

**IN THE MATTER OF  
THE ENGINEERS AND GEOSCIENTISTS ACT,  
R.S.B.C. 1996, chapter 116, as amended (the “Act”)**

**and**

**IN THE MATTER OF ERIC CHRYSANTHOUS, P. Eng.**

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

Hearing Date: By written submissions

Discipline Committee Panel: David Ricketts, P. Eng., Chair,  
Ed Bird, P. Eng.,  
Bruce Nicholson, P. Eng.

Counsel for the Association: David Volk

Counsel for the Member: Joven Narwal

**I. Overview**

1. This panel of the Discipline Committee (the “Panel”) of the Association of Professional Engineers and Geoscientists of British Columbia (the “Association”), doing business as Engineers and Geoscientists BC, determined that by sending inappropriate emails to engineers and members of the public between 2010 and 2015, Mr. Chrysanthous demonstrated unprofessional conduct contrary to the Act and acted in a manner contrary to Principal 7 of the Code of Ethics; and that by failing to appear at an investigative meeting with the Association, Mr. Chrysanthous failed to comply with section 30(4) of the Act. The Panel set a schedule for written submissions on penalty.
2. Written submissions on penalty were received from the Association dated April 13, 2018. After an extension, Mr. Chrysanthous’ written submissions were received dated June 8, 2018. The Association submitted a reply dated June 22, 2018.
3. Section 33(2) of the Act states that if the Panel finds a member has contravened the Act, the Panel may order 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.

4. As to costs, the Act provides:

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.

5. The Association argues that Mr. Chrysanthous' membership should be cancelled and he should be ordered to pay \$44,393.54 in costs. Mr. Chrysanthous argues in favour of a reprimand and no costs.
6. For the reasons set out below, the Panel cancels Mr. Chrysanthous' membership and directs that Mr. Chrysanthous pay reasonable costs. In order to set a specific figure for costs, the Panel directs that the Association provide evidence as to its calculation of the costs incurred and claimed.

## **II. PENALTY**

### **A. "Governability"**

7. The Association refers the Panel to authorities in which a discipline hearing panel has found that a licensed professional was "ungovernable" and has cancelled their license on that basis. In addition to the evidence before the Panel at the hearing, the Association relies upon affidavits containing Mr. Chrysanthous' communications to the Association after the hearing, being Affidavit No. 1 of Efreem Swartz made on July 31, 2017 and Affidavit No. 2 of Ashley Spencer made on April 13, 2018. These affidavits refer to a number of communications from Mr. Chrysanthous to the Association and others, in which he criticizes the Association, purports to make complaints about staff of the Association and generally decries these proceedings.
8. Mr. Chrysanthous argues that his conduct after the hearing is irrelevant.
9. This Panel is not called upon to make a finding as to whether Mr. Chrysanthous is "ungovernable". In the authorities referred to by the Association, the legislative regime contemplated such a determination or the charge to the registrant expressly sought such a finding. That is not the case here.
10. In our view, Mr. Chrysanthous' conduct after the hearing and his cooperation in the proceedings is relevant to our assessment of the penalty. It is relevant to the issue of whether Mr. Chrysanthous can be remediated, and the nature of the action that will be required for protection of the public interest. We address that below.

### **B. Penalty Considerations**

11. The Association relies upon *Re Foreman*, a November 2015 decision of the Discipline Committee on Penalty and Costs, which approved of a framework for the consideration of penalty set out in a Law Society of British Columbia decision (*Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17) listing the following factors:
  - a. the nature and gravity of the conduct proven;
  - b. the age and experience of the member;
  - c. the previous character of the member, including details of prior discipline;
  - d. the impact upon the victim;
  - e. the advantage gained, or to be gained, by the member;
  - f. the number of times the offending conduct occurred;
  - g. whether the member has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstances;
  - h. the possibility of remediating or rehabilitating the member;
  - i. the impact on the member of criminal or other sanctions or penalties;
  - j. the impact of the proposed penalty on the respondent;
  - k. the need for specific and general deterrence;
  - l. the need to ensure the public's confidence in the integrity of the profession; and
  - m. the range of penalties imposed in similar cases.
12. The Association also referred to more recent Law Society decisions (for e.g. *LSBC v. Dent*, 2016 LSBC 05) in which it was held that it is not necessary to consider each and every "Ogilvie" factor in every case, and that the factors can be consolidated (*LSBC v Dent*, para. 20-23).
13. The Association emphasizes the following factors:
  - a. nature and gravity of the conduct;
  - b. number of times the conduct occurred;
  - c. whether the misconduct has been acknowledged and any steps taken to redress the wrong;

- d. need for specific and general deterrence;
- e. need to ensure the public's confidence in the integrity of the profession;
- f. the existence or lack of remorse;
- g. the degree or willingness to be governed by the Association; and
- h. the member's ongoing cooperation with the Association in addressing the outstanding matters that are the subject of the misconduct.

14. Mr. Chrysanthous emphasizes that the emails were published more than three years ago, in a political rather than professional context and that he has ceased to be a member.
15. This Panel accepts that the considerations in assessing penalty must be tailored to the individual case. The Panel sets out its analysis of the factors it finds to be most relevant in this case below.

### ***Nature and Gravity of the Misconduct***

16. In this Panel's view the misconduct is serious.
17. Mr. Chrysanthous' emails were deeply disturbing. They were sent to Translink staff and board members, local politicians and others. They included allegations of dishonesty and personal and professional impropriety about the recipients or other local politicians or other persons.
18. As well, and even worse, Mr. Chrysanthous' emails contained both direct and indirect threats of violence, including reference to beatings and shootings. They contained violent images. They include such statements and images as follows:
  - "enjoy 2011, it may be your last."
  - "go down to TransLink with a big stick to beat the crap out of the indifferent deadbeats"
  - "when faced with fraud, the only effective way to deal with the fraudsters is to actively hunt them down and eliminate them - put a bullet in them, just as the Inuit hunters once did in Canada."
  - "Don't mess up 'most marvelous mayor. You won't like what happens if you do." (Below the statement is the picture of a boxer standing in a menacing pose with his fist raised.)
  - "Where is Rambo when you need him? You know what I think? First, we shoot down the sales tax for transit. Then, we shoot down the dirt bags at TransLink." (Below this paragraph is an image of a person firing a

gun and a link to a YouTube video that is a clip of a scene from a Rambo movie.)

- “It seems to me that we might be better off parachuting these fools over extremists held areas in Syria for ISIS to practice their execution techniques on them.”
- “You had until April 30, 2015 to remove the 99 B-Line diesel buses from Broadway. Foolishly, you ignored this deadline, and the 99 B-Lines are still in operation. You all seem to believe that you are untouchables who are beyond the reach of the law - transit employees doing as you please with impunity - you have connections. Uh-huh; things are in the works. Sometimes, the direct solution, is the only solution.” (Below the statement is a YouTube link to a clip from a movie in which the protagonist shoots and kills a man.)
- “It really is the end of transit and unless [REDACTED] and his friends at TransLink are made extinct.”

19. These emails precipitated a complaint to police (as well as the report to the Association). Mr. Chrysanthous desisted in these emails after a visit from the police.
20. Mr. Chrysanthous argues that the emails were only 9 in number, sent over three years ago and were sent in a political context.
21. This significantly underplays the seriousness of the misconduct. We repeat our finding that the content of the emails causes harm to the individuals named in the emails and harm to the integrity of the profession.
22. When the Association conducted its investigation into the matter, Mr. Chrysanthous was asked to attend an investigative meeting. He attended once and maintained that he was unable to speak, and refused to attend a second time. While this has less immediate outward ramifications to the public, it is nonetheless significant because it thwarts the Association in the fulfilment of its regulatory mandate.

***Number of times the offending conduct occurred***

23. There were 9 emails over five years, to a broad range of recipients. This is an aggravating factor.

***Age and Experience/Past Character and Discipline***

24. Mr. Chrysanthous does not have a prior disciplinary record.
25. He was an experienced engineer.

26. No character evidence or references were provided.
27. While it is relevant that Mr. Chrysanthous has no prior record, it does not outweigh the significance of the misconduct.

***Acknowledgment of the misconduct, steps taken to redress the wrong; the possibility of remediating or rehabilitating the member***

28. We deal with these related factors together.
29. There is no evidence that Mr. Chrysanthous has ever acknowledged or apologized for his behaviour. He persisted until cautioned by police. He did not admit during the investigation, in the hearing or in his submissions that it was he who sent the emails, although later argued that they were proper political comment. He refused to participate in the investigatory interview.
30. While not denying an absence of remorse, Mr. Chrysanthous relies on the decision in *College of Physicians and Surgeons of Ontario v. Porter*, (2003) 174 O.A.C. 126 to argue that lack of remorse cannot be treated as an aggravating factor at the penalty stage, because a respondent is entitled to put the regulator to strict proof of allegations.
31. The Association argues that lack of remorse is an aggravating factor, relying upon *The Law Society of Manitoba v. Nadeau*, 2013 MBL 4. In *Re Nadeau*, the discipline hearing panel reviewed the authorities and summarized as follows:

From these authorities we conclude that the following principles should guide a discipline panel in determining an appropriate sentence for a lawyer found guilty of professional misconduct.

1. A penalty should be imposed to protect the public, maintain high professional standards and foster and preserve public confidence in the legal profession. A sentence is not to be imposed to punish a lawyer.

2. A review of the checklists in the textbooks and decisions of other discipline panels of factors to be taken into account in fashioning an appropriate penalty indicates many similarities in approach. No one list should be selected as being applicable to any particular case. A panel should not be fettered in its discretion but should be free to choose the factors which suit the circumstances under consideration, including the determination of the weight to be ascribed to any particular factor.

3. After a guilty plea or following conviction, a panel may consider whether the offending member has admitted guilt and expressed remorse, not for the purpose of imposing a higher penalty but for the purpose of considering whether leniency should be given. (emphasis added)

4. Where a member has been convicted of misappropriation of a client's funds, disbarment should be the penalty imposed unless special or exceptional circumstances justify a lesser penalty.

5. Where there is no misappropriation, disbarment may be imposed depending on such factors as the seriousness and number of offences, the need for general or specific deterrence, and a prior disciplinary record.

6. Where the nature and number of charges for which the member has been convicted demonstrate clearly that a lawyer is ungovernable, then disbarment should be imposed.

32. Mr. Chrysanthous' communications to the Association *after* the hearing do not indicate that he has gained any insight or appreciation regarding his behaviour. Mr. Chrysanthous continues to minimize its significance. In sum, the evidence indicates that Mr. Chrysanthous has no insight and no remorse.
33. The absence of remorse does not aggravate the penalty, but it means that there is no evidence upon which the Panel could conclude that Mr. Chrysanthous can be remediated or rehabilitated or even deterred from a repetition of his behaviour.

### **Public Confidence**

34. Mr. Chrysanthous emphasizes that he is no longer a member of the Association, and there is therefore risk that he will reoffend and no need to protect the public.
35. The Association notes that Mr. Chrysanthous' emails were widely disseminated by Mr. Chrysanthous and he identified himself as an engineer in those emails.
36. In the Panel's view, even if Mr. Chrysanthous is no longer a member, it is important that the penalty indicates its disapprobation of the conduct and promotes confidence in the integrity of the profession and its ability to self-regulate.

### **Other Cases**

37. The Association referred to several past Association decisions regarding unprofessional criticism, to which we now turn.
38. *Re Bolton* concerned a single incident, and a one month suspension and remedial course plus costs was ordered. In *Re Perry*, the member had published criticism of a colleague without substantiating that claim or giving the associate an opportunity to respond in advance. He was directed to write a letter of apology to the satisfaction of the Association, failing which he was to be fined \$5,000.
39. The Association also referred to several cases where a member had failed to respond or otherwise cooperate in an investigation. (*Re Syed*, *Re Hartford*, and *Re Yeung*). Where the failure to respond had been remedied, the result was a fine

or other modest disciplinary or remedial action. In *Re Hage*, the member was ordered suspended until he provided a response.

40. The Association also referred to *Re Stromotich*. That case involved somewhat similar conduct to that here: the member failed to provide requested records and sent two emails that impugned the competence of a government employee. He maintained his unfounded criticism in the hearing. The discipline panel ordered that Dr. Stromotich be suspended for two months, pay a fine of \$10,000, prepare a letter of apology to the employee in a form approved by the Association's Registrar, pass the Association's Professional Practice Exam, and pay costs of \$51,000. It also ordered that Dr. Stromotich's membership would remain suspended until he complied with all aspects of its order.
41. In explaining its rationale for the penalty imposed, the *Stromotich* panel wrote:

**14** The Association's primary responsibility is to protect and safeguard the public interest and to regulate the practice of professional engineering and professional geoscience in the public interest. The **Act** provides for a complaints and investigation process which plays an important role in discharging the Association's duty to protect the public.

**15** Section 30(4) of the **Act** compels a member that is being investigated to provide the Investigation Committee with information and records. A member's refusal to respond to the Investigation Committee's requests goes to the very root of the Association's ability to fulfill its mandate. A member cannot remain silent or fail to provide meaningful information.

**16** Unless a member who has been found liable for failing to respond to the Investigation Committee is properly penalized, the complaints and investigation portion of the **Act** would be circumvented, and the public interest compromised.

**17** The purpose of the Code of Ethics is to define the minimum level of conduct for the Association's members. The Code of Ethics is a standard against which the conduct of professional engineers and geoscientists can be assessed and if the member fails to meet that standard he or she is guilty of unprofessional conduct.

**18** A member's failure to conduct his or herself with fairness, courtesy and good faith towards his or her colleagues undermines the integrity of the Profession and diminishes the Profession as a whole in the eyes of the public.

**19** The penalty in this case should have the objective of securing Dr. Stromotich's compliance with the **Act** and assuring Dr. Stromotich's observance of the Code of Ethics.

42. We agree with the reasoning of the panel in *Re Stromotich*.
43. In this Panel's view, based upon the seriousness of the misconduct and the absence of any prospect of remediation, the appropriate penalty is cancellation of Mr. Chrysanthous' membership.

### **III. Costs**

44. Section 35(1) of the Act provides that where an adverse determination is made, the Panel may "direct that reasonable costs of and incidental to the investigation under section 30 and the inquiry under section 32" be paid and to fix the amount of those costs.
45. A determination has been made by this Panel against the respondent. There is no basis to depart from the usual order that the reasonable costs of the investigation and inquiry be paid by Mr. Chrysanthous.
46. The Association has submitted the figure of \$44,393.54. It has stated in its submissions that this is 90% of the actual costs. However, no material supporting that calculation is provided.
47. Mr. Chrysanthous submits that the amount is "excessive" and unsupported and no costs should be awarded. He also submits that he does not have the means to pay costs, although no evidence is provided.
48. The costs sought are higher than that awarded in a number (although not all) of the other cases to which we were referred. We accept that this case was more complex than a simple one day hearing. However, in our view, due to the size of the claim, some further information is required in order to determine the amount.
49. We therefore direct that reasonable costs be paid by Mr. Chrysanthous. However, in order to determine a specific figure, we ask that the Association provide evidence supporting its claim. This can be in the form of an affidavit with copies of relevant invoices, which can be redacted for confidentiality if necessary. This information should be provided to Mr. Chrysanthous so that he can make any further submissions or provide further evidence if he wishes to do so.
50. If the parties are able to agree upon a figure, then they can either refrain from providing further submissions to this Panel or, if an order is required, provide a form of consent order. If the parties cannot come to satisfactory arrangements, submissions may be made to this Panel including the evidence referred to above, on a schedule set out below.

### **IV. Summary**

51. The Panel orders that Mr. Chrysanthous' membership be cancelled, effective immediately.

52. The Panel directs that Mr. Chrysanthous pay reasonable costs of these proceedings, the amount which may be determined by agreement between the parties or, if not, by further submissions, to be delivered as follows:
- a. submissions and any further evidence upon which the Association relies must be delivered by counsel for the Association to Mr. Chrysanthous and to the Panel no later than August 31, 2018;
  - b. submissions and any further evidence upon which Mr. Chrysanthous relies must be delivered by Mr. Chrysanthous to counsel for the Association and to the Panel no later than September 14, 2018; and
  - c. reply submissions may be delivered by counsel for the Association to Mr. Chrysanthous and to the Panel by September 21, 2018.
  - d. Submissions for the Panel shall be delivered to Jean Whittow Q.C., counsel for the Panel and may be delivered electronically.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Dave Ricketts, P. Eng., Chair

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DATED this 16<sup>th</sup> day of August, 2018.

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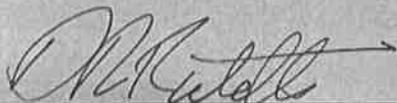
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