

## COMPLAINTS COMMITTEE: VOLUNTARY UNDERTAKING UNDER SUBSECTION 24(2)(C) OF THE PROFESSIONAL ENGINEERS ACT

In the matter of a complaint regarding the actions and conduct of a member of the Association of Professional Engineers of Ontario and a holder of a certificate of authorization.

### BACKGROUND

1. The complaint relates to work done by the member and holder to complete and submit Records of Site Condition (RSCs) for two properties located in Toronto, ON, to the then Ministry of the Environment and Climate Change, currently Ministry of the Environment, Conservation and Parks (collectively “the ministry”).
2. At all material times, the holder held a certificate of authorization (C of A) naming the member as the individual accepting professional responsibility for engineering services provided under the C of A.
3. The member and holder did not have a written contract or agreement with the client to complete the work for the two properties.
4. In an email dated April 25, 2017, the member informed the client that the work required for the properties would be completed within six months or more.
5. In an email dated December 7, 2017, the member informed the client that the RSCs for the properties would be filed on Friday (December 8, 2017). Consequently, in an email dated December 9, 2017, the client requested that the invoice for the work be submitted before the end of 2017.
6. In an email dated December 11, 2017, the member issued an invoice to the client and stated that the RSCs for the properties had been filed and that the client would receive notification from the ministry within five working days.
7. However, it was later discovered that the RSCs for the properties had not been filed as communicated by the member.
8. Once discovered, the member submitted an RSC for each property; however, in emails

dated May 28, 2018, and June 15, 2018, the client received a Notification of “Not in Accordance” (NIA) for each RSC from the ministry. The ministry provided its reasons for the NIAs including that the submissions were missing data, contained inconsistencies, did not meet the necessary requirements and were not completed in accordance with the regulations.

9. Following the NIAs, the member and holder resubmitted the RSCs, and subsequently the member’s client received additional NIAs from the ministry for each property. Sometime after this, the member and holder ceased work on the properties for the client.

### THE COMPLAINT

10. The complaint raised issues concerning the work completed by the member and holder with regards to their having submitted an invoice for work that had not yet been completed.
11. The Complaints Committee (the committee) received a candid and fulsome response to the complaint from the member and holder, including an explanation relating to the member and holder’s scope of work on the project. The member also expressed that it is not the holder’s policy to invoice for work that is not complete.

### THE CONSIDERATION OF THE COMPLAINTS COMMITTEE

12. The committee considered the complaint five times between July 9, 2019, and July 15, 2020. The committee considered the response received and carefully considered the issues raised in this matter. In addition to the invoicing concern, the committee was concerned that the member and holder did not keep copies of the relevant versions of the Phase II ESA reports referenced by each RSC submission. The committee considered whether a referral to the Discipline Committee was warranted in all the circumstances, and whether it was in the interest of the public and the profession to proceed with the matter. The committee decided that if the issues raised in the complaint were addressed through certain proactive remedial efforts on the part of the member and holder, as well as publication of a summary of this matter, that the public interest issues raised by the complaint would be addressed.

**VOLUNTARY UNDERTAKING**

13. The member and holder voluntarily undertook to:
  - a. Complete a written contract or agreement for every client, clearly documenting the scope of engineering services to be completed with reasonable timelines.
  - b. Not submit final invoices stating that work has been filed and/or completed when the work is not yet completed.
  - c. Respond in a timely manner to queries by a client in relation to services retained.
  - d. Prepare a Corporate Policy Manual with particular focus on version control of documents and record keeping and to provide a copy of the policy manual to PEO.
14. Further, the member and holder voluntarily agreed that a summary of this matter and the voluntary undertaking would be published in PEO's Gazette without their names.
15. The voluntary undertakings described above were completed and accepted by the committee as a dispositive measure, and pursuant to its powers under section 24(2)(c) of the act, the committee decided that this matter would not be referred to the Discipline Committee.