

**IN THE MATTER of the *ENGINEERS AND GEOSCIENTISTS ACT*
R.S.B.C. 1996, c. 116 (as amended)**

and

Ginger Ada Rogers, P.Geo.

**DECISION AND ORDER OF THE DISCIPLINE COMMITTEE
ON PENALTY AND COSTS**

Discipline Committee Panel:

Neil Cumming, P.Eng. (Chair)

Jurgen Franke, P.Eng.

Jaswinder Bansal, P.Eng.

Counsel for the Panel:

Robin McFee, QC

Counsel for Association:

Lindsay Waddell and Heather Hoiness

Neither Ms. Rogers nor anyone on her behalf appeared.

INTRODUCTION

- [1] C'F kæk rþg'Eqo o kwgg'Rcpgrñ*ý g'ðRcpgrñ+qñ'ý g'Cuuqekvkqp'qñ'Rtqhguukqpcñ'Gpi kþggtu" cpf "I gquckp vkñu'qñ'Dtkkuj 'Eqñwo dlc"*ý g'ðCuuqekvkqpö+."acting under the authority of the *Engineers and Geoscientists Act*, RSBC 1996 c. 116 as amended (ý g'ðActö+, held an Inquiry on November 25, 2019 to examine allegations of incompetence, negligence or unprofessional conduct, and alleged contraventions of the *Cuuqekvkqpau'Code of Ethics* by Ginger Ada Rogers, P.Geo.
- [2] Ms. Rogers did not appear at the hearing, nor did anyone acting on her behalf.
- [3] After a review of the evidence and the arguments made by the Association, the Panel found that Ms. Rogers had demonstrated unprofessional conduct, negligence and incompetence in her professional capacity in relation to her activities as alleged in Paragraph 1 of the Notice of Inquiry. Vj g'Rcpgrñ'cuq'hqwpf "ý cvO u0Tqi gtuðeqpf wv'ý cu'eqpvtct { "vq"ý g" Cuuqekvkqpau'Eqf g'qñ'Gj kcu'cu'cmgi gf "lp'Rctci tcr j u'5"cpf "6"qñ'ý g"P qvæg"qf Inquiry.
- [4] In its December 9, 2019 determination, the Panel directed that the parties provide written submissions respecting proposed penalty and costs and stipulated that in lieu of preparing a written submission, Ms. Rogers was at liberty to request an oral hearing no later than y kj lp"36"f c { u"qñ'ý g'tgegkr v'qñ'ý g"Cuuqekvkqpau'uwdo kukqpu0
- [5] As previously noted, Ms. Rogers did not appear at the November 25, 2019 hearing, nor did anyone acting on her behalf. Counsel for the Panel sent a copy oh'ý g'Rcpgrñ'F gego dgt"; ." 2019 determination to Ms. Rogers by mailing it to her at her last know residential address at [REDACTED]. This was never returned as undeliverable by Canada Post. As well, counsel for the Panel attempted to email the decision to her at the last two email addresses she had provided to the Association. These go cku'dqwpegf "dcen'cu'wpf grkxgtcdrg0"Vcnkpi "lpvq"ceeqwv'v'O u0Tqi gtuð'hcñwt g"vq"cr r gct" at the hearing, and the efforts to provide her with a copy of the December 9, 2019 f gvgto kpcvkqp"d { "o ckkpi "k"vq"O u0Tqi gtuð'rcu'cf f tguu'qp'hkq"y kj "ý g'Cuuqekvkqp."cpf " go ckkpi "k"vq"ý g"v'y q"go ckn'cf f tguugu'hqt "O u0Tqi gtu'lp"ý g"Cuuqekvkqpau'f cvcdcuq."ý g" Panel is satisfied that reasonable efforts have been made to bring the Notice of Determination to the attention of Ms. Rogers.
- [6] The Association was directed to deliver its submission to the Panel and Ms. Rogers within 30 days of the date of the decision. Ms. Rogers was to deliver her submission to the Panel cpf "ý g'Cuuqekvkqp"y kj lp"36"f c { u"qñ'ý g'tgegkr v'qñ'ý g"Cuuqekvkqpau'uwdo kukqp0"Vj g" Association was to deliver a reply submission within 10 days of their receipt of Ms. Tqi gtuð'uwdo kukqp0
- [7] Qp"Lcpwct { "; ."4242"kv'y cu'dtqwi j v'vq"ý g'Rcpgrñ'cwgpvkqp"that the determination issued on December 9, 2019 had been misdirected and was not delivered to counsel for the Association until January 9, 2020. Accordingly, the dates for delivery of submissions were extended.
- [8] Vj g'Rcpgrñtgegkxgf "ý g'Cuuqekvkqpau'uwdo kssion on February 7, 2020.

[9] No submission has been received from Ms. Rogers. Upon inquiring on March 3, 2020 as to whether the Association had received a submission, the Panel was informed that they had not. Independent counsel had been able to contact Ms. Rogers.

[10] The Panel therefore decided to proceed with making a determination on penalty and costs without the benefit of a submission from Ms. Rogers.

[11] In considering an appropriate penalty the Panel took into account the following principles. They are based on the factors used by the Law Society of British Columbia¹, and which have been adopted by previous disciplinary panels of the Association:

- a. the nature and gravity of the conduct proven;
- b. the age and experience of the member;
- c. the previous character of the member, including details of prior discipline;
- d. the impact upon the victim;
- e. the advantage gained, or to be gained, by the member;
- f. the number of times the offending conduct occurred;
- g. whether the member has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstances;
- h. the possibility of remediating or rehabilitating the member;
- i. the impact on the member of criminal or other sanctions or penalties;
- j. the impact of the proposed penalty on the respondent;
- k. the need for specific and general deterrence;
- l. the need to ensure the public's confidence in the integrity of the profession; and
- m. the range of penalties imposed in similar cases.

[12] The Panel also took into consideration a subsequent decision of the Law Society of BC², which holds that it is not necessary to consider each of the Ogilvie factors, and that the Panel may consider those that it considers relevant. Dent further consolidated the Ogilvie factors as follows:

- a) Character and professional conduct record of the member;
- b) Acknowledgement of the misconduct and remedial action;
- c) Public confidence in the legal profession including public confidence in the disciplinary process.

The Panel considers these factors to be relevant in the current case.

¹ *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17.

² *Law Society of British Columbia v. Douglas Edward Dent* [2016] LSBC 5.

CUUQEKVKQP d'UWDO KUKQP 'QP 'RGP CNV['CPF 'EQUVU

[13] The Association has provided submissions on each of these points in support of their position on the appropriate penalty and costs determination. The Panel has considered the CUUQEKVKQP d'UWDO KUKQP and takes note of the following:

- a) Ms. Rogers deliberately falsified data submitted to a regulatory agency which allowed her client to continue activities which would otherwise not have been permitted.
- b) Ms. Rogers was convicted of an offence in Alberta; she was fined \$27,750 and restricted from submitting reports to the Alberta Ministry of Environment for three years.
- c) Ms. Rogers has no prior disciplinary record. She has acknowledged her improper actions and pled guilty to charges in Alberta. She entered into a consent agreement with the Association of Professional Engineers and Geoscientists of Alberta which resulted in the suspension of her membership for three years, expiring on March 29, 2022.
- d) There is a need for general deterrence to dissuade other members from similar improper conduct.

[14] Taking these factors into account the Association has requested the Panel to order the following:

- a) C'uwur gpukqp"qh'O u0Tqi gtuo'o go dgtuj k "lqt 'y q" { gctu'ltqo 'yj g'f cvg"qh'y ku" determination.
- b) Completion of the Professional Engineering and geoscience Practice in BC Online Seminar and the Professional Practice Exam prior to reinstatement of her membership.
- c) Ms. Rogers shall undergo a general practice review within 12 months of her reinstatement, and if required by the Practice Review Committee, a technical review would also be required. Costs of the review would be borne by Ms. Rogers.
- d) Ms. Rogers shall pay costs to the Association in the amount of \$20,826.89, which ku'gs vwxcrp'v'q": 2' "qh'y j'CUUQEKVKQP d'UWDO KUKQP 'QP 'RGP CNV['CPF 'EQUVU

O U0TQI GTU0 SUBMISSION ON PENALTY AND COSTS

[15] No submission on penalty and costs was received from Ms. Rogers. The Panel has, however, taken into consideration the penalties imposed in Alberta as noted above and further notes that the subject matter of this inquiry is the same, i.e. there is no additional misconduct to be considered beyond that which has already been penalized in Alberta.

DISCIPLINARY ACTION AND COSTS

[16] The Panel has carefully considered the submissions of the Association and the penalties already imposed on Ms. Rogers. It has taken into account the factors cited at Paragraphs [11] and [12] above when considering a penalty and an award of costs.

[17] The Panel orders the following penalty:

- a) Ms. Rogers' membership shall be suspended from the date of this determination until March 29, 2022. The end of the suspension will coordinate with the suspension of membership in Alberta.
- b) Ms. Rogers shall be required to complete the Professional Engineering and Geoscience Practice in BC Online Seminar and pass the Professional Practice Exam prior to reinstatement of her membership.
- c) Within 12 months of reinstatement of her membership Ms. Rogers must undergo a general practice review and if required, a technical review. The costs of the reviews shall be borne by Ms. Rogers.

[18] With regard to an award of costs, the Panel has taken into consideration the fine imposed on Ms. Rogers in Alberta and the fact that she is no longer practicing geoscience. These factors would serve to mitigate the award of costs. However, it is also noted that Ms. Rogers did not engage with the Association's disciplinary process. The Panel considers that a significant amount of the Association's costs may have been avoided if Ms. Rogers had engaged in the disciplinary process.

[19] Accordingly, the Panel agrees that an award of costs in the amount of \$20,826.89 is appropriate and orders that Ms. Rogers' membership may not be reinstated until the costs are paid in full.

Dated this 23rd day of March, 2020.

Discipline Committee Panel:

<original signed by>

Neil A. Cumming, P. Eng.
Chair

<original signed by>

Jurgen Franke, P.Eng.

<original signed by>

Jaswinder Bansal, P.Eng.