

ENGINEERS GEOSCIENTISTS MANITOBA

IN THE MATTER OF: Gregory T. Fortune, P. Eng., a registered member of Engineers
Geoscientists Manitoba

AND IN THE MATTER OF: *The Engineering and Geoscientific Professions Act, C.C.S.M., c. E120*

REASONS FOR DECISION

ENGINEERS GEOSCIENTISTS MANITOBA
870 Pembina Highway
Winnipeg, MB R3M 2M7
Phone No. 204-474-2736

ENGINEERS GEOSCIENTISTS MANITOBA

Panel of the Discipline Committee:

Jessica Carvell (Chair)
Kerra Mruss, P. Eng., FEC
Allan Ball, P. Eng., FEC

IN THE MATTER OF: Gregory T. Fortune, P. Eng., a registered member of Engineers
Geoscientists Manitoba

AND IN THE MATTER OF: *The Engineering and Geoscientific Professions Act*,
C.C.S.M. c. E120

Legal Counsel for the Investigation Committee:

Rob Prokopanko

Legal Counsel for This Panel of the Discipline Committee:

Stuart Blake

Hearing Date: June 28, 2022

REASONS FOR DECISION

The Charge:

1. The Amended Charge dated May 16, 2022 ("Amended Charge"), alleges that Mr. Fortune committed professional misconduct, contrary to section 46(1)(d) of *The Engineering and Geoscientific Professions Act* (the "Act"), the particulars of which are as follows:
 - 1) In contravention of section 12.1(2) of the Act and By-Law 11.2, Mr. Fortune failed to comply with Engineers Geoscientists Manitoba ("EGM") continuing professional development

(“CPD”) program by failing to report his professional development activities for the 2017-2019, 2018-2020, and 2019-2021 evaluation periods (collectively, the “Evaluation Periods”).

- 2) In contravention of section 12.1(4) of the Act, following a request made by the Registrar, Mr. Fortune failed to provide the Registrar with copies of the records of his participation in continuing professional development activities during the Evaluation Periods.
 - 3) In contravention of section 33(1) of the Act, Mr. Fortune failed to produce, within 10 days of receipt of a request made by the Investigation Committee, records in his possession or under his control pertaining to his participation in CPD activities.
 - 4) In contravention of section 26(2) of the Act, Mr. Fortune failed to return his manual seal to EGM following the suspension of his registration.
 - 5) In contravention of section 28(5) of the Act, Mr. Fortune failed to return his certificate of registration to EGM following the suspension of his registration.
2. The Amended Charge was referred to the Discipline Committee on or about May 17, 2022.

Participation of Mr. Fortune

3. Neither Mr. Fortune, nor a representative on his behalf, appeared for the hearing scheduled June 28, 2022. Email correspondence between Mr. Fortune, legal counsel for the Investigation Committee and Deanna Brown, a legal assistant, dated June 23, 2022 was tendered as an exhibit. In this email, Mr. Fortune indicated he had no intention to participate in the June 28, 2022 hearing.
4. An Affidavit of Service of Deanna Brown dated June 21, 2022 was tendered as an exhibit which established that the Amended Charge and an Amended Notice of Hearing dated May 17, 2022 was served upon Mr. Fortune both by way of email and registered mail.

5. The Discipline Panel ("Panel") has considered that section 19.1.2 of the EGM By-laws provides that notice is sufficient if sent by registered mail or email to the address recorded in EGM records.
6. Section 45 of the Act provides that the Discipline Panel, on proof of service on the investigated person of the Notice of Hearing, may proceed with the hearing in the absence of the investigated person or their agent and act, decide and report on the matter being heard in the same way as if the investigated person were in attendance. Further, section 19.1 of the EGM By-laws effective November, 2021, provides that any notice by email or registered mail shall be deemed to have been received on the day it was sent unless a notice of non-delivery is received in the case of email or on the third business day following mailing when the notice is given by registered mail.
7. The Discipline Panel ("Panel") is satisfied by the Affidavit of Service of Deanna Brown as well as the email correspondence from Mr. Fortune that Mr. Fortune was properly served and received appropriate notice of the hearing.
8. At the commencement of the hearing on June 28, 2022, counsel for the Investigation Committee ("IC") satisfied the Panel that it has jurisdiction to hear this matter, and that all procedural steps required by the Act and the EGM By-Laws were fulfilled.
9. In Mr. Fortune's absence, a plea of not guilty was entered on his behalf.

Factual Background

10. At the commencement hearing, counsel for the IC tendered the Affidavit of Lorraine Dupas, ProDev Coordinator for EGM dated June 8, 2022. This Affidavit established the following facts:
 - 1) Mr. Fortune was first registered as a member of EGM on February 22, 2006. He has no disciplinary history with EGM.
 - 2) The EGM's continuing professional development program, ProDev Program, requires members of EGM participate in, maintain a detailed record of, and report to EGM, continuing

professional development activities undertaken. The ProDev Program requires members to complete a minimum of 240 hours of professional development hours over a 3-year period. Reporting of those hours are required on an annual basis.

- 3) Mr. Fortune failed to provide any reporting of professional development activities as required by the due dates of December 31, 2019, December 31, 2020, and December 31, 2021.
 - 4) Beginning on January 14, 2020 and continuing through to February 28, 2022 Mr. Fortune received numerous email reminders to complete and report his professional development hours.
 - 5) As a result of his ongoing non-compliance, Mr. Fortune received letters dated March 30, 2020, April 1, 2021 and April 4, 2022 from EGM advising of the temporary suspension of his certificate of registration and instructing him to return the manual seal and certificate to EGM. Mr. Fortune's certificate of registration has been suspended since March 30, 2020. The Panel notes that the evidence before it suggests Mr. Fortune did not receive the letters dated March 30, 2020 and April 1, 2021.
 - 6) On or around November 25, 2021 Mr. Fortune was advised by letter dated November 18, 2021 that the IC had commenced an investigation. By that letter Mr. Fortune was instructed to provide a detailed record of his professional development activities over the preceding three years, and to return his seal within ten days.
 - 7) Throughout the relevant period, Mr. Fortune did not respond to any of the EGM's communications related to his non-compliance with the ProDev Program, the directions to return his seal and certificate of registration, or the requirements of the IC investigation.
11. Counsel for the IC confirmed that notwithstanding the temporary suspensions, Mr. Fortune maintained his EGM membership by paying his dues throughout the relevant periods.

12. As indicated above, an email exchange from Mr. Fortune dated June 23, 2022 was admitted as evidence. The June 23, 2022 email represents the only evidence submitted of a response by Mr. Fortune to any of the attempts of EGM to communicate with him about these matters. In this email, Mr. Fortune indicates that he mailed his seal and certificate to the office of the IC counsel on June 23, 2022 and requested that steps be taken to “dissolve” his EGM membership. Mr. Fortune further indicated some concerns with the ProDev Program including allegations that the Program is “very poorly controlled”, “[m]any of my peers are simply dishonest about their training”, that participation in Program was “unethical” and that he “simply do not have time to play on the Association website.”
13. Counsel for the IC confirmed that he had not received Mr. Fortune’s seal or certificate of registration as of the date of the hearing.

Submission of Counsel for the IC

14. Counsel for the IC argued that all counts of professional misconduct set out in the Amended Charge had been established. Counsel relied upon section 12.1 of the Act, which obliges a member to comply with the continuing professional development requirements established through By-Laws, make records of their activities and provide a copy of their records to the EGM Registrar without delay.
15. Counsel further described that the continuing professional development program approved by the council of the Association on June 20, 2016, was then adopted by the Association's By-laws effective October, 2017, which provided that practitioners must, in addition to maintaining competency in their field of practice through continuing professional development, also record and report professional development activity as prescribed by the continuing professional development program and any failure to do so may constitute professional misconduct. These provisions were carried forward into each iteration of the By-laws as effective October 2018, November 2019, November 2020 and November 2021.

16. Counsel also highlighted the obligations within the various iterations of the By-laws on all members to respond to written requests from EGM and failure to do so could constitute professional misconduct.
17. Counsel emphasized the importance of the ProDev Program to the regulatory framework and characterized Mr. Fortune's misconduct as serious.
18. With respect to penalty, counsel submits that the objective of any penalty is to protect the public and maintain the public's confidence in the self-governance of the professional body. In this regard, counsel advocated that Mr. Fortune should be reprimanded, pay a fine of \$750, and the conviction and penalty should be published in accordance with the EGM's publication policy. IC also seeks an order that Mr. Fortune pay a contribution towards the IC's costs of \$4,000, representing approximately two thirds of the total costs.
19. In support of his submissions, Counsel for the IC replied upon an excerpt from James T. Casey, *Regulation of Professions in Canada* (Thompson Reuters Canada Limited, 2022), a 2020 decision of this Discipline Committee involving Mr. Ast, and two decisions of the Law Society of Ontario – Law Society of Upper Canada v. Mafi, 2015 ONLSTH 133 and Law Society of Ontario v. Jones-Bechard, 2020 ONLSTH 85.

Decision

20. The Panel has considered that section 46(1) of the Act sets out that contravention of the Act or By-Laws may constitute professional misconduct. The evidence presented establishes that Mr. Fortune contravened section 12.1(2) of the Act and section 11.2 of the By-Law by failing to report on his professional development activities for the 2017-2019, 2018-2020 and 2019-2021 Evaluation Periods. Mr. Fortune further contravened sections 12.1(4) and 33(1) of the Act by failing to provide copies of his records of professional development activities, upon request by the Registrar and the

IC. In failing to return his manual seal and certificate of registration upon his suspension, Mr. Fortune breached sections 26(2) and 28(5) of the Act.

21. Mr. Fortune's professional misconduct is repeated, lengthy and continues unremedied to the date of the hearing. The only evidence on the record of this proceeding to explain Mr. Fortune's conduct is his email of June 23, 2022. The Panel rejects Mr. Fortune's suggestion that alleged misconduct by others excuses in any way his own contraventions of the Act and By-laws. Completion of ongoing professional development activities and reporting upon those activities are the primary mechanism by which EGM ensures its members remain competent to practice their profession. To reduce these important reporting obligations to "play on the Association website" shows a concerning lack of respect and understanding for the role that continuing education plays in the EGM's protection of the public.
22. Although Counsel for the IC submitted there were no mitigating factors, the Panel considers Mr. Fortune's approximate 14 years of membership in EGM and no prior disciplinary record to be mitigating. These mitigating factors do not outweigh the length of Mr. Fortune's misconduct, his continuing failures to respond to EGM and his failure to return his manual seal and registration. Mr. Fortune's lack of remorse is an aggravating factor.
23. With respect to penalty, we order that Mr. Fortune be reprimanded, that he pay a fine of \$750.00 within 30 days of this Order, and that the matter be published in accordance with EGM's policies. The Panel believes these penalties will act as a general deterrent to EGM's other members.
24. The Panel understands that Mr. Fortune's certificate of registration shall remain suspended until he is compliant with the ProDev Program. The Panel has considered that Mr. Fortune has indicated to counsel for the IC that he no longer wishes to be a member of EGM and has taken steps to return his manual seal and certificate of registration. However, given that these steps had not been completed as of the date of the hearing, the Panel orders that Mr. Fortune comply with the ProDev Program reporting requirements for the 2017-2019, 2018-2020, and 2019-2021 Evaluation

Periods, and return his manual seal and certificate of registration within 30 days of this Order. In the event that Mr. Fortune terminates his membership during this time period, the Order related to compliance with the ProDev Program shall not apply. In the event that Mr. Fortune withdraws his membership and subsequently seeks re-admission, he must fully comply with this Order as a pre-condition to re-admission to membership with EGM.

25. Pursuant to section 48(1) of the Act, the Panel also orders Mr. Fortune to pay an amount of \$4,000 as contribution towards the costs of EGM for investigation and hearing. We were advised this represents approximately two thirds of EGM's total costs.

Order


This Panel Orders that:

1. Mr. Fortune be and is hereby reprimanded.
2. Within 30 days of issuance of this Order, Mr. Fortune shall return his manual seal and certificate of registration to Engineers Geoscientists Manitoba.
3. Unless Mr. Fortune's registration has been cancelled, within 30 days of issuance of this Order, Mr. Fortune shall comply with all reporting requirements of the continuing professional development program.
4. Within 30 days of issuance of this Order, Mr. Fortune shall pay a fine of \$750.00 to the Engineers Geoscientists Manitoba.
5. Within 30 days of issuance of this Order, Mr. Fortune shall make a contribution of \$4,000.00 to EGM's costs.
6. The finding of professional misconduct and the resulting penalty shall be published in accordance with EGM's policies.

Dated in Winnipeg, Manitoba this 17th day of August, 2022.



Jessica Carvell, Chair



Kerra Mruss, P.Eng., FEC



Allan Ball, P. Eng., FEC