

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

- and -

IN THE MATTER OF Ken Dextras, P.Eng.

DISCIPLINE COMMITTEE PANEL:	Roy Wares, P.Eng., Chair Alexander Black, P.Eng Paul Adams, P.Eng.
COUNSEL FOR THE ASSOCIATION:	David Wende
KEN DEXTRAS, P.Eng.	Not Present
COUNSEL FOR THE MEMBER:	None
DATE AND PLACE OF HEARING	April 7, 2008, Vancouver, BC
DATE OF VERBAL LIABILITY FINDING	April 7, 2008
DATE OF WRITTEN DECISION	June 20, 2008

DETERMINATION

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 Ken Dextras, P.Eng..

[2] Ken Dextras was a member of the Association under the Professional Engineer (P.Eng.) designation at all times relevant to the matters herein in question.

[3] The allegation of unprofessional conduct against the member Ken Dextras, P. Eng. is found in the second paragraph of the Notice of Inquiry of November 14, 2007.

"... contrary to the Act, you have demonstrated unprofessional conduct by your failure to provide the Association's Investigation Committee with the requested information or records, in your possession or control, as set out in a letter to you dated July 19, 2007, contrary to Section 30(4) of the Act

[4] Dextras did not attend the hearing nor did he have legal counsel represent him. David Wende advised the panel that Dextras had advised him by e-mail that he would not attend the hearing. Wende had earlier asked Dextras to formalize any objections to the panel composition but nothing had been heard back from Dextras. The panel delayed commencement of the hearing from 9.30am to 10.00am in case Dextras decided to attend. In the absence of further communication from Dextras, the panel commenced at 10.00am, Monday April 7, 2008. There being neither written objections to the panel members, or objections from the Association, the Panel commenced the hearing. At the conclusion of the hearing, the Panel rendered a verbal decision on liability on April 7, 2008, then heard submissions from Wende on sanctions.

[5] The Panel faced deciding the initial question of whether Dextras was properly served notice of this inquiry. On that issue, we heard the following evidence:

[6] On February 25, 2008, Wende, who had assumed conduct of the matter because of Robert Hunter's scheduling conflicts, sought to set a date for the hearing and sought to admit certain documents [Ex 2, Tab 2]. Wende asked Dextras to choose a date between April 1 and April 11, 2008 that would be least inconvenient to him.

[7] On March 4, 2008, Wende again wrote Dextras asking for the courtesy of a response to the February 25 letter. Wende stated that he had received instructions from the Association that Dextras had been attempting to deal directly with the President, APEGBC and that the Association had instructed Dextras to deal directly with him (Wende) [Ex 2, Tab 3].

[8] A new Notice of Hearing was signed on 10th March, 2007, setting out April 7, 2008 as the date of the Hearing.[Ex 2, Tab 4]

[9] Having not received a response from his earlier correspondence to Dextras, Wende wrote Dextras on March 11, 2008 specifying April 7, 2008 as the date for the hearing and noted the failure by Dextras to respond to any previous correspondence. Wende pointed out that should the Panel make a verbal determination at the hearing of a breach of professional conduct, he (Wende) would ask the Panel to hear submissions on penalty.[Ex 2, Tab 6]

[10] An affidavit of Attempted Service was prepared on March 17, 2008 using the last address of Dextras on the APEGBC files [Ex 2, Tab 5]. The affidavit by George Zainescu made oath and swore that he had attempted to deliver the documents on March 12, 2008. He had been greeted by a middle-aged man who said that Dextras was out of town, and who offered to take the documents. The process server left without delivering the documents under the belief that they had to be delivered personally to Ken Dextras.

[11] Wende wrote an e-mail to Dextras on March 13, 2008, requesting that he (Dextras) not block e-mails. The letter attached to the e-mail specified the panel members for the upcoming hearing and asked Dextras to make a representation on reasonable apprehension of bias by the panel members, should he have any objections.

[12] Wende had a further round of e-mail correspondence on March 17th, 2008 with Dextras, including reference to section 32(2) of the Act which specifies that failing personal service, a notice of inquiry must be sent either by notice at the last known address, or by sending by registered mail to the last address on the APEGBC file. Dextras had also attempted to bring the President of APEGBC into the discussion, an opportunity which she pointedly turned down on March 4, 2008 [Ex. 2 tab 7,8]

[13] Wende subsequently swore an affidavit on April 6th, 2008 attesting to his knowledge of a registered mail package delivered to the Canada Post office at Metrotown, Burnaby on March 17, 2008, addressed to Dextras and enclosing the Notice of Hearing dated on November 10, 2007. The panel looked at the original of the Canada Post receipt which is dated March 17, 2008 at 17.14, [Ex 2, tab 9, exhibit A].

[14] On April 2, 2008, Wende wrote Dextras inquiring whether Dextras would attend the hearing. Dextras responded later that day stating he would not be in attendance and until he heard from the President of APEGBC, he would neither give Wende the time of day or attend any meetings,

[15] The evidence is that Dextras was first served a Notice of Inquiry, dated November 14, 2007 and served on him by process server on November 28, 2007. The original hearing did not proceed on the initial January 7, 2008 hearing date. Subsequently, Dextras was contacted by Wende on February 25, 2008 with a request to proceed to a hearing in early April, 2008. Dextras did not respond.

[16] The evidence is that on March 4, 2008, Wende again wrote Dextras advising Dextras that in the event that he had no response from Dextras by March 7, 2008, Wende would ask the Chair of the Discipline Committee to unilaterally set a hearing date.

[17] Further, on March 12, 2008, a process server attended at Dextras' last known address, and on being advised by an unidentified middle age male that Dextras was "out of town for two weeks", the process server did not leave the package with the unidentified male.

[18] Subsequently, on March 17th, 2008, Beverley Mitovic, Regulatory Compliance Officer at APEGBC, delivered a registered mail package to Canada Post, Metrotown at 17.14 PDT. This package was delivered to Canada Post 17 days before the scheduled hearing. Thiele testified that the registered package went back and forth from Canada Post offices and was never in fact picked up by Dextras, even though Dextras was aware of the package from both Canada Post notifications and Wende's communications. Further, Thiele also testified that the address of service had been the address in the APEGBC files for at least 8 years.

[19] Section 32(2) of the Act specifies that:

On receipt of the investigation committee's recommendation for an inquiry, the discipline committee must cause an inquiry to be held before it by causing written notice of an inquiry to be personally served on the person who is the subject of the inquiry or, failing personal service, by leaving the notice at, or by mailing it by registered mail to, the person's last address on file with the association.

[20] Section 32(3) of the Act specifies that:

Notice under subsection(2) must be given at least 14 days before the inquiry unless this requirement is waived by the person who is the subject of the inquiry

[21] Wende directed the Panel's attention to the *Interpretation Act* and a recent case (*Assessor of Area # 12-TriCities/Fraser Valley, 2004 BCSC 135*) for the definition of "mail". The definition in the *Interpretation Act* for "mail" is:

"mail" refers to the deposit of the matter to which the context applies in the Canada Post Office at any place in Canada, postage prepaid, for transmission by post, and includes deliver:

[22] Notwithstanding that the Notice of Service was not left by the process server at the Dextras address on March 12th, 2008, the Panel is satisfied that Dextras was properly served notice of the

hearing by the mailing of the registered mail package on March 17, 2008, a period of 17 days before the hearing date and meets the 14 day notification period. The definition of "mail" in the *Interpretation Act* applies to delivery to a Canada Post office outlet, not the actual delivery date. Further, the hearing was a continuation of a hearing originally scheduled for January 7, 2008 and the evidence of Dextras' correspondence with Wende indicates he was aware of the pending hearing. Dextras chose not to recover the registered mail from Canada Post.

BURDEN AND STANDARD OF PROOF

[23] Wende opened the hearing by informing the Panel of the rules of evidence, the burden of proof upon the Association and the standard of proof that the Panel must apply in reaching its decision. Wende made clear that the burden of proof always rests upon the Association, and that the onus falls upon the Association to demonstrate that the charges had been proven to the appropriate standard of proof.

[24] The panel accepted that the standard of proof required is that stated by Madame Justice McLachlan (as she then was) in *Dr. William Jory v. The College of Physicians and Surgeons of British Columbia* (unreported December 13, 1985) which reads in part:

"The standard of proof in cases such as this is high. It is not the criminal standard of proof beyond a reasonable doubt. But it is something more than a balance of probabilities. The authorities establish that the case against a professional person on a disciplinary hearing must be proved by a fair and reasonable preponderance of credible evidence ... The evidence must be sufficiently cogent to make it safe to uphold the findings with all the consequences for the professional person's career and status in the community."

[25] The standard of proof in disciplinary proceedings against a professional person is somewhere between the "balance of probability" and "beyond a reasonable doubt". The word "cogent" is synonymous with "powerful", "compelling" and "convincing". The more serious the allegations brought against the Member, the more cogent should the evidence be before a finding of liability is made against the Member. The Panel applied that standard of proof in reaching our decision.

THE EVIDENCE BEFORE THE PANEL

[26] The Panel emphasises that in coming to this Decision, only the evidence put before the Panel during the hearing was considered. The events, which gave rise to this matter being brought to the attention of the Association are summarized below. The Panel heard from two witnesses. The first witness was Mr Geoff Thiele, Associate Director, Regulatory Compliance, APEGBC. The second witness was Ms. Joanne Newlove, Manager of Council Affairs, APEGBC.

[27] On July 10, 2007, the Practice Review Committee requested [Ex 04] that an investigation be carried out on Ken Dextras, P.Eng., for his refusal to provide any information requested by the Practice Review Committee by e-mail and verbally over 15 month period [Ex04]. The relevant section of the Act is Section 44 which reads::

If a practice review committee is created under section 10 (1)(d) a member, licensee or certificate holder

- (a) must, on request, provide the practice review committee with any relevant information, record, document or thing, and*
- (b) may not refuse to comply with a request under paragraph (a) on the grounds of confidentiality*

[28] On July 12, 2007, the Investigation Committee authorized an investigation into the conduct of Dextras as a result of a complaint from the Association's Professional Practice Committee. The substance of the investigation was that Dextras had failed to respond to a request from the Professional Practice Committee.

[29] The authorization and nature of the investigation were set out in the letter of July 19, 2007 [Ex. 5, Tab 1] that Thiele sent to Dextras, in which Thiele requested a reply no later than August 17, 2007. This letter recommended that Dextras seek legal advice, provided relevant case law and identified to Dextras that failure to comply with the Investigation Committee request might potentially result in charges under the Act.

[30] Thiele never received a reply from Dextras to this letter of July 19, 2007;

[31] Instead, Dextras sent an e-mail of August 13, 2007 to Derek Doyle, P. Eng., Executive Director and Registrar, and Ross Rettie, P. Eng., Director of Professional Practice and Ethics. In this e-mail, Dextras posed three questions he wanted answered before he completed his response to the July 19, 2007 letter of Thiele. [Ex. 5, Tab 2]. Doyle, the Executive Director of the Association, then copied the message to Thiele, though Dextras had not sent a copy to Thiele

[32] Ms. Beverley Mitovic, Compliance Officer, acting on instructions from Thiele, sent via e-mail on August 16, 2007, a copy in PDF format of the letter of July 19, 2007, again requesting a response before August 17, 2007. [Ex. 5, Tab 3] and reminding Dextras of the possible consequences of a failure to respond.

[33] No response to the request of the Investigation Committee was received by August 17, 2007.

[34] On August 17, 2007, Dextras sent an e-mail to Doyle, and copied to the general e-mail address for the then President of the Association, in which Dextras indicated that he needed a response to his e-mail of August 13, 2007 which set out his three questions and demanding that Mr. Doyle send out the answers to his questions under Mr. Doyle's signature. [Ex 5, Tab 4]. Dextras again demanded responses, first from the Executive Director to the August 13 and July 19 letters before contemplating any response.

[35] On August 23, 2007, Thiele forwarded via e-mail a new letter to Dextras, addressing the three questions put to Mr. Doyle by Dextras on August 13, 2007, and extending the time for a response to the Investigation Committee to August 31, 2007. [Ex 5, Tabs 5 and 6]. Thiele pointed out to Dextras that he (Dextras) had not provided reasons why he had failed to respond to the Practice Review Committee and the Investigation Committee. In the letter, Thiele did point out to Dextras that practice reviewers sign confidentiality agreements with the Association and their names are kept confidential. Thiele again recommended to Dextras that he discuss this matter with a lawyer.

[36] Having received an "auto reply" from Dextras to the effect that Thiele's e-mail correspondence would now be blocked, and that only e-mails from Mr. Doyle would be accepted, Thiele again sent his letter of August 23, 2007 to Dextras, using Doyle's e-mail address at 12.29pm, August 23, 2007. [Ex 5, Tab 7];

[37] On the afternoon of August 23, 2007, at 2.26pm, Newlove received a further e-mail addressed to then President Tim Smith, P. Eng. [Ex 5, Tab 9] from Dextras. Dextras advised the (then) President of APEGBC to tell the APEGBC staff lawyer (Thiele) to stop wasting his (Dextras') time.

[38] Shortly after opening Dextras' e-mail at Tab 9, Newlove spoke with Dextras at about 2.30pm, August 23, 2007. The subject matter of the conversation in that telephone discussion of August 23, 2007 was recorded in a memorandum prepared by Newlove shortly after the telephone conversation concluded. [Ex 5, Tab 8];

[39] The substance of the conversation was that Dextras informed Newlove by phone that he would have no further dealings with Geoff Thiele. Dextras explained to Newlove his concerns over potential patent infringements by the Practice Review Committee. He also reiterated to Newlove that he would not respond to the Investigation Committee through Thiele, until the Executive Director and the President had replied to his earlier questions. Newlove testified that Dextras expressed some scepticism about the Investigation Committee which he regarded as scare tactics.

[40] Acting on instructions of Smith and Doyle, Newlove attempted to e-mail Dextras with a message advising him that neither gentlemen would be responding to him with respect to the matters that were the subject of the Investigation;

[41] On August 29, 2007, at 7.01pm Dextras blocked that email [Ex 5 Tab 10].

[42] No response was ever received by the Investigation Committee

[43] On November 14, 2007, a Notice of Inquiry was signed by the Chair of the Discipline Committee setting out January 7, 2008 as a date for a hearing.

[44] On November 28th, 2007, Dextras was served with Notice of Inquiry and a letter written by Robert Hunter of the firm Bull, Houser and Tupper, dated November 16, 2007 (affidavit by L McManus)[Ex 2, Tab 1).

[45] On December 7, 2007 [(Ex 5, Tab 11A); Dextras wrote to Janet Benjamin, P.Eng., President APEGBC asking her to intervene in the practice review and subsequent proceedings. He asked Benjamin, as President, to have APEGBC immediately cease and desist any practice reviews or hearings. In later e-mails, Dextras claimed that he had not had an adequate response from Ms. Benjamin. In our view, Dextras failed to understand the nature of the Association's Investigation and Discipline process.

[46] On February 25, 2008, David Wende assumed conduct of the matter because of Mr Hunter's scheduling conflicts. Wende sought to set a date for the hearing and sought to admit certain documents [Ex 2, Tab 2].

[47] We have described the chronology of Notice of Service in paragraphs # 6 to # 22, leading up to the April 4, 2008 e-mail exchanges between Dextras and Wende. Wende stressed to Dextras the importance of attending the hearing.

ANALYSIS AND FINDINGS

ANALYSIS

[48] The allegation against Ken Dextras, P.Eng. is that Dextras demonstrated unprofessional conduct when he failed to respond to a request of the Investigation Committee of the Association of Professional Engineers and Geoscientists of British Columbia (APEGBC) to provide information or records in his possession or control as set out in a letter dated July 19, 2007 contrary to Section 30(4) of the Act.

[49] The relevant section of the Act is Sections 30 (3) and (4) of the Act provide:

.....(3) The investigation committee or a subcommittee composed of one or more of its members appointed by the investigation committee may, on receipt of a report under section 29 or whenever it considers it appropriate, investigate a member, licensee or certificate holder regarding any matter about which an inquiry may be held under section 32.

(4) A member, licensee or certificate holder that is being investigated under subsection (3) must provide the committee or subcommittee conducting the investigation with any information or records in the possession or control of the member, licensee or certificate holder that the committee or subcommittee may require. (our emphasis)

[50] The issue facing the Panel is in deciding whether the behaviour of Ken Dextras was reasonable in the circumstances.

[51] The evidence is that Dextras neither attended the hearing nor was represented by legal counsel before or during the hearing. There is no evidence that he sought legal advice or engaged legal counsel to represent him in his dealings first with Thiele, then with Hunter then with Wende.

[52] Nevertheless, the relevant sections of the Act have to be clear and unambiguous to the member, and in his absence and with lack of legal counsel, Dextras is entitled to the most favourable interpretation.

[53] The evidence is that the Practice Review Committee was unable to gather any information they required from Dextras between early 2006 and May 2007 even though Dextras should have been aware of the functions of the Practice Review Committee who are empowered under Section 44 of the Act to request relevant information and documents and that a member may not refuse to comply with this request on grounds of confidentiality.

[54] When Thiele wrote to Dextras on July 19, 2007, he set out the powers of the Investigation Committee, requested his response to the allegation that he had breached Section 44 of the Act and recommended that Dextras seek legal advice. Thiele asked for a response by Friday August 17th, 2007

[55] Instead of responding to Thiele, Dextras then wrote to the Executive Director of APEGBC on August 13th, 2007, asking three questions to be answered before he responded to the earlier Thiele letter.

[56] Thiele again wrote on August 16th to Dextras and drew Dextras' attention to the possibility of a breach of Section 30(4) that could result in charges being laid.

[57] Instead of replying to the perfectly proper questions from Thiele, Dextras again wrote the Executive Director on August 17th, 2007, and this time included the President of the Association as an addressee on his e-mail, but not Thiele,

[58] Thiele again wrote on August 23, 2007 to Dextras extending the disclosure period to August 31, 2007 and also again recommended Dextras obtain legal advice. Thiele also provided some general background on the confidentiality provisions of the Practice Review Committee to ensure Dextras was under no uncertainty about the Association practices.

[59] Dextras' response was to block any e-mail from Thiele. Thiele then sent a letter under his name to Dextras from the e-mail address of the Executive Director. What followed was an exchange of e-mails and phone calls with Joanne Newlove and, the (then) President of the Association.

[60] By August 29th, 2007, Dextras was now blocking e-mails from Newlove who had specified to Dextras that neither the Executive Director, nor the President and the Registrar would respond to Dextras' letters because the Investigation Committee was now investigating the matter. Dextras insisted he would only respond to the Executive Director.

[61] When Wende assumed the file on February 25, 2008, he had some difficulty in getting any response from Dextras. Dextras did not attend this hearing.

[62] The question the Panel faced is what a reasonable member of the Association would conclude when presented with the evidence placed in front of the Panel.

[63] The Panel concluded that the relevant sections of the Act (44 and 30(4)) are clear and unambiguous and that the requirements placed on a member are clear.

[64] It is not open to a member of the Association of Professional Engineers and Geoscientists of British Columbia to selectively decide which parts of the Act are applicable, which parts he should accept and which parts reject. The powers granted by the legislature are clear and the powers granted a self-governing organization are also clear.

[65] In the case of Dextras, he chose to selectively ignore the appropriate requests from the Professional Practice Committee which led to a complaint to the Investigations Committee.

[66] The allegations against Dextras are that he ignored the requests for information from the Investigation Committee. The Panel finds that Dextras did ignore the reasonable and legitimate requests of the Investigation Committee and chose to ignore or block communications from Association officials charged with day-to-day conduct of the Association affairs. Further, Dextras attempted to by-pass the Investigation Committee by engaging senior officials and elected members in discussions of the matter at hand and was seemingly unaware that once the matter had passed to the Investigation Committee, the senior officials were unable to comment or act on the matter. In particular, Dextras' letter to President Benjamin of December 7, 2007 was an attempt to by-pass the Investigation and Discipline process, which is a process that all members of APEGBC must or should be aware of.

[67] The Panel finds that Dextras' actions in the circumstances were not reasonable for a member of the Association and demonstrated unprofessional conduct by his actions.

CONCLUSION

[68] After careful consideration, and based on a fair and reasonable preponderance of credible and cogent evidence, the Panel unanimously concluded that Ken Dextras, P.Eng. chose to ignore valid requests for information from the Investigation Committee with requested information or records in his possession and control as set out in a letter dated July 19, 2007 as required by Section 30(4) of the *Act*.

[69] After an adjournment, the Panel delivered a verbal decision. At the request of Wende, the Panel agreed to hear submissions on sanctions and costs and not bifurcate the hearings

ORDER

[70] The Panel concluded that Mr. Dextras demonstrated unprofessional conduct and breached Section 30(4) of the *Act* as alleged in the November 14, 2007 Notice of Inquiry.

[71] The Panel's jurisdiction comes from Section 33 of the *Act*, which provides:

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

(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 revoke 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.”

[72] The Panel also recognizes that Section 32(3) of the *Act* requires that:

“(t)he discipline committee must give written reasons for any action it takes under subsection (2).”

[73] The Panel agrees with Wende’s argument that membership in the Association confers upon members certain rights, but membership itself is not a right. Membership is only a privilege to be both earned and maintained.

[74] To maintain the privilege of membership in the Association requires members to, among other things:

- I. meet the professional standards of the profession;
- II. conduct themselves as expected by their peers; and
- III. comply with the *Act*.

[75] The Panel determined that Dextras failed in the latter two obligations which he owes the Association.

[76] Wende submitted that the penalty imposed by this Panel should take into account three factors, all measured within the context of the gravity of the misconduct. These factors are:

- a) the need to protect the public;
- b) the need to deter not only this member, but other members who might be tempted to conduct themselves in a similar manner where appropriate; and
- c) promote the rehabilitation of the member.

[77] In this matter, Ken Dextras demonstrated more than an isolated incident of unprofessional conduct and a breach of the *Act*. His conduct is that of someone who refuses to be governed by a self-regulating profession.

[78] Wende, on behalf of the Association, argued that to allow a member to continue conducting himself without regard to the governance regime imposed upon all members by the *Act* would be a failure by the Association to maintain the fundamental obligation of any self-regulating professional body: the protection of the public.

[79] The Panel has concluded that it is important to specifically deter Mr. Dextras from continuing to defy the Investigation Committee in breach of Section 30(4) and to generally deter others who may

look at our Determination and Orders when published to the profession in *Innovation* magazine. The penalty should not be so "light" that it could be wrongly viewed by some members as no more than a "licensing fee" for continuing to practise without regard to the member's obligations to the Association.

[80] Wende argued that the penalty can, within the confines of Section 33, be creative, to permit Dextras an opportunity to redeem himself and promote his rehabilitation.

[81] Accordingly, the Panel makes the following determination:

- I. that Ken Dextras be suspended from membership in the Association for a minimum of sixty (60) days, beginning thirty (30) days from the date of this written Determination and Order in accordance with our ability to impose this sanction pursuant to Section 32(2)(c) of the *Act*.
- II. that as a consequence of his suspension, Ken Dextras be required to surrender to the Association when the suspension takes effect, his Seal and Certificate of Membership, in accordance with Bylaw 12 (b) which states:

"12 (b) In the event of suspension or revocation of membership, licence or limited licence the certificate and seal or stamp issued pursuant to Section 20 of the Act shall be returned to the Association"

- III. that Ken Dextras pay a fine to the Association of \$5,000.00; and
- IV. that Ken Dextras pay special costs as described below.

[82] The Panel further orders that Ken Dextras' membership remain suspended until he has:

- i. provided a satisfactory response to the Investigation Committee letter to him dated July 19, 2007;
- ii. paid the fine to the Association in the amount of \$5,000.00; and
- iii. paid the costs awarded pursuant to the submissions set out below.

[83] In accordance with the Association's Bylaw 12(b) and if Dextras' professional seal and certificate is not in the possession of the Association within seven (7) days of a request for same, the suspension period will be extended by one day for each day the seal is not in the possession of the Association thereafter.

[84] Section 35(1) of the *Act* permits the Association to recover its costs for its investigation and the prosecution of an Inquiry. The relevant section is:

"35 (1) 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."

[85] Section 35(4) of the *Act* provides that if those costs are disputed by the Member, then those costs may be assessed by a Registrar of the Supreme Court of British Columbia as "special costs".

[86] Special costs are generally awarded by our courts at between 70% to 100% of the actual legal fees and taxes, plus all of the reasonable disbursements incurred in bringing a matter before the court.

[87] Dextras' behaviour and his refusal to respond to requests for information from the Association led directly to the inquiry. Accordingly, the Panel awards special costs to the Association in the amount of \$16,500.00, that being a total of actual disbursements plus approximately 75% of the Association's legal costs and fees.

Respectfully submitted and signed in counterpart:

Vancouver, British Columbia

June 20, 2008

"R.Wares"

Roy Wares, P.Eng., Panel Chair, Chair Discipline Committee

"A.Black"

Alexander Black, P.Eng. Member, Discipline Committee.

"P.Adams"

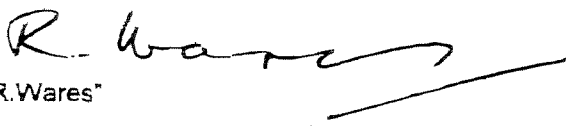
Paul Adams, P.Eng., Member, Discipline Committee

[87] Dextras' behaviour and his refusal to respond to requests for information from the Association led directly to the inquiry. Accordingly, the Panel awards special costs to the Association in the amount of \$16,500.00, that being a total of actual disbursements plus approximately 75% of the Association's legal costs and fees.

Respectfully submitted and signed in counterpart:

Vancouver, British Columbia

June 20, 2008



"R.Wares"

Roy Wares, P.Eng., Panel Chair, Chair Discipline Committee

"A.Black"

Alexander Black, P.Eng. Member, Discipline Committee.

"P.Adams"

Paul Adams, P.Eng., Member, Discipline Committee

[87] Dextras' behaviour and his refusal to respond to requests for information from the Association led directly to the inquiry. Accordingly, the Panel awards special costs to the Association in the amount of \$16,500.00, that being a total of actual disbursements plus approximately 75% of the Association's legal costs and fees.

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"R.Wares"

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Alexander Black, P.Eng. Member, Discipline Committee.

"P.Adams"

Paul Adams, P.Eng., Member, Discipline Committee

JUNE 20, 2006

"R.Wares"

Roy Wares, P.Eng., Panel Chair, Chair Discipline Committee



"A.Black"

Alexander Black, P.Eng. Member, Discipline Committee.

"P.Adams"

Chronology and Table of Exhibits

Date	Event	Exhibit
July 10, 2007	Letter to Mitovic from Lina Bowser, Practice Review Coordinator ,re Practice Review Committee Motion regarding Ken Dextras, P.Eng.	Ex 4
July 19, 2007	Confidential letter from Mr G. Thiele to Ken Dextras regarding referral to Investigation Committee by the Practice Review Committee	Ex 5, Tab 1
August 13, 2007	e-mail from Ken Dextras to Derek Doyle, P.Eng with a copy to Ross Rettie, P.Eng., requesting Doyle answer specific questions before he(Dextras) would respond to the July 19, 2007 letter.	Ex 5, Tab 2
August 16, 2007	e-mail from Mitovic to Ken Dextras with a further copy of the July 19 th letter and reminding Dextras of the provisions of the Act re failure to comply	Ex 5, Tab 3
August 17, 2007	e-mail message from Dextras to Doyle asking Doyle to respond to the August 13 letter Dextras had sent Doyle	Ex 5, Tab 4
August, 23, 2007	Letter from Thiele to Dextras informing Dextras of the reasons Doyle cannot respond. Thiele also laid out some relevant information and gave Dextras an extension until August 31, 2007 to respond.	Ex 5, Tab 5
August 23, 2007	Auto-reply message from Dextras to Thiele showing Dextras was blocking Thiele's e-mail	Ex 5, Tab 6
August 23	e-mail message from Thiele to Dextras using the Doyle e-mail address but signed by Thiele	Ex 5, Tab 7
August 23, 2007	Phone call from Dextras to Tim Smith, President, APEGBC, taken by Joanne Newlove and memoed to file	Ex 5, Tab 8
August 23, 2007	e-mail from Dextras to President Tim Smith requesting that Thiele stop wasting his time	Ex 5, Tab 9
August 29, 2007	e-mail sent by Newlove to Dextras informing Dextras that senior officials will not respond to his letters. Dextras blocked this e-mail from Newlove	Ex 5, Tab 10
November 14, 2007	Notice of Inquiry signed	Ex 5, Tab 11
November 28, 2007	Service of Notice of Inquiry affidavit	Ex 2, tab 1
December 3, 2007	Dextras writes Janet Benjamin (then) President APEGBC regarding APEGBC	Ex 2, Tab 11A
February 25, 2008	Letter to Dextras from Wende updating Dextras on Hearing matters	Ex 2, Tab2
March 4, 2008	Letter to Dextras requesting Dextras reply	Ex 2, Tab 3
March 10, 2008	New Notice of Hearing	Ex 2, Tab 4
March 2008	Print out from APEGBC files on Dextras last address	Ex 2, Tab 5
March 12, 2008	Affidavit of Attempted service	Ex 2, Tab 6
March 13, 2008	Wende to Dextras requesting that Dextras not block his e-mails	Ex 2, Tab 7
March 14/17, 2008	Chain of e-mail between Dextras and Wende	Ex 2, Tab 8
March 17, 2008	Affidavit of Service on Dextras via registered mail	Ex 2, Tab 9
April 2, 2008	Dextras to Wende e-mails; Dextras refuses to attend until he receives a reply to his December3/07 letter to the President, APEGBC	Ex 2, Tab 10
April 3 to 4, 2008	Dextras/ Wende e-mails setting out the details of the Hearing and the Dextras responses	Ex 2, Tab 11