

**DISCIPLINE COMMITTEE  
OF THE  
ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO**

**IN THE MATTER OF A HEARING BETWEEN:**

**ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO**

**and**

**MICHAEL KILBOURNE, P.Geo.**

**Heard:** March 8, 2013

Oral Decision Released: March 8, 2013

Written Decision Released: April 1, 2013

**Discipline Committee Panel:**

**A.R. (Tony) Lotimer, P.Geo, - Chair**

**Visha Sukdeo, Public Non-Member**

**Steven Usher, P.Geo.**

**DECISION AND REASONS FOR DECISION**

**1.** This was a hearing before a Panel of the Discipline Committee of the Association of Professional Geoscientists of Ontario (APGO), held on March 8, 2013.

**ALLEGATIONS**

**2.** It was alleged the Mr. Michael Kilbourne is guilty of professional misconduct as defined in the *Professional Geoscientists Act 2000* and Ontario Regulation 258/02. The allegations are set out in the Notice of Hearing (Exhibit 1 at the Hearing).

**JOINT SUBMISSION ON FINDING/ EVIDENCE**

**3.** A Joint Submission on Finding with respect to the allegations was presented to the Panel by the APGO and Mr. Kilbourne, through their respective Counsel (Exhibit 2 at the Hearing). Mr. Kilbourne was not present at the hearing and was represented by Counsel David Conklin. Counsel Richard Steinecke represented the APGO. The parties agreed, in the Joint Submission, to the following findings of fact.

**3.1** In 2011, Mr. Kilbourne pleaded guilty and was convicted in United States District Court to the offense of conspiracy. The charge was in connection with a scheme in which Mr. Kilbourne received bribes and kickbacks in exchange for assisting companies in obtaining contracts with his employer. The conduct that is the subject of the conviction took place over an extended period of time between 2001 and 2006. In May 2011, Mr. Kilbourne was sentenced to 24 months in prison in the United States of America and ordered to pay \$180,000 in restitution. He has paid the restitution in full. He began serving his sentence on or about July 18, 2011 and expects to be released at some point between April 13, 2013 and July 18, 2013.

**3.2** The APGO learned of the conviction when another individual forwarded a copy of a media report that referred to the conviction. Mr. Kilbourne did not report his conviction to the APGO because he was focused on dealing with the consequences of the criminal charge, his plea and sentence, and the effect on his family and friends.

**3.3** The conduct in question occurred before Mr. Kilbourne became a member of APGO. The conviction, and the failure to report the conviction to APGO, occurred after Mr. Kilbourne became a member of APGO.

**3.4** The conviction and the failure to report the conviction meets the definition of professional misconduct as defined in the *Professional Geoscientists Act 2000* and the APGO regulation governing professional misconduct under the Act, as follows:

*Professional Geoscientist Act 2000* - Section 24. (1) A member or certificate holder commits professional misconduct if he, she or it is found guilty of an offence that relates to his, her or its professional integrity, 2000, c. 13, s.24 (1).

Ontario Regulation 258/02 (Disciplinary Matters). 16. (2) 10. Failing to comply with any terms, conditions or limitations imposed on a certificate of registration or a certificate of authorization.

## **FINDING**

**4.** After hearing submissions from both Counsel, the Panel accepted the joint submission on finding and found Mr. Kilbourne guilty of professional misconduct.

## **JOINT SUBMISSION ON ORDER**

**5.** A Joint Submission on Order with respect to penalty was presented to the Panel by Counsel (Exhibit 3 at the Hearing). The Joint Submission included the following.

5.1 Mr. Kilbourne has been offered a position of employment with Harricana River Mining Corporation, on the understanding that he should be available to begin working with Harricana in the spring 2013, following his release from prison. Harricana is aware of his conviction and is committed to assisting with his rehabilitation and return to work. A letter of support for Mr. Kilbourne prepared by Mr. Brent Peters, officer and director of Harricana, was included in the joint submission. Mr. Peters would be the supervisor of Mr. Kilbourne in the position of employment.

5.2 If this was a contested hearing, Mr. Kilbourne would have testified that the duty to report the finding to the APGO slipped his mind as he was focused on dealing with the consequences of the criminal charge, his plea and sentence for himself, his family and his friends.

5.3 Both Counsel noted that the Panel should consider a number of principles in the determination of an order arising from the finding. Those principles include: punishment (including the range of penalties previously imposed for past offences of a similar nature); retribution; general and specific deterrence; and rehabilitation (including mitigating factors).

5.4 Counsel called two witnesses who spoke to the integrity and character of Mr. Kilbourne. The first witness is a member of the Canadian Institute of Chartered Accountants. The second witness is a professional member of APGO. Both witnesses spoke favourably of Mr. Kilbourne and supported his return to professional geoscience practice.

5.5 It was noted in the Joint Submission on Order that the parties did not agree on whether publication of this matter by the APGO should identify Mr. Kilbourne by name. Counsel for the APGO commented on possible other ways of publishing findings by panels of the discipline committee, including this one, on the APGO website.

5.7 Both parties acknowledged that O. Reg. 258/02, s. 18 (4) calls for the publication of the member's name in an official publication of the APGO. APGO Counsel also submitted that it would be appropriate to publish the outcome of the hearing, including Mr. Kilbourne's name, on the APGO website, on a yet to be established link to Discipline Decisions.

## **ORDER**

The Panel of the Discipline Committee accepted the Joint Submission on Order from the parties, and made the following Order:

1. That Mr. Kilbourne's registration be suspended for a period of six months with the first three months of the suspension commencing on the date of the decision of the Panel of the discipline committee (March 8, 2013).
2. That Mr. Kilbourne's membership be under the term, condition and limitation that he practice his profession only under the monitoring and supervision of Mr. Brent Peters, or another individual acceptable to the Registrar of the APGO, for the first (one) year of Mr. Kilbourne's actual practice after the end of the initial three month suspension. The monitor and supervisor shall confirm having reviewed the joint submission on finding and the joint submission on order documents. The monitor and supervisor shall confirm to the Registrar in writing that he or she shall monitor and supervise Mr. Kilbourne's conduct, particularly in the area of access and authorization of spending of his employer's funds and to provide written reports to the Registrar in a form acceptable to the Registrar every six months. The final report shall demonstrate, to the satisfaction of the Registrar, that Mr. Kilbourne has been successfully re-introduced into the practice of the profession.
3. That Mr. Kilbourne's membership be under the term, condition and limitation that he successfully complete, in the opinion of the Registrar, the APGO Professional Practice and Ethics Examination or such other course or examination that is acceptable to the Registrar within six months of the date of the decision of the Panel, or such longer period of time that the Registrar consents to in writing.
4. That Mr. Kilbourne shall not be required to serve the second three-month installment of his suspension if he ensures the successful completion of the remaining terms of this order.
5. This decision is to be published in an official publication of the APGO, with reasons, and identifying Mr. Kilbourne by name, pursuant to O.Reg. 258/02, s. 18 (4).

## **REASONS FOR THE DECISION**

The Panel finds the Joint Submission on Order to be a reasonable penalty for the professional misconduct committed by Mr. Kilbourne, in light of the mitigating factors.

1. Mr. Kilbourne has already incurred significant penalty for his conduct. In effect, he will have been suspended from practicing as a member of APGO for almost 2 years by the time this order is implemented.

2. Mr. Kilbourne acknowledged and accepted responsibility for the conduct that led to his criminal conviction. He has acknowledged and accepted responsibility before this Panel for that conduct, notwithstanding that it took place before he became a member of the APGO.

3. Mr. Kilbourne made full restitution of \$180,000 at the time he was sentenced by the U.S. criminal court. He has shown remorse for his misconduct. He is otherwise of good character.

4. The witnesses called to speak on behalf of Mr. Kilbourne were credible. Their testimony provided the panel with a reasonable degree of confidence that the plan to re-introduce Mr. Kilbourne to professional practice following his release from prison will be successful.

4. The penalty appears to be consistent with the decisions on penalty reached in a number of similar discipline proceedings of other regulated professions (Ontario College of Physicians and Surgeons, College of Chiropractors of Ontario).

5. The broader issue of publishing the outcome of discipline committee hearings on the APGO web page, above and beyond the requirements of O. Reg. 258/02, s. 18 (4), is a matter that should, in the Panel's view, be considered by Council of APGO, before any action is taken in that regard.

**Dated: April 1, 2013**

A.R. (Tony) Lotimer, P.Geo. – Chair, Discipline Panel

Visha Sukdeo, Discipline Panel

Steven Usher, P.Geo., Discipline Panel