

registration shall be suspended until he pays the fine.

3. The Permit Holder will pay a fine in the amount of \$500 within 1 month of the Discipline Committee's written decision, failing which its Permit to Practice shall be suspended until it pays the fine.
4. The Permit Holder shall pay costs of the hearing in the amount of \$1,000 within 1 month of the Discipline Committee's written Decision, failing which its Permit to Practice shall be suspended until it pays the costs.
5. Details of this matter will be published in *The PEG* magazine and on the APEGA website without identifying the Professional Member, P.Eng., or Permit Holder by name. The Hearing Panel agreed that publication on a named basis would meet no goal of discipline that would be proportionate to the damage that named publication would cause.

It was the view of the Hearing Panel that these orders would protect the public, educate the membership, and uphold the standing of the profession generally. The nature of the conduct that led to findings of unprofessional conduct was relatively minor in the range

of discipline findings. There was no actual damage resulting from the conduct. Of note, the Professional Member, P.Eng., cooperated throughout the investigation and hearing process. The Professional Member, P.Eng., was also prepared to adopt a practice to ensure the proper paperwork was in place as required. Finally, neither of the parties had prior discipline findings.

The Hearing Panel communicated that, while Professional Members cannot be perfect, each must take their role in maintaining the reputation of the Profession seriously. Self-regulation is a privilege that requires each Professional Member to perform duties both concisely and efficiently.

Signed,

**DAVID EVANS, P.GEOL.**

Panel Chair, APEGA Discipline Committee

**TIM MORAN, P.ENG.**

Panel Member, APEGA Discipline Committee

**MARC SABOURIN, P.ENG.**

Panel Member, APEGA Discipline Committee

*Date: July 20, 2017*

Date: June 26, 2017

Case No.: 16-001-FH

## REGARDING THE CONDUCT OF A PROFESSIONAL MEMBER, P.ENG.

Pursuant to the *Engineering and Geoscience Professions Act*, an APEGA Disciplinary Hearing was held on April 19, 2017. The hearing addressed a complaint against the conduct of a Professional Member, P.Eng. (the "Member"). The hearing proceeded by way of an Agreed Statement of Facts, Admission of Unprofessional Conduct and Joint Submission on Sanctions.

The Member was engaged to prepare plans and specifications for a municipal local improvement involving the installation of a sanitary sewer main and upgrades to the water main and to administer the tender on behalf of the municipality and to review and inspect the work being executed by the successful contractor.

The amended charge that was presented to the Hearing Panel by the parties was that:

Your management and administration of the Project failed to identify errors that resulted in certification of payments for work that had not been verified by you, and payments to a contractor by your client for that work.

In the Agreed Statement of Facts and Admission of Unprofessional Conduct the Member admitted that:

- a. the Member verified and asked the municipality to pay for 7 gasline crossings and 1,200 tonnes of crushed gravel and 200 tonnes of pitrun gravel, despite not having verified that those items had been used and required payment;
- b. while the second and final payment recommendation addressed the overpayment for the crushed gravel and pitrun gravel, it again failed to identify the overpayment for the 7 gas line crossings that were not installed but had been certified for payment;
- c. for several years the Member provided a credit of \$3,500 to the municipality in respect to the 7 gas line crossings that were not installed; and

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- d. this admitted conduct constituted unprofessional conduct in the practice of engineering.

The Hearing Panel accepted the Member's admission of unprofessional conduct. In the opinion of the Hearing Panel, the admitted conduct was serious enough to constitute unprofessional conduct. A client must be able to rely on recommendations made by a Professional Member, and it is unprofessional to recommend payment for work that the Professional Member has not verified.

The Hearing Panel also noted that in this case the delay in the Member providing all relevant documents on a timely basis meant that the Member did not make clear to the Investigative Committee the scope of the work undertaken for the Project. As a result, it was only when the Member provided the additional information that the Investigative Committee was able to understand the more limited scope of the work which resulted in the amended charge. The Hearing Panel emphasized that it is essential that a Member under investigation cooperate with the investigation by providing all relevant documents on a timely basis.

The Hearing Panel also accepted the Joint Submission on Sanctions made by the parties and made the following orders:

- a. the Member was issued a letter of reprimand;
- b. the Member was fined \$250 payable within 60 days of receipt of the written decision of the Hearing Panel;
- c. the decision was to be published to the membership and made available to the public without the name of the Member; and
- d. the Member, as Chief Operating Officer of his permitted corporation, was required to submit a revised Professional Practice Management Plan to the Director of Enforcement and Permits of APEGA within 60 days of receipt of the written decision of the Hearing Panel, and the Director will forward this revised Professional Practice Management Plan to the Practice Review Board for follow-up in accordance with their process.

The Hearing Panel determined that a reprimand was appropriate to make clear that greater care should

have been taken to verify the work and to document that verification. The fine of \$250 was also appropriate to recognize that such conduct was unacceptable but fell within the low end of the scale of potential unprofessional conduct. The Hearing Panel noted that if there had been additional instances of such conduct proven, a more serious fine may have been required.

The Hearing Panel agreed that publication was appropriate to provide the public and the profession with information concerning what has occurred and to make clear to the profession the importance of ensuring that clients are not advised to pay for work that has not been verified by the Professional Member. The Hearing Panel accepted the joint submission of the parties to publish the decision without the name of the Member. The Hearing Panel recognized that joint submissions on sanctions by the parties must be given significant weight by a hearing panel and should only be rejected if they are clearly unreasonable or unfit to deal with the findings on unprofessional conduct made by the hearing panel. In this case, in view of the Member's very long career, the Member's cooperation and acknowledgment of the conduct, and the Member's personal circumstances, the Hearing Panel agreed that there was no need to mention the Member by name in the publication.

The Hearing Panel also accepted the proposal that the Member, as Chief Operating Officer of the Member's permitted corporation, submit a revised Professional Practice Management Plan. It was clear from the evidence that more steps could have been taken to document the scope of work of the Project and the management and inspection of the Project. The revised Professional Practice Management Plan to be reviewed by the Practice Review Board will help to ensure that the errors that lead to this hearing are not repeated.

Signed,

**ROBERT SWIFT, P.ENG.**

Panel Chair, APEGA Discipline Committee

**PAUL RUFFELL, P.ENG.**

Panel Member, APEGA Discipline Committee

**DIANA PURDY, P.GEOL.**

Panel Member, APEGA Discipline Committee

*Date: June 26, 2017*