

**ENGINEERS GEOSCIENTISTS MANITOBA (“EGM”)**

**(Formerly Known As: The Association of Professional Engineers and Geoscientists of The Province of Manitoba)**

**IN THE MATTER OF:** Victor Jakob Thielmann P. Eng., of the City of Winnipeg in Manitoba, a Professional Engineer registered in the Province of Manitoba.

**AND IN THE MATTER OF:** THE ENGINEERING AND GEOSCIENTIFIC PROFESSIONS ACT (the “Act”)

**AND IN THE MATTER OF:** CHARGES 2013-01-1 AND 2013-01-2 DATED FEBRUARY 29, 2016

**NOTICE OF DECISION AND REASONS**

**Discipline Panel Members:** Ray Hoemsen – M.SC., P. Eng – Chair  
Kerra Muss – M.SC., P. Eng  
Robert Janz, Public Representative

**Counsel to the Complaints Investigation Committee** Stuart Blake  
Anthony Foderaro  
Fillmore Riley LLP

**Counsel for the Member:** Bob Sokalski  
Melanie Wire  
Hill Sokalski Walsh LLP

**Counsel to the Panel:** William Haight  
Phillips Aiello

## PREAMBLE

1. The sanction hearing for this proceeding was held at the EGM offices on May 11, 2022. The hearing was held as a result of the decision of this Panel of the Discipline Committee dated February 8, 2022 in which the member, Victor Thielmann, was found guilty of two charges of unskilled practice (the “Unskilled Practice Decision”). Based on the Unskilled Practice Decision, the evidence submitted in the course of this proceeding including the further evidence filed for the sanction hearing (the Affidavit of Ian Wiebe affirmed April 19, 2022 and the Affidavit of Victor Thielmann, sworn May 4, 2022), the written briefs and the submissions of counsel for the parties, the Panel has made its decision on the issue of sanction/penalty. Prior to rendering its decision, the Panel will address a preliminary matter raised at the hearing on May 11, 2022.

## THE PRELIMINARY MOTION

2. Prior to hearing submissions on sanction, the Panel considered a motion from the member that the Investigation Committee (the “IC”) produce copies of invoices for the legal fees paid by EGM to counsel for the Panel. The IC objected to this request.
3. The legal fees paid for the Panel’s counsel, Bill Haight, were summarized in the Affidavit of Ian Wiebe, affirmed April 19, 2022. Approximately \$83,000.00 has been paid to Mr. Haight’s firm (Phillips Aiello) for services provided in this proceeding. Counsel for the member argued that the invoices which support the amount paid to Phillips Aiello (the “PA Invoices”), are relevant and their production necessary

for transparency. It was asserted that due to the amount of costs sought by the IC, fairness requires the production of the PA Invoices and the member is entitled to full supporting material for the amounts charged by the Panel's counsel. Provision of the total amount of the PA Invoices is not, in the member's opinion, full supporting material.

4. The member's counsel relied upon the Court of Queen's Bench decision in *Wolfrom v. The Association of Professional Engineers and Geoscientists of the Province of Manitoba* and a decision of an Appeal Council of EGM in *Re Hyrhoruk*. These authorities, says the member's counsel, support the claim for the PA Invoices. The member asserted that the PA Invoices should be produced to ensure the Unskilled Practice Decision and its reasons were the product of the thought processes of the Panel members alone.
5. Counsel for the IC submitted that the law requires appropriate information to be provided for the calculation of costs and that the total amount paid as set out in the Affidavit of Ian Wiebe was an appropriate amount of information. The IC also argued that the information sought was not relevant to the issues to be determined at a sanction hearing and were not relevant to this specific sanction hearing as the IC was not seeking to recover these costs.
6. The Panel considered this motion in camera. It obtained legal advice during this session. When the Panel returned to the hearing, the legal advice received by the Panel was placed on the record and the Panel then delivered its decision. It dismissed the member's motion and determined that the PA Invoices were not

relevant to the sanction hearing and appropriate and sufficient information had been provided regarding the costs incurred during the course of this proceeding.

7. As a consequence of the suggestion by the member that they should be permitted to know of the involvement of Panel's counsel in the Unskilled Practice Decision, the Panel believes it would assist both parties if details of the process followed in rendering both the Unskilled Practice Decision and this sanction decision were provided.
8. The process followed for this decision was:
  - The Panel reached its penalty/sanction decision without input from the Panel's legal counsel on the ultimate issue of what is a fit and appropriate penalty in the circumstances.
  - The involvement of the Panel's legal counsel was to provide advice regarding the legal principles relevant to penalties in professional regulatory proceedings.
  - Upon the Panel reaching its decision and the reasons therefore, a draft of the decision and reasons was prepared by the Chair and circulated to the other members of the Panel. A copy of the draft reasons prepared by the Chair was not provided to the Panel's legal counsel.
  - Revisions were made to the initial draft as a result of comments made by the other Panel members. The revised draft was then provided to legal counsel for review.

- The draft provided to legal counsel is the product of the thought processes of the members of the Panel alone. After arriving at the decision and reasons, the Panel sought advice from its counsel regarding the decision and draft reasons to ensure those reasons are clearly expressed and well-reasoned.
9. The same process was followed for preparation of the Unskilled Practice Decision. Prior to the Panel rendering the Unskilled Practice Decision, it was advised by its counsel of the Wolfrom and Hyrhoruk decisions and the principles applicable to rendering decisions in professional regulatory proceedings.

#### POSITION OF THE PARTIES

10. The IC is seeking the following Penalty:
- A reprimand.
  - Supervision: for a period of six months all of the member's drawings submitted for plan permits to the City of Winnipeg are to be inspected prior to submission and issuance by a designated Professional Engineer authorized by the IC.
  - Costs: \$202,851.26 to be paid to EGM within 30 days. This amount is comprised of \$188,000.00 sought for the unskilled practice hearing (which amount represents two thirds of the non-indemnified costs of that hearing) and \$14,851.26 for costs of the sanction hearing. The IC is not seeking to recover all of the costs in this proceeding.

- Publication of the Unskilled Practice Decision and this decision should occur.

11. The member's position on penalty is as follows:

- A reprimand is not required in the circumstances of this case.
- Supervision is not required for an engineer with the member's experience and qualifications.
- Any publication should be delayed until the member's appeals arising from this proceeding have been decided. The member argues that publication prior to the determination of their appeals could irreparably damage their professional reputation.
- The only sanction which should be levied upon the member is an order of costs. In that regard, the member suggests an amount of \$30,726.36 which is calculated based upon the Court of Queen's Bench Tariff. In the alternative, the member suggests the amount of \$42,600.00 based upon the same tariff but doubling the amount for time expended during the course of the hearing.

### **DECISION and REASONS**

12. A reprimand is warranted and shall be issued.

13. The Panel believes a reprimand is a fit and appropriate disposition for the following reasons:

- The member has been found guilty of unskilled practice. The Panel believes that the Unskilled Practice Decision and its reasons coupled with a cost order is not sufficient to govern the member in the interest of the public. The Panel believes that an official denunciation needs to be made and therefore a reprimand is appropriate. The Panel notes that the IC has not sought a fine, suspension or revocation of the member's licence. The Panel agrees that such dispositions would not be appropriate in the circumstances. Regardless, a formal statement beyond the Unskilled Practice Decision needs to be made.
- The Panel considered that the member has been an electrical engineer for more than 40 years and their professional experience is extensive. As a result, the member should be aware of the significance of affixing their seal to a drawing. As indicated in the Unskilled Practice Decision:
  - Affixing an engineering seal to drawings is a statement by the engineer to ensure the public that the engineer has reviewed and approved of the drawings, will take responsibility for everything within those drawings and that the drawings are complete for their intended purpose.
  - An engineer's seal is a statement to the public that an engineer has provided the detailed consideration required to ensure conformance with recognized standards for safety and quality.

- The member cannot simply abdicate their professional responsibility to the authority having jurisdiction (“AHJ”), in this case, the City of Winnipeg. While the City of Winnipeg is responsible for issuing a permit and then a subsequent inspection of the completed works, the member still had the obligation to ensure that sufficient detail was provided on the sealed drawings in question. Based upon their years of experience, the member should have known better.
- The Panel accepts that the member’s pending appeals arising from this proceeding place them in a position wherein an expression of remorse may adversely impact upon arguments intended for their appeals. The Panel believes that the member’s right of appeal and the positions which the member intends to assert on appeal must be balanced with the member’s professional obligation of accountability. While the member is entitled to vigorously defend the allegations against them, they also have a professional responsibility to be accountable for their practice of engineering. The Panel noted in the Unskilled Practice Decision that the expert opinions relied upon by the member did not opine on the issue identified in the charges, namely the lack of detail within the impugned drawings. The Panel believes this factor sways the pendulum away from the vigorous defence argument and toward a consideration of lack of accountability. In the circumstances, a reprimand is warranted in order to maintain public confidence in the ability of EGM to properly govern the conduct of its members.



- It was noted that a formal caution has previously been issued to the member, albeit that caution did not involve unskilled practice. The pre-existing caution was not a factor in this decision.

### Supervision

14. Supervision is not warranted. The member has over 40 years of experience in electrical engineering. The Panel accepts the member's credentials and expertise and acknowledges they are extensive.
15. The Panel was advised by the member, through their counsel, that since 2012 (when the drawings in question were prepared by the member) the member has personally sealed and submitted hundreds of drawings to the AHJ for the purpose of supporting the issuance of a permit. These sealed drawings were all subsequently approved by the AHJ.
16. The Panel therefore views the member's unskilled practice as being out of character. In these circumstances, the Panel believes the public's confidence in EGM to properly supervise the conduct of the member will be maintained without supervision. As a result of the member not having any disciplinary record for unskilled practice, their 40 plus years of extensive experience in electrical engineering and the fact that there have been no unskilled practice concerns raised in the last decade, the Panel does not believe that an order of supervision is required.

Cost

17. The Panel assesses costs against the member in the amount of \$135,000.00.
18. The Panel received legal advice from its counsel regarding the position of the member that costs be calculated pursuant to the Queen's Bench Tariff. The advice received was:
  - The Panel was not bound to follow the Queen's Bench Tariff. There has been no authority provided which indicated the Panel should follow this tariff. The fact that the Province of British Columbia follows the B.C. Court tariff does not bind this Panel. Section 48(1) of the Act provides a wide discretion to award all or part of the costs. It makes no mention of the Queen's Bench Tariff.
  - In the Kane decision, a discipline panel of the EGM did not apply the Queen's Bench Tariff but awarded costs on the basis of two thirds of the expenses incurred by the IC. [The Kane decision was referenced by counsel for the IC in the course of the sanction hearing. Subsequent to the hearing, the Panel requested a copy of that decision. IC's counsel provided the decision and both parties made brief written submissions regarding its relevance to this proceeding.]
  - The Court tariff is applicable to civil proceedings wherein access to justice is an important consideration. The tariff is a component of efforts made by the Manitoba Courts to ensure citizens have full access to justice. This is not an overriding consideration in a professional disciplinary proceeding.

- While there is nothing restricting the Panel from considering the amount of costs which would be awarded by applying the tariff, it is not required to do so.
19. The Panel does not believe the Queen's Bench Tariff should be followed when determining the amount of costs. The Panel has a broad discretion to award costs that are appropriate in the circumstances. In light of the significant costs incurred by EGM and the role the member played in these costs being incurred (as discussed below) the Panel does not believe that the smaller amount of costs which would be awarded under the tariff are appropriate in the circumstances. The Panel notes that tariff costs against the member have previously been assessed by the Courts in the member's failed efforts to obtain relief through the judicial system.
  20. Member's counsel argued that the member must have the right to vigorously defend their position and that cost orders should not punish the member for doing so. The Panel was warned that if the member, as a consequence of their strenuous defence, was subjected to a cost order in the neighbourhood of that sought by the IC, other members will be deterred from responding to charges in a similar manner.
  21. The Panel agrees the member has the right to vigorously defend the subject charges and that cost orders ought not be punitive. However, as mentioned previously, it is an engineer's professional responsibility to be accountable for their conduct. If a Professional Engineer does not display accountability or lacks insight regarding their conduct, this is a factor which can be taken into account in a cost order. To consider an engineer's lack of accountability or insight when assessing

the quantum of costs is not punitive; it is merely taking into account a circumstance relevant to the issue of what is a fit and appropriate penalty in a professional regulatory matter. Such a consideration is relevant to sentencing principles such as specific deterrence and the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members. The Panel expects a member with 40 plus years experience to accept responsibility for work that could have and should have been done better and be accountable for errors made. The member has displayed no such accountability or insight.

22. The Panel believes the member's argument that a large cost award will create a chill for members who may wish to defend charges in a similar manner to be speculative. Further, members that are accountable for their conduct, should not be concerned with significant cost awards. Accountable members who vigorously and successfully defend charges should be met with a cost order which reflects such success. The member has not been successful in any of the defences asserted and the manner in which the charges were defended resulted in extensive time and effort being expended.
23. The member is deemed to know the law. The applicable law for costs in a proceeding such as this is section 48(1) of the Act. That section indicates the member may be fixed with all or part of the costs of an investigation, hearing and an appeal. The member therefore knowingly assumed the risk of paying all or part of the costs of this proceeding when they defended the charges in the manner they did.

24. The Panel accepts that balance is required to ensure the manner in which a member defends against a charge does not visit significant extra costs to the general membership of EGM. In the circumstances of this proceeding, it would not be fair to visit the majority of the costs of this proceeding upon the membership in general. The EGM and its members are required to pay the price of being self-governed. This price should only involve a reasonable portion of the cost of discipline proceedings. What is reasonable will depend on the circumstances of each case.
25. The Panel was referred to the sentencing principles set out in *The Regulation of Professions in Canada* by James T. Casey. For the reasons previously mentioned, the Panel believes that the principles of specific deterrence and the need to maintain the public's confidence in EGM's ability to properly supervise the conduct of its members support a significant cost order.
26. The Panel has considered the guidance on cost orders provided by the Saskatchewan Court of Appeal in *Abramatz v. The Law Society of Saskatchewan*. In particular, the Panel has considered the following factors:
  - a) The balance between the effective cost award on the member and the need for EGM to effectively administer its disciplinary process;
  - b) The respective degrees of success of the parties;
  - c) Cost awards should not be punitive;
  - d) The other sanctions imposed upon the member in this proceeding and the expenses associated therewith; and

- e) The relative time and expense of the investigation and hearing for each of the charges, and in particular, those where the member was found not guilty.

27. When reviewing these principles, the Panel notes:

- The member was found guilty of both charges.
- The member's preliminary motions for disclosure of an unrelated complaint and to challenge the jurisdiction of the Panel were unsuccessful.
- It has been decided that supervision is not necessary and there will therefore be no further expenses to the member arising from this decision. The member was successful on this point and the Panel has considered this in arriving at its determination of costs.
- The member did not provide any evidence of potential hardship for the cost order sought by the IC.
- The costs being sought by the IC are not the entire costs for this investigation and hearing. They are a portion of the time expended.

28. The Panel notes the IC offered more than once to resolve this issue prior to the commencement of the hearing. The Panel also notes that the offers from the IC required supervision of the member which the Panel has found to be unnecessary. It appears the member did not accept the invitation to engage in discussions aimed at a resolution.

29. As indicated previously, the member should not be punished for the manner in which they defended the charges. The Panel has considered the magnitude of the cost order sought by the IC and the obvious impact it would have upon the member. Regardless of the fact the member has provided no evidence regarding their own individual financial circumstances, the Panel acknowledges a cost order of the magnitude sought by the IC would have an adverse effect on most members. The Panel has also considered the need for EGM to effectively administer the disciplinary process and that it would not be fair in this instance to visit a large amount of the costs of this proceeding upon the membership in general.
30. The Panel considered the Kane decision and notes the member in that case was assessed costs of two thirds of the proceeding for both the investigation and the subsequent disciplinary hearing. The Panel also notes that success in that proceeding was divided, which is not the case here.
31. A cost order of \$135,000.00 in this case represents approximately two thirds of the approximate non indemnified costs of \$202,000.00 incurred by the IC which amount does not include the PA Invoices. The Panel does not wish to create a precedent that costs incurred by the Panel's legal counsel should not be considered in assessing a fit and appropriate cost order. The significant cost order of this Panel has led the Panel to not include the costs incurred by EGM for the Panel's legal counsel. The Panel notes the IC did not seek to recover the costs of the Panel's counsel.

32. As a result of the number of years which have passed since these charges were laid, the Panel does not believe the member should be granted with an extended period to pay. The Panel therefore orders that the costs be paid within thirty (30) days of the date of these reasons.

#### Publication and Stay of Proceedings

33. The Panel acknowledges that publication is a discretionary matter for EGM. The Panel recommends publication of the Unskilled Practice Decision and this decision should the member be found guilty of unskilled practice upon the conclusion of their appeals. Section 50 of the Act indicates the publication must not occur until any appeal period has expired. The Panel has been advised that the member has appealed the Panel's two preliminary rulings, the Unskilled Practice Decision and may appeal this decision. Should the appeal relating to the Unskilled Practice Decision be unsuccessful, the Panel recommends that EGM publish the final results. In support of this position, the Panel notes the following:

- Both the unskilled practice hearing and the sanction hearing were open to the public. In order for the public to have confidence in the integrity of EGM's ability to properly supervise the conduct of its members, publication is necessary. If discipline and sanction decisions are not published, how can EGM be seen by the public to be carrying out its task of governing its members in the interest of the public? In the circumstances of this case, the public's need to know takes priority over the member's desire to not face potential professional embarrassment.



- Publication is not restricted under the Act.
  - Publication will educate and raise awareness amongst EGM members about the importance of taking responsibility for drawings they have sealed and the importance of being accountable when errors are made.
34. The member has requested that any cost order be stayed pending the member's appeal. The IC has requested that costs be payable within thirty (30) days of the Panel's order. The Panel notes no evidence was presented by the member concerning an inability to pay a large cost order. The Panel therefore assumes that irreparable harm will not occur to the member if the cost order is not stayed pending appeal. The Panel also notes that if the member is successful in their appeal, the amount paid for costs may be reimbursed.
35. In considering whether the cost order ought to be stayed pending the appeal, the Panel received legal advice regarding the test for a stay of proceedings pending an appeal. As a result of this advice, the Panel considered the merits of the appeal, the balance of convenience and whether irreparable harm has been shown.
36. The member's appeal will be dealt with by an independent body who may or may not have views differing from the Panel's. In these circumstances, the Panel agrees that the member's appeals may have merit. However, as the member has provided no information regarding an inability to pay a large cost order, the Panel determines that the balance of convenience favours not issuing a stay for the cost order and that there is no evidence of irreparable harm.

**SUMMARY OF DECISIONS**

37. In summary, the Panel orders as follows:

- a) the member be reprimanded;
- b) the member pay the partial costs of this proceeding in the amount of \$135,000.00 within thirty (30) days of the date of this decision;
- c) should the member be found guilty of unskilled practice upon the conclusion of their appeals, the Panel recommends the publication of both the Unskilled Practice Decision and this sanction decision;
- d) the member's request to stay the provisions of this order pending their appeal is denied save for the issue of publication; and
- e) the IC's request for practice supervision is denied.

Dated at the City of Winnipeg this \_\_\_\_\_ day of June, 2022.

For ease of circulation, these Reasons may be signed in counterpart.

**Ray Hoemsen, P. Eng.** Digitally signed by Ray  
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Ray Hoemsen – M.Sc., P. Eng. – Chair

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Kerra Mruss – M.Sc., P. Eng.

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Robert Janz, Public Representative

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- c) should the member be found guilty of unskilled practice upon the conclusion of their appeals, the Panel recommends the publication of both the Unskilled Practice Decision and this sanction decision;
- d) the member's request to stay the provisions of this order pending their appeal is denied save for the issue of publication; and
- e) the IC's request for practice supervision is denied.

Dated at the City of Winnipeg this 29th day of June, 2022.

For ease of circulation, these Reasons may be signed in counterpart.

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Ray Hoemsen – M.Sc., P. Eng. – Chair

Mruss, Kerra (MrussK)

Digitally signed by Mruss, Kerra (MrussK)  
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Kerra Mruss – M.Sc., P. Eng.

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Robert Janz, Public Representative

**SUMMARY OF DECISIONS**

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- b) the member pay the partial costs of this proceeding in the amount of \$135,000.00 within thirty (30) days of the date of this decision;
- c) should the member be found guilty of unskilled practice upon the conclusion of their appeals, the Panel recommends the publication of both the Unskilled Practice Decision and this sanction decision;
- d) the member's request to stay the provisions of this order pending their appeal is denied save for the issue of publication; and
- e) the IC's request for practice supervision is denied.

Dated at the City of Winnipeg this 28<sup>th</sup> day of June, 2022.

For ease of circulation, these Reasons may be signed in counterpart.

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Ray Hoemsen – M.Sc., P. Eng. – Chair

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Kerra Mruss – M.Sc., P. Eng.

  
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Robert Janz, Public Representative