

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

IN THE MATTER OF a Discipline Hearing)
in respect of Todd Hugh Patrick)
McCracken, P.Geo.)

DISCIPLINARY PANEL:)
BRAD LEONARD, P.Geo.,)
(Panel Chair))

MARK BEDNARZ, P.Geo.)
DONALD B. JOHNSTON, Public Member)

HEARD ON THURSDAY THE 23RD DAY
OF SEPTEMBER, 2021

B E T W E E N :

ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO,

Association

- and -

TODD HUGH PATRICK MCCRACKEN

Member

DECISION AND ORDER

This is a Discipline Hearing initiated by the Association as a result of allegations that the Member was guilty of professional misconduct.

Specifically, it was alleged by the Association that the Member, while practising as a professional geoscientist in respect of two projects, issued documents or participated in the issuing of documents that failed to comply with the NI43-101, Form 43-101F1, CIM Standards, and CIM Guidelines. As such, the Association alleged that the Member was guilty of “professional misconduct” as defined in Ontario Regulation 258/02, (the “Regulation”) section 16. The Notice of Hearing sets out the details of these allegations.

The Panel convened virtually to consider these allegations against the Member on September 23rd, 2021. Both parties were represented by Counsel: the Panel was assisted as needed by assigned Independent Legal Counsel.

Prior to the Hearing, the Panel had been advised that the parties had come to a resolution that would be put before the Panel on September 23rd, 2021.

THE GUILTY PLEA

The Panel was presented with an Agreed Statement of Facts (the “ASF”), signed by the parties. The ASF described how each party had retained experts to review the two reports that were the subject of the allegations: even the Member’s expert conceded that “neither report complied strictly with NI 43-101 and Form 43-101F1”. The Member was prepared to agree that this non-compliance constituted professional misconduct as described in paragraph 16(2).3 (contravening a law or standard) of the Regulation.

The Panel then recessed to consider whether the facts as set out in the ASF supported a finding of professional misconduct. After due deliberation the Panel concluded that the Member was guilty of non-compliance with the standards set out in NI 43-101 and Form 43-101F1, and as such was guilty of professional misconduct. The guilty plea was therefore accepted.

PENALTY

The Panel was then presented with a Joint Submission signed by both parties. This document set out what the parties proposed was the appropriate penalty to be imposed on the Member. The Panel was advised by Counsel that there had been extensive discussions and negotiations between the parties culminating in the Joint Submission. The Panel was provided with caselaw reminding the Panel that a Joint Submission, while not binding on the Panel, should be afforded considerable respect, and that a Panel such as ours should only refuse to accept it if it brought the “administration of justice into disrepute”; or if accepting it would significantly offend the public interest by being “unhinged” from the circumstances of the offence and the offender.

In response to questions from the Panel, the Panel was advised that the reports were either amended or withdrawn to address the concerns of the regulator in British Columbia, that there had been no intentional non-compliance and no economic impact. The Panel was reminded that the Member had acknowledged his non-compliance by way of his guilty plea.

The Panel then again recessed to consider the Joint Submission and proposed penalty. In light of all of the submissions, the Panel accepted the terms of the Joint Submission as the appropriate penalty in the circumstances.

The Panel therefore orders that the Association and Mr. McCracken take the steps outlined in detail in paragraphs 2 through 5 of the Joint Submission on Order, a copy of which is attached to this Decision and Order as Appendix A. Paragraph 1 of the Joint Submission on Order requires that Mr. McCracken be reprimanded by the Panel: that took place during the course of the Hearing on September 23, 2021. Paragraph 6 of the Joint Submission on Order is not applicable as the Panel adopted the penalty provisions as set out in that document.

This Decision may be signed electronically and in counterparts.

Date: October 14, 2021

Brad Leonard, P.Geo., (Chair)

Mark Bednarz, P.Geo.

Donald B. Johnston, Public Member

Appendix A

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

BETWEEN:

ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO

“PGO”

- and -

TODD HUGH PATRICK McCracken P.Geol.

“Mr. McCracken”

JOINT SUBMISSION ON ORDER

The parties, after receiving legal advice from their respective counsel, agree that the order proposed below is fair and reasonable and protects the public interest and, as such, jointly submit to the Discipline Committee that it order the following:

1. The Discipline Committee orders that Mr. McCracken appear before the panel of the Discipline Committee following the hearing on September 23, 2021, to be reprimanded and that the reprimand be recorded in the register.
2. The Discipline Committee orders that Mr. McCracken’s registration with the PGO shall be suspended for a period of two months from September 23, 2021, but that such suspension be deferred and will never take effect so long as Mr. McCracken complies fully with all of the provisions of this Order including successfully completing the mentorship, failing which, the deferral of the suspension shall be revoked and shall commence as of the date that the suspension is revoked.

3. The Discipline Committee imposes the following terms, conditions or restrictions on the member's membership in the PGO for a maximum period of nine months commencing on September 23, 2021, in order to provide practical experience under the supervision of another member:
 - (a) Mr. McCracken shall only practice the profession in consultation with a Mentor who will meet or speak with Mr. McCracken at least monthly and as many additional times as the Mentor considers necessary to effectively review and support Mr. McCracken's practice related to mineral resource estimates consistent with the Mentor's qualifications with particular focus on Reasonable Prospect of Eventual Economic Extraction, metallurgical recovery and smelter payables, and NI 43-101 reports.
 - (b) The Mentoring also includes reviewing all draft NI 43-101 reports that Mr. McCracken prepares or proposes to sign before they are filed.
 - (c) Initially the Mentor will be Paul Teniere. However, if Paul Teniere, is unable or unwilling to continue in that role, the Registrar may choose another Mentor, after consulting with Mr. McCracken, where the Registrar concludes that this would be in the public interest.
 - (d) Mr. McCracken shall cooperate fully with the Mentor, including participating fully in meetings or conversations with the Mentor when requested and providing information to the Mentor within two business days of a request. Mr. McCracken will arrange for any consent necessary to cooperate in this way.
 - (e) Mr. McCracken shall implement fully any recommendations made by the Mentor.
 - (f) Mr. McCracken shall make his best efforts to ensure that the Mentor prepares and provides to the Registrar monthly reports, in the template provided by the Registrar, of the Mentor's observations and conclusions regarding the manner in which Mr. McCracken is conducting his practice related to NI 43-101 reports and the extent of Mr. McCracken's participation in the mentorship. The Registrar may advise the Mentor

in writing that the Mentor can reduce the frequency of the reporting by the Mentor to a frequency specified by the Registrar if the Registrar concludes monthly reports are no longer necessary to protect the public. Further, if upon receipt of the sixth monthly report, the Registrar and the Mentor agree that Mr. McCracken is conducting his practice in accordance with Regulation 258/02, the Registrar may terminate the review period at that time.

- (g) For greater certainty, Mr. McCracken remains responsible for the content of his NI 43-101 reports and the mentor does not become a cosigner.
 - (h) Mr. McCracken shall, unless the mentorship period has been terminated in accordance with 3(f) above, make his best efforts to ensure that the Mentor prepares and provides to the Registrar by June 23, 2022, a final report as to whether Mr. McCracken has successfully completed the mentorship.
 - (i) The Mentor will sign a non-disclosure agreement keeping all information obtained during the mentorship confidential and will agree not to use any information obtained to compete or solicit business from with Mr. McCracken's employer.
4. Mr. McCracken shall reimburse the Association of Professional Geoscientists of Ontario (PGO) for the cost of the Mentor within 45 days of being invoiced for them by the PGO. Mr. McCracken will be provided with a copy of the Mentor's invoice, upon request. The cost to Mr. McCracken shall be capped at \$10,000.
 5. The Discipline Committee orders that the name of Mr. McCracken be published by the PGO with the summary of the decision and reasons.
 6. In the event the panel of the Discipline Committee does not adopt this Joint Submission document as a basis for making its determination, finding, and disposition, the parties agree that this matter will then continue on the basis of a full hearing before a panel of the Discipline Committee on a date to be fixed by the Discipline Committee and that same shall proceed on the basis of all of the allegations set out in the Notices of Hearing in this matter.

Signed this 3 day of ^{September} ~~August~~, 2021:



Todd McCracken

Signed this 27th day of August, 2021, on behalf of the PGO



Aftab Khan, Registrar

DISCIPLINE COMMITTEE OF THE
ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS
OF ONTARIO

JOINT SUBMISSION ON ORDER AND PENALTY

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ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO -and- TODD HUGH PATRICK McCRAKEN

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

DECISION AND ORDER