

IN THE MATTER OF
THE *ENGINEERS AND GEOSCIENTISTS ACT*,
R.S.B.C. 1996, c. 116 as amended and
IN THE MATTER OF JOHANN G. DUERICHEN, P. Eng.

**DECISION AND REASONS OF THE DISCIPLINE COMMITTEE ON INTERIM ACTION
UNDER SECTION 31(7)**

Discipline Committee Panel: Paul Adams, P. Eng., Chair
 Thomas Leung, P. Eng.
 Christopher Newcomb, P. Eng.

Counsel for the Association: Andrew D. Gay, Q.C.

Counsel for the Member: Coady MacEachern

A. Introduction

1. This Panel of the 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 convened to consider taking interim action under section 31(7) of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116 (the "Act") in the matter of Johann G. Duerichen, P. Eng.
2. This matter was initiated by a notice of application submitted by the Association. The Association sought an order that Mr. Duerichen's membership be suspended, or, in the alternative, that restrictions be placed on his scope of practice, on an interim basis pursuant to section 31(7) of the Act.
3. Prior to this matter coming before the Panel, the Association and Mr. Duerichen agreed to make a joint submission, in which they jointly proposed certain restrictions on Mr. Duerichen's scope of practice (the "Joint Submission").
4. The Joint Submission proposed that the Panel issue an order restricting Mr. Duerichen's practice of structural engineering, and prohibiting his practice of geotechnical engineering and electrical engineering. In light of the Joint

Submission, the Association withdrew its application for an order suspending Mr. Duerichen's membership.

5. This matter had originally been scheduled to be conducted by videoconference over Zoom. However, having reached agreement on the Joint Submission, the parties proposed that the Panel could make its decision based on the written materials without the need for an attendance.
6. The parties responded to inquiries from the Panel in writing, and agreed to an amendment to the proposed order contained in the Joint Submission (the "Amended Order"). On the basis of the parties' response and the agreed-upon amendment to the proposed order, the Panel agreed that an attendance by videoconference was not required.
7. The Panel has accepted the Joint Submission in this matter. The Panel has determined that the restrictions on Mr. Duerichen's scope of practice proposed by the parties are necessary and appropriate, and makes the Amended Order proposed by the parties.

B. Background

8. The complaint underlying this matter was made by a building inspector employed by the City of Revelstoke in February 2019. The complaint concerned Mr. Duerichen's conduct in relation to the construction of a residence in Revelstoke for which he took responsibility for the structural, architectural, and geotechnical elements (the "Revelstoke Project").
9. In October 2019, the Investigation Committee of the Association (the "Investigation Committee") moved to investigate Mr. Duerichen's conduct in relation to the Revelstoke Project, as well as in relation to the construction of a retail store in Smithers, BC (the "Smithers Project"). The Investigation Committee assigned the investigation to a subcommittee (the "Subcommittee").
10. Following some delays partly attributable to the COVID-19 pandemic, the Subcommittee interviewed Mr. Duerichen on July 9, 2020 and August 20, 2020. The Subcommittee's investigation concluded in September 2020.
11. A notice of inquiry was issued on December 2, 2020 (the "Notice of Inquiry"). The Notice of Inquiry sets out thirteen allegations against Mr. Duerichen in relation to his work on the Revelstoke Project and the Smithers Project.
12. The allegations in the Notice of Inquiry include unprofessional conduct, incompetence, and violations of the Association's Bylaws. The allegations call into question Mr. Duerichen's qualifications with respect to structural, geotechnical, and electrical engineering.

13. The hearing of the inquiry is scheduled for May 11-14, 2021.

C. Material before the Panel

14. The material before the Panel included an expert report from Douglas Gairns, P. Eng. regarding Mr. Duerichen's work on the Smithers Project (the "Expert Report"), and an affidavit attaching, among other things, excerpts of the transcripts from Mr. Duerichen's two interviews with the Subcommittee (the "Transcripts").
15. Briefly stated, the Expert Report is very critical of Mr. Duerichen's practice of structural engineering. Mr. Gairns opines that Mr. Duerichen's work on the Smithers Project, combined with his responses to questions posed by the Subcommittee, demonstrates that Mr. Duerichen does not understand current methodologies and requirements that govern the practice of structural engineering in British Columbia.
16. The Joint Submission highlighted excerpts from the Transcripts. The excerpts to which the Panel was referred indicate that Mr. Duerichen acknowledged concerns about his expertise and qualifications in geotechnical and electrical engineering.
17. It is important for the Panel to be clear that in referring to the material above, it is not making any finding with respect to Mr. Duerichen's conduct. In particular, and as was pointed out by the parties in the Joint Submission, Mr. Duerichen may subsequently challenge the Expert Report at the hearing of the inquiry.
18. The Panel has received and considered this material for the purpose of assessing the proposed interim order under section 31(7), as set out in more detail below.

D. Section 31(7)

19. Section 31(7) of the Act states as follows:

31(7) If the discipline committee considers that a delay in holding an inquiry under section 32 concerning a member, licensee or certificate holder would be prejudicial to the public interest, the discipline committee, without giving the member, licensee or certificate holder an opportunity to be heard, may suspend the membership, licence or certificate of authorization, or restrict the scope of practice, of the member, licensee or certificate holder, until an inquiry and decision under section 32.

20. In considering an order under section 31(7), the Panel accepts the criteria set out in the Joint Submission, relying on the decision of the BC Court of Appeal in the case of *Scott v. Massage Therapists of British Columbia*, 2016 BCCA 180 and the decision of a Panel of the Discipline Committee in *Re Syed*, December 23, 2018.

21. Based on that authority, the criteria for an order under section 31(7) can be summarized as follows:
 - a. *A prima facie* case;
 - b. A risk to the public interest; and
 - c. Urgency to the matter.
22. Additionally, as set out in the *Scott* case, the Panel must be mindful of the impact of an interim order on the member. While it is at all times considering the public interest, the Panel must not automatically impose an interim suspension where the criteria above have been met, but must also consider whether practice restrictions would be sufficient and proportionate.

E. Panel's analysis

23. The Panel has considered the parties' analysis set out in the Joint Submission. The Panel accepts it, and provides brief reasons below.
 - i. *A prima facie* case
24. The Panel's role at this stage is not to determine whether or not the allegations in the Notice of Inquiry are made out. The Panel's role is only to make a provisional assessment of the facts, including an assessment of whether the underlying allegations are unfounded or manifestly exaggerated.
25. The Panel agrees that the material before it, including the Expert Report and the excerpts from the Transcripts, establish a *prima facie* case that Mr. Duerichen is unqualified to practice structural engineering without supervision, and that he is unqualified to practice geotechnical or electrical engineering.
26. The Panel wishes to emphasize that it is not making any conclusive findings in this regard. Importantly, Mr. Duerichen maintains the right to argue at the inquiry that the evidence does not establish the allegations against him as set out in the Notice of Inquiry. The Panel's analysis at this stage is simply a provisional assessment of the facts for the purposes of an order under section 31(7).
27. The Panel finds that a *prima facie* case has been established.
 - ii. *A risk to the public interest*
28. The Panel must be satisfied that there is a real risk to the public if an interim order is not made.
29. The Panel agrees that in this case the allegations are serious, and that the prospect of work being carried out in a way that is not in accordance with applicable engineering standards presents a clear risk to the public.

iii. Urgency to the matter

30. Urgency must be demonstrated to justify an interim order under section 31(7), which requires the Panel to consider the impact of a "delay in holding the inquiry".
31. In this case, the inquiry is scheduled for May 11-14, 2021, approximately five months from now. In the meantime, Mr. Duerichen is practising structural engineering and intends to continue doing so.
32. The Panel agrees that there is urgency to this matter, and that the delay between the date of this decision and the date of the inquiry indicates a need for interim action.

iv. Sufficiency and proportionality

33. The Panel must consider the sufficiency and proportionality of an order under section 31(7).
34. The Panel notes that the proposed restrictions address each of the disciplines of concern, but stop short of a complete suspension of Mr. Duerichen's membership.
35. The Panel agrees that in the circumstances, based on the material before it and in light of the agreement of the parties, the proposed restrictions set out in the Amended Order are sufficient and proportionate.

F. Order

36. Pursuant to section 31(7) of the Act, the Panel imposes the following restrictions on Mr. Duerichen's scope of practice:
 - A. Mr. Duerichen is not permitted to practise structural engineering, however:
 - i. he may design buildings whose design and construction is governed by Part 9 of Division B of the British Columbia Building Code ("Part 9 Buildings"), and
 - ii. Mr. Duerichen may practise structural engineering in relation to components of Part 9 Buildings that must be designed in accordance with Part 4 of Division B of the British Columbia Building Code so long as he is directly supervised in accordance with the Association's Quality Management Guideline on Direct Supervision, dated January 9, 2018, including as that Guideline may be amended from time to time, and the supervising professional engineer assumes full responsibility for his work.

- B. In connection with work that he performs pursuant to paragraph (A) above, Mr. Duerichen shall not apply his seal to any drawings, reports or other documents.
 - C. Mr. Duerichen is not permitted to practise geotechnical engineering.
 - D. Mr. Duerichen is not permitted to practise electrical engineering.
37. As set out in section 31(9) of the Act, the restrictions on Mr. Duerichen's scope of practice set out in paragraph 36 above are effective as of receipt of this decision by Mr. Duerichen (through his legal counsel), or three days after this decision is mailed to Mr. Duerichen, whichever is earlier.
38. The restrictions on Mr. Duerichen's scope of practice set out in paragraph 36 above will be in effect until an inquiry is held and a decision is rendered or a Consent Order is made pursuant to sections 32 or 32.1 of the Act, respectively, or pursuant to the equivalent provisions in the *Professional Governance Act*, SBC 2018, c. 47.
39. Lastly, although the restrictions set out above were agreed to by Mr. Duerichen through legal counsel, Mr. Duerichen is advised of his right to apply to the Supreme Court to have the restrictions removed, as required by section 31(8) of the Act.

Dated this 16th day of December, 2020 and signed in counterpart:

<original signed by>

Paul Adams, P. Eng, Chair

<original signed by>

Thomas Leung, P. Eng.

<original signed by>

Christopher Newcomb, P. Eng.