

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

and

IN THE MATTER OF MAHMOUD MAHMOUD, P.Eng

**DECISION AND ORDER OF THE DISCIPLINE COMMITTEE
ON PENALTY AND COSTS**

Date and Place of Hearing:

By written submissions
August 9 and 21, 2024

Panel of the Discipline Committee:

Frank Denton, P.Eng., Chair
Jaswinder Bansal, P.Eng.
Mike Racich

Counsel for Engineers and Geoscientists BC:

David G. Volk

Counsel for the Respondent:

John J. McIntyre

Decision Date:

September 6, 2024

Introduction

1. In its decision issued July 18, 2024, this panel of the Discipline Committee (the “Panel”) of the Association of the Professional Engineers and Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC (“EGBC”) determined that Dr. Mahmoud had contravened section 20(9) of the *Engineers and Geoscientists Act*, RSBC 1996, c 116 (the “EGA”) (now repealed) by providing unsealed copies of reports to clients on two occasions. The Panel found, further, that two allegations of unprofessional conduct were not proven on a balance of probabilities.
2. The penalty portion of the hearing proceeded by written submissions. On August 9, 2024, the Panel received written submissions from the EGBC. On August 21, 2024, the parties provided a joint submission on the issue of penalty and costs (the “Joint Submission”).
3. In the Joint Submission, the parties proposed:
 - (a) That the appropriate penalty is a reprimand; and
 - (b) That the amount of costs payable by Dr. Mahmoud to the EGBC should be set at \$7,500, with that amount payable within 30 days of the Panel’s decision.
4. In the Joint Submission, the parties refer to *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81, 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)
5. For the reasons set out below, the Panel is satisfied that the proposed disposition is suitable.

Framework for Assessing Penalty and Costs

Jurisdiction

6. On February 5, 2021, the *Professional Governance Act*, S.B.C. 2018 c. 47 (the “PGA”) came into effect and repealed the EGA. This proceeding was initiated by a Citation issued pursuant to the PGA. The conduct that was the subject of the Citation occurred when the EGA was in force.
7. *Re Gernon*, (December 2023) also involved a matter in which the proceeding was initiated by a Citation issued pursuant to the PGA, but relating to conduct that occurred when the EGA was in force. In that decision, the discipline panel held that, in accordance with sections 35 and 36 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, the substantive provisions of the EGA (and the Bylaws and Code of Ethics as they applied at that time) applied to their proceeding (at para. 6). This included the EGA’s penalty provisions.
8. In *Re Gernon*, the panel also held that, in relation to costs, it was the provisions of the PGA that applied (at para. 57).
9. The Panel agrees that this is the appropriate framework.

Penalty

10. With respect to penalty, section 33(2) of the EGA states that where there is a finding against a member, the Panel may:
 - (a) reprimand the member, licensee or certificate holder;
 - (b) impose conditions on the membership, license or certificate of authorization of the member, licensee or certificate holder;
 - (c) suspend or cancel the membership, license or certificate of authorization of the member, licensee, or certificate holder;

(d) impose a fine, payable to the association, of not more than \$25,000 on the member, licensee or certificate holder.

11. Section 33(2) provides the Panel with discretion to decide an appropriate penalty from the options provided in the EGA. In *Re Gernon*, the panel cited the Law Society of British Columbia decisions in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 05, in relying on the following consolidated list of factors:

- (a) The nature, gravity, and consequence of the conduct;
- (b) The age and experience of the member;
- (c) Character and professional conduct record of the member;
- (d) Acknowledgment of the misconduct and remedial action; and
- (e) Public confidence in the profession including public confidence in the disciplinary process.

Costs

12. With respect to the assessment of costs, s. 81 of the PGA provides that:

81 (1) A discipline committee or panel, in the context of a discipline hearing under section 75, may require the respondent to pay the costs of one or both of the following:

- (a) an investigation;
- (b) the hearing under section 75.

(2) Costs assessed under subsection (1)

- (a) must not exceed the actual costs incurred by the regulatory body during the course of the investigation and hearing, and
- (b) may include the salary costs for employees or officers engaged in the investigation and hearing.

(3) The board may make bylaws governing the assessment of costs under subsection (1), including the following:

- (a) the factors to be considered in assessing costs;

- (b) the maximum amount of costs that may be assessed within the limits set out in subsection (2);
- (c) the time allowed for payment of costs;
- (d) the extension of time for payment of costs. ...

13. EGBC has enacted bylaws pursuant to the above authority. Section 10.9 of the Bylaws provide the following with respect to the assessment of costs:

(1) If an adverse determination is made against a Respondent after a discipline hearing held pursuant to section 75 of the PGA [Discipline hearings] the Discipline Hearing Panel must require, through an order in writing, that the Respondent pay EGBC's costs, which may be up to the actual costs incurred by EGBC as a result of an investigation and a discipline hearing, provided that those actual costs are within the limits set out in section 81(2)(a) of the PGA.

...

(5) In determining the costs to require the Respondent to pay, the Discipline Hearing Panel:

- (a) must consider whether EGBC did not prove all the allegations made against the Respondent set out in the citation to the requisite standard, and if so, the seriousness of the allegations which were not proven relative to those which were proven...

14. In cases where the conduct at issue occurred under the EGA, EGBC's practice is to limit the costs it is seeking to those that would be available under the EGA. In other words, even though EGBC would be entitled to seek its investigation costs, it does not do so in such cases.

Analysis

Penalty

15. In applying the factors outlined in *Re Gernon*, the Panel notes as follows.

16. Some of the factors are potentially mitigating in terms of penalty. For example, while the use of a seal is of fundamental importance, as it signifies that the engineer has accepted professional responsibility for the content of the document; as conceded by

EGBC in its submission, the nature and gravity of the conduct is not at the serious end of the spectrum. Further, Dr. Mahmoud has no prior discipline history.

17. Other factors are potentially aggravating. Dr. Mahmoud is a highly educated engineer, widely recognized in his field. He has significant experience as a geotechnical engineer, and is consistently involved in continuing professional development. As noted in *Re Rice* (April 2021, at para. 23), these are aggravating factors in relation to penalty, as they suggest that Dr. Mahmoud “ought to have known better.”
18. Further, Dr. Mahmoud’s position that he did not need to seal the reports as they were “preliminary” demonstrates a failure to take responsibility for his conduct. While the absence of an admission or demonstrated remorse is not an aggravating factor, it is the absence of a mitigating factor: *Re Gernon*, para. 38.
19. With respect to the issue of public confidence, the use of the seal is of significant importance to the public’s confidence in the profession. While the nature and gravity of the conduct is not at the serious end of the spectrum, Dr. Mahmoud disregarded his professional obligation to seal the reports, which should not be condoned.
20. With respect to penalties imposed in similar cases, the EGBC refers to two discipline decisions involving behaviour at the less serious end of the spectrum for which reprimands were issued. Both were resolved on consent.
21. A reprimand is a punitive measure as opposed to a remedial measure. Punitive measures serve the purposes of deterrence (both specific and general) and help to maintain public confidence. However, a reprimand is considered to be a penalty that is on the “lighter” end of the punitive scale. The Panel is satisfied that the proposed reprimand is appropriate in light of all of the factors outlined above.

Costs

22. In its initial submission, the EGBC submitted that, given the divided success in the matter, \$20,864.48, representing 15% of its costs, would be a fair and reasonable recovery.

23. In the Joint Submission, the parties state that a cost award of \$7,500, or approximately 5% cost recovery, falls within the range of reasonable amounts which might be payable as costs in the matter.

24. Through the Joint Submission, the parties have agreed on what would constitute a reasonable amount of costs. The Panel is satisfied that the sum appropriately takes into account that EGBC did not prove all of the allegations made against the Respondent set out in the citation, while still being a significant and suitable amount. The Panel defers to the parties' agreement.

Conclusion

25. The Panel orders as follows:

(a) Dr. Mahmoud is reprimanded.

(b) Dr. Mahmoud shall pay to EGBC costs of \$7,500 within thirty (30) days of the date of this decision.

<original signed by>

Frank Denton, P.Eng., Chair

<original signed by>

Jaswinder Bansal, P.Eng.

<original signed by>

Mike Racich