

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

- and -

IN THE MATTER OF RANDALL W. HARTFORD, P.Eng.

DISCIPLINE COMMITTEE PANEL:

**Roy Wares, P. Eng., Chair
Darryl Chambers, P. Eng.
Chris Newcomb, P.Eng.**

Counsel for the Association;

Robert W. Hunter

Randall W. Hartford, On his Own Behalf

SUPPLEMENTAL DETERMINATION AND ORDER

INTRODUCTION

- [1] A Discipline Committee Panel (the Panel) of the Association of Professional Engineers and Geoscientists of British Columbia (the Association) under authority of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, C. 116, (the *Act*), held an inquiry to examine the alleged contraventions of the *Act* by Randall W. Hartford, P.Eng.
- [2] The hearing was held on December 9, 2006 and December 13, 2006. At the conclusion of the hearing, the Panel reserved its decision. The Panel delivered its written decision on January 10, 2007. The Panel unanimously determined that the Member, Randall W. Hartford, P.Eng. demonstrated unprofessional conduct by his failure to provide the Investigation Committee with information and records in his possession as required by Section 30(4) of the *Act*. In the Determination, the Panel laid out a schedule for submissions on penalty.

BACKGROUND

- [3] Randall W. Hartford, P. Eng., is a registered member, in good standing, with the Association. Mr. Hartford has been a member of the Association since 1992.
- [4] On May 6, 2006, a complaint regarding Mr. Hartford was received by the Association. After a series of letters and requests to Mr. Hartford, none of

which elicited any response from Mr. Hartford, the matter was turned over to the Investigation Committee. Mr. Hartford was informed of this by letter on September 8, 2006. A sequence of letters, faxes and e-mails were sent to Mr. Hartford on September 8, and 21, 2006. This sequence is the correspondence that is central to the Notice of Hearing. None of the correspondence was replied to by Mr. Hartford.

[5] On October 28, 2006, Mr. Hartford was served legal notice of the date of the Disciplinary Hearing. On the morning of the first day of the hearing, December 9, 2006, Mr. Hartford finally made contact with Mr. Hunter, representing the Association, and Mr. Thiele, Associate Director, Regulatory Compliance, at the Association.

[6] In the Panel's Decision on January 10, 2007, we wrote:

After careful consideration, the Panel finds that contrary to the Act, Randall W. Hartford, P.Eng., by a fair and reasonable preponderance of credible evidence, demonstrated unprofessional conduct by his failure to provide the Association's Investigation Committee with the information or records in his possession, as required by section 30(4) of the Act, as requested by the Association in:

- a) *a letter to Mr. Hartford dated September 8, 2006;*
- b) *an e-mail message to Mr. Hartford dated September 21, 2006; and*
- c) *a fax to Mr. Hartford dated September 21, 2006*

[7] The Panel also wrote:

The Panel requests that the parties provide their submissions on penalty and costs in writing pursuant to the following schedule:

- 1) *written submissions by the Counsel, APEGBC by the close of business, January 18, 2007.*
- 2) *opportunity for Mr. Hartford to make written submissions within ten days of delivery of the Association's written submissions.*
- 3) *An opportunity for Counsel, APEGBC to make a written reply to Mr. Hartford's written arguments, if any, within four days of receipt of the argument.*
- 4) *If the parties so wish, the hearing on sanction may be held by teleconference within a reasonable period after the Panel has received the submissions from the parties.*

SUBMISSIONS

SUBMISSION ON PENALTY

- [8] Mr. Hunter, on behalf of the Association, made a written penalty submission, dated January 16, 2007.
- [9] Mr. Hartford neither made a submission nor requested a teleconference hearing on sanction. On the face of it, the deadline for Mr. Hartford to make a submission was ten days from the delivery of the Association submission, dated January 16, 2007.
- [10] On the morning of February 7, 2007, the Panel Chair issued instructions to Association staff to issue written instructions to Mr. Hartford, that he had until 4.30 pm, Thursday February 8, 2007, to deliver his submission. Mr. Hartford was to also be informed that, in the absence of his submission, the Panel would proceed without further notice to review the submissions and render a decision. Such instructions were sent by e-mail, facsimile and by regular mail, to addresses used by Mr. Hartford in correspondence with the Association in January 2007.
- [11] No submission was received by the Association from Mr. Hartford by the date and time set by the Panel at 4.30 pm, February 8, 2007.
- [12] In his written submission on January 16, 2007, Mr. Hunter took the Panel to the relevant section of the *Act*, relevant case law for professional discipline cases and guiding principles by which discipline panels in self regulating professions impose sanctions.
- [13] Section 33(2) of the *Act*, provides that if the Discipline Committee Panel finds that a member has demonstrated unprofessional conduct, then the Panel 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 revoke the membership, licence or certificate of authorization of the member, licensee or certificate holder.*
- [14] Mr. Hunter submitted that the 1994 British Columbia Court of Appeal case of *McKee v. College of Psychologists of British Columbia*, is instructive in

relation to the purpose of professional discipline cases. In this case, Finch, J.A. (now C.J.B.C.) stated at para 7:

In the case of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self governing professional body, the legislative purpose is regulation of the professional in the public interest. The emphasis must clearly be upon the protection of the public interest, and, to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional's peers are better able to assess than a person untrained in the particular professional art or science.

[15] Mr. Hunter also submitted that in considering the appropriate penalty, the Panel should be guided by the following principles, which we accept;

- (a) protection of the public:
- (b) specific deterrence – the deterrence to Mr. Hartford from further unprofessional conduct:
- (c) general deterrence – deterrence to other members from engaging in similar conduct: and
- (d) rehabilitation of Mr. Hartford to practice in conformance with professional standards.

[16] Mr. Hunter submitted, on behalf of the Association that the appropriate penalty is

- (a) The membership of Mr Hartford in the Association be suspended:
- (b) Mr Hartford return his professional seal to the Association immediately, in accordance with the Association's bylaw 12(b)
- (c) Mr. Hartford's membership in the Association continue to be suspended until the Investigation Committee of the Association confirms that they are satisfied that Mr. Hartford has properly

responded to their request for information as set forth in the Association's letter to Mr. Hartford dated September 8, 2006; and

- (d) Mr. Hartford be reprimanded and pay a fine in the amount of \$5,000 to the Association by the 1st day of April, 2007, failing which Mr. Hartford's membership in the Association is suspended until he has paid the full amount of the fine to the Association.

[17] Mr. Hunter pointed out in his submission that there was a high probability that the Investigation Committee would review, on its scheduled January 25, 2007 meeting, Mr. Hartford's response to the September 8, 2006 letter that he provided for the first time to the Association on December 8, 2006. Mr. Hunter pointed out that should the Investigation Committee deem that the December 8, 2006 response by Mr. Hartford was satisfactory, then the suspension would be moot.

[18] Mr. Hunter pointed out that even if the suspension was moot, the Association still sought the imposition of the reprimand and fine.

SUBMISSION ON COSTS

[19] Mr. Hunter also addressed the issue of costs. In particular, Mr. Hunter took us to Section 35(1) and 35(3) of the Act, which states:

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.

If the discipline committee directs that the costs be paid and determines the amount under subsection (1) or (2), the amount may be assessed by the registrar of the Supreme Court, in the judicial district in which the inquiry under section 32 takes place, as special costs under the Supreme Court rules, as nearly as they are applicable.

[20] Mr. Hunter wrote that the Association's total costs, to January 16, 2007 for the investigation, inquiry and disbursements, was \$13,433.26.

ANALYSIS AND DISCUSSION

ANALYSIS: PENALTY

- [21] In our Determination, we wrote that we were troubled by Mr. Hartford's evasiveness and lack of response to formal and informal regulatory requests from the Association. In our Determination, we set out a schedule for delivery of submissions on sanction. We also set out a provision for a teleconference on the sanctions if the parties so wished.
- [22] We are troubled that on this occasion, Mr. Hartford has neither made a submission setting out his case for or against sanctions or sought the opportunity to present his case by a teleconference. In that absence, and in Mr. Hartford's failure to observe the February 8, 2007 deadline imposed by the Panel, the Panel proceeded to render a decision.
- [23] In his submission, Mr. Hunter argued that failure to respond to one's professional regulatory body is a serious matter. We agree.
- [23] Mr. Hunter also argued that as a self-regulating profession, the general purpose of the *Act* is to protect and safeguard the public interest. Mr. Hunter also argued that the complaints and investigation portion of the *Act* plays an important part in discharging the Association's duty to protect the public. We agree.
- [24] In this case, Mr. Hunter also argued that it is also in the public interest that members not make an "end-run" around the investigation process and circumvent investigations with few, if any, personal and professional consequences. Mr. Hunter also argued that unless the penalties addressed protection of the public interest, general and specific deterrence, the Association's ability to enforce the *Act* and protect the public would be negatively impacted. We agree.
- [25] In this matter, Mr. Hartford was reminded during the hearing on December 13, 2006, that the Panel was addressing the substance of the hearing notice not the substance of the initial complaint from a member of the public.
- [26] We are advised that at the January 25, 2007 Investigation Committee meeting, the Committee decided that Mr. Hartford's December 8, 2006 letter had provided the information originally requested on September 8, 2006.
- [27] That however is not the end of the matter of Mr. Hartford's unprofessional conduct.
- [28] We are of the view that a reprimand and financial penalty must be imposed on Mr. Hartford as a consequence of his unprofessional conduct.

ANALYSIS: COSTS

[29] Mr. Hunter, in his argument, stated:

“costs” refers to an amount of money payable to a party involved in a legal proceeding to compensate that party for his legal expense. Normally, a party who has been awarded costs is entitled to be compensated for a portion of his legal fees, and all of his disbursements.

[30] Mr. Hunter submitted that Section 35(1) of the *Act* sets out a two-step test for the determination of costs. First, the Panel may award costs and then if awarding costs, the Panel must consider the amount of the costs.

[31] Mr. Hunter took the Panel to various legal cases. In civil trials in the Supreme Court of British Columbia, costs are within the jurisdiction of the judge. The unsuccessful party usually pays the costs of the unsuccessful party. For the Association, this principle is reflected in Section 35.

[32] Mr. Hunter took us to the legal precedent of ***Currie v. Thomas (1985), 19 D.L.R (4th) 594 (B.C.C.A.)***. Costs normally follow the event and though the judge has a wide discretion on whether to award costs, the discretion must be awarded in a judicial manner, not in an arbitrary or capricious manner.

[33] Mr. Hunter, on behalf of the Association, submitted that the Panel should take guidance from Section 35(3) of the *Act*, which states that the amount of costs determined by the Panel may be assessed by the Registrar of the Supreme Court as “special costs” under the Supreme Court Rules.

[34] Special costs refer to costs that are proper or reasonably necessary to conduct the proceedings. They are not necessarily equivalent to the actual legal fees. The test, as set out in ***Bradshaw v. Bank of Nova Scotia (1991) 54 B.C.L.R.***, is what a reasonable client would have to pay to a reasonably competent lawyer to do the work for which the costs are claimed. In the case cited, the rule of thumb was special costs as 80-90% of the legal bill assessed for reasonableness.

[35] Mr. Hunter also cited the case of ***Shpak v. Institute of Chartered Accountants of British Columbia, 2003 BCCA 149***. In this case, the accountant was ordered by the British Columbia Court of Appeal to pay 70% of the Institute’s reasonable costs.

[36] With respect to Mr. Hartford, Mr. Hunter argued that the Panel should exercise its discretion on whether to direct Mr. Hartford to pay the Association’s costs. We are of the view that we will exercise our

discretion and direct Mr. Hartford to pay the Association's costs as we deem appropriate.

- [37] Further, Mr. Hunter argued that the Association's reasonable costs for legal fees and disbursements is \$13,433.26 and that the Association would provide copies of the invoices on request.
- [38] Mr. Hunter went on to argue that the Panel should consider Mr. Hartford's credibility and conduct and award the Association 90% of its costs. Mr. Hunter argued that the inquiry was necessitated solely by Mr. Hartford's failure to respond to the Investigation Committee and his unwillingness to admit guilt. Mr. Hunter argued that the costs, if appropriate, should be paid by Mr. Hartford in twelve monthly instalments.
- [39] The Panel found in its Determination, that Mr. Hartford's testimony was neither credible nor persuasive. We are troubled that Mr. Hartford has chosen to not respond to our request for submissions on sanction and provide us with his views, or seek a teleconference. We stressed to Mr. Hartford in our Determination on January 10, 2007, that the integrity of the public complaint process was a key concept of professional self-regulation. We are troubled that Mr. Hartford has chosen to disengage even further from the process of self-regulation.

DECISION ON SANCTIONS

- [40] We find that, in the public interest, Mr. Hartford be reprimanded for his unprofessional conduct and pay a fine to the Association of \$5,000 payable on May 1, 2007.
- [41] We exercise our discretion as a Panel and order Mr. Hartford to pay special costs of the reasonable fees and disbursements of the Association, set at \$13,433.26. We also exercise our discretion as a Panel and set the special cost levy at 90% of the costs. The special cost levy is \$12,089.93. Mr. Hartford is entitled access to copies of the fees and disbursements.
- [42] We order Mr. Hartford to pay the costs in 12 (twelve) monthly instalments commencing on May 1, 2007 and thereafter on the 1st day of each month until the costs are paid in full. Mr. Hartford is of course free to pay the fine and costs remaining in advance of this payment schedule.
- [43] In the event that Mr. Hartford fails to either pay the fine on the due date and/or fails to pay the portions of the special cost levy on the dates agreed to with the Association, Mr. Hartford's membership in the Association will be suspended forthwith and he will be required to return his professional

seal to the Association until all of the payments scheduled above are returned to good standing.

- [44] In the event that there is a disagreement between the Association and Mr. Hartford that he has fully complied with the foregoing Order, this Panel retains the jurisdiction to determine whether there has been compliance.

Dated, this 5th day of March, 2007, and signed in counterpart.

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Panel Chair, Member Discipline Committee, APEGBC.

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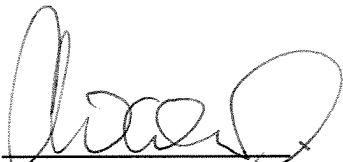
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Member, Discipline Committee, APEGBC

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Chris Newcomb, P.Eng.
Member, Discipline Committee

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