

**DISCIPLINE COMMITTEE OF THE
ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO**

IN THE MATTER OF a Discipline Hearing)
in respect of Ginger Ada Ethel Rogers)

DISCIPLINARY PANEL:)
BRAD LEONARD, P.Geo.,)
(Panel Chair))
NOELLE SHRIVER, P.Geo.)
PAUL CONNOR, Public Member)

HEARD ON THURSDAY THE 18th DAY
OF JULY, 2019

B E T W E E N :

ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO,

Association

- and -

GINGER ADA ETHEL ROGERS

Member

DECISION AND REASONS FOR DECISION

This is a Discipline Hearing initiated by the Association as a result of conduct with respect to the professional practice of the Member in the Province of Alberta.

Specifically, it was alleged by the Association that the Member is guilty of professional misconduct, negligence, and incompetence as defined in the *Professional Geoscientists Act 2000* (the "Act") and Ontario Regulation 258/02 (the "Regulation"). The Notice of Hearing, which was marked as Exhibit 1, sets out the details of these allegations.

A hearing concerning the allegations was originally scheduled to proceed, by request of the Member, by teleconference. A teleconference was scheduled for Thursday, May 2, 2019, and the Member was served with the Notice of Hearing (Exhibit 1) informing her of the allegations and the date. The day before the scheduled teleconference, as a result of a health issue on the part of one of the Panel members, it became clear that

the teleconference Hearing could not proceed on the scheduled date. The Hearing was rescheduled to proceed on Thursday, July 18, 2019, in person, before the above noted Panel as the Member had disputed the jurisdiction of the Association to proceed on the allegations. In attendance, in addition to the Panel members, were Richard Steinecke, Counsel to the Association, his colleague Erica Richler, Aftab Khan, Registrar of the Association, and Carol Street, Independent Legal Counsel ("ILC") to the Panel. The Member did not attend.

THE MEMBER'S NON-ATTENDANCE AND SERVICE

With respect to the Member's non-attendance, the Member had advised the Association in an email dated April 5, 2019 that she disputed the Association's jurisdiction to proceed against her (for reasons discussed below), and that she would not be attending or otherwise participating in the teleconference Hearing scheduled for May 2, 2019.

Notwithstanding her position, the Member continued to be kept informed of the proceedings. Independent legal counsel advised her of the new Hearing date, as did the Registrar, who served the member with a Notice of Resumption of Hearing on July 5, 2019, and who included these communications with the Member in an Affidavit of Service sworn July 10, 2019 and marked as Exhibit 2.

The Member was also advised by ILC to the Panel in an email dated July 16, 2019 that if she wished to call in to the Hearing, call-in information would be made available to her. That email was marked as Exhibit 3. We were advised by independent legal counsel that no response had been received.

Finally, at the commencement of this Hearing the speaker phone in the Hearing Room was activated to allow the Member to call-in and participate should she wish to do so. The Hearing was scheduled to proceed starting at 10:00 a.m.: by 10:24 she had shown no signs of participating. The phone line was left open during the remainder of the proceedings but the Member did not participate.

The Panel was satisfied on the basis of the evidence provided that the Member was served and acknowledged receipt of the Exhibit 1 Notice of Hearing, and was

subsequently made aware of the date of the resumption of the Hearing on July 18, 2019, as well as of her right to either attend or call-in to the Hearing to participate. Notwithstanding that information, the Member chose not to participate. The Panel was satisfied that it could proceed in the Member's absence, pursuant to Section 6(3)(b) of the *Statutory Powers Procedure Act*, RSO 1990, c. S. 22.

THE MEMBER'S JURISDICTIONAL ARGUMENTS

Even though the Member did not attend and provided no materials to support her jurisdictional argument, Mr. Steinecke, on behalf of the Association, responded to her position. He produced an Affidavit of Mr. Khan sworn April 25, 2019 and marked as Exhibit 4. That Affidavit included a number of email communications and attached documents between the parties, including the Member's position that this Panel was without jurisdiction to proceed.

Those communications made clear that the Member had been provided with, among other things, a Joint Submission on Finding which she signed and returned to Mr. Steinecke in March of 2019 (Exhibit 4, Tab D). At the same time she signed and returned a completed Plea Inquiry Questionnaire (Exhibit 4, Tab E). Immediately thereafter, the Member questioned the Association's jurisdiction on the basis that the alleged misconduct all took place in Alberta, not Ontario, and that she had already been disciplined by the Association of Professional Engineers and Geoscientists of Alberta ("APEGA") for the same actions. She maintained that she cannot be disciplined twice for the same actions (Exhibit 4, Tab B, p. 16).

The Member subsequently sent an email pointing out that she had resigned her Ontario designation in October of 2018, which the Association gave effect to on January 1, 2019. She maintained there was therefore no need for the Association to determine whether she should remain a member because she is no longer a member. She repeated that in her opinion the Association had no jurisdiction to proceed (Exhibit 4, Tab B, p. 15).

After receiving Mr. Steinecke's response, the Member, on April 4, 2019 (Exhibit 4, Tab B, p. 11, 12) set out her "final position". She repeated that the impugned conduct took place in Alberta, where she was a member of APEGA; that she has already been disciplined by APEGA for the same conduct, and that section 11(h) of the 'Charter of Human Rights of Canada' says she cannot be punished twice for the same offence. She said she would not be attending the Hearing, 'the reason being APGO cannot discipline me a second time for the same offence'.

The Member has not responded to any subsequent communications to her.

Mr. Steinecke therefore responded to the following issues raised by the Member:

1. That she is no longer a Member;
2. That the conduct in question took place outside of Ontario;
3. That she has already been punished for that conduct.

With respect to the first issue, section 41(1) of the Act provides a complete answer to the Member's position. It says:

41(1) Even though an individual ceases to be a member of the Association, disciplinary proceedings may be initiated or continued under this Act with respect to his or her conduct while he or she was a member.

We conclude we have the jurisdiction to proceed notwithstanding that this Member ceased to be a member as of January 1, 2019.

With respect to the second issue, Mr. Steinecke referred the Panel to caselaw establishing that a regulator's jurisdiction is over the person (i.e. the individual member) regardless of the location of the conduct (Combined Factum and Book of Authorities on the Jurisdictional Issue raised by Ms. Rogers, marked as Exhibit 5, at paragraph 4 and cases at tabs 1, 2 and 5).

Based on these cases, we are satisfied that we have jurisdiction to proceed even though the alleged misconduct took place outside of Ontario.

With respect to the third 'double jeopardy' issue, Mr. Steinecke also referred the Panel to caselaw on this issue (Exhibit 5, paragraph 5, and cases at tabs 3 and 4). Those cases clearly establish there is no 'double jeopardy' in situations where a member of a professional body has been convicted of a criminal offence before being disciplined, or where the order is reversed and the disciplinary matter is dealt with first.

In this case, the Member has been convicted of a criminal offence in Alberta (as discussed further below) and has been disciplined by APEGA. Should she be subject to these disciplinary proceedings for the same conduct?

Mr. Steinecke set out a number of policy reasons as to why regulators such as this Association should proceed in cases of overlapping jurisdiction. Those policy reasons in summary include:

1. To ensure that the regulator has the opportunity to express its own disapproval of the misconduct;
2. To send a message to the profession about the seriousness of the conduct (i.e. general deterrence);
3. To ensure the regulator does not appear to have condoned the conduct 'behind closed doors', and, as a corollary to that, to be transparent with the public generally and specifically with respect to the former member's past history. In that regard the Association's public register currently states under the heading "Disciplinary Results: N/A" which is potentially misleading to the public if this Panel does not assume jurisdiction to proceed with the allegations against her;
4. To help enforce the legislation should the former Member attempt to practise in Ontario without legal authority to do so, or, should she seek future reinstatement in Ontario due consideration will be given to any past conduct concerns. The Panel should proceed to hear the allegations against her at this time, rather than some future hypothetical date when she might seek reinstatement to ensure the evidence is available.

The Panel considered the caselaw and these policy reasons and was satisfied that it has jurisdiction to proceed and that it is appropriate to do so.

THE ALLEGATIONS AGAINST THE MEMBER AND FINDINGS

The Panel then proceeded to hear evidence regarding the allegations against the Member. The Registrar, Aftab Khan, was called as a witness.

In summary, the evidence established the following:

1. The Member, in March of 2016, on behalf of a client, either personally or through her company provided a required annual report to Alberta Environment and Parks regarding soil testing results.
2. An employee of Alberta Environment and Parks reviewed those results and noted that they were identical to a previous report.
3. Alberta Environment and Parks contacted the Laboratory that had done the current and previous soil analyses. The Laboratory provided results back to Alberta Environment and Parks.
4. Although the Member initially denied any wrongdoing, she ultimately acknowledged that she had falsified the current Laboratory Analysis data, which had the effect of allowing her client to continue to discharge wastewater on land through irrigation, when the true data would not have permitted the client to do so.
5. The Member was charged with contravening certain sections of the *Environmental Protection and Enhancement Act* of Alberta by knowingly providing false or misleading information. She pleaded guilty to that charge, was fined \$28,750 and barred from submitting any documents or reports to Alberta Environment and Parks where she is the responsible professional member for a period of three years.

6. Thereafter, the Member was disciplined by APEGA, where she admitted her conduct, advised that she did not intend to further pursue a career in geoscience, and was found guilty of the allegations against her. APEGA's Discipline Committee ordered that the Member was ineligible to reinstate her APEGA membership, either personally or through her company, for three years. If she wished to apply for reinstatement after that period of time she was required to pass the relevant practice exam. APEGA would share the disciplinary information with sister Canadian engineering and geoscience regulators; she would be issued a letter of reprimand, a copy of which would be placed permanently in her file; and the matter and its outcome would be published as APEGA considered appropriate, with the Member identified by name.
7. On March 4, 2019, the Member signed a document acknowledging the above noted conduct (Exhibit 6 Document Brief, Tab 9).

Having reviewed this evidence, this Panel concludes that the Association has proven its case against the Member. We find the Member guilty of the following:

- Subsection 24(1) of the Act in that she is guilty of an offence relating to her professional integrity, specifically:
 - o Paragraph 16(2).1 of the Regulation in that she failed to make reasonable provision for safeguarding the life, health or property of a person who may be affected by the work for which the member or certificate holder was responsible;
 - o Paragraph 16(2).2 of the Regulation in that she failed to correct or report a situation that the member or certificate holder believed might endanger the safety or the welfare of the public;
 - o Paragraph 16(2).3 of the Regulation in that the Member contravened the Act or the regulations made under it, including the Code of Ethics, or of the by-laws of the Association or contravened any other statute, regulation, standard, code, by-law or rule that applied in connection with

work being undertaken by or under the responsibility of the Member or certificate holder;

- Paragraph 16(2).9 of the Regulation in that the Member engaged in conduct or an act relevant to the practice of professional geoscience that, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional;
 - Paragraph 16(2).12 of the Regulation in that the Member engaged in conduct or an act, criminal or otherwise, that constitutes conduct unbecoming of a professional geoscientist;
- Pursuant to section 26(2)(b) of the Act and section 17 of the Regulation the Panel also finds the Member guilty of negligence in that she committed an act or omission in the practice of the profession that constitutes a failure to maintain the standards that a reasonable and prudent professional geoscientist would have maintained in the circumstances;
 - Pursuant to section 25 of the Act the Member's conduct establishes incompetence.

PENALTY

Association Counsel then marked as Exhibit 7 a Joint Submission on Order that set out a proposal for a penalty that the Member had agreed to before she took the position that this Panel lacked jurisdiction and that she would not participate in this Hearing. This proposal corresponded with the penalty imposed on the Member by APEGA. We understand that we are not bound by Exhibit 7.

Mr. Steinecke provided us with a number of cases setting out the principles to guide us in imposing a penalty, and in particular the public interest where public health and the environment have been impacted. He pointed out the mitigating factors that this is a first offence of this Member, and that she accepted responsibility for her actions and was for the most part cooperative with this Association's processes.

On the other hand, there are aggravating factors in that this is a serious offence. Public authorities rely on the integrity of Members in their reports to governmental agencies and authorities. The Member disregarded rules that are designed to protect the public and the environment.

The Panel agrees that it is appropriate that the penalty be consistent in approach with that imposed by APEGA. Accordingly the following Penalty is imposed on the Member:

1. The Member's membership in the Association is suspended from the date of the Hearing (July 18, 2019) until the latter of March 29, 2022 or the successful completion by the Member of the National Professional Practice Examination;
2. The Member shall be reprimanded in writing, in the form annexed hereto as Appendix A. The Panel directs the Registrar to forthwith provide a copy of this Decision, including Appendix A, to the Member to her by regular mail to her last known address, as well as by email.
3. The Member's name will be published by the Association along with a summary of this Decision and Reasons.

This Decision may be signed electronically and in counterparts.

Date: August , 2019

Brad Leonard, P.Ge., (Chair)

Noelle Shriver, P.Ge.

Paul Connor, Public Member

APPENDIX A TO DECISION AND REASONS FOR DECISION
DISCIPLINE COMMITTEE OF THE
ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO

BETWEEN:

ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO,

Association

- and -

GINGER ADA ETHEL ROGERS

Member

REPRIMAND

TO: GINGER ROGERS

The Panel of the Discipline Committee of the Association, consisting of Brad Leonard, P.Ge., Noelle Shriver, P.Ge. and Paul Connor, Public Member, declared in its Decision and Reasons for Decision dated August , 2019 that you should be reprimanded in writing for your professional misconduct, negligence and incompetence as a Professional Geoscientist. This is that reprimand.

We are embarrassed by your conduct and for the profession of which you were a practitioner.

Your conduct is unacceptable and will not be countenanced in future.

The members of the Panel sincerely hope, and indeed expect, that you will take this reprimand to heart and will change your professional conduct to those standards expected of a Professional Geoscientist in the Province of Ontario.

The Panel directs that, should you succeed in becoming a registered Professional Geoscientist after the penalty period, and if you are going to act as a Qualified Person

(QP) on any project, you are to accept the position only if you have the appropriate training, experience and expertise in the commodity and type of work for which you will be signing as a Professional Geoscientist and QP.

A copy of this reprimand is being placed in your member file and will be publicly accessible via the website of the Association of Professional Geoscientists of Ontario.

DATED the day of August, 2019.

Brad Leonard, P.Geo. (Chair)

Noelle Shriver, P.Geo.

Paul Connor, Public Member

On the other hand, there are aggravating factors in that this is a serious offence. Public authorities rely on the integrity of Members in their reports to governmental agencies and authorities. The Member disregarded rules that are designed to protect the public and the environment.

The Panel agrees that it is appropriate that the penalty be consistent in approach with that imposed by APEGA. Accordingly the following Penalty is imposed on the Member:

1. The Member's membership in the Association is suspended from the date of the Hearing (July 18, 2019) until the latter of March 29, 2022 or the successful completion by the Member of the National Professional Practice Examination;
2. The Member shall be reprimanded in writing, in the form annexed hereto as Appendix A. The Panel directs the Registrar to forthwith provide a copy of this Decision, including Appendix A, to the Member to her by regular mail to her last known address, as well as by email.
3. The Member's name will be published by the Association along with a summary of this Decision and Reasons.

This Decision may be signed electronically and in counterparts.

Date: August 21ST, 2019



Brad Leonard, P. Geo., (Chair)

Noelle Shriver, P. Geo.

Paul Connor, Public Member

Original signed by Brad Leonard, P. Geo., Noelle Shriver, P. Geo. and Paul Connor, Public Member