

**IN THE MATTER OF  
THE ENGINEERS AND GEOSCIENTISTS ACT,  
R.S.B.C. 1996, chapter 116, as amended (the “Act”)**

**and**

**a hearing concerning**

**[APPLICANT B]  
(the “Applicant”)**

**DECISION OF THE REGISTRAR**

Hearing Date: December 11, 2017

Counsel for the Association: Henry Wood, Q.C.  
Counsel for the Applicant: Self-represented

1. The Registration Committee of the Association of Professional Engineers and Geoscientists of the Province of British Columbia (the “Association”), doing business as Engineers and Geoscientists BC, determined that a hearing should be conducted pursuant to s 7(c) (5) of the Bylaws for a decision on the Applicant’s suitability for registration.
2. The Council has delegated its power to conduct a hearing to the Registrar pursuant to s. 13(8) of the Act.
3. A Notice of Hearing was issued dated September 20, 2017 and delivered to the Applicant setting out the date for the hearing. The Applicant attended the hearing without legal counsel.
4. The issues giving rise to this hearing relate to the Applicant’s conduct in relation to an examination on a course offered by the Structural Engineers Association of British Columbia (“SEABC”). Two former colleagues at the firm where the Applicant was then employed (the “Firm”), [Mr. F] (“Mr. F”) and [Mr. EIT], who was an engineer in training at the relevant time (“Mr. EIT”), allege that the Applicant attempted to cheat on the examination for this course in several different ways. This is described in the Notice of Hearing as follows:
  1. Offering an inducement of \$2000 to [Mr. F], a member of the Association, who was entrusted with proctoring an examination for the Certificate in Structural Engineering in an attempt to obtain the examination prior to the time you were scheduled to write it;

2. Asking a junior colleague, [Mr. EIT], who was to proctor the same examination for another examinee, to provide you with the examination prior to the time you were scheduled to write it;
3. Accepting the examination, or a copy of it, from [Mr. EIT] and reviewing it prior to the scheduled time for writing; and
4. Violating the condition that the examination be completed within 2 hours.

### **Onus and Burden of Proof**

5. Section 13 of the Act provides that “an applicant...must submit evidence satisfactory to the council...that the applicant is of good character and repute.”
6. Counsel for the Association submitted that in light of the wording of that section, the onus is upon the applicant to satisfy this panel of his suitability. Counsel referred to the decision of the Association dated January 18, 2017, *Re Applicant A*. In particular, the standard to be met in a civil case is the “balance of probabilities”, which means “more likely than not”.

### **Facts**

7. Although the onus is upon the applicant, it was agreed that the Association would proceed first.
8. The Association called three material witnesses concerning the character issues in this case: a representative of SEABC, [Mr. S] (“Mr. S”), Mr. EIT and Mr. F.

### **Mr. S**

9. Mr. S was coordinator and instructor for the course in structural modelling that is the subject of this hearing. He explained that this course was part of a certificate program offered by SEABC. Mr. S testified that, at the relevant time, the arrangements for the examination at the end of the course by an out-of-town student were that the student was required to notify Mr. S of the person he nominates as the proctor for the exam no less than a week before the exam, and that Mr. S would then send the proctor an email, along with the exam, instructions for the exam, and the form to be completed on the completion of the exam. Mr. S testified that the exam for this course was open-book, and subject to a time limit, and the examinee was not to receive any assistance from any other party.

10. Mr. S testified that the Applicant undertook the course and identified Mr. EIT as the proctor.

11. Mr. S confirmed that he sent an email and the examination and other attachments to Mr. EIT at 6:06 a.m. on April 17, 2012. As well, Mr. S confirmed receipt of the email at 11:17 that day from the Applicant's manager, advising that there had been an irregularity and the exam was not completed. We understood that the exam was not completed on that day or at any other time by the Applicant.

### **Mr. EIT**

12. Mr. EIT testified that as of April 2012, he was a junior engineer in training at the Firm. The Applicant asked him to proctor an examination and he agreed to do so.

13. On the morning of April 17, 2012, on his arrival at the office, Mr. EIT logged in and saw the email from Mr. S. The Applicant was waiting for him and asked him to forward the email. Mr. EIT did so without reading the email. Unbeknownst to Mr. EIT at that point, the email contained the instructions about administering the exam, including the restrictions on the time limit.

14. Mr. EIT was asked why he forwarded the email without reading it, and testified "I didn't have any reason to doubt that my senior engineer would say something that is not right, so I just trusted him, forwarded the email."

15. After forwarding the email, the Applicant later came back and asked Mr. EIT some questions about the exam. Mr. EIT testified that he believed the Applicant's questions related to the exam because they had no relationship to any work underway at the Firm. Mr. EIT has a master's degree in structural engineering.

16. Mr. EIT then read the body of the email, and realized that there were restrictions on the manner in which the exam was to be administered, which he had not noticed earlier. He told his manager. On his manager's instructions, he went to the Applicant and told him to delete the email (and exam). Then, Mr. EIT forwarded the email that he had received from Mr. S to his manager, who in turn forwarded it to SEABC.

17. Mr. EIT later saw the Applicant escorted out of the Firm's premises and learned his employment was terminated. He described feeling "really bad" that he had contributed to the Applicant losing his job.

18. Mr. EIT was referred to the Applicant's letter of response to the Association in which the Applicant had described interactions between them about the exam, and stated in particular that Mr. EIT had told the Applicant that he could not proctor the exam because he was not a P. Eng. Mr. EIT denied that such a conversation occurred.

19. Mr. EIT's evidence did not vary in cross-examination. These events have remained firmly in his memory.

20. I note that Mr. EIT had no motivation to lie or mislead in giving evidence, as he has no personal interest in the outcome of these proceedings.

21. For these reasons, and based upon the unreliability of the evidence of the Applicant, described below, where the testimony of the two conflict, I prefer the evidence of Mr. EIT.

**Mr. F**

22. Mr. F was a professional engineer at the Firm. He testified that the Applicant asked him to proctor some weeks prior to April 17, 2012 as he was to be a proctor for another engineer who was taking the same course.

23. Mr. F testified that that the Applicant telephoned him a few days before the call described below and suggested to him that he create an email account and the exam would be sent to that name but Mr. F wouldn't actually have to proctor the exam. Mr. F testified that he told the Applicant he couldn't do that and got off the call. This was not pursued directly in cross-examination of the Applicant (perhaps because the Applicant's evidence was so unclear about whether he had had any conversation at all with Mr. F about proctoring the exam). The issue is not identified on the Notice of Hearing, and so I make no findings about this.

24. Mr. F then testified that on April 16, 2012, he received a call from the Applicant:

April 16th, ■■■ phoned in the morning and said \$2,000 into the phone, and I said, \$2,000 for what? And he said, for the exam. And I said something to the effect, ■■■, I can't do that. You know, I don't know exactly what you're talking about, but I can't do that. And I just made another excuse to get off the phone and -- and that was the end of that.

25. Mr. F testified that the Applicant called back and said that Mr. EIT would proctor the exam instead of Mr. F.

26. I tried to ascertain with precision when Mr. F was chosen as proctor and whether and when the proctor was altered to Mr. EIT, noting that Mr. S testified that he must have notice about a week in advance of the examination. That information was not available. However, I am satisfied that that evidence is not essential, and would not impact the value of Mr. F's evidence that the call described immediately above was received.

27. Mr. F testified that he thought about this call and talked to a colleague and came to the view that he had to tell his manager about it. He expressed some reluctance to do so, but felt he was already “in hot water” by virtue of the Applicant’s request. He noted that the Applicant was his “superior” at this time. When asked further about this by counsel for the Association, Mr. F stated that, prior to this incident, he had concerns about the Applicant’s competence but not his integrity.

28. Mr. F sent an email to the manager at 2:28 p.m., reporting this incident, on April 16, 2012.

29. Mr. F was referred to the Applicant’s letter to the Association, in which the Applicant described Mr. F as “unfriendly” to him. Mr. F denied this was so prior to the incident in question and said that they had only dealt with one another on one project.

30. the Applicant’s cross examination of Mr. F seemed to be directed at showing that Mr. F disliked him. Mr. F did not demonstrate animosity toward the Applicant, and the cross-examination did not establish any reason for Mr. F to fabricate the allegation that is the subject of these proceedings.

31. Mr. F had no motivation to lie or mislead in giving evidence, and no personal interest in the outcome of these proceedings. Due to the clarity of his recollection about the substance of the telephone calls, and based upon the unreliability of the evidence of the Applicant, described below, where the testimony of the two conflict, I prefer the evidence of Mr. F.

### **The Applicant**

32. The Applicant testified and was subject to cross-examination. Unlike the evidence of the other witnesses, the Applicant’s testimony was unclear, often contradictory, not affirmative, and frequently couched with ‘I think’, ‘I don’t recall’, and ‘maybe’. He was unable to recall events, such as, for example, whether he received the exam electronically or in paper format and other examples referred to below. But in the same time frame, he took another exam proctored by a friend in the local library and had fairly firm memories of that exam and the requirements for it by comparison. Overall, the Applicant’s evidence did not ring true.

33. The Applicant began by stating that he had been terminated by the Firm without cause, and there had been no reference to his conduct regarding the exam. He said that he had made “an unintentional mistake” regarding the exam.

34. The Applicant testified that there was no advantage to him at all in taking this course and exam and he was doing this purely for personal development. However, in

cross-examination, he agreed that he would be able to use the fact that he had successfully completed the exam or, if obtained, the related certificate, to improve his resume and employment opportunities. He also testified that the Firm would pay the costs of the course if he passed.

35. Contrary to the Applicant's testimony, those are two obvious benefits to successful completion of this exam.

36. As to the allegation that the Applicant offered Mr. F a "bribe" to provide him with the examination, the Applicant denied that the telephone call as described by Mr. F took place. He testified that he might have spoken with Mr. F about the Firm covering the costs of the course, but was unsure. He testified that he could not think of a reason why Mr. F would make this up. However, he then testified about what he referred to as prior "friction" between them, clearly attributing Mr. F's allegation to ill-will.

37. The Applicant was asked about his discussions with Mr. F about acting as proctor on this examination. the Applicant testified that he *thought* he did not ask Mr. F to proctor. He conceded that he knew Mr. F was to proctor a second engineer on the same exam. He then testified firmly that he did not ask Mr. F to proctor his exam. Finally he said that he was unsure.

38. As to his communications with Mr. EIT, the Applicant's evidence was internally inconsistent, inconsistent with statements he had made in letters to the Association prior to this hearing and, at times, inconsistent with the testimony of Mr. EIT. For example, the Applicant was unclear about when he asked Mr. EIT to act as proctor. He was unclear about whether and when he had asked Mr. EIT about receipt of the exam prior to April 17, 2012.

39. The Applicant was also unclear about whether he asked Mr. EIT for assistance with exam questions. He first denied that he had asked Mr. EIT questions about the exam, explained that it was probably a misunderstanding or miscommunication, and also conceded that "I wouldn't say hundred percent".

40. As to Mr. EIT's evidence about returning later in the morning to tell the Applicant to delete the email and exam, the Applicant testified that he could not recall that. the Applicant testified that Mr. EIT said you needed to be a P. Eng. to proctor the exam. This was denied by Mr. EIT, and is not supported by any other evidence. I am of the view that Mr. EIT made no such statement.

41. The Applicant's testimony about his knowledge of the restrictions on the administration of the exam was also unsatisfactory. He testified that it was his intention to take the exam during breaks at work, essentially at his own pace. When asked about

the restrictions on the administration of the exam, he testified that when he received the exam, he did not read the instructions, even though they were included with the email to which the exam was attached. He also testified that he presently believes that there is no restriction on the time in which the exam is taken. He was then referred to his earlier letter to the Association, in which he wrote that when Mr. EIT interrupted him while he was taking the exam, Mr. EIT told him that there was a time limit of two hours and that this was a surprise to him.

42. Later, The Applicant testified that he knew, at the time, that “any exam should have some time limit”. When asked what time limit applied to this exam, he first answered “maybe two/three hours”, though later still stated that he thought it was maybe four or six hours.

43. After extensive cross-examination, the Applicant agreed that, by taking the “relaxed approach to completing this exam” he must have known he was violating some of the exam requirements.

44. The Applicant then stated that this was “unintentional” and he didn’t mean to harm anyone. He then admitted that by taking the exam on his “own time frame”, he thought he might get a better result.

45. Association counsel returned to the topic at the end of the cross-examination. At this point, the Applicant admitted that he knew in 2012 that he was seeking an advantage over other examinees, and that he had betrayed the trust of the junior member of the Firm who acted as his proctor.

46. The Applicant testified that his departure from the Firm was unrelated to these incidents, or at least no one ever told him otherwise. He wrote in a letter to the Association that the termination had been a few days after the exam incident. In cross-examination when asked about the reason for this incorrect statement as to the timing of the termination, the Applicant suggested that the error had been introduced by a friend who helped edit his letter. This testimony is inherently improbable. It is hard to imagine that anyone would forget what would have been a significant event. I am of the view that this was deliberately misleading.

47. In summary, I find that in advance of the SEABC examination, the Applicant attempted to secure a copy of the exam from Mr. F by offering him \$2000 for a copy of the exam. The Applicant then did obtain the exam from Mr. EIT, in circumstances where he knew that he was circumventing the examination requirements by writing the exam at his own speed. When this was discovered, the Applicant was told to delete the exam and his employment was terminated. When asked about these incidents by the Association, the Applicant gave various false explanations. Apart from the admission made at the

conclusion of the cross-examination, the Applicant attempted to maintain a simply unbelievable position throughout the hearing.

48. The facts appear to be slightly different than the issues set out in the Notice of Hearing. In particular, it was Mr. F and not Mr. EIT who was to proctor the exam for a second examinee. Also, items #2 and #3 on the Notice of Hearing suggest there was a pre-scheduled time for writing the exam. Instead, there was to be a time-limit for exam and so it had to be at a scheduled time. the Applicant attempted to circumvent the exam requirements by asking for and obtaining the exam without adhering to that restriction. I am satisfied that these discrepancies are not significant and the Notice of Hearing gave adequate notice to the Applicant of the issues to be addressed in this hearing.

### **The Meaning of Good Character and Repute**

49. I adopt the review of the case law regarding the meaning of good character and repute set out in the prior Association's decision *Re Applicant A*:

28. Counsel referred me to an article prepared by Mary Southin *The Advocate*, (1987) v. 35, at 129, Mary Southin, QC (as she then was) quoted in a decision of the Law Society, *Applicant 3 (Re)*, 2010 LSBC 23 (CanLII). Ms. Southin wrote that character comprises:

1. An appreciation of the difference between right and wrong;
2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;
3. A belief that the law at least so far as it forbids things which are *malum in se* must be upheld and the courage to see that it is upheld.”

29. Counsel noted that the last of these three items might be applicable more to lawyers than other professions. I am satisfied that this article captures a description of the quality of integrity that is essential for a member of this profession. A practical test of good character would be that if the general public, your colleagues and your competitors knew your actions, full disclosure, they would not hesitate to consider you to represent them, or partner with you.

30. Good repute was defined in the article as follows:

“... would a right-thinking member of the community consider the applicant to be of good repute? ...

If that right-thinking citizen would say, knowing as much about an applicant as the Benchers do, “I don't think much of a fellow like that. I don't think I would want him for my lawyer”, then I think the Benchers ought not to call him or her.”



31. I am of the view that the applicant's repute is gauged by assessing what a member of the public or a member of the engineering profession would say about him or her, knowing the relevant facts.

32. Counsel also noted other principles that have been applied in credentials hearings conducted by other regulatory bodies, in particular, the Law Society of British Columbia and the Law Society of Upper Canada. All of these principles were referred to in *Re Applicant 3*. I have borne these in mind in considering this application:

- a) The issue is the applicant's character at the time of the application;
- b) The standard to be met is not one of perfection;
- c) A single incident is not determinative of character;
- d) A serious event that calls into question the applicant's character is not addressed merely by an assertion of remorse: a more thorough examination is required.

50. In addition, and relevant for this case, I note the following passage from *Law Society of BC re Applicant 4*, 2013 LSBC 03:

[42] When considered in light of the good character test, the Applicant's failure to convince the Panel that he was telling the truth is fatal to his application.

### **Analysis**

51. As set out above, I have found that the Applicant sought to obtain an exam, and then did obtain and begin to write an exam in a manner he knew to be inconsistent with the exam requirements. This conduct is inconsistent with the integrity required of a member of this profession.

52. While these events occurred six years ago, the Applicant falsely denied his conduct in correspondence with the Association and repeatedly during the hearing. As set out in the authorities referred to above, this is relevant to the assessment of his character at this time. The Applicant's attempts to deceive the Association and this Panel show that, despite the passage of time, he continues to lack the required qualities of honesty and integrity.

53. I further note that the Applicant offered no evidence that demonstrates good character.

54. For these reasons, I am of the view that the Applicant has not discharged the burden of satisfying the Association that he is of good character and repute.

55. An applicant who does not meet the statutory requirements for admission may re-apply at a later date, and, at that time, if they have “rehabilitated” or “redeemed” their character, successfully gain admission. To that end, I suggest that it would be helpful to the Applicant to complete Unit 1 (modules 2 and 3) and Unit 2 (module 1) of the Association’s Working in Canada Seminar before reapplying. These modules cover a number of ethical issues.

**Decision**

56. I have therefore concluded that the Applicant’s application will be denied.

57. I have further concluded that the Applicant will be eligible to reapply for membership in the Association in eighteen months from the date of this decision.

58. I have decided to put a time limit on the Applicant’s eligibility for reapplication on the basis of the authority in *Pugliese v. Clark*, 2008 BCCA 130 (CanLII).

DATED this 28<sup>th</sup> day of May, 2018.



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Ann English, P. Eng., Registrar

**Corrigendum – June 4, 2018**

The decision has been corrected for typographical errors.