

IN THE MATTER OF
THE *ENGINEERS AND GEOSCIENTISTS ACT*,
R.S.B.C. 1996, c. 116 as amended and

IN THE MATTER OF ROBERT UNGER, P.Eng.

DECISION OF THE DISCIPLINE COMMITTEE

Hearing date: April 24, 2020
Decision date: April 28, 2020
Discipline Committee Panel: Christopher Arthur, P.Eng., Chair
Neil Cumming, P.Eng.
Jurgen Franke, P.Eng.

Counsel for the Association: Lindsay Waddell
Sara Hanson

For the Member Robert Unger appearing on his
own behalf

A. Introduction

1. This Panel of Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC (the "Association") finds that Robert Unger, P.Eng. breached section 44 of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116 (the "Act").

B. Background

2. This Panel was appointed to conduct an inquiry to determine, pursuant to section 33 of the Act, whether Mr. Unger acted contrary to section 44 of the Act by failing to provide the Practice Review Committee with a Practice Review Questionnaire requested by the Association's Director of Professional Practice. Section 44 of the Act provides:

Practice review committee

44 If a practice review committee is created under section 10 (1) (d), a member, licensee or certificate holder

(a) must, on request, provide the practice review committee with any relevant information, record, document or thing, and

(b) may not refuse to comply with a request under paragraph (a) on the grounds of confidentiality.

3. The particulars of the allegations against Mr. Unger are set out in the Notice of Inquiry dated March 4, 2020 as follows:
 1. You have breached section 44 of the *Act* by failing to provide the Practice Review Committee with the Practice Review Questionnaire requested by the Association's Director of Professional Practice, Standards & Development on October 19, 2017, or at any time subsequent, despite the Association's continued requests, including but not limited to those made by the Association's:
 - a. Director of Professional Practice, Standards & Development by letter dated February 19, 2018;
 - b. Director of Professional Practice, Standards & Development by phone on May 11, 2018;
 - c. Manager of Quality Assurance Programs by phone on May 23, 2018;
 - d. Manager of Quality Assurance Programs by phone on May 30, 2018;
 - e. Director of Professional Practice, Standards & Development by letter dated July 3, 2018;
 - f. Director of Professional Practice, Standards & Development by letter dated September 17, 2018;
 - g. Director of Professional Practice, Standards & Development by letter dated November 2, 2018;
 - h. Manager of Quality Assurance Programs by phone on December 6, 2018;
 - i. Investigation Manager by letter on July 10, 2019.
4. The hearing was originally scheduled to take place at the Association's offices. Due to the COVID-19 pandemic, the hearing took place virtually via Zoom and was hosted by Charest Reporting.
5. The Association and Mr. Unger both led evidence with respect to the allegations set out in the Notice of Inquiry and made opening and closing submissions.
6. The Panel's determination takes into account the evidence adduced at the hearing and the parties' submissions.

C. Service

7. No issues were raised with respect to service of the Notice of Inquiry. The Panel accepts that Mr. Unger was properly served with the Notice of Inquiry dated March 4, 2020, as well as the amended Notice of Inquiry dated April 2, 2020, which was revised to reflect the change of venue.

D. Burden and Standard of Proof

8. The Panel finds that the Association bears the burden of proof and must prove its case on a “balance of probabilities” according to the Supreme Court of Canada’s decision of *F.H. v. McDougall*, 2008 SCC 53. The Panel notes the Supreme Court of Canada’s comments that evidence must be clear, convincing and cogent to satisfy the balance of probabilities test.

E. Evidence

9. Two witnesses testified at the hearing. The Association called Jesse Romano. Mr. Unger testified on his own behalf.

Jesse Romano

10. Mr. Romano is the Investigation Manager at the Association. He testified that:
- a) By letter dated October 19, 2017, Peter R. Mitchell, P. Eng., the Director of Professional Practice, Standards & Development, wrote to Mr. Unger advising him that he had been randomly selected to undergo a practice review. Mr. Mitchell requested that Mr. Unger complete a Practice Review Questionnaire by December 4, 2017;
 - b) On November 30, 2017, Mr. Unger replied to the Association advising him that he had “no intention of wasting my time filling out your questionnaire”. Mr. Unger referenced his dissatisfaction with the Association not supporting him in relation to an unrelated matter in 2009;
 - c) On December 15, 2017, Mr. Unger emailed the Association following up on his November 30, 2017 email. He indicated that he expected a response and requested a “hearing”;
 - d) By letter dated February 19, 2018, Mr. Mitchell responded to Mr. Unger’s emails. Mr. Mitchell
 - a. advised that Mr. Unger was randomly selected for the practice review;
 - b. requested Mr. Unger to advise if he was not practicing professional engineering as the Practice Review Committee can make a determination on whether to close the practice review file;

- c. informed Mr. Unger that practicing professional engineers are required by section 44 of the Act to provide any requested information and that failure to complete the Practice Review Questionnaire would result in a request that his professional conduct be investigated;
 - d. informed Mr. Unger that another option is to resign;
 - e. informed Mr. Unger that the purpose of the Practice Review Program is to be an educational and professional development process for the benefit of all members and licensees, as well as proactive quality assurance check on their practices; and
 - f. requested that Mr. Unger confirm whether or not he is a practicing professional engineer by March 19, 2018.
- e) Mr. Unger did not comply with the March 19, 2018 deadline;
- f) By letter dated July 3, 2018, Mr. Mitchell advised Mr. Unger of his and other Association staff attempts to reach Mr. Unger by telephone on May 11, 2018, May 23, 2018 and May 30, 2018. He provided Mr. Unger with a final opportunity to respond. Mr. Mitchell asked that Mr. Unger advise whether or not he is a practicing professional engineer by August 6, 2018;
- g) By letter dated September 17, 2018, Mr. Mitchell confirmed no reply was received to his July 3, 2018 letter and the requested information had still not been received. Mr. Mitchell informed Mr. Unger this was his final notice and that failure to submit the requested information by October 22, 2018 would result in a request that his professional conduct be investigated;
- h) By letter dated October 18, 2018, Mr. Unger wrote to Mr. Mitchell with his understanding that investigations are instituted pursuant to a third party complaint. Mr. Unger requested the identity of the complainant and further details relating to same;
- i) By letter dated November 2, 2018, Mr. Mitchell replied to Mr. Unger clarifying that his conduct was being investigated by the Association for failing to respond to a request for information further to section 44 of the Act. Mr. Mitchell provided Mr. Unger with a final opportunity to reply by November 30, 2018, failing which his matter would be forwarded to the Investigation Committee. Mr. Mitchell again requested Mr. Unger confirm whether or not he is practicing as a professional engineer, and offered him the option of changing his status to non-practicing (retired);
- j) On July 3, 2019, the Practice Review Committee approved a motion that an investigation be carried out on Mr. Unger for breach of section 44 of the Act;
- k) By letter dated July 10, 2019, Mr. Romano wrote to Mr. Unger to advise that the matter had been placed on the agenda for the next Investigation

Committee meeting on July 25, 2019;

- l) On July 10, 2019, Mr. Unger replied by email to the Association indicating that he would be unavailable to attend the July 25, 2019 Investigation Committee meeting as he would be out of town on that date;
- m) On July 10, 2019, Mr. Romano emailed Mr. Unger to clarify that the Investigation Committee meetings are not open to the public or members of the Association, and the letter was not inviting him to attend the meeting. Mr. Romano advised Mr. Unger that in order to avoid any action being taken by the Investigation Committee, he should contact the Professional Practice, Standards & Development department in advance of July 25, 2019, and comply with the requirements of the practice review;
- n) On July 25, 2019, the Investigation Committee moved that it investigate Mr. Unger, that it had reasonable and probable grounds to believe that Mr. Unger had contravened the Act, and that staff be instructed to forward the file to the Association's legal counsel for review and to draft a notice of inquiry;
- o) A notice of inquiry dated March 4, 2020 was served upon Mr. Unger;
- p) By letter dated March 27, 2020, Mr. Unger resigned his membership in the Association. Mr. Unger's membership was officially resigned as of April 6, 2020;

Robert Unger

11. Mr. Unger testified that:

- a) He graduated from engineering in 1979 and attended his iron ring ceremony that same year;
- b) He joined the Association on February 3, 1982;
- c) He is proud to call himself a professional engineer and was enthusiastic about his profession;
- d) He worked in structural design, real estate, and energy management;
- e) He retired in 2012 and has not acted in any engineering capacity since that time;
- f) He is not aware of any complaints against him, other than this one;
- g) He contacted the Association in 2009 in relation to an unrelated matter. He

requested the Association's support. The Association advised him that it could not assist in relation to that matter. This was very upsetting to Mr. Unger;

- h) When he was advised that he was randomly selected to complete a practice review, this set off a flood of emotions based upon his experience in 2009;
 - i) Mr. Unger wanted to have a meeting with the Association to discuss the unrelated matter and felt this disciplinary inquiry was his only route to do so. Mr. Unger explained that his request for a "hearing" in his email to the Association on December 15, 2017 was in relation to this unrelated matter;
 - j) Mr. Unger apologized for his lack of response and apologized if he was discourteous to anyone at the Association.
 - k) Mr. Unger requested that he be permitted to resign in good standing;
12. Mr. Unger admitted to failing to provide the Practice Review Committee with the requested questionnaire and a substantive response to any of the communications. He acknowledged that he did not tell the Association that he was not practicing professional engineering.

F. Analysis and Findings

13. Mr. Unger resigned his membership in the Association after the events involving his practice review, and after receiving the Notice of Inquiry, but prior to the Discipline Committee inquiry. The Association's jurisdiction was not disputed, however, the Panel notes in any event that the definition of "member" in section 28 of the Act provides that for sections 29 to 35, "member" includes a "former member" of the Association, and therefore applies to Mr. Unger.
14. The material facts in this case are not in dispute. Mr. Unger admits all of the allegations in the Notice of Inquiry.
15. The Panel finds that Mr. Unger failed to provide the Practice Review Committee with the Practice Review Questionnaire requested by the Association's Director of Professional Practice, Standards & Development on October 19, 2017, and failed to provide a substantive response to the below correspondence that followed up on the original request:
- a. Director of Professional Practice, Standards & Development by letter dated February 19, 2018;
 - b. Director of Professional Practice, Standards & Development by phone on May 11, 2018;
 - c. Manager of Quality Assurance Programs by phone on May 23, 2018;

- d. Manager of Quality Assurance Programs by phone on May 30, 2018;
 - e. Director of Professional Practice, Standards & Development by letter dated July 3, 2018;
 - f. Director of Professional Practice, Standards & Development by letter dated September 17, 2018;
 - g. Director of Professional Practice, Standards & Development by letter dated November 2, 2018;
 - h. Manager of Quality Assurance Programs by phone on December 6, 2018;
 - i. Investigation Manager by letter on July 10, 2019.
16. The Panel finds that Mr. Unger failed to advise the Association that he was not practicing professional engineering.
17. Accordingly, the Panel finds that the Association has proven on a balance of probabilities that Mr. Unger breached section 44 of the Act by failing to provide the Practice Review Committee with the information and document it requested.
18. Under section 33 of the Act, after conducting an inquiry, the Discipline Committee may make the following determinations:
- Disciplinary actions
- 33 (1)After an inquiry under section 32, the discipline committee may determine that the member, licensee or certificate holder
- (a) has been convicted in Canada or elsewhere of an offence that, if committed in British Columbia, would be an offence under an enactment of the Province or of Canada, and that the nature or circumstances of the offence render the person unsuitable for registration or licensing,
 - (b) has contravened this Act or the bylaws or the code of ethics of the association, or
 - (c) has demonstrated incompetence, negligence or unprofessional conduct.
19. The Panel has determined pursuant to section 33(1)(b) of the Act that Mr. Unger breached section 44 of the Act.
20. The Panel will determine whether sanctions should be imposed upon Mr. Unger pursuant to s. 33(2) of the Act and whether to impose costs pursuant to s 35 of the Act. The Panel requests that the parties provide written submissions in accordance with the following schedule:

1. Submissions must be delivered by counsel for the Association ("Association Submissions") to Mr. Unger and to the Panel by May 15, 2020.
2. Submissions must be delivered by Mr. Unger to counsel for the Association and to the Panel by May 29, 2020.
3. Reply submissions may be delivered by counsel for the Association to Mr Unger and to the Panel by June 5, 2020.

2. Submissions for the Panel shall be delivered to Susan Precious, counsel for the Panel and may be delivered electronically.

<original signed by>

Christopher Arthur, P.Eng., Chair

<original signed by>

Neil Cumming, P.Eng.

<original signed by>

Jurgen Franke, P.Eng.