Date: 2026-11-05

File Nos. D26-002, SR23-013, T26-061

IN THE MATTER OF THE *PROFESSIONAL GOVERNANCE ACT*, S.B.C. 2018, c. 47

and

IN THE MATTER OF BORIS KLARICH, P.ENG.

SECOND DECISION AND ORDER OF THE EXTRAORDINARY ACTION PANEL

Discipline Committee Panel:	Larry Spence, P.Eng., FEC, FGC (Hon), Chair Roz Nielsen, P.Eng., M.Eng. John Wilson (public member)
Counsel for Engineers and Geoscientists BC:	Brendan W. Dawes
Counsel for the Registrant:	Jason Z. Murray
Counsel for the Panel:	Tonie Beharrell

Background

1. This Extraordinary Action Panel (the "Panel") was appointed by the Chair of the Discipline Committee of the Association of Professional Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC ("EGBC") to consider, pursuant to s. 67 of the *Professional Governance Act* (the "PGA"), whether to impose limits, conditions or a suspension on the registration of Boris Klarich, P.Eng. ("Mr. Klarich" or the "Registrant").

2. The parties proposed an interim order in joint submissions which involved a targeted restriction on the registrant's practice specifically in relation to Guardrail Work. In a decision dated October 5, 2026, the Panel issued an order in the following terms (the "Initial Order," at paras. 32 and 33):

> *1. The Registrant may not conduct any engineering work related to guards, guardrails, handrails, privacy screens or similar components ("Guardrail Work"), including the preparation, review, sealing or authentication of any design, drawing, calculation, specification, letter of assurance or model schedule in respect of such components (the "Interim Condition").*
>
> *2. The Interim Condition set out in paragraph 1 is in effect until the earlier date that:*
>
> *a. Files SR23-013 and T26-061 are both concluded in one of the following manners:*
>
> *i. A Consent Order is made between the Investigation Committee or the Discipline Committee and Mr. Klarich pursuant to section 75(5)(a) or 75(6) of the PGA; or*
>
> *ii. The Discipline Committee determines pursuant to section 67(4) of the PGA that the limits and conditions are no longer necessary to protect the public; or*
>
> *b. The Panel imposes further conditions after reviewing submissions from the parties.*

3. The Panel was concerned with whether this Initial Order was sufficient to meet the

obligation of protecting the public. In this regard, the Panel stated (at para. 29):

> *The Panel has struggled with the question of whether the targeted restriction outlined in the Joint Submission is sufficient to meet the obligation of protecting the public. In particular, while the Expert Reports are focused on Guardrail Work undertaken by the Registrant, some of the alleged deficiencies (failure to comply with applicable code provisions, technicals standards and EGBC Quality Management Guidelines, practice guidelines and advisories, particularly those relating to design verification, document authentication, independent review, and field review requirements) suggest more systemic concerns with Mr. Klarich's practice, which may not be addressed by the practice restriction on Guardrail Work. In addition, the Panel is concerned that the protracted timing of Mr. Klarich's interaction with the EGBC investigations does not reflect a fully proactive approach to the situation.*

4. As a result, in addition to issuing the Initial Order, the Panel directed that the parties provide written submissions addressing two additional issues:

   • the impact of any previous disciplinary history the Registrant may have, and the current scope of the Registrant's practice, on the appropriate interim order; and

   • the appropriate weight for the Panel to place on the Joint Submission in coming to its determination.

5. The Panel stated that it may amend the Initial Order after reviewing those submissions.

6. Having reviewed the parties' submissions, and for the reasons outlined below, the Panel has determined that an interim suspension of the Registrant's practice is required.

Test for Extraordinary Action

7. The PGA provides:

> *67(1) If the board of a regulatory body, or a discipline committee established under section 75 [discipline hearings], considers the action necessary in the public interest during an investigation under section 66(1)(a) or pending a hearing under section 75, the board may, by order and without giving the registrant an opportunity to be heard, impose limits or conditions on the practice of the regulated practice by the registrant, or suspend the registration of the registrant.*

8. As outlined in the Panel's October 5, 2026 Decision, EGBC extraordinary action panels

have consistently adopted the test for extraordinary action set out in *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180. (See, for example, *Duerichen (Re)* 2022 EGBC 3; *Dwyer (R*e) 2023 EGBC 6; and *McNally (Re)* 2026 BCEGBC 2 ("McNally")). Under that test, three criteria must be met for an order under s. 67 to the made:

(a) a prima facie case;
(b) risk to the public interest; and
(c) urgency to the matter.

9. In considering these factors, the Panel must also consider the potential impact of an interim order on a registrant, keeping in mind that these orders are to be used "sparingly." In this regard, the Panel must balance the need for an interim order against the consequences on a registrant. The ultimate question for the Panel is whether the proposed interim order is appropriate and necessary for the protection of the public.

Deference to be Given to Joint Submissions

10. As outlined above, the Interim Order was proposed to the Panel as a joint submission of the parties. The Panel therefore sought submissions on the appropriate weight to be given to joint submissions.

11. The Registrant submitted that the joint submission should be afforded a high degree of deference by the Panel and should only be strayed from in extremely limited circumstances.

12. In this regard, the Registrant relied on a decision of the Saskatchewan Court of Appeal in *Rault v. Law Society of Saskatchewan* 2009 SKCA 81 ("*Rault*") for the proposition that the Panel should defer to the joint proposal of the parties unless it is "inappropriate; not within the range of sentences; unfit or unreasonable; and/or contrary to the public interest." (para 28). This decision has been referred to in prior Discipline Committee decisions, including *Re Mahmoud,* 2024 BCEGBC 10, and *Re Rice,* 2021 BCEGBC 5.

13. The Registrant further submitted that, in assessing whether a proposed joint submission on disciplinary action would be contrary to the public interest, other regulatory decision

makers, such as the Association of Professional Engineers of Ontario have relied on the Supreme Court of Canada decision in *R. v. Anthony-Cook* 2016 SCC 43 (*"Anthony-Cook").*

14. In *Anthony-Cook*, which involved joint submissions on sentencing made in the Criminal context, the Supreme Court held that a joint submission will be contrary to the public interest if it is so outside of the appropriate range that a reasonable, informed member of the public would see its acceptance as a breakdown in the justice system. The Registrant notes that *Anthony-Cook* test has been applied to joint submissions in a professional regulatory proceeding in Ontario.

15. EGBC submits that, while joint submissions ought to be given some weight, the standard is not as high as that outlined in *Anthony-Cook.* EGBC notes that, in British Columbia, the question of whether the case applies has been raised before tribunals and the review board of the Law Society of British Columbia but has been left undecided. EGBC therefore submits that it remains undetermined whether *Anthony-Cook* governs a joint submission in a professional discipline proceeding in BC.

16. EGBC also notes that none of the authorities in which *Anthony-Cook* has been applied arose in the extraordinary action context, in which a professional regulator seeks to impose an interim practice restriction. EGBC submits that the extraordinary action context is different, and different considerations may therefore apply. Specifically, EGBC notes that:

    - A joint submission on penalty follows findings or an admission. An order under section 67 of the *PGA* is made during an investigation, or pending a hearing, on a provisions assessment of untested facts and without any determination of the allegations;
    - The rationale for certainty in the plea process discussed in *Anthony-Cook* rests on the accused giving up the right to a trial. A registrant at the extraordinary action stage retains the right to a full hearing.
    - Disciplinary action is, in part, retrospective and is directed to what the conduct merits. An order under s. 67 of the *PGA* is protective and forward-looking, and

the overriding question for the Panel is whether the Panel considers the "action necessary in the public interest".

- A penalty or sentence is final, subject to review or appeal. An order under section 67 of the PGA is inherently provisional and may be amended or rescinded at any time under s. 67(4) of the PGA on evidence that it is no longer necessary to protect the public.

17. As a result, EGBC submits that the *Anthony-Cook* public interest test should not be imported into an extraordinary action proceeding under s. 67 of the *PGA*. Although a joint submission in the extraordinary action context is entitled to some weight submission should be given some weight, the Panel must conduct its own analysis and reach a conclusion on the totality of the evidence before it.

18. The Panel acknowledges the submissions of EGBC relating to the different context of extraordinary action proceedings. For the purposes of this decision, the Panel is prepared to apply the test as outlined in *Rault,* and cited in previous decisions of the Discipline Panel*:* that the Panel should defer to the joint proposal of the parties unless it is "inappropriate; not within the range of sentences; unfit or unreasonable; and/or contrary to the public interest." (para 28).

19. For the reasons which follow, the Panel finds that the interim action contained in the Initial Order is inappropriate and contrary to the public interest. In coming to this conclusion, the Panel has considered a number of factors, including the nature of the alleged conduct, the previous record of the Registrant, and the remaining scope of the Registrant's practice if the Guardrail Restriction is in place.

Conduct at Issue

20. The Panel has considered the material provided by the parties relating to the two complaints about Mr. Klarich's engineering work in respect of guardrails that have given rise to the extraordinary action proceeding. That information is reviewed in the Panel's initial order and will not be repeated here. However, the Panel notes the description of the concerns as outlined by EGBC in its initial submissions on the matter, prior to the

development of the joint submission. In its initial submission, EGBC stated (at para. 155):

> *EGBC's primary position is that the Interim Suspension is necessary. The concerns identified by the Investigators and by the experts are not confined to the technical content of guard design. They extend to matters that are fundamental to the regulated practice of professional engineering in any field: (i) preparation and retention of calculations sufficient to support the design; (ii) knowledge of applicable codes, standards and guidelines; (iii) performance of a risk assessments; (iv) performing and documenting checks; (v) obtaining of a documented independent review where the design warrants it; (vi) performing and documenting field reviews before giving assurance that they have been carried out; (vii) retaining complete project documentation; and (viii) accurate authentication of documents. On the evidence before the Panel, Mr. Klarich's practice does not meet those requirements. <u>There is no evidence before the Panel that his approach to the remainder of his practice differs from his approach to the projects that have been examined. (</u>Emphasis added)*

21. The Panel agrees with this characterization of the concerns identified by the investigators, as contained in the materials before the Panel. Specifically, those materials support that the complaints at issue relate to matters that are not confined to the technical content of guardrail design, and extend to matters that are fundamental to the regulated practice of professional engineering in any field.

<u>Previous Discipline</u>

22. In relation to the Registrant's prior discipline, the Panel agrees with EGBC's submission that previous disciplinary history is a matter that the Panel may properly consider as part of its assessment of the risk to the public and of the proportionality of the interim order; weighed together with the totality of the evidence before the Panel.

23. The Registrant has been the subject of one previous disciplinary disposition in relation to allegations that the Registrant prepared and sealed a letter stating that an inspection of a roof truss for a single-family house project had been satisfactorily completed, prior to the inspection actually taking place. The matter was resolved by a consent order under which the Registrant's registration was suspended for two months. In addition, Mr. Klarich was required to undergo a Practice Review following the suspension, and was required to

complete and pass the Professional Practice Examination and the *Professional Engineering and Geoscience Practice in BC* online seminar. Mr. Klarich complied with all the terms of the Consent Order.

24. As it relates to the Panel's assessment of the risk to the public, the Panel notes that, pursuant to the consent order, the Registrant was required to refresh his knowledge of the profession's requirements. The matters currently before the Panel involve serious allegations, in a different technical area, again raising concerns about foundational professional obligations. While the Panel is mindful that the present allegations have not been established, for the purposes of an interim risk assessment, the nature and potential recurrence of the allegations necessarily bears on the amount of confidence the Panel could place on a narrow restriction as adequate protection of the public.

25. The fact that the two matters arise in different technical areas strengthens rather than weakens this concern. If both matters concerned guardrails, the Panel could more readily conclude that the problem could be addressed by prohibiting guardrail work. But the common thread between the matters is not guardrails, it is the professional obligations that follow an engineer across areas of practice.

26. In this regard, the Panel can reasonably observe that both matters potentially engage: the reliability of professional representations made to others; the exercise of professional judgment in matters affecting public safety; the trust that clients, regulators and the public place in a professional engineer's authenticated work; and the profession's core obligation to place public safety above other considerations. Viewed this way, the concern is not that the Registrant made the same technical error twice. Rather, it is that the allegations in both matters touch on competencies and duties that are foundational to the privilege of professional practice. That is a qualitatively different concern.

Scope of the Registrant's Practice

27. The Panel also requested submissions on the scope of the Registrant's practice in order to assess whether the Guardrails restriction would sufficiently address public safety concerns. Both parties pointed to statements made by Mr. Klarich in a January 12, 2026, investigation interview in response to this question. In that interview, Mr. Klarich stated, in

part, "I do a lot of … swimming pools, which is pretty easy for me and some … maybe for a couple of firms I do steel connection design and then, of course, some guardrails for a couple of clients."

28. EGBC submitted that, on Mr. Klarich's own description, his current practice has three components: swimming pools, steel connection design, and guardrail design. They state that the current Interim Condition removes one of those three components (and may also capture aspects of Mr. Klarich's 'steel connection design' practice).

29. The Panel notes that, under the provisions of the Initial Order, the Registrant would nonetheless remain authorized to carry out most of his structural engineering work, including steel connection and pool design. Further, the Initial Order does nothing to address the underlying professional practice concerns raised by the allegations.

Decision

30. The Panel finds that the joint proposal of the parties is inappropriate, unreasonable, and contrary to the public interest; and that the public interest can only be appropriately addressed through issuance of an interim suspension.

31. The Registrant was previously disciplined for conduct touching professional obligations. Although he completed remediation, a second serious matter has arisen, and the parties have agreed that there is sufficient risk to require extraordinary action. Pursuant to the Initial Order, the Registrant would nonetheless remain authorized to carry out most of his structural engineering work, including steel connection design and pool design. Given that the current allegations relate to practice-wide concerns in the Registrant's practice, the Panel is not satisfied that a restriction confined to Guardrail work is sufficient to protect the public.

32. Ultimately, the Panel's responsibility is to impose interim action that is proportionate to the risk. The Panel must intervene in the registrant's practice by the least intrusive method that will achieve public protection. To this end, the Panel has considered whether the restriction relating to the Guardrail work, or some other restriction short of suspension, would suffice. The Panel is concerned that a condition short of suspension would not

address the risks attendant upon the Registrant's continued practice given his failure to adhere to standards fundamental to the regulated practice of professional engineering.

33. For these reasons, the Panel is of the view that there would be an unacceptable level of risk to the public if the Registrant is engaged in practice, and he must immediately be suspended.

Order

34. As set out above, the Panel varies its order of October 5, 2026, and now orders that Mr. Klarich be immediately suspended and not be permitted to engage in the reserved practice of professional engineering in British Columbia until the earlier date that:

    a. A Consent Order is made between the Investigation Committee or the Discipline Committee and Mr. Klarich pursuant to section 73(2) of the *PGA;*

    b. A discipline hearing is held and a final determination is made in this matter pursuant to section 75(5)(a) or 75(6) of the *PGA;* or

    c. The Discipline Committee determines pursuant to section 67(4) of the PGA that a suspension is no longer necessary to protect the public.

DATED THIS 5th DAY OF NOVEMBER, 2026

<original signed by>

Larry Spence, P. Eng, FEC, FGC (Hon), Chair

<original signed by>

Roz Nielsen, P. Eng., M. Eng

<original signed by>

John Wilson