

In the matter of Engineers and Geoscientists Act, R.S.B.C. 1996, chapter 116 (the "Act"), and a referral pursuant to section 33.1 concerning

DAVID HOWARD DROVER

DETERMINATION OF THE DISCIPLINE COMMITTEE

Hearing Date: 30th August 2019

Discipline Committee Panel: Chris Arthur, P. Eng., Chair
Neil Cumming, P. Eng.
Peter Bobrowsky, P. Geo.

Counsel for the Association: Lindsay Waddell and Heather Hoiness

Counsel for the Member: Self-represented

Counsel for the Panel: Richard B Lindsay QC PEng FCI Arb

I. Background

1. A panel of the Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia (the "Association"), doing business as Engineers and Geoscientists BC is convened to consider and decide upon the Association's application to cancel Mr. Drover's registration, pursuant to section 33.1 of the Act.
2. Section 33.1 of the Act provides that the Association, once aware of disciplinary action against a member by a body such as APEGA that governs the practice of professional engineering or professional geoscience in another province of Canada may refer the matter to the Association's discipline committee. After providing that member with an opportunity to be heard the Discipline Committee may, without causing an inquiry to be held, make one or more of the orders in section 33 (2) of the Act that it considers equivalent to the order made in the other province.
3. In June 2017 a disciplinary committee comprising members of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) (the "Alberta Panel") ordered the cancellation of Mr. Drover's registration after finding that Mr. Drover was guilty of six charges of "extremely serious" misconduct in relation to email, blog and verbal communications with various individuals, corporations and agencies during 2015 and 2016.
4. The particulars of the allegations against Mr. Drover are that Mr. Drover:
 - Sent emails that were unprofessional in tone and content;
 - Acted in an abusive, harassing and vulgar manner towards an individual during and after a corporation AGM;

- Published blogs that were unprofessional in tone and content.

The Alberta Panel heard testimony from four witnesses and received affidavit and documentary evidence. The Alberta Panel ruled that all allegations against Mr. Drover were proven.

5. At the time of the complaints to APEGA, similar complaints were also made to the Association. The Association placed those complaints into abeyance until the Alberta Panel made its determination. After becoming aware of the Alberta Panel determination, the Council of the Association referred the matter regarding Mr. Drover to the Disciplinary Committee pursuant to Section 33.1 of the Engineers and Geoscientists Act, R.S.B.C. 1996, chapter 116 (the "Act"). The Association applied to have the Discipline Committee order that Mr. Drover's membership be cancelled pursuant to Section 33.1 of the Act.
6. As part of the proceedings the Panel was required to decide the appropriate forum of the hearing, whether oral or by exchange of written submissions. The Panel made a decision accordingly based on section 33.1 of the Act and the information available in the submissions of the parties.
7. The submissions of the Association's counsel on 11th February 2019 include the transcript of the Alberta Panel hearing of 15th and 16th August 2016, APEGA hearing tribunal APEGA DC Case #16-101-FH David Drover. Also included in the Association's submission was an extensive collection of supporting documents and authorities. After the Association's application was submitted Mr. Drover provided a considerable volume of material to the parties which resulted in numerous email communications. In addition, Mr. Drover made complaints of harassment to the Human Rights Commission and the RCMP, and an application to the Association under the Freedom of Information and Protection of Privacy Act. As such, the Panel decided to allow an extended period for formal submissions and subsequent response by both Mr. Drover and the Association in order to provide adequate time to the parties to prepare submissions and therefore ensure a fair hearing for both parties.
8. Following the Association's submission of 11 February 2019 Mr. Drover was requested to make his formal submission by 16th August 2019 and the Association's reply was requested to be made by 23rd August 2019. Mr. Drover made formal submissions on 16th August and also on 20th August which together contained over 1600 pages of emails and associated attachments. The Panel accepted the latter submission by Mr. Drover despite it being beyond the requested deadline, and also granted the Association an extension of time until 28th August for review and reply. The hearing took place on 30th August 2019.
9. The Panel noted that Mr. Drover was advised to seek legal representation on numerous occasions throughout the proceedings since the Association submitted the order but no counsel appeared on his behalf.

II. Determination as regards an oral or written hearing

10. The Panel reviewed section 33 of the Act that addresses the nature of hearing to be conducted in a matter such as this and reviewed the relevant submissions of Mr. Drover and the Association that consider this matter.

11. The Panel determined that this hearing may be conducted on the basis of written submissions based on three points:
 - (a) Section 33.1 (2) of the Act is explicit that a decision in the context of disciplinary action in another jurisdiction does not require an inquiry to be held and the Panel accepts the position of the Association that an 'inquiry' refers to an oral hearing;
 - (b) A hearing by written submission does not restrict Mr. Drover's opportunity to be heard and the Panel has been diligent to allow adequate time for Mr. Drover to prepare and submit his submissions, including accepting his late submission on 20th August.
 - (c) The detail available to the Panel in respect of the APEGA hearing is comprehensive and, in the opinion of the Panel, presents compelling evidence to support the decision made by the Alberta Panel as regards Mr. Drover's demonstrable unprofessional conduct.

III. Determination as regards disciplinary action against members in another province of Canada

12. Section 33.1 of the Act addresses the Association's authority in the circumstances where a disciplinary action is taken against a member by a body such as APEGA that governs the practice of professional engineering or professional geoscience in another province of Canada.
13. The Panel acknowledges that on receiving notice of the submitted order Mr. Drover voluntarily resigned his membership, effective as of 12th August 2018, and also that section 28 of the Act stipulates that the jurisdiction to discipline a "member" includes *inter alia* a "former member".
14. The Association is aware that on 16th June 2017 APEGA ordered Mr. Drover's registration to be cancelled following a disciplinary hearing that took place during August 2016. The disciplinary hearing found Mr. Drover to have displayed "extremely serious" professional misconduct. Whilst it is not necessary for the Panel to evaluate the details of the Alberta Panel hearing and associated decision, the transcript of the hearing was included in both Mr. Drover's and the Association's submissions. The Panel has reviewed this transcript and subsequently found no cause for reconsideration of its decision.
15. The Panel has reviewed and considered Mr. Drover's submissions and finds that they do not provide any material evidence or arguments that are relevant to the Association's application, being the application of section 33.1 of the Act. Much of Mr. Drover's submissions comprise correspondence attempting to dispute the APEGA decision and to discredit the authority of the both Association the APEGA. Indeed, the Panel finds that the nature and tone of much of Mr. Drover's communications and submissions are unprofessional and very similar to that which led to the APEGA decision.
16. The Panel concluded that section 33.1 of the Act should be applied and that the Association's application to cancel Mr. Drover's membership should be granted.

DATED this 16th day of September 2019.

<original signed by>

Christopher Arthur, P. Eng., Chair

<original signed by>

Neil Cumming, P. Eng.

<original signed by>

Peter Bobrowsky, P. Geo.

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DAVID HOWARD DROVER

DETERMINATION OF THE DISCIPLINE COMMITTEE

CLARIFICATION

Discipline Committee Panel: Chris Arthur, P. Eng., Chair
Neil Cumming, P. Eng.
Peter Bobrowsky, P. Geo.

Counsel for the Association: Lindsay Waddell and Heather Hoiness

Counsel for the Member: Self-represented

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I. Clarification

The panel would like to make a clarification in respect of the Determination dated 16th September 2019 relating to the matter of Engineers and Geoscientists Act, R.S.B.C. 1996, chapter 116 (the "Act"), and a referral pursuant to section 33.1 concerning David Howard Drover.

Where the Determination refers to the "hearing" and the "hearing date" this nomenclature relates to the session on August 30, 2019 when the Panel met to consider the parties' written submissions and, after deliberation, reached a decision.

DATED this 26th day of September 2019.

<original signed by>

Christopher Arthur, P. Eng., Chair

<original signed by>

Neil Cumming, P. Eng.

<original signed by>

Peter Bobrowsky, P. Geo.