

IN THE MATTER OF THE ENGINEERS AND GEOSCIENTISTS ACT

R.S.B.C. 1996, CHAPTER 116 AS AMENDED

-and-

IN THE MATTER OF VLADIMIR STUCHLIK P.Eng.

Discipline Committee Panel: Alexander Black P.Eng. Chair

Darryl Chambers P.Eng.

David Ricketts P.Eng.

Counsel for the Panel: David Martin

SUPPLEMENTARY DETERMINATION

INTRODUCTION AND HEARING PROCESS

- 1) This Discipline Committee Panel (the Panel) of the Association of Professional Engineers and Geoscientists of British Columbia (the Association), under the authority of the *Engineers and Geoscientists Act R.S.B.C. 1996, C116 (The Act)* held an Inquiry to examine the alleged contraventions of the Act by Vladimir Stuchlik P.Eng, on April 29 and 30, 2014 and rendered a Determination on May 20, 2014. In the Determination, the Panel found all of the allegations in the Notice of Inquiry to have been proved.
- 2) Counsel for the Panel, Mr. Martin, by letter dated May 20, 2014, called for a written submission from the Association on Penalties and Costs followed by a response from Mr. Stuchlik. A submission from Ms. Allard, counsel for the Association, was received on June 2, 2014. A submission was received from Mr. Stuchlik dated June 11, 2014. The Panel reviewed the submissions received from Ms. Allard for the Association and from Mr. Stuchlik. Mr. Stuchlik's submission was reviewed by the Panel and the Panel considered it to be disputing the Determination of the Panel and that it did not address Penalty and Costs. The Panel instructed Mr. Martin to inform Mr. Stuchlik that his submission did not address Penalty and Costs and allowed him to make a resubmission. These instructions, in a letter dated June 17, 2014, also included a strong recommendation from the Panel for Mr. Stuchlik to engage Counsel to advise him on the Discipline process. Mr. Stuchlik's resubmission to the Panel was dated June 17, 2014. The Panel reviewed this resubmission and considered that it continued to dispute the Panel's Determination and did not address Penalty and Costs. The Panel concluded that Mr. Stuchlik had not addressed Penalty and Costs, despite the admonishments for him to do so. In the circumstances, the Panel proceeded to

consider the appropriate Penalty and Costs without further input from Mr. Stuchlik.

SUBMISSION ON PENALTY

- 3) In her submission, Ms. Allard referred the Panel to the relevant section of the Act, relevant case law for professional discipline cases and guiding principles by which discipline panels in self-regulating professions impose sanctions.
- 4) Section 33(2) of the Act, provides that if the Panel finds that a member has demonstrated unprofessional conduct, then the Panel 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.*
- 5) On reaching its decision on Penalty, the Panel was guided by the following principles:
 - a) the need for protection of the public;
 - b) the need to deter Mr. Stuchlik from committing further similar unprofessional conduct
 - c) the need to deter other members of the Association from similar conduct;and
 - d) the rehabilitation of Mr. Stuchlik.
- 6) The Panel carefully considered all the evidence and submissions. The Panel carefully considered the penalties submitted by the Association in paragraph 8 of Ms. Allard's submission on Penalties and Costs. Ms. Allard submitted that the following was an appropriate penalty:
 - a) Mr. Stuchlik's membership in the Association is suspended for 6 months commencing on a date to be determined by the Panel.

- b) Mr. Stuchlik will return his seal to the Association by a date to be determined by the Panel, failing which an additional day will be added to the suspension in paragraph (a) for every day the return of Mr. Stuchlik's seal is late.
- c) Mr. Stuchlik is to successfully complete the Professional Practice Examination within 6 months of the date of the Panel's decision on penalty and costs.
- d) Following the completion of his suspension, Mr. Stuchlik will have the following conditions imposed on his membership in the Association:
 - i) Mr. Stuchlik may not practice in the field of sewerage disposal systems except under the direct supervision of another member approved in advance and in writing by the Registrar.
 - ii) Mr. Stuchlik may not practice in any other areas of engineering unless his engineering work is peer reviewed by another member or members approved in advance and in writing by the Registrar.
 - iii) Supervision and peer review requirements shall continue for a minimum period of 12 months and shall be arranged by and at the sole expense of Mr. Stuchlik. Supervising and peer reviewing members shall provide reports every 180 days to the Registrar. At the completion of 12 months, a final report shall be provided from all supervising and peer reviewing members to the Registrar advising whether the supervision and peer review requirements are still required. The Registrar will provide all reports of supervising and peer reviewing members to the Discipline Committee review panel to determine if the requirement for supervision and/or peer reviews should continue and, if so, for how long, in accordance with section 34 of the Act,
 - iv) Mr. Stuchlik will be the subject of a general practice review by the Practice Review Committee, at his own expense. The estimated cost of the practice review is \$2,250.00 plus taxes and expenses. Mr. Stuchlik may also be the subject, at his own expense, of a technical practice review if so required by the Practice Review Committee. The practice reviews must be completed within 12 months, unless additional time is required by the Practice Review Committee, in which case the deadline for completion of the practice reviews may be extended, at the discretion of the Practice Review Committee, for a further 6 months.

- e) Mr. Stuchlik shall pay within 6 months of the date of the Panel's decision on penalty and costs the Association's legal, investigation and inquiry costs as determined by the Panel.
 - f) Mr. Stuchlik shall pay a fine to the Association of \$10,000.00, payable within 6 months of the Panel's decision on penalty and costs; and
 - g) If any of the conditions in paragraphs (c), (e) and (f) are not met, Mr. Stuchlik's suspension will remain in effect until such time as all of these conditions have been met by Mr. Stuchlik.
- 7) Ms. Allard, in her submission, argued that under the *Act*, the primary responsibility of the Association is to protect and safeguard the public interest and to regulate the practice of professional engineering in the public interest. Any penalty for unprofessional conduct must ensure the public interest is protected and preserved.
- 8) Ms. Allard argued that Mr. Stuchlik designed and installed a sewage disposal system that was not compliant with the applicable health and safety regulatory requirements in designing a system that used treated effluent. The panel was guided by the evidence of Mr. Featherstonhaugh who stated that Mr. Stuchlik designed and installed a sewage disposal system that did not comply with the only regulation applicable to the use of treated effluent, the *MSR*. and did not seek any regulatory approvals or authorizations for the design, installation or operation of the sewage system he designed, installed and operated.
- 9) The panel, in considering an appropriate penalty, accepted Ms. Allard's assertion, on behalf of the Association, that Mr. Stuchlik showed a disregard for the regulatory and design process for reclaimed water systems, in particular in his assertions that a business license was all that was necessary for approval and that the system design was 95% electronics and that no other engineering branch has the capacity or knowledge to design his system.
- 10) The panel agrees with the Association's position, presented by Ms. Allard, that the failure of Mr. Stuchlik to meet the applicable regulatory requirements, and the disregard shown by Mr. Stuchlik of the need to meet the applicable regulatory requirements are serious matters.
- 11) The panel considers the penalty proposed by the Association on Mr. Stuchlik should reflect the need to protect and safeguard the public and be a deterrent to Mr. Stuchlik from committing further incidences of unprofessional conduct.
- 12) After careful consideration, the panel considers a suspension of six months proposed by the Association is an appropriate penalty and that the conditions proposed on his future membership by the Association to be appropriate.

- 13) The Panel considered the fine proposed by the Association in paragraph 8(f) of Ms. Allard's submission, taking into consideration the principles set out in paragraph 5 above. The Panel concluded that a fine of \$5,000.00 is more appropriate for Mr. Stuchlik's unprofessional conduct rather than the \$10,000.00 proposed by the Association considering the other penalties that are being imposed.
- 14) The Panel determined that an appropriate date for commencement of suspension of Mr. Stuchlik's membership in the Association and return of his seal to the Association, proposed by the Association, to be August 15, 2014.

SUBMISSION ON COSTS

- 15) Ms. Allard, in her submission, referred the Panel to the relevant section of the Act, relevant case law and guiding principles by which discipline panels for self-regulating professions can impose sanctions regarding costs.

- 16) Section 35(1) of the Act states;

"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"

- 17) Section 35(3) of the Act states;

"If the discipline committee directs that costs be paid and determines the amount under subsection (1) or (2), the amount may be assessed by the registrar or district registrar of the Supreme Court, in the judicial district in which the inquiry under section 32 takes place, as special costs under the Supreme Court Rules, as nearly as they are applicable."

- 18) Ms. Allard, in her submission, referred to a decision from the British Columbia Court of Appeal as to whether the Panel should consider awarding Costs under Section 35(1) and, if so, what is the appropriate level of Costs under Section 35(3) of the Act.

- 19) With respect to whether Costs should be awarded, Ms. Allard submitted that the normal rule is that the unsuccessful party pays the costs to the successful party and that these costs should be applied in a judicial manner and not arbitrarily or capriciously. Ms. Allard submitted that the Association considers there are no special circumstances that would warrant the Panel departing from the normal rule and the Panel should exercise its discretion to award Costs to the Association. The Panel

accepted the position presented by the Association and then considered the appropriate award of Costs to the Association.

20) Ms. Allard, in her submission, referred to decisions from the British Columbia Courts, and to Rule 14-1(3) of the Supreme Court Rules. Ms. Allard submitted that special costs are usually between 80% to 90% of a reasonable legal bill assessed under the *Legal Professions Act*.

21) The Panel reviewed the Association's submission on Costs detailed in Appendix A of Ms. Allard's submission and after careful consideration, considered that an award of 70% of the Association's Costs in the amount of \$53,328.54 to be appropriate.

DETERMINATION

22) The Panel determined that;

- a) Mr. Stuchlik's membership in the Association is suspended for six months commencing August 15, 2014.
- b) Mr. Stuchlik will return his seal to the Association by August 15, 2014, failing which an additional day will be added to the suspension in paragraph (a) for every day the return of Mr. Stuchlik's seal is late.
- c) Mr. Stuchlik is to successfully complete the Professional Practice Examination within 6 months of the date of the Panel's decision on penalty and costs.
- d) Following the completion of his suspension, Mr. Stuchlik will have the following conditions imposed on his membership in the Association:
 - v) Mr. Stuchlik may not practice in the field of sewerage disposal systems except under the direct supervision of another member approved in advance and in writing by the Registrar.
 - vi) Mr. Stuchlik may not practice in any other areas of engineering unless his engineering work is peer reviewed by another member or members approved in advance and in writing by the Registrar.
 - vii) Supervision and peer review requirements shall continue for a minimum period of twelve months and shall be arranged by and at the sole expense of Mr. Stuchlik. Supervising and peer reviewing members shall provide reports every 180 days to the Registrar. At the completion of twelve months, a final report shall be provided from all supervising and peer reviewing members to the Registrar advising whether the supervision and peer review requirements are still

required. The Registrar will provide all reports of supervising and peer reviewing members to the Discipline Committee review panel to determine if the requirement for supervision and /or peer reviews should continue and, if so, for how long, in accordance with Section 34 of the Act.

- viii) Mr. Stuchlik will be the subject of a general practice review by the Practice Review Committee, at his own expense the estimated cost of the practice review is \$2,250.00 plus taxes and expenses. Mr. Stuchlik may also be the subject, at his own expense, of a technical practice review if so required by the Practice Review Committee. The practice reviews must be completed within 12 months, unless additional time is required by the Practice Review Committee in which case the deadline for completion of the practice reviews may be extended at the discretion of the Practice Review Committee, for a further 6 months.
- e) Mr. Stuchlik shall pay within 6 months of the date of the Panel's decision on penalty and costs the Association's legal, investigation and inquiry costs in the amount of \$53,328.54.
- f) Mr. Stuchlik shall pay a fine to the Association of \$5,000.00 payable within 6 months of the Panel's decision on penalty and costs; and
- g) If any of the conditions in paragraphs c), e) and f) are not met, Mr. Stuchlik's suspension will remain in effect until such time as all of these conditions have been met by Mr. Stuchlik.

Dated this 11th day of July, 2014

Discipline Committee Panel;



Alexander Black, P.Eng. Chair

Darryl Chambers, P.Eng.

David Ricketts, P.Eng.

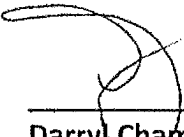
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