

1. Decision

This is the Decision of the Council Panel regarding the appeal of Jimi Marrone (Appellant) of the Registration Committee (RC) decision regarding licensure with Professional Geoscientists Ontario (PGO)¹.

2. Notice of Appeal Hearing

- i. The Notice of the appeal hearing (Notice) was published on the PGO website on September 24, 2021.
- ii. The Notice included a statement that the Council Panel will determine the merits of the Appellant's appeal of the decision of the RC and can make any order that is permitted by the Professional Geoscientists Act.
- iii. The Notice included attendance instructions to members of the public.

3. Appeal Hearing Participants

- i. The Appeal was conducted November 15, 2021, with the following participants:

Jimi Marrone – Appellant

Richard Steineke – PGO Legal Counsel

Aftab Khan – PGO Registrar and Witness for PGO

Eiligh Lewis – PGO Assistant Registrar and observer

Paul Hubley – Council President and Council Panel

Carol Street – Legal Advisor to Council Panel

- ii. No members of the public attended the hearing.
- iii. The hearing was conducted using the Zoom video conferencing platform, commencing at 9:30 a.m. and was completed by 2 p.m.
- iv. Prior to hearing evidence, both parties (Appellant and PGO Legal Counsel) consented to have the Council Panel comprise a single Councillor, Paul Hubley, Council President, as the Council Panel.
- v. Both parties confirmed approval of a virtual format for the appeal hearing.
- vi. Periodic checks of video quality were made with participants and no problems were reported to the Council Panel throughout the hearing proceedings.

¹ PGO is the operating name of the Association of Professional Geoscientists of Ontario

4. Prior Registration Committee Decision

- i. A decision by the RC rendered May 11, 2021 was that the Appellant's academic requirements were fulfilled. However, the experience did not meet the requirements for a full licensure.

5. Basis for Appeal

- i. Under the Professional Geoscientists Act, 2000, Section 14 (1), an applicant or a registrant may appeal a decision of the Registration Committee with respect to the applicant or registrant to the Council.
- ii. The Appellant submitted to PGO a request to appeal the decision as described in a letter from the Appellant dated June 30, 2021, and an amendment letter dated November 5, 2021. The June and November 2021 letters describe the basis for appeal, understood by the Panel as the following: (i) that the Appellant's position on practical experience requirements for full licensure is that the requirements have been met; (ii) that the Registration Committee did not adequately assess the work experience record; (iii) that the assessment methodologies used by the RC to reach its conclusion were inappropriate and/or flawed; and (iv) that the decisions of the RC were prejudiced by poor reception during video conferencing. In the June letter (but not the November amendment letter), reference was also made to misrepresentations made by PGO regarding the requirements for licensure.

6. Opening Statements

- i. Opening statements were made by the Appellant and by PGO Counsel. PGO Counsel had provided a Documents Brief, which was marked as **Exhibit #1**. The Notice of Hearing was found at Tab 1, page 3 and following.

7. Evidence

- i. The Appellant provided direct testimony, generally following the order of the November 5, 2021 amended appeal letter. No other witnesses were called by the Appellant. The discussion topics are grouped together below consistent with how they appear in the letter and generally consistent with the testimony. The November 5, 2021 letter was marked as **Exhibit #2**.

ii.

A. Practical Experience (Item 1 of Exhibit #2): The position taken is that the work experience as a mining analyst, having been focused on the financial analysis of resource sector equities, should be considered as practical geoscience experience. It was stated that no other analyst with whom the Appellant works was competent in

the resource sector. It was stated that generally no P.Geo. writes the entire NI1-43 reports and therefore it should not be expected that any one P.Geo. understands all elements of such reports. It was stated that responsibility is taken for the analysis in the reports, and that this meets the criteria of the required regulations (cited in Exhibit #2 Item 1 as Regulation O.Reg.59/01 amended to O.Reg.378/01 Section 9.3 (1)). The Appellant disputes the dismissal by the RC of any consideration of field experience at OMAFRA and NPCA, and further objects to dismissal of the field experience on the grounds that PGO does not disclose that experience needs to be within the past 10 years. The decision of the RC was disputed on the grounds that the Work Experience Record (WER) demonstrates a progression of responsibilities over time, and that further field experience requirements would represent a career regression rather than the career progression desired by PGO.

B. Past Precedents (Item 2 of Exhibit #2): The position taken by the Appellant is that if others have been accepted into PGO based on being granted qualifying work experience through experience as an Equity Research Analyst, then the Appellant should also be accepted.

C. Interactions with PGO: The Appellant described personal interactions with PGO, citing a phone call with Aftab Khan in 2018 or 2019 regarding the initial application and requirements for licensure. In the Documents Brief, Tab 10 (Page 66), a copy of the initial appeal cites misrepresentation by PGO, notably that the Appellant was assured by Aftab Khan that the work experience as an equity analyst would be considered as qualified work experience. In testimony, it was described that the interview process was conducted as a quiz without the benefit of being able to prepare, that the Appellant felt “blindsided” and that the approach was not a fair test of the Appellant’s expertise.

D. Technical disruptions (Item 3 of Exhibit #2): The Appellant described that the two interviews, conducted by Zoom calls, experienced significant technical disruptions which did not allow the parties to hear one another adequately nor coherently, which likely caused significant prejudice and ultimately contributed to the RC decision to not license the Appellant.

- iii. In cross-examination, PGO Counsel challenged Item A.) above. Item C.) and D.) were addressed in witness testimony provided by Aftab Khan. The Appellant agreed that the description of *Qualifying Work Experience Requirements – Schedule B* issued by PGO is that shown in the Documents Brief, Tab 13 (pages 80 to 84), that the Registration Regulation is identified in the document (page 80), that Section 1 states that some

application of geoscience theory is needed in each of five areas (shown as 1a. to 1e., page 81).

- iv. In cross examination it was noted that the nature of the Appellant's work was not entirely apparent in the WER. When asked about the level of field work in the past 10 years, the Appellant indicated that the work involved review of others' work and applying financial analysis to the findings of others. The field experience comprised about a dozen site visits totalling about 3 days field work, and the Appellant acknowledged that the field work did not involve sampling, measurements, logging, or testing.
- v. Questions related to the technical proficiency of the Appellant, and the ability to understand the environmental issues related to mining production were put to the Appellant. In reply, the Appellant stated that the technical issues raised by the RC and in cross-examination have never been raised before.
- vi. Questions were asked related to the type of Bachelors degree obtained in the 1990s, clarified as an urban studies / geography degree. The Educational Units (EUs) were fulfilled later. In redirect evidence, the issue of timing of obtaining a B.Sc. was noted by the Appellant, and that PGO did not adequately consider that the B.Sc. was obtained in 1994 – the objection is to PGO using the date of fulfilling all of the EU requirements, which is perceived as not consistent or fair.
- vii. Questions were asked related to the OMAFRA, entered as **Exhibit #3** (provided as part of the Appellant's November 5, 2021 documents). The Appellant agreed that the experience was for agricultural purposes, not for metal minerals testing. Regarding hydrology experience as an intern, the response was that this is geoscience because it is one of the required EUs. The Intern Evaluation Form was entered as **Exhibit #4**.
- viii. Questions were asked related to the ability and independence of the Appellant's references to evaluate the Appellant's practical work experience (Documents Brief Tabs 5, 6, 7, 8 and 9. In response, reference was made by the Appellant to the Seabridge report (Documents Brief Tab 4, pages 19 - 30), authored by the Appellant. In addition, the redirect evidence questioned the weight that references are given compared to other information during decision-making, and generally the questioning of PGO's approach to evaluate competency was challenged, notably the methods used in the RC decision dated May 11, 2021.
- ix. PGO called one Witness, Aftab Khan, PGO Registrar, to testify (the Witness). For ease of reference, discussion topics are listed in a similar order to the above (i.e. testimony was heard from the Witness regarding Issue A., C., and D.).
 - a. Issue A. Practical Experience: The Witness testified that practical experience is the same as qualifying work experience as described in Schedule B (Document Brief, Tab 13, page 80). When questioned, the Witness indicated that the RC

makes their decision in the manner they choose including consideration of practical experience. In response, questions were asked by the Appellant of the Witness regarding the apparent discrepancies in the WER evaluation. Further questions were raised regarding the timing of the PGA and its regulatory framework. The Witness could not comment on the evaluation. The regulatory framework was cited in the Document Brief.

- b. Issue C. Interactions with PGO: Mr. Khan had an estimated 20 calls with the Appellant. Interviews were requested by the RC to further evaluate the application. The first interview did not have one of the key RC members with senior mining sector experience, therefore a second interview was set up. The RC that conducted the second interview was comprised of senior geoscientists in the mining sector – John Ryder, Heather Turnbull, Jim Steel and Doug Cater. Jim Steel has financial analyst experience. In response, questions were asked by the Appellant of the Witness regarding the nature of the conversations, the perceived lack of standardization of the interview and decision-making process, the interview procedure, and general approach. The Witness described the general processing of an applicant and that a standardized approach was not appropriate, as each application is different, and testified that it was mentioned that the RC made the decisions.
- c. Issue D. Technical disruptions: Mr. Khan testified that the quality of connection in the first interview was not an issue and stated that interruptions were experienced in the second interview. Mr. Khan stated that it was his understanding that there was sufficient time for the interview, and that the explanations by the Appellant were understood by the RC, and that he (i.e. Mr. Khan) spoke with the RC participants when this was raised by the Appellant, who each informed him that there was no connection issue from their side. The Appellant did not recall the specifics of the connection issue.

8. Closing Arguments

- i. Closing arguments were given by the Appellant and by PGO Counsel.

9. Review of Law, Regulations and Past Precedents

- i. The applicable Act is the Professional Geoscientists Act (2000), available on the PGO website at <https://www.pgo.ca/about/act-and-regulations>.
- ii. The Registration Regulation, O.Reg. 324/16, is available as a link from this PGO web page, to the online regulation at <https://www.ontario.ca/laws/regulation/r16324>, updated to September 2016. The Document Brief, Tab 12, also included a section labelled Excerpts

from the Professional Geoscientists Act, 2000 with the note “*Consolidation Period: From November 14, 2017 to the e-Laws currency date*”, and included Excerpts from Ontario Regulation 324/16 Registration (Page 70 to 79).

- iii. PGO By-Law Number 6 is relevant insofar as it describes the function and powers of the RC. The link to the By-Law is: <https://www.pgo.ca/files/by-laws/By-Law%20No.%206%20-%20Registration%20Committee.pdf>
- iv. PGO’s summary of qualifying work experience is: <https://www.pgo.ca/registration/workexp> and a link to Schedule B (provided in the Documents Brief, Tab 13, as pages 80 to 84) is: <https://www.pgo.ca/files/qualifying-work-experience.pdf>
- v. The evidence provided by the Appellant did not provide any additional citations to law, regulations or past precedents. Similarly, the evidence provided by PGO Counsel or the Witness did not provide any additional citations beyond those cited above. Therefore, no additional law, regulations or past precedents were further considered.

10. Analysis

Issue A. Practical Experience

- i. The key issue at dispute is related to whether the experience of the Appellant is qualifying practical experience in accordance with PGO’s Act and Regulations. The issue is framed with several questions:
- ii. *Question 1 – what is the framework within which the PGO operates?*
- iii. The PGO is required to operate within the PGO Act (2000) and its Regulations. The applicable Regulation is O.Reg.324/16. Decisions must be made within the framework of the Act and Regulations.
- iv. *Question 2 – what are the minimum requirements for registration?*
- v. The requirements for the Practicing Member Class, applicable here, is described in Section 18 (1) and 18 (2) of O. Reg. 324/16, available on the PGO website (see above).
- vi. Section 18 (1) 1. states that the applicant must have a four-year B.Sc. or equivalent in an area of geoscience that meets (emphasis added) the prescribed knowledge requirements.
- vii. Based on a plain reading of the Regulation, it is apparent that if a B.Sc. is obtained that does not meet the prescribed knowledge requirements it would not meet this definition prescribed by the Regulation.
- viii. The Documents Brief (Page 18) shows that the Appellant obtained a B.Sc. in April 1994, and in testimony, it was understood that the B.Sc. did not at the time meet

- the prescribed knowledge requirements – this was the reason for taking additional EUs over the years until all of the EUs were met.
- ix. Therefore, from the definitions, it is apparent that a B.Sc. that met the prescribed knowledge requirements was not obtained until after the EUs were satisfied, which is understood to be some time in 2018.
 - x. However, where the requirements are not met, as in this case, Section 9. (1) of the Regulation provides 4 options for the Registrar and/or the RC, discussed further in Question 5 below.
 - xi. *Question 3 – what is geoscience work experience?*
 - xii. This is understood to be the fundamental question at issue, given the extent of items in the appeal letters and the testimony provided in the hearing. Terms have been variously used – on Page 1 of Schedule B alone the terms found to describe experience are: qualifying work experience, verifiable and acceptable work experience, pre-graduation experience, work experience, experience, acceptable qualifying work experience, and practical experience. Given the variability in the terminology, it should come as no surprise that there be some initial confusion on the requirements. The variability of the terms is addressed later.
 - xiii. Schedule B cites Regulation 378/01, s. 9.3 (1) as defining the requirements for qualifying work experience (Documents Brief, Tab 13, page 80), then includes the (five) criteria for qualifying work experience, stated in considerable detail. Exhibit #2 also cites this regulation. It was noted that the (five) criteria are listed in Regulation 324/16 as part of the definition of “geoscience work experience” (Documents Brief, Tab 12, at page 71).
 - xiv. Schedule B states that some (emphasis added) application of geoscience theory is required in each (emphasis added) of five areas: (a) development and implementation (b) analysis; (c) integration and synthesis; (d) testing methods; and (e) implementation methods. While Schedule B references Regulation 378/01, the current Regulation is Regulation 324/16.
 - xv. Testimony addressed most of the elements of experience. Considerable time was given to discuss how the Appellant’s experience should or should not be considered as qualifying work experience (or the like) and discussing questions regarding the appropriateness of the requirements.
 - xvi. One key area of the appeal was the requirement of Schedule B Section 1.a) - this section states that some field and/or laboratory investigation programs, including gathering of field and laboratory observations and data, is required.
 - xvii. Relating this to the Regulation, an applicant would be required to demonstrate some experience in this activity during 4 of the past 10 years or 10 of the past 15 years. It

- is apparent that upon comparison of the Appellant's WER (Documents Brief, Page 10 to 18), this requirement is not satisfied. The Appellant took the position that this is not an appropriate requirement, as it represents a backward (regression) not forward (progression) of experience, however, provided no alternatives or precedents for consideration during the hearing.
- xviii. As Schedule B is not a Regulation, but is instead a PGO website publication, Regulation 324/16 takes precedence over Schedule B. It is apparent that despite the confusion over the appropriate reference section, the Regulation provides the overarching framework for Schedule B, and Schedule B is sufficiently detailed for its intended purpose to describe geoscience work experience.
 - xix. *Question 4 – what level of geoscience work is required?*
 - xx. Section 18 (1) 2. of Regulation 324/16 states that the applicant must have at least 4 years of geoscience work experience obtained within 10 years before the date of the application. Section 18 (2 a.) states that an alternative requirement is that an applicant have at least 10 years of geoscience work experience obtained within 15 years before the date of the application.
 - xxi. It is apparent that any decisions by the Registrar and/or RC must conform to this Regulation.
 - xxii. Therefore, an applicant must have either 4 of the past 10 years or 10 of the past 15 years of geoscience work experience that includes some experience in each of the five required areas.
 - xxiii. Another key aspect of the appeal was understood to be when the "clock" starts on geoscience experience, i.e. does it begin once a B.Sc. is obtained or does it begin once a qualified B.Sc. meeting the requirements is obtained? As described in Section xx. (above), the "clock" is related to the date of the application.
 - xxiv. *Question 5 - what discretion does the RC have or not have to make decisions?*
 - xxv. Regulation 324/16, s.9.(1) is clear on this (Documents Brief, Tab 12, page 73). It is clear that where the applicant has not met the qualifying work experience, the RC "may request that the applicant do one or more of the following for the purposes of meeting the requirements", listing these options:
 - 1. Successfully complete one or more written, oral or practical examinations;
 - 2. Obtain additional geoscience work experience;
 - 3. Fulfil one or more additional prescribed knowledge requirements;
 - 4. Submit one or more additional references;
 - x. Based on the testimony and the RC Decision (Document Brief, Tab 2, pages 7- 9), the RC ultimately selected option 2, as the Appellant did not have the required geoscience work experience.

- xi. It is apparent that the RC was entitled to rely on the oral examination and entitled to request obtaining additional geoscience work experience.
- xii. *Question 6 – were the evaluation methods used by the RC appropriate?*
- xiii. In the hearing it is understood that the evaluation methods of the RC comprised a review and 2 interviews, with at least one interview including an oral examination.
- xiv. The methods used by the RC to evaluate the applicant were challenged by the Appellant. No written methodology was available for review in the hearing. Testimony by the PGO Witness indicated that a prescribed methodology was not appropriate due to the individualized needs of each case. The Appellant objected to the manner of testing and the specific questions, and the unexpected oral examination when the expectation was a simpler interview.
- xv. It is accepted that the Appellant was not adequately informed that there would be an oral examination during the interview, as no documentation was provided by PGO to refute this complaint of the Appellant.
- xvi. The PGO Witness testimony included reference to interviewers from the RC that were selected from the mining industry including a financial analyst member. It is apparent that the interviewers were relied upon by the RC and by the PGO to evaluate the Appellant's application. This is reasonable, given the extent to which the RC ensured that the appropriate interviewers were relied upon. It is apparent that sufficient efforts were made by PGO to ensure that the appropriate interviewers were utilized.
- xvii. It is apparent that while the methods used for the RC decision are not standardized, the RC is within bounds of the Regulatory framework when they requested specific definitions insofar as the terms appear in the Appellant's own reports (i.e. porphyry, cited in the Documents Brief, Tab 4, at page 20).
- xviii. The concern of the Appellant that the specific terms upon which the Appellant was tested were not appropriate may have some merit but insufficient information was provided on this in the hearing. Comments and concerns regarding PGO's use of terminology are also noted above and addressed further in conclusions.
- xix. However, concerns about terminology do not change the fact that the oral examination process is clearly allowed as per Regulation 324/16, s. 9 (1) 1, also that it is apparent that the interviewers were the appropriate experts to determine the manner in which the oral examination was conducted and that no alternative methodology of examination was suggested for consideration during the hearing.
- xx. Given the above, it is apparent that even if the Appellant been better informed of the examination, and/or the interviewers used different methods or questions,

there is insufficient cause to believe that the outcome would have been significantly different. This is addressed further in the conclusions.

Issue B. Past Precedents

- i. No evidence or examples were provided by either the Appellant or the PGO Counsel directly on this issue. The PGO Witness testimony was that cases are assessed by the Registrar and if forwarded to the RC as in this case they are assessed on an individual basis.
- ii. In any event, it is apparent that the key issue is not whether there are past precedents for accepting other financial analysts as registrants, but rather, whether the experience of the particular individual meets the standards set in the Regulation. Even if it were determined that PGO has accepted numerous financial analysts in the past, that would not and should not affect the decision-making for the next financial analyst.
- iii. Therefore, on the basis of what was provided and not provided, past precedents were not further considered.

Issue C. Communications with PGO

- i. It has already been accepted above that the communication on the issue of examinations was insufficient based on the records provided.
- ii. Testimony was heard regarding numerous communications between the Appellant and Registrar. No written documentation was provided for consideration during the hearing with the exception of the letters included in the Documents Brief.
- iii. Another key communications issue is the availability of the work experience requirements information contained within Schedule B (Documents Brief, Tab 13, pages 80 – 84). It is noted that at the time of this review a link to Schedule B was clearly visible on the website, comparable to the link to the WER template. Assuming that the website information in November 2021 is comparable to that on the website in 2018, it would be reasonable that anyone applying at that time would have to access the WER template for their registration and would similarly be equally able to access the Schedule B requirements. No testimony was heard that indicated that Schedule B was not accessible or available at the time of application; rather, that the requirements were not clearly understood and/or accepted by the Appellant.
- iv. The basis for appeal dated June 30, 2021 (Documents Brief, Tab 10, page 66) refers to the alleged misrepresentation by PGO. During the hearing, the Appellant could not recall any specific date or item where the PGO Witness misrepresented,

misdirected or misinformed the Appellant. The records submitted during the hearing also did not support any misrepresentation. Rather, a review of the PGO website indicates that the required information was available and reasonably accessible, although the terminology was at times inconsistent.

- v. It is apparent that there was no evidence to suggest any misrepresentation by PGO, but that communications were probably at times unclear and resulted in some understandable frustration by the Appellant. However, it is also apparent based on the evidence presented in the hearing that had communications been clearer, it would not have affected the RC decisions or altered the outcome in any way.

Issue D. Technical Disruptions

- i. The PGO Witness provided testimony that the technical disruptions were experienced only by the Appellant, in one not both interviews, and was not identified as an issue by any participant at the time of the interviews. The PGO Witness also provided testimony that each interviewer confirmed that the connection was sufficiently clear for answers to their questions.
- ii. It is apparent from the Witness testimony and a review of the records that there is no cause to believe that the interviews were prejudiced by technological glitches or that this affected the outcome of the RC decision(s).

11. Conclusions and Decision

In conclusion,

- i. The Appellant's concerns regarding communications by PGO were in part reasonable, although there was no evidence of misrepresentation on the part of PGO;
- ii. The Registrar reasonably concluded that the application of Jimi Marrone did not meet the work experience requirements, and that referral to the RC was required;
- iii. The RC reasonably discharged its duties within the mandate in accordance with the mandate of the Registration Regulation; and,
- iv. It is apparent that further review by the RC would not result in any other outcome.

It is the decision of this Panel that the RC was within its mandate and within the Registration Regulation in its decision on the Appellant's application, as set out in the May 11, 2021 letter from the Registrar Re: PGO Registration No. 11112 (Document Brief, Tab 2, pages 7 – 9) should be referred to as the prevailing position on the matter. As a result, this appeal must fail.

12. Closure

As a final note, it was apparent during the hearing that there is room for improvement with PGO communications. The following should be considered:

- i. Ensuring that requirements for registration are clearer by making the terminology and citations in its materials (i.e. Schedule B) more consistent.
- ii. Providing some reasonable forewarning of an examination, whether it's written or oral.
- iii. Identifying a reasonably concise set of resources upon which the examination will be based.
- iv. Ensuring that there is record-keeping of discussions with applicants.

Thank you to the participants of the hearing. In particular, thanks to the Appellant, Jimi Marrone – on a personal note I do hope that your registration with PGO will continue to be pursued.

A handwritten signature in blue ink, appearing to read 'Paul Hubley', with a long horizontal flourish extending to the right.

Paul Hubley, M.Sc., P.Geo., EP, CRM, FGC

PGO Council President

December 13, 2021