

ENGINEERS GEOSCIENTISTS MANITOBA

IN THE MATTER OF: Mazen J. Habash, 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

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Panel of the Discipline Committee:

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

IN THE MATTER OF: Mazen J. Habash, 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. Habash 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. Habash failed to comply with Engineers Geoscientists Manitoba ("EGM") continuing professional development

(“CPD”) program by failing to report his professional development activities for the 2015-2017, 2016-2018, 2017-2019, 2018-2020, and 2019-2021 evaluation periods.

- 2) In contravention of section 12.1(4) of the Act, following a request made by the Registrar, Mr. Habash 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. Habash 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. Habash 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. Habash 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.
 3. Following the June 28, 2022 hearing, counsel for the Investigation Committee (“IC”) advised that despite the five evaluation periods noted in the Amended Charge, it was only proceeding on the charges which relate to the 2016-2018, 2017-2019, 2018-2020, and 2019-2021 evaluation periods (collectively “the Evaluation Periods”).

Participation of Mr. Habash

4. Neither Mr. Habash, nor a representative on his behalf, appeared for the hearing scheduled June 28, 2022.
5. An Affidavit of Service of Deanna Brown dated June 21, 2022, a legal assistant, 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. Habash both by way of email to the only email address for

Mr. Habash within the records of the EGM, and registered mail to one of the two mailing addresses within the records of EGM.

6. 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.
7. Section 45 of the Act provides that the 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.
8. The Panel is satisfied by the Affidavit of Service of Deanna Brown that Mr. Habash was properly served and received appropriate notice of the hearing.
9. At the commencement of the hearing on June 28, 2022, counsel for the 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.
10. In Mr. Habash's absence, a plea of not guilty was entered on his behalf.

Factual Background

11. 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. Habash was first registered as a member of EGM on June 22, 2010. 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. Habash failed to provide any reporting of professional development activities as required by the due dates of December 31, 2018, December 31, 2019, December 31, 2020, and December 31, 2021.
- 4) Beginning on January 15, 2019 and continuing through to February 8, 2022 Mr. Habash received numerous email reminders to complete and report his professional development hours.
- 5) As a result of his ongoing non-compliance, Mr. Habash received letters dated April 3, 2019, March 27, 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. Habash's certificate of registration has been suspended since April 3, 2019 pending compliance with the ProDev Program.
- 6) On or around November 26, 2021 Mr. Habash was advised by letter dated November 18, 2021 that the IC had commenced an investigation into his non-compliance with the ProDev Program. By that letter Mr. Habash 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. Habash 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.

12. Counsel for the IC confirmed that notwithstanding the temporary suspensions, Mr. Habash maintained his EGM membership by paying his dues throughout the relevant periods.

Submission of Counsel for the IC

13. 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.
14. 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.
15. 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.
16. Counsel emphasized the importance of the ProDev Program to the regulatory framework and characterized this misconduct as serious.
17. 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. Habash should be reprimanded, pay a fine of \$1,000.00, directed to comply with all reporting requirements within 30 days, failing which an additional fine of \$500.00 be owing, a suspension of registration of one month to take place immediately upon lifting of the current administrative suspension, and the conviction and penalty should be published in accordance with the EGM's publication policy. IC also seeks an order that Mr. Habash pay a contribution towards the IC's costs of \$3,500, representing approximately two thirds of the total costs.

18. 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

19. 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. Habash 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 2016-2018, 2017-2019, 2018-2020 and 2019-2021 reporting periods. Mr. Habash 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. Habash breached sections 26(2) and 28(5) of the Act. Each of these contraventions alone constitutes professional misconduct.

20. Mr. Habash's professional misconduct is repeated, lengthy and continues unremedied to the date of the hearing. Mr. Habash has shown a complete disregard for his obligations as a member of a self-governing profession. Each of these factors is aggravating.
21. The Panel acknowledges that Mr. Habash has no prior disciplinary history, which is mitigating.
22. With respect to penalty, we order that Mr. Habash be reprimanded, that he pay a fine of \$1,000.00 within 30 days of this Order, that he comply with all ProDev Program requirements and return his manual seal and certificate of registration within 30 days, and that the matter be published in accordance with EGM's policies.
23. The Panel also accepts the recommendation that Mr. Habash be subject to an additional fine of \$500.00 should he not comply with this Order. The Panel agrees with the rationale of the Law Society of Ontario in *Law Society of Ontario v. Jones-Bechard*, 2020 ONLSTH 85 at paragraph 13, that a conditional fine will encourage compliance.
24. The Panel understands that Mr. Habash's certificate of registration shall remain under an administrative suspension until he is compliant with the ProDev Program. Given the importance of continuing professional development programs to the protection of the public, and Mr. Habash's complete disregard for his obligations to respond to EGM, the Panel finds that an additional suspension of his certificate of registration is appropriate. Mr. Habash shall be suspended until one month following the lifting of the administrative suspension.
25. Pursuant to section 48(1) of the Act, the Panel also orders Mr. Habash to pay an amount of \$3,500 as contribution towards the costs of EGM for investigation and hearing. We were advised this represents approximately two thirds of EGM's total costs.

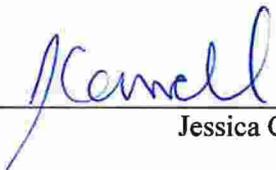
Order

This Panel Orders that:

1. Mr. Habash be and is hereby reprimanded.

2. Within 30 days of issuance of this Order, Mr. Habash shall comply with all reporting requirements of the continuing professional development program and pay a fine of \$1,000.00 to the Engineers Geoscientists Manitoba.
3. If Mr. Habash fails to comply with Clauses 2 and 3 of this Order, he shall pay a further fine of \$500.00 to the Engineers Geoscientists Manitoba.
4. Mr. Habash's certificate of registration shall remain suspended until one month following the conclusion of the administrative suspension.
5. Within 30 days of the issuance of this Order, Mr. Habash shall make a contribution of \$3,500.00 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 11th day of August, 2022.



Jessica Carvell, Chair



Kerra Mruss, P.Eng., FEC



Allan Ball, P. Eng., FEC