



ENGINEERS &
GEOSCIENTISTS
BRITISH COLUMBIA

**IN THE MATTER OF THE *PROFESSIONAL GOVERNANCE ACT*
S.B.C. 2018, CHAPTER 47**

and

IN THE MATTER OF JERRY RAYMOND LAY, P.ENG.

ENGINEERS AND GEOSCIENTISTS BC FILE NO. T19-055

CONSENT ORDER

Background

1. On December 9, 2021, pursuant to section 66(1) of the *Professional Governance Act*, S.B.C. 2018, c. 47 (the “PGA”), the Investigation Subcommittee of the Association of Professional Engineers and Geoscientists of British Columbia, doing business as Engineers and Geoscientists BC, issued an investigation report (the “Report”) regarding Mr. Jerry Raymond Lay, P.Eng. The Report was provided to the Investigation Committee pursuant to section 9.7.6(1) of the *Bylaws* of Engineers and Geoscientists BC.
2. On December 9, 2021, the Investigation Committee appointed a Resolution Subcommittee to attempt to resolve this matter by means of a Consent Order.
3. The Investigation Committee and Mr. Lay wish to resolve the matter by consent pursuant to section 73(2) of the *PGA* to avoid the need for a disciplinary hearing.
4. Mr. Lay has previously been disciplined by Engineers and Geoscientists BC. On October 22, 2009, Mr. Lay entered into a Consent Order (the “2009 Consent Order”) in which Mr. Lay agreed that he demonstrated unprofessional conduct in relation to his engineering services regarding residential sewerage systems, contrary to the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116 (the “EGA”) and the *Bylaws* under the *EGA*.

5. In the 2009 Consent Order, Mr. Lay was reprimanded and agreed not to undertake any new wastewater treatment or disposal systems work until he completed further training and education (the “Practice Restriction”). The Practice Restriction remains in place and Mr. Lay is prohibited from providing wastewater retreatment and disposal systems services.
6. Mr. Lay consents to the disposition set out below.

Legislation

7. On February 5, 2021, the *EGA* was repealed and replaced by the *PGA*.
8. The conduct of Mr. Lay took place at a time when the *EGA* was in force. As a result, the conduct in question is considered pursuant to sections 30(9)(b) and 30(9)(c) of the *EGA*, and the Bylaws and Code of Ethics under the *EGA*.
9. Pursuant to sections 35(2) and 36(1)(c) of the *Interpretation Act*, R.S.B.C. 1996, c. 238, investigations commenced under the *EGA* carry on procedurally under the *PGA*.

Admissions

10. Mr. Lay admits that he demonstrated unprofessional conduct in relation to the geotechnical engineering services he provided for terraced rock walls (the “Rock Walls”) at a single-family residence located in Vernon, BC (the “Project”). In particular, Mr. Lay admits that he failed to:
 - a. undertake an adequate design process for the Project, including:
 - i. complete adequate design calculations regarding the stability of the Rock Walls; and
 - ii. prepare or provide drawings, design plans, or written directives to the contractor regarding the construction of the Rock Walls;
 - b. fulfill his duties as Engineer of Record for the Project by improperly delegating his professional responsibilities to the contractor;
 - c. sign and date the drawings prepared for the Project;
 - d. carry out adequate field reviews of the Rock Walls and document field reviews during the construction stage of the Project;
 - e. engage an independent reviewer to analyze the design and drawings for the Project.
11. The conduct set out above at paragraph 10 is contrary to Principle 1 of the Engineers and Geoscientists BC Code of Ethics (the “Code of Ethics”), as it stood at the time,

which required that all members and licensees shall hold paramount the safety, health and welfare of the public, the protection of the environment and promote health and safety within the workplace.

12. The conduct set out above at paragraph 10(a), (b) and (d) is contrary to Principle 3 of the Code of Ethics, as it stood at the time, which required that all members and licensees shall provide an opinion on a professional subject only when it is found upon adequate knowledge and honest conviction.
13. The conduct set out above at paragraph 10(a), (d) and (e) is contrary to section 14(b) of the Engineers and Geoscientists BC Bylaws, as it stood at the time, which required that members and licensees shall establish and maintain documented quality management processes for their practices, including:
 - a. regular documented checks of engineering and geoscience work using a written quality control process appropriate to the risk associated with the work;
 - b. documented field reviews by, or under the direct supervision of, members or licensees, of their domestic projects during implementation or construction; and
 - c. documented independent review of structural designs prior to construction by members or licensees having appropriate experience in design structures of a similar type and scale, and not involved in preparing the designs.
14. The conduct set out above at paragraphs 10 (c) is contrary to section 20(9) of the *EGA*, as it stood at the time, which required that a member receiving a seal or stamp under that section must use it, with signature and date, to seal or stamp estimates, specifications, reports, documents, plans or things that have been prepared and delivered by the member or licensee in the member's or licensee's professional capacity or that have been prepared and delivered under the member's or licensee's direct supervision.

Disposition

15. By consent, this Consent Order is made pursuant to section 73 of the *PGA*.
16. Mr. Lay's registration in Engineers and Geoscientists BC is suspended for a period of two months commencing on November 17, 2023 (the "Suspension Period").
17. During the period from the effective date of this Consent Order to November 17, 2023, Mr. Lay will:
 - a. make reasonable arrangements for the orderly transfer of his ongoing professional engineering project files to other professional engineers; and

- b. limit his practice to those project files that he is currently engaged on and not take any new project files or other engineering work.
18. Mr. Lay will, at his own expense, during the Suspension Period complete the following educational courses:
 - a. “Authentication of Documents (formerly “Use of Seal”)” provided by Engineers and Geoscientists BC; and
 - b. “Documented Field Reviews During Implementation and Construction” provided by Engineers and Geoscientists BC.
19. Prior to the completion of the Suspension Period, Mr. Lay will provide a declaration that he has read and is familiar with the Engineers and Geoscientists BC *Professional Practice Guidelines: Retaining Wall Design*, Version 1.1, published on February 25, 2020.
20. Upon expiry of the Suspension Period, Mr. Lay agrees that any retaining wall design¹ prepared by him must be subject to a peer review, pursuant to the *Discipline Committee Ordered Peer Review Policy* and the *Peer Review Guidelines* of Engineers and Geoscientists BC, as may be amended or revised from time to time (the “Peer Review”), subject to the following conditions:
 - a. the peer reviewer must be a professional engineer who is a registrant of Engineers and Geoscientists BC and who is approved in writing by the Registrar of Engineers and Geoscientist BC (the “Approved Peer Reviewer”);
 - b. the Peer Review will continue for a minimum period of 12 months and the Approved Peer Reviewer must review a minimum of six projects, whichever comes later (the “Peer Review Period”);
 - c. following the Peer Review Period, the Approved Peer Reviewer will provide Engineers and Geoscientist BC with confirmation in writing that Mr. Lay has completed the Peer Review process and that, in the opinion of the Approved Peer Reviewer, Mr. Lay has demonstrated competence such that he should be permitted to prepare retaining wall designs without oversight;
 - d. following the Peer Review Period, if the opinion of the Approved Peer Reviewer is that Mr. Lay has not demonstrated competence such that he should be permitted to prepare retaining wall designs without oversight and requires further peer review, the Peer Review Period must continue for an additional six-month period, or the completion of three additional projects whichever comes later (the “Extended Peer Review”), following which the Approved Peer Reviewer must provide confirmation in writing that Mr. Lay

¹ As defined in the Retaining Wall Design, Professional Practice Guidelines of Engineers and Geoscientists BC, Version 1.1 as may be amended or revised from time to time.

has completed the Extended Peer Review and has demonstrated competence such that he should be permitted to prepare retaining wall designs without oversight; and

e. Mr. Lay will pay the costs associated with the Peer Review.

21. Mr. Lay will pay \$3,000 towards Engineers and Geoscientists BC legal and investigative costs contemporaneous with the execution of this Consent Order.

Consequences of the Consent Order

22. The full text of this Consent Order will be published on the website of Engineers and Geoscientists BC, and a summary will be published in print and electronic publications, including in public communications.

23. This Consent Order has the same force and effect as an Order made under section 75 of the *PGA*.

24. Mr. Lay agrees that Engineers and Geoscientists BC has recommended that he receive independent legal advice regarding this Consent Order and that Engineers and Geoscientists BC has given him the opportunity to obtain independent legal advice.

25. Mr. Lay and Engineers and Geoscientists BC 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. Lay and the Investigation Committee this 9th day of November, 2023.

<original signed by>

Jerry Lay P.Eng.

Anthony Spina

Name of Witness

<original signed by>

Signature of Witness

The Investigation Committee of the Association
of Professional Engineers and Geoscientists
of the Province of British Columbia

<original signed by>

Per: Robert Allan Dakin, P. Eng.
Vice-Chair, Investigation Committee