following findings of fact:

1. **Member, P.Eng.** prepared a sketch for the deck attached to their home.
2. **Member, P.Eng.** applied their Professional Engineer seal to the deck sketch that they had prepared.
3. **Member, P.Eng.** lost control of the deck sketch that they had prepared and sealed, and the deck sketch came into the possession of the purchaser of their home.

Analysis and Judgment

Section 21 of the Act governs the use of professional Seals by members and provides as follows:

“(1) Every licensee is entitled, in accordance with the bylaws, to sign and seal all final drawings, specifications, plans, reports and other documents prepared or approved by him or her.

(2) ...

(3) ...

(4) Every licensee shall sign and seal, in accordance with the bylaws, all final drawings, specifications, plans, reports and other documents relating to the practice of professional engineering or the practice of professional geoscience that he or she issues.”

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 dishonourable, 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 the 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.”

And sections 20(2)(a) and (b) of the Bylaws state:

“...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 practise in a careful and diligent manner;
- ...”

Decision

Section 21 of the Act provides that professional seals may only be applied to final drawings. By applying a professional seal to an incomplete sketch, **Member, P.Eng.** breached Section 21 of the Act.

Section 30(c) of the Act provides that a breach of the Act or the Bylaws is professional misconduct.

The Hearing Panel determined that the actions of **Member, P.Eng.** constituted professional misconduct as defined in Section 30 of the Act, in that their conduct was a breach of the Act.

Delay

Counsel for the Investigation Committee suggested that the issue of delay was relevant to this case. The misconduct occurred in 2015 and the hearing could not be held until 2022.

Member, P.Eng. advised the hearing panel that their health had been compromised by the delay in having the matter heard.

Counsel for the Investigation Committee advised that there must be significant prejudice for a matter to be stayed because of inordinate delay. Other remedies to deal with delay include reduced fines and orders for costs.

The Hearing Panel found that the delay in this case was not so unreasonable to warrant a stay of proceedings. However, the Hearing Panel took into account the issue of delay in dealing with the disposition of the matter.

Disposition

The Investigation Committee and the member were asked for Submissions as to Disposition.

In the Submissions 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 and Salte, *The Law of Professional Regulation*, 2015 – Chapter 8.2, Penalty – Principles, 233-246.

Member, P.Eng. provided an oral response to the Submissions as to Disposition.

The Hearing Panel acknowledged 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:

- nature and gravity of conduct proven.
- effect on the victim.
- advantage gained, or to be gained, by the member.
- the number of times the offending conduct occurred.
- the possibility of remediating or rehabilitating the member.
- need to ensure the public's confidence in the integrity of the profession.
- risk to public safety.
- specific deterrence of the member from engaging in further misconduct.
- general deterrence of other members of the profession.
- punishment of the offender.
- denunciation by society of the conduct.
- range of sentences in other cases.

The Hearing Panel also considered mitigating circumstances:

- age and experience of the member at the time the action(s) occurred.
- previous character of the member.
- history of the member's professional conduct.
- member's acknowledgement of responsibility and steps taken to disclose and redress the wrong.
- effect on the member of criminal or other sanctions or penalties.
- effect of the proposed penalty on the member.
- family and personal circumstances.
- the delay in bringing the matter before the Hearing Panel.

Order

Having considered all the above, the Hearing Panel orders as follows:

1. That **Member, P.Eng.** is hereby reprimanded for professional misconduct.
2. That **Member, P.Eng.** shall complete and provide proof of completion of the APEGS Law and Ethics Seminar.
3. That **Member, P.Eng.** shall have 12 months from the date of this Decision and Order to complete the Law and Ethics Seminar.
4. That the Decision and Order shall be published on the APEGS website and in *The Professional Edge*, without names.

Failure to comply with any of the foregoing orders of the Hearing Panel shall result in **Member, P.Eng.** being suspended from the Association of Professional Engineers and Geoscientists of Saskatchewan and shall remain suspended until there has been compliance with the orders.

Respectfully submitted and ordered on behalf of the Discipline Committee at Regina, Saskatchewan, this 22nd day of April, 2022.

Original signed by Panel

Trevor Chadwick, P.Eng., Chair, Hearing Panel

Larry Doke, Member, Hearing Panel

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

Clare O'Dowd, P.Geo., Member, Hearing Panel