

**IN THE MATTER OF THE ENGINEERS AND GEOSCIENTISTS ACT
R.S.B.C. 1996, CHAPTER 116**

and

IN THE MATTER OF ELWYN BURCH, P.ENG.

Engineers and Geoscientists BC File No. T17-042

CONSENT ORDER

Background

1. On May 27, 2015, Elwyn Robert Burch, P.Eng. (“**Mr. Burch**”) and the Association of Professional Engineers and Geoscientists of British Columbia (the “**Association**”) entered into a Consent Order (the “**2015 Consent Order**”) by which Mr. Burch accepted that he:
 - A. Demonstrated unprofessional conduct, in his provision of professional engineering services, during the period from in or about November 2013 to in or about January 2014, in connection with the location of a sewerage system for a property in Comox, British Columbia (the “**Engineering Work**”), and in connection with causing engineering documents relating to the Engineering Work being prepared and filed with the Vancouver Island Health Authority, in circumstances in which he knew or ought to have known that the Engineering Work was in breach of the *Sewerage System Regulation*, B.C. Reg. 209/2010, as amended (the “**SSR**”), in that the Engineering Work was not consistent with the requirements of any “source of standard practice” permitted under the SSR;
 - B. Demonstrated unprofessional conduct in his capacity as an “authorized person” as defined under the SSR with respect to the Engineering Work, in that he knew or ought to have known that the assurance statement which he made in the Filing of Sewerage System forms dated November 20, 2013 and December 12, 2013 each of which he caused to be filed with the Vancouver Island Health Authority, contained inaccurate and/or false information;
 - C. Demonstrated unprofessional conduct in his preparation of the Hydrogeology Report dated December 12, 2013 (the “**2013 Report**”), in that, without reasonable factual or scientific bases, he made conclusions in the 2013 Report in circumstances in which he knew that other persons would rely on the 2013 Report under the SSR; and

Note: Redacted according to the Association's Procedure for Publishing Consent Orders, Interim Orders and Disciplinary Determinations as revised and approved by Council on June 17, 2016 (CO-16-58)

- D. Contravened the *APEGBC Code of Ethics*, including principles 2 and 3, in that he prepared the 2013 Report in circumstances in which he did not have the required qualification by training or experience in the field of hydrogeology and/or you lacked adequate knowledge to make the conclusions which you made in the 2013 Report.
2. Pursuant to the terms of the 2015 Consent Order, Mr. Burch was reprimanded and was ordered to immediately cease and desist from all of the following practices:
 - A. Designing sewerage systems;
 - B. Acting as an “authorized person” under the *Sewerage System Regulation*, B.C. Reg. 209/2010, as amended;
 - C. Providing hydrogeological advice or services to any person;
 - D. Advertising his name on the “Professionals for Sewerage System Regulation” list that is published on APEGBC’s website; and
 - E. Representing himself as a “Wastewater Engineer” on any letterhead, business card, advertisement, publication, or in any oral or written communication to any person.
 3. Pursuant to the terms of the 2015 Consent Order, Mr. Burch agreed to undergo a Practice Review.

Current Disciplinary Issue

4. On August 3, 2018, a Notice of Inquiry dated July 26, 2018 was issued to Mr. Burch containing the following allegations:
 - A. You demonstrated unprofessional conduct, incompetence or negligence in 2016 when, having been retained by a client to prepare a landslide assessment geotechnical report in respect of the residential property located at [REDACTED] Comox, BC (the “**Property**”), you affixed your seal to reports dated August 8, 2016 and October 24, 2016 (the “**Reports**”) and to a Landslide Assessment Assurance Statement (the “**Assurance Statement**”) in circumstances where:
 - i. you failed to qualify or limit the purpose for which the Reports were prepared, and in particular you failed to label the Reports as ‘preliminary’ and instead indicated that the Reports could be used by the client “for any purpose” and that the Town of Comox could rely upon your Reports for the purpose of applications for a development permit and a building permit when in fact the Reports were preliminary and could not be used for these purposes;

- ii. you represented in the Assurance Statement that the geoscience work you had performed was appropriate for the issuance of a development permit when in fact the work that you had performed was still preliminary and not suitable for the issuance of a development permit;
- iii. you accepted responsibility for a professional assignment in circumstances where you did not, and by virtue of your training and experience could not, perform the geoscience work related to the Reports and Assurance Statement; and
- iv. affixing your seal to the Reports and Assurance Statement had the effect of misrepresenting that:
 - a) the Reports and Assurance Statement were prepared by you in your professional capacity, or alternatively under your direct supervision, when in fact you were not qualified by training or experience to prepare, or supervise the preparation of, the geoscience components of the Reports and Assurance Statement; and
 - b) you are qualified by training or experience in the geoscience disciplines related to the Reports and Assurance Statement, when in fact you are not.

B. You demonstrated unprofessional conduct, incompetence, or negligence by preparing the Reports, issued under your seal, which were deficient and fell below the standard expected of a professional engineer with experience in geotechnical engineering, particulars of which are:

- i. failing to include an adequate description of the field work, including failing to include an explanation of the location of test pits and the test pit logs, and an adequately detailed explanation of your observations from your site visit;
- ii. failing to either adequately describe the background information upon which you relied, such as any surficial geology maps and/or historical air photos that were considered, if any, or alternatively, failing to consider surficial geology maps and/or historical air photos when preparing the Reports;
- iii. failing to reference in the Reports that you relied upon the reports of others, including the November 24, 2011 report prepared by [REDACTED];

- iv. failing to include on the site plan that was appended to the Reports the topographic information for the Property and its surrounding areas, and the recommended slope hazard mitigation recommendations, including the setback location and the concrete barrier;
 - v. failing to provide an adequate description of the slope on the Property, including the height of the slope;
 - vi. failing to describe in the Reports the methodology and the assumptions that you used when you calculated the factor of safety of the slope on the Property;
 - vii. failing to provide clear definitions of important qualitative and/or descriptive terms relating to the terrain and the perceived hazard levels identified, including “minor”, “very low”, “very stable”, “large”, “long term” and “long time”;
 - viii. failing to adequately explain the basis for your conclusions with respect to the relevant geology and tectonic activity; and
 - ix. failing to provide clear slope hazard mitigation recommendations and failing to explain how the risks of shallow slides and/or erosion of the slope on the Property by surface water would be mitigated by the recommendations made in your Reports, and failing to include an assessment of the residual risks if your recommendations in the Reports were implemented.
- C. You contravened section 14(b)(2) of the Association’s Bylaws in 2016 when you failed to ensure regular, documented checks of the geological engineering work included in the Reports, using a written quality control process appropriate to the risk associated with the work.
- D. In the alternative to paragraph 4C, you contravened section 14(b)(1) of the Association’s Bylaws in 2016 when you failed to retain records relating to the geoscience work that formed the basis upon which you prepared the Reports.
- E. The conduct set out above at paragraphs 4A to 4D is contrary to Principle 1 of the Association’s Code of Ethics.

Admissions

5. Mr. Burch admits the allegations in the Notice of Inquiry set out in paragraphs 4A to 4E above.

Disposition

6. This Consent Order is made pursuant to section 32.1 of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116 (the “**Act**”).
7. Mr. Burch’s membership in the Association is cancelled effective January 15, 2019 (the “**Cancellation Date**”).
8. During the period from the date of this Consent Order to the Cancellation Date, Mr. Burch will:
 - A. make reasonable arrangements for the orderly transfer of his ongoing professional engineering project files to other professional engineers;
 - B. limit his practice to those project files that he is currently engaged on and not take on any new project files or other engineering work; and
 - C. refrain from providing landslide assessment services or slope stability analysis services to any person, including by signing or sealing landslide assessment reports, or by signing or sealing Landslide Assurance Statements.
9. Should Mr. Burch re-apply for membership or licensure by the Association, without limiting any other power of the Council to determine if Mr. Burch meets the requirements for membership or licensure, he agrees to the following conditions:
 - A. prior to being registered or licensed by the Association, Mr. Burch must complete and pass the Professional Practice Examination of the Association, and provide written notice to the Association that he has completed and passed it;
 - B. prior to being registered or licensed by the Association, Mr. Burch must complete and pass the Professional Engineering and Geoscience Practice in BC Online Seminar, and provide written notice to the Association that he has completed and passed it; and
 - C. if Mr. Burch’s membership or licensure is approved by the Association, his membership or licensure will be subject to a condition that he shall not provide landslide assessment services or slope stability analysis services to any person, including by signing or sealing landslide assessment reports, or by signing or sealing Landslide Assurance Statements.

10. Mr. Burch shall pay:

- A. \$1,500 towards the Association's investigation and legal costs immediately upon signing this Consent Order; and
- B. a further \$1,500 towards the Association's investigation and legal costs within 14 days of signing this Consent Order.

11. In the event that Mr. Burch fails to comply with any of the terms of this Consent Order, his membership in the Association will be suspended until every default has been remedied in accordance with the terms of this Consent Order.

Consequences of the Consent Order

12. The full text or a summary of this Consent Order will be published by the Association in print and electronic publications including on the Association's website.


13. This Consent Order has the same force and effect as an Order made under section 33(2) of the Act and may be dealt with under section 34 of the Act if conditions in the Consent Order are not met.

14. Mr. Burch agrees that he has had the opportunity to obtain independent legal advice regarding this Consent Order.

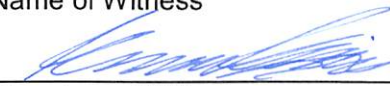
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15. The Association and Mr. Burch agree that this Consent Order may be executed in counterparts and delivered as an electronic document.


This Consent Order is approved and accepted by Mr. Burch and the members of the Discipline Committee Review Panel this 1 day of November, 2018.



Elwyn Robert Burch, P.Eng.


Name of Witness


Signature of Witness



Upul Atukorala, P.Eng.,
Member, Discipline Committee

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Peter Bobrowsky, P.Geo.,
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