

IN THE MATTER OF
THE *ENGINEERS AND GEOSCIENTISTS ACT*,
R.S.B.C. 1996, c. 116 as amended

and

IN THE MATTER OF KONSTANTIN (CONSTANTINE) POPOV, P. Eng.

DECISION OF THE DISCIPLINE COMMITTEE

Hearing dates: July 6 - 9, 2020

Discipline Committee Panel: Colin Smith, P.Eng., Chair
Neil Cumming, P.Eng.
Emily Cheung, P.Eng.

Counsel for the Association: Lindsay Waddell
Natasha Edgar

For the Member: Konstantin Popov, on his own behalf

A. Background

1. This Panel of Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC (the "Association") was appointed to conduct an inquiry into the conduct of Konstantin Popov pursuant to section 32 of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116 (the "Act").
2. The particulars of the allegations against Mr. Popov are set out in the Notice of Inquiry dated June 22, 2020 as follows:
 1. You demonstrated unprofessional conduct, incompetence or negligence when, in 2015, while acting as Project Manager for Counterpoint Interiors Ltd. ("Counterpoint") on a project at [REDACTED] in Burnaby, B.C.

(the "Project"), you encouraged Tibor Gyimesi and/or M.M. Welding Inc. (collectively "M.M.") to submit a higher bid for welding work on the Project than that already tendered by M.M. and to split M.M.'s increased profit with you through Ecotech Management Inc. ("Ecotech"), thereby creating, and profiting from a rigged bid process to the detriment of the owner of the Project.

2. In the alternative, you engaged in a conflict of interest in or about the fall of 2015 when you accepted payment of \$9,450 through Ecotech for project management services allegedly rendered to assist M.M. with completion of work on the Project while you were also acting as Project Manager for the Project on behalf of Counterpoint.

3. The conduct set out at paragraphs 1 and 2 above is contrary to Principle 4 of the Association's Code of Ethics which requires members to act as faithful agents of their employers, maintain confidentiality and avoid a conflict of interest but, where such conflict arises, fully disclose the circumstances without delay to the employer.

4. The conduct set out at paragraphs 1 and 2 above is contrary to Principle 5 of the Association's Code of Ethics which requires that members uphold the principle of appropriate and adequate compensation for the performance of engineering and geoscience work.

5. The conduct set out at paragraphs 1 and 2 above is contrary to Principle 7 of the Association's Code of Ethics which requires that members conduct themselves with fairness, courtesy and good faith towards clients, colleagues and others and give credit where it is due and accept, as well as give, honest and fair professional comment.

3. The hearing took place via video conference on the Zoom platform due to the COVID-19 pandemic.
4. For the reasons set out below, the Panel finds that the allegations in clauses 2, 3, 4 and 5 are proven to the requisite standard.

C. Service

5. No issues were raised with respect to service of the Notice of Inquiry. The Panel accepts that Mr. Popov was properly served with the Notice of Inquiry.

D. Burden and Standard of Proof

6. The Association bears the burden of proof and must prove its case on a "balance of probabilities" according to the Supreme Court of Canada's decision of *F.H. v. McDougall*, 2008 SCC 53. The Panel notes the Supreme Court of Canada's comments that evidence must be clear, convincing and cogent to satisfy the balance of probabilities test. This has been applied in *Kaminski v. Association of Professional Engineers and Geoscientists of British Columbia*, 2010 BCSC 486.

E. Jurisdiction

7. In its opening statement, the Association raised a jurisdictional issue, noting that at the time of the alleged conduct Mr. Popov had applied for but not yet been granted membership. There is no dispute that Mr. Popov was not a member of the Association at the time of the conduct alleged in the Notice of Inquiry. He became a member on December 16 or 17, 2015. The parties disagreed as to whether the Discipline Committee has jurisdiction over a member's pre-registration conduct.
8. The Association indicated that it would argue that point in its closing submissions. The Panel indicated that it wanted to hear from the parties on jurisdiction at the beginning of the hearing.
9. The Association took the position that the issue of jurisdiction was a matter of pure law. After hearing from the parties, the Panel disagreed with the Association's position and found the issue of jurisdiction was one of mixed law and fact because the issue was inextricably tied to the merits of the discipline inquiry hearing. The Panel's finding was based upon the Association's argument that Mr. Popov's pre-registration conduct continued into the registration period and / or raised issues about his suitability to practice, which could not be determined in the absence of a full evidentiary record.
10. As will be discussed below, the Panel finds that it has jurisdiction to conduct a hearing into Mr. Popov's conduct. The Panel's jurisdiction arises from Mr. Popov's conduct which occurred while he was an applicant for membership and continued from the pre-registration period into the registration period, and because his conduct raises issues as to his suitability to be a member.

F. Evidence

11. The allegations in this case pertain to Mr. Popov's conduct while acting as Project Manager of the Project on behalf of Counterpoint Interiors Inc. ("Counterpoint"). Mr. Popov's involvement in the Project was through his company, Ecotech Management Inc. ("Ecotech") of which he is the principal. Counterpoint was retained by the Project's owner Reliance Insurance as the general contractor of the Project. M.M. Welding Inc. ("M.M. Welding") was retained by Mr. Popov on behalf of Counterpoint to perform structural welding work on the Project. Continental Steel Ltd. ("Continental Steel") was subsequently retained to perform remediation of M.M. Welding's structural welding work.
12. The Association called four witnesses:
 - a. Jesse Romano, the Association's investigator;
 - b. David Lloyd, P.Eng, the complainant and principal of Continental Steel;
 - c. Tibor Gyimesi, the principal of M.M. Welding; and

- d. Brian Carroll, the principal of Counterpoint.
13. Mr. Popov testified on his own behalf. He did not call any other witnesses.
 14. Jesse Romano is the Investigations Manager at the Association. Mr. Romano testified as follows:
 - a. Mr. Popov applied for membership with the Association in 2007. He was not granted membership at that time. He re-activated his application on February 3, 2015 and indicated that he had acquired additional years' experience and passed the "Law and Ethics" course. Mr. Popov was granted membership in the Association on December 16 or 17, 2015. Mr. Popov resigned his membership in December 2019. Mr. Popov has no disciplinary history with the Association.
 - b. Mr. Romano described the Association's complaint and investigation process. He was the investigator assigned to the complaint against Mr. Popov.
 - c. Mr. Romano identified the complaint against Mr. Popov dated March 2, 2016 which was made by David Lloyd of Continental Steel. The complaint states that Counterpoint assigned a contract it had entered into with M.M. Welding Inc. to Continental Steel for it to remediate work undertaken by M.M. Welding. Mr. Lloyd alleges that while Mr. Popov assured him there was enough money left in the M.M. Welding contract to pay Continental Steel, there were delays in payment. Mr. Lloyd's complaint asserts these payment issues were not the subject of the complaint. Rather, Mr. Lloyd alleges that Mr. Popov "solicit[ed] bribes" from M.M. Welding. Mr. Lloyd enclosed the following documents as part of his complaint:
 - i. a letter dated March 2, 2016 from Tibor Gyimesi "To Whom it May Concern" describing Mr. Gyimesi's interactions with Mr. Popov in relation to the tendering process for M.M. Welding. The letter states that after submitting a tender on behalf of M.M. Welding, Mr. Popov approached Mr. Gyimesi and told him that "M.M.'s price was lower than the other bidders and we should increase it by \$18,000";
 - ii. an April 7, 2015 email from Mr. Popov to Mr. Gyimesi stating:

Please see your quote.

Our profit became 9k for each.
 - iii. a purchase order dated April 9, 2015 from Counterpoint for supply and installation of structural steel to the Project for \$82,259 plus tax; and
 - iv. a builder's lien filed by Mr. Lloyd on March 2, 2016.

- d. After becoming aware of the complaint, on March 3, 2016, Mr. Popov phoned the Association to inquire about the complaint process. On March 4, 2016, Jimelle Gallagher of the Association spoke with Mr. Popov about the complaint process. Mr. Popov did not provide an explanation for the allegations at that time but did inquire whether it would “make a difference” if he was not a member at the time of the events.
- e. On October 19, 2016, Mr. Lloyd provided additional documents to the Association, including a copy of the cheque from M.M. Welding to Ecotech in the amount of \$9450. The cheque is dated October 5, 2015.
- f. The Association interviewed several witnesses in 2016 and early 2017, and advised Mr. Popov of the complaint against him by letter dated February 2, 2017.
- g. On October 25, 2016, Mr. Romano interviewed Mr. Gyimesi. When asked whether he had the April 7, 2015 email from Mr. Popov to Mr. Gyimesi (a printed copy of which had been supplied to the Association by Mr. Lloyd), Mr. Gyimesi responded that he did provide it to Mr. Lloyd but he could no longer find it. The interview summary records “He said that his Toshiba had a lot of problems and finally he gave up and “junked” his computer.” Mr. Romano explained to Mr. Gyimesi that his Gmail account is web-based and he should be able to retrieve it from any computer.
- h. On February 24, 2017, Mr. Popov responded to the complaint through his legal counsel, Diego Solimano. Mr. Popov provided a statutory declaration and several documents. Mr. Popov stated that he did not receive a cheque for \$9000 from Mr. Gyimesi. Mr. Popov confirmed that Ecotech received a cheque from M.M. Welding for \$9450 which was deposited on October 6, 2015. Mr. Popov denied eliciting a bribe from Mr. Gyimesi and denied placing himself in a position of conflict of interest.
- i. On September 5, 2017, Mr. Solimano wrote to the Association with further information in response to questions from the investigation subcommittee. The subcommittee had asked for Mr. Popov’s complete file for the Project (including any invoices), and inquired about the purpose of the cheque for \$9450. Mr. Popov responded that there was no legal or contractual relationship between him and Mr. Gyimesi. Mr. Popov was a contractor for Counterpoint, and Counterpoint engaged M.M. Welding. The cheque from M.M. Welding to Ecotech was for “project management services”. Those project management services included: “all shop drawings are produced and approved”, “all materials are on site”, and “all discrepancies between site conditions and drawings are resolved.” No invoices were provided to the Association.
- j. On April 18, 2018, Mr. Romano conducted an interview of Mr. Popov which was transcribed. He was asked about the April 7, 2015 email. Mr. Popov

indicated that he did not recognize that email and saw it for the first time on March 2, 2016 when Mr. Lloyd provided it to the Association. Mr. Popov denied authoring the email. Mr. Popov also stated that he invoiced Mr. Gyimesi for the project management services. He said he provided him with a printed invoice "at the gas station in return for cheque". Mr. Romano noted that the invoice had not yet been provided to the Association and requested a copy of that invoice.

- k. On April 24, 2018, Mr. Solimano wrote to the Association and enclosed a copy of the invoice that Mr. Popov provided to Mr. Gyimesi. Mr. Romano identified the invoice which is from Ecotech to M.M. Welding for "project management services" in the amount of \$9450. The invoice is dated October 1, 2015.
 - l. The Association attempted to obtain information from Microsoft in relation to the April 7, 2015 email. That process uncovered four emails on that date to Mr. Popov, none of which was the one involving Mr. Gyimesi. As such, the information from Microsoft was inconclusive as to whether Mr. Popov had sent the April 7, 2015 email to Mr. Gyimesi. On cross-examination, Mr. Romano testified that the email could have been deleted or that it may never have existed.
15. David Lloyd is the principal of Continental Steel. He testified as follows:
- a. He has a background in structural engineering and founded Continental Steel in 1973.
 - b. He has known Mr. Gyimesi for approximately 30 years and describes him as a friend.
 - c. Mr. Lloyd also has a business relationship with Mr. Gyimesi. He said that Mr. Gyimesi is a small contractor who depends on Continental Steel, which is a larger company, for much of its equipment and worker support. Mr. Gyimesi purchases small quantities of steel from Continental Steel.
 - d. Mr. Lloyd held a mortgage on Mr. Gyimesi's house in 2015. He described that in 2016, at the time of the events at issue in this matter, Mr. Gyimesi sold his house and "paid over" Mr. Lloyd. On cross-examination, Mr. Lloyd stated that he had held the first mortgage on Mr. Gyimesi's house in the amount of \$600,000.
 - e. In January or February 2016, Mr. Gyimesi approached Mr. Lloyd for help with the Project, as Mr. Gyimesi had let his Canadian Welding Bureau ("CWB") certification expire. Mr. Lloyd then met with Mr. Popov and Mr. Gyimesi and learned there were two problems: the certification issue and an issue with the quality of M.M. Welding's work.

- f. Mr. Lloyd agreed that Continental Steel would take over M.M. Welding's work after being assured by Mr. Popov that there were sufficient funds left in the structural steel contract to pay Continental Steel.
- g. On completion of the work, Mr. Lloyd sent an invoice to Counterpoint and was advised by Mr. Popov that Counterpoint had no intention of paying the invoice.
- h. Mr. Lloyd spoke to Mr. Gyimesi the same evening who referred to Mr. Popov as "bent". Mr. Lloyd probed Mr. Gyimesi about the comment. Mr. Gyimesi told Mr. Lloyd that he had submitted a tender and was told by Mr. Popov that it was "too low" and that he could increase the tender by \$18,000 of which \$9000 would be paid to Mr. Gyimesi and \$9000 to Mr. Popov. Mr. Gyimesi told Mr. Lloyd about delivering a cheque to Mr. Popov in a parking lot of a gas station. A few days later, Mr. Lloyd obtained a printed copy of the April 7, 2015 email from Mr. Popov to Mr. Gyimesi.
- i. Mr. Lloyd then prepared a complaint about Mr. Popov to the Association. As part of that process, he drafted a letter "for [Mr. Gyimesi] to sign" based upon what Mr. Gyimesi had told Mr. Lloyd. Mr. Lloyd testified that he sent that letter, unsigned, to the Association after confirming with Mr. Gyimesi that it accurately described the events. Mr. Gyimesi signed the documents a few days later.
- j. In or about this time Mr. Lloyd called Brian Carroll of Counterpoint, and Mr. Popov. Mr. Lloyd made notes of his telephone call with Mr. Popov. Mr. Lloyd said that Mr. Popov did not deny the alleged events during their phone call.
- k. When asked whether the payment issue was a factor in filing a complaint against Mr. Popov, Mr. Lloyd replied "not really".
- l. Mr. Lloyd said that Mr. Gyimesi brought him a printed copy of the April 7, 2015 email from Mr. Popov. Mr. Lloyd said, "I wanted something real before I sent my complaint in and I considered this to be something real". Mr. Lloyd testified that he has no reason to doubt the integrity of the document and when asked whether he altered it, he responded "Good gosh, how would I?".
- m. Mr. Lloyd told Mr. Gyimesi to find the cheque. After requesting it several times, Mr. Gyimesi provided a copy of the cheque to Mr. Lloyd, who then forwarded it to the Association.
- n. Mr. Lloyd said that Mr. Gyimesi volunteered the information about Mr. Popov being "bent" but was reluctant to provide further details or to be involved in the complaint process. Mr. Lloyd confirmed the accuracy of the statement in his March 2, 2016 complaint to the Association that "Mr. Gyimesi did not volunteer this information. Definitely correct; I put extreme

pressure on him, first to get the story and next to get him to sign the letter.” Mr. Lloyd denied that holding a mortgage over Mr. Gyimesi’s house presented any financial pressure to Mr. Gyimesi. Mr. Lloyd stated the only threat was the potential impact on their friendship. On cross-examination, Mr. Lloyd acknowledged comments made in a March 21, 2017 email to the Association in which he said, “The only real “threat”, though was withdrawing a 25 year old friendship, and no longer being a source to bail him out of his next jamb. (sic)” Mr. Lloyd agreed on cross-examination that he did not withdraw his friendship with Mr. Gyimesi. They remain friends and “saw him Friday night and had a beer.” This was in reference to the Friday immediately prior to the hearing.

- o. Mr. Lloyd stated on cross-examination about Mr. Gyimesi that while he “pressured him to provide facts, they were his facts”.
 - p. Mr. Lloyd stated that he had a conversation about the hearing with Mr. Gyimesi the Friday prior to the hearing. Mr. Lloyd testified he told Mr. Gyimesi that he should “essentially tell the truth and that I wasn’t pressuring him to give any specific answer.” He clarified, “I wanted to be sure that I guess while I had pressured him to provide facts, they were his facts.”
16. Mr. Gyimesi is the principal of M. M. Welding. He testified as follows:
- a. Mr. Gyimesi founded M.M. Welding approximately twenty years ago. M.M. Welding is involved in steel fabrication, erection and installation. He is presently the only employee but estimated there were approximately three employees in 2015. Mr. Gyimesi is a welder, fabricator, and crane operator.
 - b. Mr. Gyimesi had worked with Mr. Popov prior to this Project.
 - c. Mr. Gyimesi has known Mr. Lloyd for 30 years. He described him as a business associate and said they “drink beer together”.
 - d. Mr. Gyimesi did not recall how he learned of the Project. He described the bidding process for the Project. Mr. Gyimesi stated that after submitting his bid, Mr. Popov approached him to tell him that the bid was low.
 - e. Mr. Gyimesi said that he met with Mr. Popov and they discussed the scope of work and identified some items that had not been included in the bid. He then retained Mr. Popov to help him with revising M.M. Welding’s bid. Mr. Gyimesi could not recall the price of the original bid. Mr. Gyimesi said, “we went through some things and I increased the bid by \$18,000.” On direct examination, Mr. Gyimesi testified that there was nothing else that Mr. Popov did to earn the consulting fee. He said, “once the bid was done, that part of our arrangement was done”.

f. Mr. Gyimesi confirmed he wrote the cheque in the amount of \$9450 for Mr. Popov's consulting fees. He could not recall whether he received an invoice for Mr. Popov's consulting services.

g. Mr. Gyimesi was asked about the April 7, 2015 email and gave the following evidence:

Q. Okay. And did you print this up and provide it to Mr. Lloyd?

A. I believe I showed him the email. I'm not 100 per cent sure whether I gave it to him as such, but I did show him this email.

Q. Okay. And did you make any changes to the email at all before you – have you altered it at all?

A. It doesn't look altered.

Q. Do you recall whether you altered it at all?

A. Well, no, I....

h. Mr. Gyimesi said that Continental Steel was brought in when the issue of Mr. Gyimesi's expired CWB certification arose. He understood there was plenty of money left in the contract to pay Continental Steel and the details of who was to pay the funds were irrelevant.

i. On cross-examination, Mr. Gyimesi was asked about the scope of work Mr. Popov provided to M.M. Welding for his consultancy fees. He testified:

Q. ...You just stated one more question by Ms. Waddell that you paid to Mr. Popov to help you to put the quote together. Now you're saying for consulting throughout.

A. No, no, I didn't say just to put the quote together. I said consulting services. And I wasn't asked whether that was throughout the project or when I put the bid together or what. It was just a simple, you know, was it just to put the bid together? No. The reason I got you to help me on this, the reason I paid you for consulting services is because the nature of this project. It is totally involved, it's a reno. I very seldom ever do any renos and I don't understand a lot of the stuff as to why things had to be dimensioned the way they were. So of course, this is why I got you to consult.

17. Brian Carroll was the owner of Counterpoint. He testified as follows:

a. Mr. Carroll was the owner of Counterpoint during the material times. Counterpoint was the general contractor on the Project.

b. The Project started in late 2014. Mr. Popov became involved in Spring 2015. The Project was completed in Fall 2015.

c. Mr. Popov, through his company Ecotech, was the Project Manager for Counterpoint. His role included obtaining the bids from the different

subcontractors. There were many subcontractors on the Project. Mr. Popov had to do all the documentation. Mr. Popov did a very good job of the documentation.

- d. Mr. Carroll described the bidding process. Typically, price was the deciding factor but sometimes the client had a relationship with a particular subcontractor.
 - e. Mr. Carroll did not recall particulars of M.M. Welding's bids other than M.M. Welding's bid was substantially lower than the next closest bidder.
 - f. There were issues with the quality of M.M. Welding's work on site.
 - g. Mr. Carroll was not aware of M.M. Welding paying Ecotech \$9450 for consulting services at the time of the Project. Mr. Popov never told Mr. Carroll about this. Mr. Carroll eventually became aware of that information through Continental Steel. Mr. Carroll said that there was no reason that Mr. Popov, through Ecotech, should have been accepting payment from any of the subtrades. Mr. Carroll stated that you do not take money from a subtrade and it is a conflict. Had he known about it at the time, Mr. Carroll would have terminated Mr. Popov.
 - h. On cross-examination, Mr. Carroll agreed that there was no conflict of interest with one subcontractor helping another subcontractor on a project, with himself being advised, by trading work or in exchange for money. Mr. Carroll noted however, that the position of a Project Manager is different in that regard.
 - i. Mr. Carroll could not recall whether there was any restriction in Ecotech's contract preventing it, as Project Manager, from offering consulting services to a subcontractor on the Project. He testified, however, that this is not the type of term which would be included in a contract. He further testified that he would not allow it.
 - j. Mr. Carroll agreed that there were times where it would be appropriate to discuss with a subcontractor who submitted a substantially lower bid and inquire whether it was possible they missed something. On redirect examination, Mr. Carroll agreed, however, that he would not expect a Project Manager to accept payment for the process of making any resulting adjustments to a bid.
18. Konstantin Popov testified as follows:
- a. Mr. Popov began working on this Project in approximately December 2014. He began working on a full-time basis on the Project sometime after January or February 2015. Mr. Popov agreed that he would have been full time in March or April 2015 and that most of the work on the Project took place over the summer and into the Fall of 2015.

- b. Mr. Popov testified to his registration history. He first applied to become a member of the Association in 2007. He revived his registration application in February 2015. Mr. Popov's cover letter to the Registration Committee dated February 3, 2015 specifically asked the Committee to consider that since his last application, he had acquired "7+ years of qualified experienced" and had passed the "Law and Ethics exam."
- c. Mr. Popov was interviewed by the Association in November 2015. Mr. Popov was asked about his recent work experience during that interview. Mr. Popov specifically mentioned the Project in his interview. He did not mention providing project management services to both the general contractor and a subcontractor on the Project. Mr. Popov did not disclose his role in assisting the subcontractor in finalizing the successful bid. Mr. Popov acknowledged that when he reactivated his registration application, he was representing to the Association that he was of good character.
- d. Mr. Popov denied taking any type of "kickback" from M.M. Welding. He stated that he knew both competing contractors from prior projects and challenged them both to ensure that nothing was missing or overpriced from their bids. Mr. Popov said that the last thing a general contractor wants is for a subcontractor to later say that part of the work was not included in their bid.
- e. M.M. Welding's bid came in much lower than its competitor. Mr. Popov asked Mr. Gyimesi to reconsider the price as it was substantially lower than the next lowest bid. Mr. Popov did not recall if M.M. Welding's bid was increased or by how much. Mr. Popov asked the competitor to lower its bid, but he says, they refused. Ultimately the selection was made to choose M.M. Welding as their price was significantly lower.
- f. Mr. Popov agreed he received the cheque for Ecotech from M.M. Welding in the amount of \$9450 in October 2015 and that he cashed it in October 2015. In response to a Panel question, Mr. Popov explained arriving at the \$9000 plus tax fee on the basis that the industry standard for that work is typically 12.5%. While that would have resulted in slightly more than \$9000, Mr. Popov and Mr. Gyimesi agreed upon the \$9000 fee, to which 5% GST was added to total \$9450.
- g. Mr. Popov distinguished the project management services to M.M. Welding from the project management services to Counterpoint. He stated "My job was to ensure that work goes well, we'll set up contractors and if it does not go well, to address by means of extension of the contract, by the probably termination of the contract, by rescheduling events, by coordinating different sub-trades between themselves to accommodate their needs because they cannot do something. This what my job would be".

- h. Mr. Popov did not consider himself to be in a conflict of interest position because “Ecotech Management acted in best interests of Counterpoint Interiors and the owner, Reliance Insurance. By providing services to M.M. Welding, Ecotech did not adversely affect Counterpoint and Counterpoint’s clients and the project itself”. Mr. Popov noted that M.M. Welding and Ecotech had no obligations to refrain from providing services to each other “just like any other two subcontractors working on the same project are not prohibited from helping each other”. In addition, Mr. Popov testified that neither he nor Ecotech were performing professional services that would enable them to sign off on any documents which would advance M.M. Welding in the Project. As there was no risk of misrepresentation, there was no risk of conflict of interest.
- i. Mr. Popov confirmed his email address. He denied sending the April 7, 2015 email to Mr. Gyimesi.
- j. Mr. Popov indicated that he continues to work in engineering in Australia. He stated the title designation (such as P.Eng.) is not required there to deal with technical issues and individuals who do not sign off on work still refer to themselves as engineers.

G. Analysis and Findings

Does the Panel have jurisdiction?

19. The Association points to section 33 of the Act:

Disciplinary actions

33 (1) After an inquiry under section 32, the discipline committee may determine that the member, licensee or certificate holder

(a) has been convicted in Canada or elsewhere of an offence that, if committed in British Columbia, would be an offence under an enactment of the Province or of Canada, and that the nature or circumstances of the offence render the person unsuitable for registration or licensing,

(b) has contravened this Act or the bylaws or the code of ethics of the association, or

(c) has demonstrated incompetence, negligence or unprofessional conduct.

(2) If the discipline committee makes a determination under subsection (1), it 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 cancel the membership, licence 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.

(3) The discipline committee must give written reasons for any action it takes under subsection (2).

(4) If a member, licensee or certificate holder is suspended from practice,

(a) the registration, licence or certificate of authorization is deemed to be cancelled during the term of the suspension, and

(b) the suspended member, licensee or certificate holder is not entitled to any of the rights or privileges of membership and must not be considered a member while the suspension continues.

20. The Association argues that principles of statutory interpretation ought to recognize the absence of any temporal limitation in the above provisions – with the exception that the conduct at issue must be in the past. The Association argues that the object of the Act and the statutory duties of the Association support a broad reading to serve the public interest. The Association relies upon *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32.
21. The Association further relies upon the following cases in which other regulators have assumed jurisdiction over pre-registration conduct: *Stolen v. College of Teachers (British Columbia)* (1994), 2 B.C.L.R. (3d) 44 (BCSC) (reversed on appeal on other grounds) which the Association submits is the guiding authority in British Columbia, *Ho v. Alberta Association of Architects*, 2015 ABCA 68; and *Ontario College of Social Workers and Social Service Workers v. Kline*, 2019 ONCSWSSW 3.
22. The Association submitted that *Keppel v. Association of Professional Engineers, Geologists & Geophysicists (Northwest Territories)* (1996), 138 D.L.R. (4th) 749 (N.W.T.S.C.) which declined jurisdiction over pre-registration matters, is distinguishable because that tribunal found that the conduct at issue did not raise issues of continuing conduct or of Mr. Keppel's fitness to practice. The Association also argued that *Association of Professional Engineers of Ontario v. Leung*, 2018 ONSC 4527 is distinguishable, including on the basis of a different statutory regime and caselaw in that jurisdiction and it dealt with a narrow issue of unauthorized practice.

23. Mr. Popov argued there is no jurisdiction over the actions of persons before they become members, and the issues raised by the Notice of Inquiry do not concern the practice of engineering.
24. With respect to the language of the statute, Mr. Popov notes that “member” is defined as “registered member of the Association” which does not include an applicant for registration. He argues “the Act, when read as whole, provides that an investigation, and any resulting discipline, may only apply to members, licensees or certificate holders, and not to persons who do not hold such designations”.
25. Mr. Popov agrees that absent statutory authority, there are limited circumstances in which regulators may consider pre-membership conduct; namely: false procurement of membership and concerns about a member’s fitness to practice. Mr. Popov says neither of these is at issue.
26. Mr. Popov submits that the conduct at issue took place between April 2015 and October 2015, and Mr. Popov was registered on December 16 or 17, 2015. As a result, the conduct is not alleged to have continued into the time of membership.
27. Mr. Popov also argues that the provision of project management services does not fall within the definition of “practice of professional engineering” under the Act.
28. The Panel agrees that the Association is a creature of statute. It possesses a broad public interest and public protection mandate under that statute.
29. Section 28 of the Act defines “member” to include “former member”. There is no dispute that Mr. Popov is a former member.
30. With respect to pre-registration conduct, the Panel agrees with the Association that the *Stollen* decision is the leading British Columbia authority, which found that membership does not grant immunity with respect to all pre-registration conduct.
31. The caselaw and broad and purposive interpretation that must be given to the Act leads the Panel to conclude that it has jurisdiction over the pre-registration conduct of a member, where membership was procured by a false representation, if conduct calls into question their suitability to practice, or where the conduct continued from the pre-registration period to the registration period.
32. In this case, the timeline of events demonstrates both conduct that is “continuing” into the time of membership, as well as conduct that is relevant to Mr. Popov’s suitability to practice:
 - a. February 2015: Mr. Popov reactivated a stale application for membership and represented to the Association that he acquired “7+ years of qualified experience” and that he passed the Law and Ethics Exam. His application for membership then became under active consideration.

- b. April 2015: Mr. Popov, through Ecotech, is alleged to have encouraged Mr. Gyimesi and M.M. Welding to submit a higher bid price, and split the profit from the rigged bid process.
 - c. October 2015: Mr. Popov received a cheque for \$9450 from M.M. Welding and cashed that cheque.
 - d. November 2015: Mr. Popov was interviewed by the Association's Registration Committee. Mr. Popov specifically told the Registration Committee about his work on the Project during his interview. He did not disclose that while serving as the Project Manager for Continental, he also provided project management services to M.M. Welding or that he received \$9450 from M.M. Welding. Mr. Popov represented to the Registration Committee during the interview that he is of good character.
 - e. Fall 2015: Mr. Carroll testified the Project ended at this time.
 - f. December 2015: Mr. Popov was granted registration.
 - g. January or February 2016: Mr. Lloyd testified he was approached during this period by Mr. Gyimesi and Mr. Popov about remediating the structural steel work on the Project.
 - h. Throughout the Project: Mr. Popov and Mr. Gyimesi testified that Mr. Popov's consulting services were not restricted to Mr. Popov's assistance with increasing M.M. Welding's bid but also included project management services that were delivered throughout the Project.
 - i. March 2, 2016: Mr. Lloyd filed a complaint against Mr. Popov with the Association.
 - j. March 2016: Mr. Popov testified he was removed from the Project by Mr. Carroll after Mr. Lloyd filed the complaint with the Association.
33. The Panel notes, in particular, that at the time of the alleged conduct Mr. Popov was under active consideration for membership and had completed the Law and Ethics exam. He is therefore presumed to have been knowledgeable about the expected standard of conduct of a member. The Panel finds that under these circumstances it is reasonable to expect applicants to conduct themselves in accordance with the standard expected of members. As such, Mr. Popov's suitability as a member is engaged.
34. Moreover, it is clear from the timeline of events that Mr. Popov's conduct at issue in acting for both Counterpoint and M. M. Welding on the Project, spanned from the pre-registration period until the period after he was granted registration.
35. The Panel does not accept Mr. Popov's argument that when members perform project management services, they are insulated from the jurisdiction of the

Association as that work does not constitute “engineering”. The practice of professional engineering is defined in the Act as (emphasis added):

"practice of professional engineering" means the carrying on of chemical, civil, electrical, forest, geological, mechanical, metallurgical, mining or structural engineering, and other disciplines of engineering that may be designated by the council and for which university engineering programs have been accredited by the Canadian Engineering Accreditation Board or by a body which, in the opinion of the council, is its equivalent, and includes reporting on, designing, or directing the construction of any works that require for their design, or the supervision of their construction, or the supervision of their maintenance, such experience and technical knowledge as are required under this Act for the admission by examination to membership in the association, and, without limitation, includes reporting on, designing or directing the construction of public utilities, industrial works, railways, bridges, highways, canals, harbour works, river improvements, lighthouses, wet docks, dry docks, floating docks, launch ways, marine ways, steam engines, turbines, pumps, internal combustion engines, airships and airplanes, electrical machinery and apparatus, chemical operations, machinery, and works for the development, transmission or application of power, light and heat, grain elevators, municipal works, irrigation works, sewage disposal works, drainage works, incinerators, hydraulic works, and all other engineering works, and all buildings necessary to the proper housing, installation and operation of the engineering works embraced in this definition;

36. The Panel notes that during his interview with the Association in November 2015, Mr. Popov offered the Project as an example of his work to support his application for membership.
37. The Panel finds that in the circumstances of this case the work carried out by Mr. Popov necessarily falls within the ambit of professional engineering as defined in the Act.
38. For these reasons, the Panel finds it has jurisdiction in this matter.

Allegation #1: Rigged Bid Process

39. The Association submits that the evidence is clear and convincing that Mr. Popov “took a kickback or payment from M.M. in exchange for helping M.M. increase its bid and secure the structural steel contract on the Project”. The Association submits that Mr. Popov solicited a bribe in the guise of a consulting fee when he used information known to him in his project management role to assist Mr. Gyimesi to increase his structural steel bid. The Association submits that Mr. Popov took the fee or kickback and recommended to Counterpoint that it accept M.M. Welding’s bid.
40. The Association submits that Mr. Popov’s evidence was less than forthcoming, self-serving, and unreliable, including because:

- a. In Mr. Popov's first contact with the Association in March 2016, he failed to plead his innocence.
 - b. Mr. Popov did not immediately offer his project management explanation for the \$9450 payment and that explanation makes little sense. Mr. Popov was already providing project management services for the entire Project and many of the tasks that Mr. Popov says he performed for Mr. Gyimesi and M.M. Welding were tasks he should have been doing as part of his job for Counterpoint.
 - c. Mr. Popov produced the invoice for Ecotech's consulting services to M.M. Welding very late in the process. The Association asserts that Mr. Popov "created" the invoice after being asked for it during his interview in April 2018.
 - d. The evidence of Mr. Gyimesi, Mr. Lloyd and Mr. Carroll should be preferred over Mr. Popov's evidence. Mr. Gyimesi had no reason to lie to the Panel. He made it clear he wanted nothing to do with the complaint process. The crux of Mr. Gyimesi's testimony is that Mr. Popov told him that M.M. Welding's bid was low, M.M. Welding increased its bid by \$18,000 and paid Ecotech \$9000. Mr. Gyimesi's evidence is supported by the April 7, 2015 email and the copy of the cheque from M.M. Welding to Ecotech for \$9450.
41. Mr. Popov made several arguments as to why the evidence is not compatible with a bribe, including that:
- a. The price difference between M.M.Welding and the next bidder was over 40%. The awarded contract price was low for the Project. Had there been a bribe, it is more likely the parties would have agreed on a higher figure.
 - b. M.M. Welding was terminated from the Project. If there had been a rigged bidding process, one would not expect the successful bidder to be terminated.
 - c. The original electronic version of the April 7, 2015 email has still not been produced by Mr. Gyimesi, and Mr. Gyimesi's evidence regarding the email is not credible.
42. Mr. Popov submitted that Mr. Gyimesi and Mr. Lloyd were not credible witnesses. He submitted that Mr. Lloyd's evidence should be given little weight due to its inconsistencies, information provided to the Association which later proved to be unsubstantiated (for example, the date of the cheque), and because of his coercion of Mr. Gyimesi. Mr. Popov pointed out that Mr. Lloyd admitted during his testimony to have seen Mr. Gyimesi a few days prior to the hearing and that they had a conversation about the hearing.

43. The Panel has several concerns with Mr. Lloyd's evidence. Mr. Lloyd's evidence was based upon what he says he was told by Mr. Gyimesi, as well as the April 7, 2015 email and a copy of the cheque for \$9450. The Panel is not satisfied about the authenticity of the April 7, 2015 email. The only version of the email that exists is the paper copy which Mr. Lloyd delivered to the Association along with his complaint. If the Panel were to accept Mr. Lloyd's version that Mr. Gyimesi printed off the email and provided it to him, that does not explain why neither Mr. Gyimesi nor Mr. Popov is able to produce the email now from any computer. Mr. Gyimesi's evidence on showing versus providing the email to Mr. Lloyd was vague and evasive. It is not apparent to the Panel that if Mr. Gyimesi and Mr. Popov were involved in a rigged bid scheme where they split the profits, that they would have confirmed that scheme in writing. Moreover, Mr. Gyimesi printing off the email for Mr. Lloyd's complaint to the Association is inconsistent with the undisputed evidence that he did not want to participate in the investigation or disciplinary process. The Association went to considerable efforts to try to confirm the existence of the email through Microsoft. Microsoft's response was inconclusive on that point. The Panel finds that it has not been proven on a balance of probabilities that the email is authentic.
44. The Panel does not accept Mr. Lloyd's evidence that he filed the complaint against Mr. Popov because he was concerned about his conduct and not because of his payment issues on the Project. Mr. Lloyd understated his financial interests. Mr. Lloyd filed a lien in relation to Continental Steel's work on the Property on the same day as he filed his complaint with the Association. Mr. Lloyd initially described his relationship with Mr. Gyimesi as being a business relationship and a friendship, however, through further questioning, it became clear that Mr. Lloyd was a major creditor of Mr. Gyimesi. Mr. Lloyd held a \$600,000 mortgage over Mr. Gyimesi's home at the time of the events at issue in this matter. At that time, Mr. Lloyd also prepared a letter in Mr. Gyimesi's name and for Mr. Gyimesi's signature, which was to form a key part of Mr. Lloyd's complaint to the Association about Mr. Popov. Mr. Lloyd sent the complaint to the Association with the letter unsigned and indicated in his testimony that Mr. Gyimesi had orally signed off on the letter. The Panel was concerned by the following language in Mr. Lloyd's March 2, 2016 letter: "I became angry and cornered Mr. Gyimesi and demanded details of what his "bent" comment meant" and his testimony that "Mr. Gyimesi did not volunteer this information. Definitely correct; I put extreme pressure on him, first to get the story and next to get him to sign the letter". The Panel does not accept Mr. Lloyd's explanation that the extreme pressure was only a threat to end their friendship.
45. The Panel also agrees with Mr. Popov that Mr. Lloyd and Mr. Gyimesi's evidence must be viewed considering Mr. Lloyd's admission that he had a conversation with Mr. Gyimesi about the hearing prior to both of them testifying. The Panel is not persuaded that Mr. Lloyd and Mr. Gyimesi did not discuss Mr. Gyimesi's testimony, that the only thing Mr. Lloyd said to Mr. Gyimesi about the hearing was to tell the truth.

46. The Panel found Mr. Gyimesi's testimony to have been evasive and inconsistent. An example of Mr. Gyimesi's inconsistent testimony was that during his examination by Ms. Waddell, Mr. Gyimesi testified that the \$9450 payment was for Mr. Popov to assist M.M. Welding with raising its bid. Under cross-examination from Mr. Popov, Mr. Gyimesi then testified that the funds were for project management services delivered throughout the Project. Mr. Gyimesi's responses to Ms. Waddell's questioning about the April 7, 2015 email were evasive. Mr. Gyimesi stated he could not recall key facts such as how he found out about the Project, the amount of his original bid on the Project, whether Ecotech sent an invoice for the project management services to M.M. Welding, and whether he provided the April 7, 2015 email to Mr. Lloyd.
47. Mr. Lloyd and Mr. Gyimesi's evidence was both internally and externally inconsistent. Mr. Lloyd and Mr. Gyimesi's version of events differ significantly from each other. Mr. Lloyd's hearsay evidence is of a rigged bid process in which Mr. Popov accepted a bribe from Mr. Gyimesi. Mr. Gyimesi's evidence is that he paid Mr. Popov to assist with M.M. Welding's bid and other project management services throughout the Project.
48. The two witnesses directly involved in the alleged rigged bid and profit scheme, Mr. Popov and Mr. Gyimesi, both deny that Mr. Popov or Ecotech profited from a rigged bidding process. Mr. Popov and Mr. Gyimesi both maintain that the payment of \$9450 from M.M. Welding to Ecotech was for project management services provided by Mr. Popov to M.M. Welding which began during the bid process and spanned the duration of the Project.
49. The Panel does not find it unusual that Mr. Popov did not immediately refute the complaint allegations in his first telephone call to the Association. The Panel agrees with the Association that it is unusual that Mr. Popov did not produce the invoice from Ecotech to M.M. Welding until late in the Association's investigation. The Panel does not find, however, that to be sufficient evidence that Mr. Popov fabricated the invoice. The Panel found Mr. Popov's testimony about the description of project management services delivered to M.M. Welding to be vague and agrees with the Association that a clear distinction in the services rendered to M.M. Welding and Counterpoint was not apparent.
50. Mr. Carroll had no direct evidence of the alleged rigged bid and profit scheme. He only heard about the allegation afterward via Mr. Lloyd. The Panel found Mr. Carroll to be a very credible and reliable witness. He gave his evidence in a straightforward and non-biased manner. Mr. Carroll was forthright in his description of Mr. Popov's strengths (in documentation) and the facts regarding the Project.
51. The Notice of Inquiry alleges not only that Mr. Popov profited from M.M. Welding's successful bid, but also that the bidding process was rigged. The Panel was not able to find on a balance of probabilities, that the bidding process was rigged. M.M. Welding's bid was the lowest bid and it was selected on the basis of price. Mr. Popov's evidence that he approached the competitor to lower its bid was

uncontested. Mr. Popov's testimony that he previously worked with both companies who were bidding against each other was also uncontested. With respect to the profit splitting, the Panel finds Mr. Lloyd and Mr. Gyimesi to have lacked credibility and their testimony on the key facts in issue lacked reliability. The Panel notes the significant difference in the circumstances of the payment from M.M. Welding to Mr. Popov as described by Mr. Lloyd and Mr. Gyimesi. In particular, Mr. Gyimesi does not corroborate Mr. Lloyd's version that it was a kickback paid in exchange for increasing the amount of the bid prior to its acceptance. The Panel is not satisfied on the basis of clear, convincing and cogent evidence that the Association has proven this allegation on a balance of probabilities.

Allegation #2: Conflict of interest

52. The Association argued that if the evidence does not support allegation #1, it amounts to a conflict of interest.
53. The Association argues that even if Mr. Popov's evidence with respect to his project management services to M.M. Welding is accepted in its entirety, his agreement to receive a fee from a subtrade on the Project while also acting as Project Manager for the general contractor was a conflict of interest.
54. The Association submits the conflict of interest is even more egregious because some of the work Mr. Popov says he performed for M.M. Welding fell within the scope of work for which he was being paid by Counterpoint.
55. Mr. Popov made several submissions on why the evidence does not establish a conflict of interest, including:
 - a. There were no contractual restrictions precluding Ecotech as a subcontractor to Counterpoint from providing services to another subcontractor on the Project.
 - b. A substantial risk that Ecotech's representation of Counterpoint would be materially and adversely affected by Ecotech's own interests or Ecotech's duties to M.M. Welding did not arise here.
 - c. Ecotech could not influence the acceptance of work done by M.M. Welding, approve shop drawings or sign off on structures, examination of work quality, payments and others aspects of M.M. Welding's contract with Counterpoint.
56. The Panel finds that the facts pertaining to this allegation are not at issue, only whether they amount to a conflict of interest. It is not disputed that Mr. Popov accepted payment through Ecotech in the amount of \$9450 from M.M. Welding at the same time as he was the Project Manager for Counterpoint. Both Mr. Popov and Mr. Gyimesi testified that the payment of \$9450 was in exchange for project management services that Ecotech delivered to M.M. Welding throughout the

course of the Project. The Panel accepts Mr. Carroll's evidence that Mr. Popov did not disclose to him that Ecotech was providing paid services to a subtrade while acting as the Project Manager on the Project.

57. The Panel finds this conduct amounts to a conflict of interest. Mr. Popov was required to act faithfully towards Counterpoint and its interests. In pursuing a business relationship with M.M. Welding, one of Counterpoint's subtrades, he placed himself in a position where decisions made on behalf of one party could materially affect the interest of the other party in which he had an interest. Mr. Popov failed to disclose his relationship with M.M. Welding to Counterpoint. He also accepted payment from more than one interested party for services pertaining to the same work.
58. The Panel does not accept Mr. Popov's submission that this was the same as one subtrade working for another subtrade during the course of a project. Ecotech was not a subtrade, it was the Project Manager. Similarly, the Panel rejects that the absence of a clause in Ecotech's contract with Counterpoint precluding Ecotech from acting as Project Manager for another subtrade would be determinative of whether the conduct amounted to a conflict of interest.
59. As a result, the Panel finds the Association has proven allegations #2 to the requisite standard.

Allegations 3, 4, and 5: Code of Ethics

60. The Panel considers the conduct in allegation #2 to be contrary to the following principles from the *Code of Ethics*, and its *Guidelines*:

Principle 4: Act as faithful agents of their clients or employers, maintain confidentiality and avoid a conflict of interest but, where such conflict arises, fully disclose the circumstances without delay to the employer or client.

Guidelines:

(e) When a conflict of interest arises members should reveal the conflict without delay to the client or employer, including interests (direct or indirect) held by close associates, relatives and companions.

Commentary:

In providing services to a client, members should consider themselves part of the client's organization or team, with high regard for the client's interests. This is implicit in the term "faithful agent" and should be the basis of the member/client relationship.

Members involved in project management, contract supervision and field services should spend sufficient time on the job site and at subcontractor and suppliers' plants, to ascertain that the work is proceeding properly and expeditiously and with due regard for safety and the environment. Reports and progress estimates should

reflect actual site conditions and progress. The interpretation of agreements and contract documents should be undertaken with fairness and impartiality.

The relationships of members with their associates should be friendly but independent and free from obligating gratuities.

Most but not all conflicts of interest arise out of business activities. Members should be careful in their business relationships in order that potential conflicts within their control are avoided. For example:

- a member with authority to recommend purchase of vehicles ought not own stock in an automobile manufacturer.
- a geoscientist in a management position in the exploration division of a major oil company ought not hold stock in a seismic contractor.
- an engineer employed by a municipality ought not have an interest in a land developer operating in that municipality.
- a member ought not actively participate in organizations, lobby groups or voluntary committees detrimental to the employer's image and competitive position.

Conflicts of interest extend to holdings of associates and to members of the professional's immediate family including common-law spouse or companion.

Where a conflict exists, a member should take steps to mitigate it including recommending the engagement of another professional to oversee the work. Such mitigation does not however erase the conflict — the best conduct is avoidance.

Principle 5: Uphold the principle of appropriate and adequate compensation for the performance of engineering and geoscience work.

Guideline:

(e) Members should not accept compensation, financial or otherwise, from more than one interested party for the same service, or for services pertaining to the same work, unless there is full disclosure to, and consent of, all interested parties.

Principle 7: conduct themselves with fairness, courtesy and good faith towards clients, colleagues and others, give credit where it is due and accept, as well as give, honest and fair professional comment.

61. The Panel finds that by not avoiding a conflict of interest, Mr. Popov has violated Principle 4.
62. The Panel finds that by accepting payment from two parties for services pertaining to the same work, or on the same project without disclosure and consent of all parties Mr. Popov has violated Principle 5.

63. The Panel finds that Mr. Popov breached Principle 7 of the Code of Ethics. By placing himself in a position in which he was accepting payment from one party while in a position to influence or make decisions on behalf of another party which would affect his own interest, Mr. Popov did not display fairness, courtesy or good faith towards clients, colleagues or others.
64. As a result, the Panel finds the Association has proven allegations #3, #4 and #5 to the requisite standard.

Unprofessional Conduct

65. “Unprofessional conduct” is not defined in the Act.
66. The British Columbia Court of Appeal in *Strother v. Law Society of British Columbia*, 2018 BCCA 481 defined “professional misconduct” adopting the test from *Law Society of British Columbia v. Martin*:

[171] The test...is whether the facts as made out disclose a marked departure from the conduct the Law Society expects of its members; if so, it is professional misconduct.

67. In *Re Foreman* (August 25, 2015), the Discipline Panel also defined “unprofessional conduct” with reference to the *Martin* decision:

[93] The Association’s *Code of Ethics Guidelines* addresses the standard of unprofessional conduct as follows:

The APEGBC Code of Ethics services several purposes. It designates the standard of conduct expected of engineers and geoscientists in easily understandable terms. It distinguishes appropriate professional conduct from that which fails to meet a required standard. The Code also provides a basis on which allegations of unprofessional conduct are adjudicated by the Discipline Committee or other groups charged with responsibilities related to the conduct of members.

[94] Hence, unprofessional conduct is that which does not meet the standard expected through application of the *Code of Ethics*. The Panel accepts the submission of the Association, based on *Law Society of British Columbia v. Martin*, 2005 LSBC 16, that professional misconduct is established when there is a marked departure from the standard to be expected of a competent professional, and that minor or inadvertent failure to comply with professional standards does not constitute unprofessional conduct.

68. The Panel accepts that the test for unprofessional conduct is a “marked departure from the standard to be expected of a competent professional”.
69. The Panel finds that Mr. Popov’s conduct in accepting payment of \$9450 for project management services to M.M. Welding while acting as Project Manager to Counterpoint and failing to disclose his financial relationship with M.M. Welding to

Counterpoint, is a marked departure from the standard expected of a competent professional. The Panel considers this conduct was serious, prolonged, and hidden. The conduct was hidden not only from Counterpoint but also from the Registration Committee, which was assessing Mr. Popov's suitability to join the profession, including whether he is of good character and good repute. Accordingly, the Panel finds that Mr. Popov's actions meet the elements of the test for unprofessional conduct.

Summary

70. In summary, the Panel finds that Mr. Popov demonstrated unprofessional conduct contrary to the Act, and acted in a manner contrary to Principles 4, 5, and 7 of the Code of Ethics.
71. The Panel will determine whether sanctions should be imposed upon Mr. Popov pursuant to s. 33(2) of the Act and whether to impose costs pursuant to s 35 of the Act. The Panel directs that the parties provide written submissions in accordance with the following schedule:
 - a. Submissions must be delivered by counsel for the Association ("Association Submissions") to Mr. Popov and to the Panel within 14 days of the date of this decision.
 - b. Submissions must be delivered by Mr. Popov to counsel for the Association and to the Panel within 14 days of the receipt of the Association Submissions.
 - c. Reply submissions may be delivered by counsel for the Association to Mr. Popov and to the Panel within 7 days of receipt of Mr. Popov's submissions.
72. Submissions to the Panel shall be delivered to Susan Precious, counsel for the Panel and may be delivered electronically.

73. The Association or Mr. Popov may request an oral hearing on penalty and costs no later than 14 days after the date of this decision.

Dated: December 4, 2020

[original signed by]

Colin Smith, P.Eng., Chair

[original signed by]

Neil Cumming, P.Eng.

[original signed by]

Emily Cheung, P.Eng.