

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

and

IN THE MATTER OF PETER SCHOBER, P. Eng.

DECISION OF THE DISCIPLINE COMMITTEE

Hearing dates: October 20-21, 2020

Discipline Committee Panel: Colin Smith, P.Eng., Chair
Oliver Bonham, P. Geo.
Tom Morrison, P.Eng.

Counsel for the Panel: Susan Precious

Counsel for the Association: Janet Gartner
Victoria Broughton

For the Member: Andi MacKay
Samantha Arrandale

A. Background

1. This Panel of the Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC (the "Association") was appointed to conduct an inquiry into the conduct of Peter Schober, P. Eng pursuant

to section 32 of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116 (the "Act").

2. The particulars of the allegations against Mr. Schober are set out in the Amended Notice of Inquiry dated July 15, 2020 as follows:

1. The background facts are as follows:

a. during the period from February 11, 2010 to August 4, 2011, you were a director, shareholder, and the president secretary of Renewable Power Corporation ("RPC");

b. during the period from February 11, 2010 to August 4, 2011, RPC was a 65% shareholder of Tyson Creek Hydro Corporation ("TCHC"), of which you were also a director;

c. during the period from February 11, 2010 to August 4, 2011, you were motivated to ensure that the Tyson Creek Hydroelectric Project (the "Project"), operated by TCHC, was profitable by virtue of being a shareholder of RPC;

d. the British Columbia Ministry of Environment (the "MOE") issued a Conditional Water Licence (the "Water Licence") to TCHC on December 21, 2007 (amended September 12, 2008) to operate the Project in the vicinity of Tyson Lake in British Columbia;

e. on or about January 22, 2010, the MOE granted TCHC leave to commence operation of the Project ("Leave");

f. it was a condition of the Water Licence and Leave that the Project be operated in compliance with the Project's Operating Parameters and Procedures Report ("OPPR"), which stipulated that the maximum drawdown of Tyson Lake for power generation use was 10 metres;

g. achieving a drawdown of Tyson Lake greater than 10 metres would improve TCHC's potential for profit;

h. you knew or ought to have known that drawdowns of Tyson Lake of more than 10 metres could have had an effect on fish or other wildlife habitats, including downstream of the Project in the Tzoonie River, and you knew that the MOE had expressed concern about the Project's impacts on fish, wildlife, and the environment;

i. on or about February 17, 2010, British Columbia Ministry of Forests and Range staff detected a significant discharge of sediment-laden water from the Project facility into Tyson Creek, and then into the Tzoonie River (the "Sedimentation Incident");

j. the Sedimentation Incident was related to the erosion of the Tyson Lake delta as a result of the drawdown of Tyson Lake as part of the Project's operation;

k. following the Sedimentation Incident, on or about February 19, 2010, the MOE requested TCHC undertake several actions, including carrying out

ongoing monitoring and providing records and data to the MOE, including in relation to Tyson Lake water levels;

l. on or about April 23, 2010, the MOE issued an Order pursuant to the Water Act, R.S.B.C. 1979 c. 429 which required TCHC to cease all diversion of water through the Project facility, undertake ongoing monitoring, and provide an Environmental Impact Assessment report;

m. on or about May 26, 2010, the MOE allowed the Project to recommence operations using drawdowns of water within the natural range of Tyson Lake water levels, in part relying on a Recommencement Plan submitted by TCHC, and required lake levels to be recorded and submitted to the MOE and Federal Department of Fisheries and Oceans (the "DFO");

n. on or about October 19, 2010, the MOE allowed the Project to operate with additional drawdowns of 5 metres following, inter alia, receipt of a report by Westrek Geotechnical Services Ltd. regarding the implications of a 5 metre drawdown submitted by TCHC; and

o. on or about July 10, 2014, TCHC notified the Ministry of Forests, Lands and Natural Resource Operations that you had manipulated records of the lake level reporting data in an attempt to hide the fact that the lake levels were out of compliance.

2. You demonstrated unprofessional conduct and negligence:

a. on or about February 11, 2010, prior to the Sedimentation Incident, when you manually changed the data recording device installed at the Project site, known as the Human Machine Interface (the "HMI"), so that it inaccurately recorded lake levels as being approximately 6.4 metres higher than the true lake levels, the effect of which was that you concealed that lake levels were frequently drawn down more than 10 metres to elevations that were not permissible under the OPPR or Water Licence;

b. by failing to correct the HMI, or ensure it was corrected by others, at any time after you manually altered it;

c. when, following the Sedimentation Incident, rather than correcting the HMI, you submitted, or allowed others to submit, water level data to the MOE and/or the DFO on the following dates, knowing that the water level data were false:

- i. March 1, 2010;
- ii. May 21, 2010;
- iii. June 2, 2010;
- iv. June 4, 2010;
- v. June 7, 2010;
- vi. June 8, 2010;

- vii. June 9, 2010;
- viii. June 10, 2010;
- ix. June 11, 2010;
- x. June 24, 2010;
- xi. June 29, 2010;
- xii. July 1, 2010;
- xiii. July 3, 2010;
- xiv. July 6, 2010;
- xv. July 9, 2010;
- xvi. September 7, 2010;
- xvii. October 26, 2010;
- xviii. November 10, 2010;
- xix. November 19, 2010;
- xx. January 4, 2011;
- xxi. May 3, 2011;
- xxii. June 3, 2011;
- xxiii. July 4, 2011;
- xxiv. August 3, 2011; and
- xxv. August 4, 2011

(collectively, the "Data Submissions");

d. in the alternative to paragraph 2(c), from March 1, 2010 to August 4, 2011 when you made, or allowed others to make, the Data Submissions when the Data Submissions were incorrect; and

e. from February 11, 2010 to July 10, 2014 by failing to notify the MOE and the DFO of your conduct as set out in the above paragraphs 2(a)-2(d).

3. The conduct set out above at paragraph 2 is contrary to the preamble and Principles 1 and 7 of the Association's Code of Ethics, which provide:

Members and licensees shall act at all times with fairness, courtesy and good faith to their associates, employers, employees and clients, and with fidelity to the public needs. They shall uphold the values of truth, honesty and

trustworthiness and safeguard human life and welfare and the environment. In keeping with these basic tenets, members and licensees shall:

1) Hold paramount the safety, health and welfare of the public, the protection of the environment and promote health and safety within the workplace; [and]

...

7) Conduct themselves with fairness, courtesy and good faith towards clients, colleagues and others, give credit where it is due and accept, as well as give, honest and fair professional comment[.]

4. Your conduct set out above at paragraph 2 prioritized your motive of maximizing profits for TCHC over the health of the natural environment and the public interest, which is contrary to the provisions of the Association's Code of Ethics as set out above at paragraph 3.

3. On October 6, 2020, the parties appeared before the Panel and jointly confirmed that Mr. Schober had admitted liability for the conduct set out in the Amended Notice of Inquiry. The Panel was advised that formal documents as to agreed facts and admissions would follow. As a result, the Panel directed that the hearing scheduled to commence on October 20, 2020 would only deal with penalty and costs.
4. On October 8, 2020, the parties entered into an Agreed Statement of Facts, which is attached as Appendix "A" to this decision.
5. On October 8, 2020, Mr. Schober admitted the conduct alleged in the Amended Notice of Inquiry in a written document titled "Admissions", which is marked as Appendix "B" to this decision. The only exception is paragraph 1(h) of the Amended Notice of Inquiry, which the Association advised it was no longer pursuing.
6. On October 20, 2020, the parties advised the Panel that they had also reached agreement with respect to penalty but not with respect to costs. The parties jointly requested a brief adjournment until the following day to deliver submissions on penalty and costs. The Panel granted that request.

B. Service

7. Counsel for Mr. Schober confirmed that service of the Amended Notice of Inquiry is admitted.

D. Burden and Standard of Proof

8. The Association bears the burden of proof and must prove its case on a "balance of probabilities" according to the Supreme Court of Canada's decision of *F.H. v. McDougall*, 2008 SCC 53. The Panel notes the Supreme Court of Canada's comments that evidence must be clear, convincing and cogent to satisfy the balance of probabilities test.

E. Conduct

9. Due to the COVID-19 pandemic, the hearing in this matter was conducted by video-conference, on the Zoom platform, hosted by Charest Reporting.
10. The following exhibits were introduced by the parties at the hearing:
 - Exhibit 1 – Amended Notice of Inquiry dated July 15, 2020
 - Exhibit 2 – Agreed Statement of Facts dated October 8, 2020
 - Exhibit 3 – Document Agreement of October 8, 2020
 - Exhibit 4 – Document Book (39 Tabs)
 - Exhibit 5 – Admissions dated October 8, 2020
 - Exhibit 6 (A to H)– Letters of Reference
11. The Panel has considered all of the evidence and accepts the Agreed Statement of Facts of the parties, and Mr. Schober’s Admissions.
12. The Panel is satisfied that the Association has proven Allegations 1 (a), (b), (c), (d), (e), (f), (g), (i), (j), (k), (l), (m), (n), (o), 2 (a), (b), (c), (d), (e), 3, and 4 to the requisite standard. The Panel finds that Mr. Schober has demonstrated negligent and unprofessional conduct contrary to the Act and has acted contrary to Principles 1 and 7 of the Association’s Code of Ethics.

F. Penalty

13. Having made a determination under section 33(1) of the Act that Mr. Schober demonstrated negligent and unprofessional conduct contrary to the Act, and acted contrary to the Code of Ethics, the Panel may impose the following penalties:
 - 33 (2)If the discipline committee makes a determination under subsection (1), it may, by order, do one or more of the following:
 - (a)reprimand the member, licensee or certificate holder;
 - (b)impose conditions on the membership, licence or certificate of authorization of the member, licensee or certificate holder;
 - (c)suspend or cancel the membership, licence or certificate of authorization of the member, licensee or certificate holder;
 - (d)impose a fine, payable to the association, of not more than \$25 000 on the member, licensee or certificate holder.
14. The Association seeks cancellation of Mr. Schober’s membership on the following terms:

- a. Mr. Schober's membership in the Association is cancelled effective the date of the Panel's determination on penalty (the "Cancellation Date").
 - b. Mr. Schober will not re-apply for membership in the Association within 24 months after the Cancellation Date.
 - c. Without limiting any powers of the Association to determine if Mr. Schober meets the requirements for membership at any point in the future, if Mr. Schober re-applies for membership in the Association, he agrees that prior to registration he must:
 - i. Complete and pass the Professional Practice Examination of the Association, and provide written notice to the Association that he has completed and passed it; and
 - ii. 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.
 - d. Mr. Schober shall pay the Association's reasonable legal and inquiry costs, to be agreed or assessed by the Panel following the expiry of the appeal period in s.39(1) of the Act.
15. Mr. Schober consents to the proposed sanction. He, however, also submits that:
- a. What he characterizes as his "eleven-month self-imposed suspension" should be factored into that sanction such that he can reapply within 13 months as opposed to two years; and
 - b. The Association's reliance on allegedly aggravated factors is an error of law.
16. The relevant factors to consider in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17:
- a. the nature and gravity of the conduct proven;
 - b. the age and experience of the respondent;
 - c. the previous character of the respondent, including details of prior discipline;
 - d. the impact upon the victim;
 - e. the advantage gained, or to be gained, by the respondent;
 - f. the number of times the offending conduct occurred;

- g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstance;
- h. the possibility of remediating or rehabilitating the respondent;
- i. the impact on the respondent 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.

[the "Ogilvie Factors"]

17. *Law Society of BC v. Dent*, 2016 LSBC 05, held that it is not necessary to consider each *Ogilvie* factor in every case, and that the factors can be consolidated. In *Dent*, the following consolidated list was suggested:
- a. Nature, gravity and consequences of conduct;
 - b. Character and professional conduct record of the respondent;
 - c. Acknowledgement of the misconduct and remedial action; and
 - d. Public confidence in the legal profession including public confidence in the disciplinary process.
18. The *Ogilvie/Dent* factors are an appropriate approach to decide penalty in this case.

Nature, gravity and consequences of conduct

19. The Association submits Mr. Schober's conduct involved "highly unethical, deliberate, and deceptive behaviour and the nature and gravity of the conduct in this case is at the most serious end of the spectrum." It submits that government and regulatory authorities relied upon Mr. Schober to collect and provide data that verified regulatory compliance. Mr. Schober's conduct undermined the regime.
20. Mr. Schober acknowledges that "there is no doubt that the falsification of data and submission of that falsified data for financial reasons is serious conduct." Mr. Schober argues that the conduct must be viewed within its broader context. Tyson Creek Hydroelectric Project (the "Project") was an innovative project operating with dire financial resources. Mr. Schober was under considerable stress to make the

Project viable. He submits that there is no allegation of any negative consequences.

21. The Panel finds that Mr. Schober's falsification of data and submission of that falsified data falls at the most serious end of the spectrum. Mr. Schober allowed the manipulation of data to continue to produce false data during a period of approximately 1.5 years. Mr. Schober stood to gain financially by his conduct.
22. This factor favours a serious penalty.

Character and professional conduct record of the respondent

23. The Association acknowledges that Mr. Schober has no prior disciplinary record, however it submits that does not diminish the significance of the conduct in this case or outweigh the other factors.
24. Mr. Schober argues he has been a member of the Association for over 25 years without issue. He argues this is a single lapse of judgment albeit one that was not immediately or ever rectified by Mr. Schober.
25. Mr. Schober entered six letters of reference into evidence. He argues that the letters speak about him being a man who is fair and of sound judgment and integrity, who does not compromise his concern for the environment and who understands that capitalism and environmentalism are not at odds. The Association submits that the letters of reference should be given little to no weight.
26. The Panel recognizes Mr. Schober's lengthy career and an absence of other disciplinary action. These weigh in Mr. Schober's favour, however, they must be viewed in context. During that very period, Mr. Schober was engaged in the falsification of data that is the subject of this inquiry. The Panel does not agree with Mr. Schober's characterization of it being a single lapse in judgment. While the manipulation occurred only once, he continued to allow the creation of repeated false data and submitted or allowed others to submit, that false data over a period of nearly 1.5 years. In addition, as Mr. Schober acknowledges, he did not rectify the device he had manipulated which generated the false data.
27. The Panel has considered the letters of reference and recognizes that they speak to positive aspects of Mr. Schober's character. The Panel also recognizes that the letters of reference contain information from third party sources which was not entered as sworn testimony with the right to cross-examination. Some letters are from sources where it is unclear if they have been made aware of the notice of inquiry or that Mr. Schober falsified data. The Panel has considered the letters of reference but has also allocated them limited weight in the circumstances.
28. This factor contains aspects that favour a stronger penalty and also contains mitigating considerations.

Acknowledgement of the misconduct and remedial action

29. The Association argues that at no time after manipulating the data did Mr. Schober correct the device. Rather, Mr. Schober manipulated the device and then continued to report false data, knowingly, for a period of 1.5 years. Further, Mr. Schober admits that from February 11, 2010 to July 10, 2014, he failed to notify the Minister of the Environment and the Department of Fisheries and Oceans of his conduct.
30. The Association submitted the following timeline is relevant context to Mr. Schober's acknowledgment of misconduct:
 - a. On May 22-23, 2013, in the course of civil litigation relating to the Project, Mr. Schober was examined for discovery. During the examination, Mr. Schober admitted he changed the lake level reporting data.
 - b. On or about July 10, 2014, Tyson Creek Hydro Corporation wrote to the Ministry of Forests, Lands and Nature Resources and alleged that Mr. Schober had manipulated records of the lake level reporting data in an attempt to hide the fact that the lake levels were out of compliance.
 - c. It was only after an admission under oath in the civil litigation proceedings, and after a complaint had been made to the Association, that Mr. Schober finally admitted to manipulating the data.
 - d. Mr. Schober did not admit the allegations in the notice of inquiry until October 8, 2020.
31. The Association argues that Mr. Schober seeks to excuse his conduct on the basis of considerable stress and concern for financial viability of the Project, including his own financial investment in the Project. The Association argues that a member's professional responsibility is paramount in the conduct of his work and personal pressures are not a valid excuse for failing to meet professional obligations.
32. Mr. Schober submits that while under oath during the examination for discovery in the civil litigation proceedings, he candidly admitted to the conduct and did not try to minimize it in any way. Moreover, he denies his first admission of the allegations was on October 8, 2020. Rather, Mr. Schober says he took responsibility for his actions from his first contact with the Association. Mr. Schober specifically referred the Panel to his letter dated February 6, 2015 in which he responds to the Association complaint by stating, "*I fully admit to doing this...What I did that day was obviously and seriously wrong...My lapse in judgment that day was serious. I deeply regret it. I emphasize that this was a one-time failure on my part, at a time of great pressure and stress, driven by a measure of desperation at that difficult time....*"

33. The Panel agrees that Mr. Schober's letter to the Association dated February 6, 2015 represents an acknowledgment of his misconduct, which came well before his October 8, 2020 admission. The Panel also considers that this acknowledgement must be viewed in context of the other aspects of the timeline pointed out by the Association. It was not until Mr. Schober was questioned under oath in 2013 that he admitted to having manipulated the data recording device in February 2010, and submitted falsified data for a period of 1.5 years thereafter.
34. The Panel finds that Mr. Schober took no remedial steps to rectify the data recording device.
35. This factor contains aspects that favour a stronger penalty and also contains mitigating considerations.
36. The Panel finds that Mr. Schober's argument about the Association's position on aggravating factors is no longer applicable. Mr. Schober made this argument at a point in the proceedings when he anticipated that the Association would be advancing a specific argument about lack of remorse, however, the Association ultimately did not do so.

Public confidence in the profession including public confidence in the disciplinary process

37. The Association argues there is a strong need for both specific and general deterrence in this case. The Association submits that a strong message must be sent to the public and to its members that such dishonest conduct will not be tolerated.
38. The Association argues Mr. Schober's conduct clearly undermines the public confidence in the profession and brings it into disrepute. The Association argues that the public would be outraged by this case and a clear message must be sent that members of the Association are responsible for meeting those expectations as set out in the *Code of Ethics*.
39. Mr. Schober argues that the position put forward by the Association and not opposed by him, is sufficient to ensure public confidence in the profession and the disciplinary process. Mr. Schober argued that counting the 11 months during which he voluntarily did not practice the profession towards the period he must wait to re-apply would not affect public confidence.
40. The Panel considers that public confidence is a paramount consideration in this case. The Panel agrees that the public and regulatory bodies would be outraged by this conduct. A strong message must be sent to Mr. Schober, the profession, and the public that his conduct will not be tolerated in order to achieve specific and general deterrence and to maintain public confidence in the profession.
41. This factor favours a serious penalty.

42. The Association submits the following similar cases are relevant to consider in the range of penalties imposed:
 - a. *Law Society of British Columbia v. Ogilvie*: a lawyer rendered accounts which contained fraudulent misstatements and misappropriated client funds. He was disbarred.
 - b. *Re Rogers* (EGBC Discipline Committee, December 9, 2019): Ms. Rogers provided falsified soil testing data in a report to Alberta Environment and Parks. She had no prior disciplinary history and acknowledged the conduct. She was suspended for three years in Alberta. EGBC's suspension was ordered to coordinate with her Alberta suspension.
 - c. *Re Foreman* (EGBC Discipline Committee, August 25, 2015): Mr. Foreman acquiesced to the disclosure of misleading, inaccurate and insufficiently qualified information to the public and took no appropriate action to correct the information. A two-year suspension was ordered.
 - d. *Re Halarawicz and re Chrysanthous*: are EGBC cases in which the Discipline Committee panels found repetitive misconduct that reflected indifference to the member's legal and ethical obligations resulted in cancellation.
43. The Panel does not agree that Mr. Schober's voluntary period away is equivalent to a suspension. There is a distinction between time away from the practice for voluntary reasons, and time away from the practice due to a suspension or cancellation that is ordered by the Discipline Committee. A voluntary period of time away from the profession is not viewed as a sanction by the public or by the rest of the profession. The Panel does not agree that a reduction in the time within which Mr. Schober may re-apply would maintain the confidence of the public.
44. The Panel has carefully considered this matter and has taken the above factors into consideration, as well as the parties' joint position on sanction, when considering the appropriate penalty. The Panel considers that in light of all the circumstances, the seriousness of the conduct, the length of time over which it occurred, the need for deterrence and public confidence in the profession, the appropriate penalty is cancellation of Mr. Schober's membership. The Panel orders that Mr. Schober's registration is cancelled effective the date of this Order, and that he is not eligible to re-apply for reinstatement of his registration for a period of 24 months from the date of this Order.
45. The Panel also agrees with the proposed requirements Mr. Schober must meet prior to applying for registration.

G. Costs

46. Section 35 of the Act provides:

Costs

35 (1) If the discipline committee makes a determination under section 33 (1), the discipline committee may direct that reasonable costs of and incidental to the investigation under section 30 and the inquiry under section 32, including reasonable fees payable to solicitors, counsel and witnesses, or any part of the costs, be paid by the person, and the costs may be determined by the committee.

47. The Association seeks reasonable costs including reasonable fees of and incidental to the investigation under section 30 and the inquiry under section 32, including reasonable fees payable to solicitors, counsel and witnesses, or any part of the costs to be paid by Mr. Schober. The Association seeks a direction that the Association is entitled to those reasonable costs, but that the quantum be resolved at a later date.
48. The Association notes that in past decisions, the Discipline Committee has awarded reasonable costs in the range of 70 to 90% of actual costs incurred by the Association. The Association does not seek a specific percentage at this time. The Association submits that the process in *Re: Chrysanthous* should be followed.
49. The Association proposes that following the hearing, when the bulk of costs and disbursements will be known, and the Panel's decision on penalty will be released, the Association will provide Mr. Schober with evidence supporting its claim for costs. Mr. Schober can likewise provide any evidence he relies upon. The parties may agree on costs, or failing that, the parties can make submissions to the Panel in writing and it may determine costs.
50. Mr. Schober opposes that requested order. In his written submission delivered at the hearing, Mr. Schober argued "On costs, the Association seeks 80% of its actual costs (the dollar amount of which it seeks to determine at a later date). Mr. Schober opposes any costs order on the basis that he is entitled to notice of the amount being sought and that the Panel cannot assess or order reasonable costs in the abstract."
51. During oral submissions, Mr. Schober argued this is an unusual case where he anticipates mounting an argument that the Association by its conduct in this proceeding and the manner in which it has prosecuted this proceeding should be disentitled to costs. Mr. Schober argued that he was unable to say whether the Association should be disentitled to costs in their entirety or it will be something less than that. Mr. Schober submitted that he anticipated advancing a wholesale challenge to both the Association's entitlement to costs as well as to the quantum of those fees.

52. Mr. Schober also argued that he is seeking not only a presentation of the Association's legal accounts but also the entirety of the Association's file.
53. Mr. Schober argued that he will advise the Association, after having seen the Association's materials, whether and to what extent he opposes a costs order. For this reason, Mr. Schober's counsel requested during the hearing that the matter of costs be set over to another day.
54. There was no written application for production of the Association's file, insufficient or no notice of the request, and no authorities in support of the request. In the circumstances of such a significant request, the Panel does not consider that it has an application for production of the Association's file before it and declines to make any order in that regard at this time.
55. The Panel also declines to make an order at this time with respect to costs. Given the position of the parties, the Panel has decided to set a submission schedule and will hear full arguments from the parties as to their position on costs.

H. Statement by Mr. Schober

56. Mr. Schober did not testify but requested an opportunity to address the Panel at the end of the hearing, during which he stated that he wanted to thank the Panel for giving him the opportunity to sincerely apologize for his actions. He expressed that he was sorry, he knows what he did was wrong, and he deeply regrets what he did.

H. Summary

57. In summary, the Panel finds that the Association has proven Allegations 1 (a), (b), (c), (d), (e), (f), (g), (i), (j), (k), (l), (m), (n), (o), 2 (a), (b), (c), (d), (e), 3, and 4 to the requisite standard. The Panel finds that Mr. Schober has demonstrated negligent and unprofessional conduct contrary to the Act, and has acted contrary to Principles 1 and 7 of the Association's Code of Ethics.
58. The Panel orders that Mr. Schober's membership with the Association is cancelled on the following terms:
 - a. Mr. Schober's membership in the Association is cancelled effective the date of the Panel's determination on penalty (the "Cancellation Date").
 - b. Mr. Schober will not re-apply for membership in the Association within 24 months after the Cancellation Date.
 - c. Without limiting any powers of the Association to determine if Mr. Schober meets the requirements for membership at any point in the future, if Mr. Schober re-applies for membership in the Association, he agrees that prior to registration he must:

- i. 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
 - ii. Complete and pass the Professional Practice Examination of the Association, and provide written notice to the Association that he has completed and passed it.
59. The Panel will determine whether to issue costs pursuant to s 35 of the Act. The Panel directs that the parties provide written submissions in accordance with the following schedule:
 - a. Submissions must be delivered by counsel for the Association ("Association Submissions") to Mr. Schober and to the Panel by February 5, 2021.
 - b. Submissions must be delivered by Mr. Schober to counsel for the Association and to the Panel by February 19, 2021.
 - c. Reply submissions may be delivered by counsel for the Association to Mr. Schober and to the Panel by February 26, 2021.
60. Submissions to the Panel shall be delivered to Susan Precious, counsel for the Panel, and may be delivered electronically.
61. The Association or Mr. Schober may request an oral hearing on penalty and costs by no later than February 5, 2021.

Dated: January 18, 2021

<original signed by>

Colin Smith, P.Eng.

<original signed by>

Oliver Bonham, P.Geo

<original signed by>

Tom Morrison, P.Eng.

Appendix "A"

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

and

IN THE MATTER OF PETER SCHOBER, P.ENG.

File No. T15-028

AGREED STATEMENT OF FACTS

Background

1. Peter Schober, P.Eng. ("Mr. Schober") is a member of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association").
2. During the period from February 11, 2010 to August 4, 2011, Mr. Schober was a director, shareholder, and secretary of Renewable Power Corporation ("RPC"). [TAB 33; TAB 37, Qs 1 and 2] During this time, he was also a director of Tyson Creek Hydro Corporation ("TCHC"). [TAB 36]
3. During the period from February 11, 2010 to August 4, 2011, RPC was a 65% shareholder of TCHC. [TAB 36; TAB 39, Q 1]

Individuals Referenced in the Documents

4. [REDACTED], is a Professional Engineer and member of the Association. He currently works at [REDACTED].
5. [REDACTED]'s position with the British Columbia Ministry of Environment (the "MOE") at the material time was [REDACTED], [REDACTED]. [REDACTED] was the statutory decision maker under the *Water Act* at the material time, including in

relation to TCHC's applications to operate Tyson Creek Hydroelectric Project (the "Project") in the vicinity of Tyson Lake in British Columbia.

6. [REDACTED], was the [REDACTED], Ministry of the Environment at the material time. He is a Professional Geoscientist and member of the Association. He is currently a [REDACTED]
[REDACTED]
[REDACTED].
7. [REDACTED]
[REDACTED]
[REDACTED].
8. [REDACTED]
[REDACTED]
[REDACTED]
9. [REDACTED] was retained by TCHC to prepare its Operational Environment Monitoring Plan.

The Project

10. The MOE issued a Conditional Water Licence (the "Water Licence") to TCHC on December 21, 2007 (amended September 12, 2008) to operate the Project. [TAB1; TAB 3]
11. The Project uses Tyson Lake, at the head of the Narrows Inlet, near Sechelt, B.C. as a water source. It diverts flows from Tyson Creek to a powerhouse, which is 500m upstream of the confluence of Tyson Creek with the Tzoonie River.
12. The purpose of the Project was to generate hydro power to sell to BC Hydro.

13. During the Project's approval process and operation, TCHC was in contact with representatives of the MOE, in particular, [REDACTED] and [REDACTED]
14. The Operating Parameters and Procedures Report ("OPPR") was a document that was prepared by TCHC in consultation with the MOE as part of the Project's operation approval process. [TAB 5].
15. The Operational Environmental Monitoring Plan ("OEMP"), prepared for TCHC by [REDACTED], was another key document that the MOE required TCHC to prepare as part of the approval process.
16. In support of TCHC's request for leave to commence operation of the Project, further to clause (l) of the Water Licence, TCHC submitted to the MOE the final Operating Parameters and Procedures Report dated January 15, 2010 ("Final OPPR") [TAB 8] and the final Operational Environmental Monitoring Plan ("Final OEMP") [TAB 10] dated November 18, 2009.
17. On January 22, 2010, the MOE granted TCHC Leave to Commence Operation of the Project ("Leave"). [TAB 9]

The Lake Level Drawdown

18. As part of the Project's approved operation and electricity generation, the level of Tyson Lake was drawn down below its natural variability. Lower drawdown limits would improve the financial viability of TCHC. [TAB 39 (Q7)]
19. On February 25, 2009, prior to Leave being granted, TCHC applied for additional storage volume. The application sought approval of a drawdown of Tyson Lake to 30 m (i.e. 20 m further than the initial 10 m drawdown) [TAB 4]. In support of this

application, TCHC prepared a Water Development Plan, version 3 of which was dated February 25, 2009 (the "WDP 3"). [TAB 4]

20. This application for additional storage and drawdown was not approved by the MOE.
21. As a condition of the Water Licence and Leave, the Project was required to operate in compliance with the Final OPPR, which stipulated that the maximum drawdown of Tyson Lake for power generation use was 10 metres. [TAB 1 (clause (I)); TAB 8 (ss. 2.4); TAB 9]

The Sedimentation Incident

22. On February 17, 2010, British Columbia Ministry of Forests and Range staff detected a significant discharge of sediment-laden water from the Project facility into Tyson Creek, and then into the Tzoonie River (the "Sedimentation Incident"). [TAB 10]
23. The Sedimentation Incident was related to the erosion of the Tyson Lake delta as a result of the drawdown of Tyson Lake by TCHC as part of the Project's approved operation. [TAB 10; TAB 16]
24. On February 19, 2010, the MOE notified TCHC of the Sedimentation Incident and requested that TCHC undertake several actions, including carrying out ongoing monitoring and providing records and data to the MOE, including in relation to Tyson Lake water levels. [TAB 11; TAB 17]
25. On April 23, 2010, the MOE issued an Order pursuant to the *Water Act*, R.S.B.C. 1996 c. 483 which required TCHC to cease all diversion of water through the Project facility, undertake ongoing monitoring, and provide an Environmental Impact Assessment report. [TAB 19; TAB 20]

26. On May 21, 2010, Mr. Schober submitted a Recommencement Plan to the MOE on behalf of TCHC (the "Recommencement Plan"). [TAB 22] The Recommencement Plain relied, in part, on lake level drawdown maximums.
27. On May 27, 2010, the MOE allowed the Project to recommence operations using drawdowns of water within the natural range of Tyson Lake water levels, in part relying on the Recommencement Plan, and required lake levels to be recorded and submitted to the MOE and Federal Department of Fisheries and Oceans (the "DFO"). [TAB 24]
28. A report dated September 16, 2010 was prepared by Westrek Geotechnical Services Ltd. for RPC regarding the implications of a 5 metre drawdown (the "Westrek Report"). [TAB 27]
29. On October 19, 2010, the MOE allowed the Project to operate with additional drawdowns of 5 metres following, *inter alia*, receipt of the Westrek Report. [TAB 29; TAB 31]

The Data Alteration

30. On February 11, 2010, prior to the Sedimentation Incident, Mr. Schober manually changed the data recording device installed at the Project site which recorded lake levels, known as the Human Machine Interface (the "HMI"). The effect of this change was to increase the recorded lake level by approximately 6.4 meters, the effect of which was that frequent impermissible drawdowns of the lake water level under the OPPR were concealed. [TAB 34]
31. At no time thereafter did Mr. Schober correct the change he made to the HMI.

32. Following the Sedimentation Incident, Mr. Schober (or other TCHC representatives, with Mr. Schober's knowledge) sent water level data that he knew to be inaccurate to the MOE and/or the DFO on the following dates:

- A. March 1, 2010; [TAB 32(A)]
- B. May 21, 2010; [TAB 32(B)]
- C. June 2, 2010; [TAB 32(C)]
- D. June 4, 2010; [TAB 32(D)]
- E. June 7, 2010; [TAB 32(E)]
- F. June 8, 2010; [TAB 32(F)]
- G. June 9, 2010; [TAB 32(G)]
- H. June 10, 2010; [TAB 32(H)]
- I. June 14, 2010; [TAB 32(I)]
- J. June 24, 2010; [TAB 32(J)]
- K. June 29, 2010; [TAB 32(K)]
- L. July 1, 2010; [TAB 32(L)]
- M. July 3, 2010; [TAB 32(M)]
- N. July 6, 2010; [TAB 32(N)]
- O. July 9, 2010; [TAB 32(O)]
- P. October 26, 2010; [TAB 32(P)]
- Q. November 19, 2010; [TAB 32(Q)]
- R. January 4, 2011; [TAB 32(R)]
- S. May 3, 2011; [TAB 32(S)]
- T. June 3, 2011; [TAB 32(T)]
- U. July 4, 2011; [TAB 32(U)]
- V. August 3, 2011; and [TAB 32(V)]

W. August 4, 2011 [TAB 32(W)]

33. On May 22 – 23, 2013, in the course of litigation between TCHC and its geotechnical advisors on the Project, Mr. Schober was examined for discovery as the representative of TCHC. In that discovery, Mr. Schober admitted he changed the lake level reporting data.

34. On or about July 10, 2014, TCHC wrote to the Ministry of Forests, Lands and Natural Resource Operations and alleged that Mr. Schober had manipulated records of the lake level reporting data in an attempt to hide the fact that the lake levels were out of compliance. [TAB 35]

DATED THIS 8 DAY OF OCTOBER, 2020



Counsel to the Association of
Professional Engineers and Geoscientists
of British Columbia



Counsel to Peter Schober, P.Eng.

Appendix "B"

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

and

IN THE MATTER OF PETER SCHOBER, P.ENG.

File No. T15-028

ADMISSIONS

Peter Schober, P.Eng., a member of the Association of Professional Engineers and Geoscientists of British Columbia, makes the following admissions in this proceeding:

1. During the period from February 11, 2010 to August 4, 2011, Mr. Schober was a director, shareholder and secretary of Renewable Power Corporation ("**RPC**") and a director of Tyson Creek Hydro Corporation ("**TCHC**") and RPC was a 65% shareholder of TCHC.
2. The British Columbia Ministry of Environment (the "**MOE**") issued a Conditional Water Licence (the "**Water Licence**") to TCHC on December 21, 2007 (amended September 12, 2008) to operate the Tyson Creek Hydroelectric Project in the vicinity of Tyson Lake in British Columbia (the "**Project**").
3. On or about January 22, 2010, the MOE granted TCHC leave to commence operation of the Project ("**Leave**").
4. It was a condition of the Water Licence and Leave that the Project be operated in compliance with the Project's Operating Parameters and Procedures Report ("**OPPR**"), which stipulated that the maximum drawdown of Tyson Lake for power generation use was 10 metres.
5. On or about February 10, 2010, and without attending on-site, Mr. Schober manually changed the data recording device installed at the Project site to increase the recorded lake level by approximately 6.4 meters, the effect of which was that impermissible drawdowns under the OPRR were concealed.
6. At the time the data were changed, Mr. Schober was under a considerable amount of stress. One of the reasons Mr. Schober changed the data recording device included his concern for the financial viability of TCHC and the Project including, but not limited to, his own financial investment in the Project.
7. On or about February 17, 2010, British Columbia Ministry of Forests and Range staff detected a discharge of sediment-laden water from the Project facility into Tyson Creek, and then into the Tzoonie River (the "**Sedimentation Incident**").

8. The Sedimentation Incident was related to the erosion of the Tyson Lake delta as a result of the drawdown (permissible or otherwise) of Tyson Lake.
9. Following the Sedimentation Incident, Mr. Schober knew the MOE was concerned about environmental impacts arising from the Sedimentation Incident.
10. Following the Sedimentation Incident, the MOE required ongoing provision of data to it regarding, among other things, Tyson Lake water levels.
11. On approximately 25 occasions, between March 1, 2010 and August 4, 2011, Mr. Schober submitted, or allowed others to submit, water level data to the MOE and/or the DFO that he knew to be inaccurate.
12. From February 11, 2010 to July 10, 2014, Mr. Schober failed to notify the MOE and the DFO of his conduct set out in paragraphs 5 and 11 (above).
13. The conduct set out above in paragraphs 5, 11 and 12:

- a. demonstrates negligent and unprofessional conduct contrary to the Act; and
- b. is contrary to the Association's Code of Ethics, which provides:

Members and licensees shall act at all times with fairness, courtesy and good faith to their associates, employers, employees and clients, and with fidelity to the public needs. They shall uphold the values of truth, honesty and trustworthiness and safeguard human life and welfare and the environment. In keeping with these basic tenets, members and licensees shall:

1) Hold paramount the safety, health and welfare of the public, the protection of the environment and promote health and safety within the workplace;

...

7) Conduct themselves with fairness, courtesy and good faith towards clients, colleagues and others, give credit where it is due and accept as well as give, honest and fair professional comment.

DATED THIS 8 DAY OF OCTOBER, 2020



Peter Schober, P.Eng.