

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 of the Hearing Panel

Stu Ritchie - Public Appointee

Daryl Andrew, P.Eng.

Brian AuCoin, P.Eng.

Chanelle Joubert, P.Geo.

COUNSEL FOR INVESTIGATION COMMITTEE:

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

COUNSEL FOR MEMBER:

Member Counsel, 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 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 (herein known as "*the Association*") with respect to the conduct of **Member, P.Eng.**

Count 1:

Member, P.Eng. did not hold paramount the safety, health and welfare of the public, and did not promote health and safety within the workplace contrary to subsection 20(2)(a) of *The Bylaws* in their response when approached by a worker with concerns about public safety and the safety of their working conditions at a work site adjacent to a divided highway.

Particulars

On <date>, **Member's** reaction to a worker who contacted them with safety concerns based on a field level risk assessment, was to swear at the worker and hang up the phone multiple times. **Member** demonstrated concern that the work permit would be cancelled rather than providing safety advice to the worker.

Count 2:

Member, P.Eng. did not conduct themselves in an honourable and ethical manner contrary to subsection 20(1) of *The Bylaws* while monitoring and supervising workers on the job site.

Particulars

Sometime following the incident of <date> **Member** attended personally to the highway research site to mentor the workers. In front of the workers **Member** made a lewd comment.

The Discipline Committee

At its meeting held on February 2, 2021, the Discipline Committee received an abbreviated report from the Investigation Committee and appointed Trevor Chadwick, P.Eng., Daryl Andrew, P.Eng., Brian AuCoin, P.Eng., Chanelle Joubert, P.Geo. and Stu Ritchie, Public Appointee to constitute a Hearing Panel to hear the complaints against **Member, P.Eng.**

The Discipline Hearing

The Discipline Hearing was convened at 10:00 am on March 15, 2021 via Microsoft Teams electronic meeting.

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

Member, P.Eng. was present in the Microsoft Teams meeting and was represented by **Member Counsel, LL.B.**, legal 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 had been forwarded to **Member, P.Eng.** pursuant to *The Act* and *The Bylaws*. Counsel for **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** was further evidence of satisfactory service of the Notice of Discipline Hearing and formal complaint upon **Member**.

Evidence Presented to the Hearing Panel

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

- A. Notice of Hearing – forwarded to **Member, P.Eng.** on or about February 25, 2021.
- B. Report to the Discipline Committee from the Investigation Committee dated January 2021, for file 33-19-02.
- C. Agreed Statement of Facts signed by **Member, P.Eng.** on February 26, 2021 and signed by Lyle Jones, P.Eng., LL.B., legal counsel for the Association's Investigation Committee on March 8, 2021.
- D. Pre-Hearing Report of Roger W. Linka dated March 4, 2021.
- E. Threshold Review Report of Lyle Jones, P.Eng., LL.B., Legal Counsel for the Investigation Committee, dated June 18, 2019.

- F. Written Complaint from the complainant, Complainant, P.Eng. dated April 14, 2019.
- G. Employer Safety Incident Report prepared by Employer Representative, P.Eng. dated December 26, 2018.
- H. Employer Final **Member** Safety Incident Investigation Report dated March 8, 2019.

The Agreed Statement of Facts contained an admission by the member of the conduct alleged for Counts #1 and #2 and that such conduct constituted professional misconduct.

The Hearing Panel considered the evidence entered by the parties 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 H, which included a Joint Agreed Statement of Facts (Exhibit C). These documents confirm the actions of **Member, P.Eng.** which are alleged by the Investigation Committee to constitute professional misconduct.

The Investigation Committee rested its case.

Member, P.Eng. had no additional evidence to submit.

Applicable Law

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 council."

Further, Section 20(1) of **The Bylaws** states:

“All members and holders of temporary licenses 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 Section 20(2)(a) of **The Bylaws** states:

“...members and licensees shall...hold paramount the safety, health and welfare of the public and the protection of the environment and promote health and safety within the workplace...”

Decision

The Hearing Panel determined that **Member, P.Eng.** breached Section 20(1) of **The Regulatory Bylaws** by failing to follow the enduring principles established in the Code of Ethics.

Further, the Hearing Panel determined that **Member, P.Eng.** breached Section 20(2)(a) of **The Regulatory Bylaws** by failing to promote health and safety in the workplace.

The above breaches by **Member, P.Eng.** constituted professional misconduct as defined in Section 30 of **The Act**, in that (c) the member's conduct was a breach of **The Regulatory Bylaws**.

The Investigation Committee and the member were asked for Submissions as to Disposition and they provided a Joint Submission as to Disposition.

Disposition

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

The Counsel for the member also provided a Brief of Law to support the Joint Submission on Disposition.

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:

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

The Hearing Panel also considered mitigating circumstances:

- age and experience of the member;
- previous character of the member;
- family and personal circumstances;
- 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; and
- effect of the proposed penalty on the member.

Decision and Order

Having considered all the above, the Hearing Panel made the following orders:

1. That **Member, P.Eng.** is hereby reprimanded for professional misconduct;
2. That **Member, P.Eng.**, pay a fine of \$2,000.00;
3. That **Member, P.Eng.** complete counselling and medical treatments undertaken;
4. That the Decision and Order shall be published on the APEGS website and in *The Professional Edge*, without names;
5. That **Member, P.Eng.**, shall pay costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the investigation committee and the discipline committee and costs of legal services. Costs shall be assessed to a maximum of \$5,000; and
6. That **Member, P.Eng.** shall have six months from the date of this Decision and Order to pay the amount of the fine and costs and in default [the member] shall receive an Administrative Suspension until the fine and costs are paid in full.

Respectfully submitted and ordered on behalf of the Discipline Committee at Regina, Saskatchewan, Canada, this 24th day of March 2021.

ORIGINAL REPORT WAS SIGNED BY THE MEMBERS OF THE HEARING PANEL

Trevor Chadwick, P.Eng.
Chair, Hearing Panel

Stu Ritchie, Public Appointee
Member, Hearing Panel

Daryl Andrew, P.Eng.
Member, Hearing Panel

Brian AuCoin, P.Eng.
Member, Hearing Panel

Chanelle Joubert, P. Geo.
Member, Hearing Panel