

**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.**  
**DETERMINATION OF THE DISCIPLINE COMMITTEE**

Hearing Date: May 17, 2017

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

Counsel for the Association: David Volk and  
Adrian Armstrong (Articled student)

Counsel for the Member: Joven Narwal, application to reopen/written  
submissions only

**I. Background**

1. A panel of the Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia (the "Association"), doing business as Engineers and Geoscientists BC conducted an inquiry to determine, pursuant to s. 33 of the Act, whether Mr. Chrysanthous has acted contrary to s. 30(4) of the Act.
2. The particulars of the allegations against Mr. Chrysanthous are set out in the Notice of Inquiry issued February 28, 2017 as follows:
  1. That in the following communications with professional engineers and members of the public:
    - December 26, 2010 email at 11:23 PM, addressed to [REDACTED] and others. Subject: TransLink 99 B-Line Noise Nuisance and Toxic Emissions Class Action: Have Your Say and Have Your Day;
    - December 9, 2012 email at 7:38 PM, addressed to [REDACTED], Transportation Minister and others. Subject: dismissal of [REDACTED] - translink ceo - along with the removal of 99 b-lines from existing trolley bus route in point grey;
    - November 30, 2014 email at 6:03 PM, addressed to the TransLink board and others. Subject: Explanation for fraudulent study by TransLink;

January 18, 2015 email at 4:49 PM, addressed to [REDACTED], the Mayor of Vancouver, and others. Subject: Red and white polka dotted pajama wearing Chinese girl drives off in her baby blue Lamborghini;

April 13, 2015 email at 12:22 AM, addressed to [REDACTED], the Mayor of Port Coquitlam, and others. Subject: fuzzy transit plebiscite math;

April 19, 2015 email at 2:30 PM, addressed to [REDACTED] and others. Subject: TransLink special permit to violate the Motor Vehicle Act?;

April 20, 2015 email at 1:24 AM, addressed to [REDACTED] and others. Subject: Stepping into the future without TransLink;

May 3, 2015 email at 9:52 PM, email addressed to [REDACTED] and others. Subject: TransLink special permit to violate the Motor Vehicle Act; and

May 18, 2015 email at 3:24 PM, addressed to [REDACTED] and others. Subject: Resident Evil: TransLink,

you have:

- a. demonstrated unprofessional conduct contrary to the Act; and
  - b. acted in a manner contrary to Principle 7 of the APEGBC Code of Ethics, which provides that you will conduct yourself 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.
2. That, contrary to section 30(4) of the Act, you failed to comply with the November 1, 2016 request of APEGBC's Investigation Committee that you appear on November 17, 2016 at 3:00 p.m. at APEGBC's office at 200 - 4010 Regent Street, Burnaby for the purposes of a rescheduled interview.
  3. The hearing took place at the Association's office at 4010 Regent Street, Burnaby BC. Mr. Chrysanthous did not attend the hearing. At the outset, the Panel heard evidence on the issue of service under s. 32(2) of the Act. It determined that service had been effected under the Act and determined to proceed. The Association then called and completed its case and made argument. This took place on May 17, 2017. The Panel reserved its decision.
  4. At the Panel's request, counsel for the Association sent supplemental submissions dated May 19, 2017 concerning the treatment of testimony by two witnesses as to the admissibility of statements made to them by Mr. Chrysanthous.

5. After the conclusion of the hearing, Mr. Chrysanthous applied through counsel to reopen the hearing, on the basis that Mr. Chrysanthous had not been properly served with the Notice of Inquiry. These submissions included a section entitled "Closing Argument" which addressed the merits of the Notice of Inquiry. The Association opposed the application to reopen.
6. In a decision issued August 30, 2017, the Panel decided it would reopen the hearing for the limited purpose of receiving Mr. Chrysanthous' submissions on the merits of the allegations in the Notice of Inquiry, based upon the existing record of evidence. It rejected Mr. Chrysanthous' submission that the Association should not be granted a right of reply. The Panel set a schedule for receipt of submissions from Mr. Chrysanthous (October 2, 2017) and a reply by the Association (November 3, 2017).
7. Mr. Chrysanthous advised through his counsel's office on October 6, 2017 that "we have no further submissions at this time". The Association then filed its Reply.
8. The Panel's determination takes into account the evidence adduced on May 17, 2017, and the subsequent submissions referred to above.

## **II. Service**

9. As set out above, Mr. Chrysanthous did not attend the proceedings. The Panel's decision that service was properly effected was made on May 17, 2017 and upheld the decision on the application to reopen which was issued August 30, 2017. A copy of this decision is attached.

## **III. Burden and Standard of Proof**

10. As noted by both the Association and Mr. Chrysanthous, the burden of proof lies on the Association and never shifts to the Member.
11. The Association also noted that it must prove its case on a standard described as the "balance of probabilities". That is, in order to make a finding of 'guilt' the Panel must find that it is more likely than not that the facts alleged occurred. Evidence must be "sufficiently clear, convincing and cogent" to satisfy that test. The leading authority for this principle is *F.H. v. McDougall*, [2008] 3 S.C.R. 41 and relied upon by the Association in *Kaminski v. Assn. of Professional Engineers and Geoscientists of British Columbia*, 2010 BCSC 468.
12. The Panel accepted the Association's submissions on the burden and standard of proof.

#### IV. Notice of Inquiry Paragraph 1

##### A. The Evidence

13. Mr. Volk presented four witnesses to provide evidence regarding the likelihood that Mr. Chrysanthous sent the emails that are the subject of this inquiry; that emails A – I in the Notice of Inquiry from “Eric Chris” were in fact sent by Mr. Chrysanthous.

14. ██████ of Translink described his research efforts to ascertain the identity of Eric Chris and find support for his belief that it was a pseudonym for Eric Chrysanthous. He testified about the following:

- c. “Eric Chris” signed at least two of his emails “Eric Chris, PE” ██████, Tab 1, p. 16, and Tab 5, p. 51), indicating that he was a professional engineer. However, no individual named “Eric Chris” was listed in the Association’s online membership directory.
- d. “Eric Chrysanthous” was listed in the Association’s online membership directory.
- e. A blog post from a website called “Rail for the Valley” that focuses on transit issues contained a post stated to be authored by “Eric Chris”. The post includes a description of “Eric Chris” as follows:

*Eric Chris is an Australian professional engineer with a master’s degree in chemical engineering and has been living in Vancouver near UBC on the 99 B-Line route for the last 16 years. He works in the hydrocarbon industry as a design engineer for his entire career. His master’s thesis was on real time air dispersion modeling of SO2 from coal fired electrical power stations. He is also an active supporter of Greenpeace and the Green party. It is fair to say that he understands environmental and technical issues quite well. Eric also graduated top in his class in finance in engineering and occasionally looks at transit holistically to see what solution might balance the engineering, financial, social and environmental considerations.*

- f. One of the documents provided by ██████ to the Association with his complaint was an August 28, 2012 article entitled “Particulate Matter and Sound Pressure Levels from the TransLink 99 B-Line Diesel Bus Rapid Transit on ██████ Vancouver” stated to be authored by “Eric Chris” ██████ Tab 1, p. 17-22). The article focuses on emission and sound problems allegedly created by the 99 B-Line at the corner of ██████ in Vancouver.
- g. ██████ confirmed that, after Constable ██████ met with Mr. Chrysanthous in person during the summer of 2015, TransLink did not receive any further threatening correspondence from “Eric Chris” ██████, Tab 7).

15. Constable [REDACTED] testified that Mr. Chrysanthous' driver's license showed an address of [REDACTED] Vancouver and that he had a vehicle also registered at that address ([REDACTED] Tab 1, p. 2). This confirms that Mr. Chrysanthous did live along the route of the 99 B-Line and, more specifically, that he lived at [REDACTED] the location about which "Eric Chris" penned an article ([REDACTED] Tab 1, p. 17) about the alleged harmful effects of emissions and noise from 99 B-Line diesel buses at that corner.
16. Constable [REDACTED] further testified that when he met with Mr. Chrysanthous on June 4, 2015 to speak with him about the emails and to provide him with the May 19, 2015 letter from the Transit Police ([REDACTED] Tab 1, p. 6), that Mr. Chrysanthous did not deny that he sent the emails and agreed not to send any further threatening emails. The Association argued that this is an important admission by Mr. Chrysanthous and goes directly to the question of identity of the sender of the emails.
17. Mr. Romano testified about the Association's registration file for Mr. Chrysanthous (Romano, Tab 2), which contains the following information:
  - a. Mr. Chrysanthous obtained a Bachelor of Science degree in Chemical Engineering at the University of Alberta in 1990 and a Masters of Environmental Management from the University of Queensland in Brisbane, Australia. [REDACTED]
  - b. Mr. Chrysanthous resigned his membership with the Association in February 2000. The November 30, 2014 email (Email c) from Eric Chris states that "In 2001 during the Enron collapse, I was working for Enron in the USA." That corresponds with the timing of Mr. Chrysanthous' resignation from the Association.
  - c. Mr. Romano testified that one of the documents he identified from the large batch of documents disclosed by TransLink in response to the Association's freedom of information request was an April 26, 2009 email from Eric Chrysanthous to a number of TransLink staff (Romano, Tab 6). That email makes it clear that Mr. Chrysanthous' stated focus at that time was on the 99 B-Line bus service and the noise and emissions produced by those buses.
  - d. Mr. Romano testified that in attempting to locate the home address of Mr. Chrysanthous, one document he focused on was the August 28, 2012 article submitted by [REDACTED] Tab 1, para. 17). Mr. Romano testified that the picture on the second page of the article appears to be taken from somewhere in the tower located at [REDACTED] This corresponds directly with Constable [REDACTED] report which states that Mr. Chrysanthous' driver's license showed an address of [REDACTED] [REDACTED] Vancouver and that he had a vehicle also registered at that address ([REDACTED] Tab 1, p. 2).

- e. Mr. Romano testified about receiving a copy of the email string in December 2016 in which Mr. Chysanthous' sought to advance his complaint about ██████████ to Engineers Canada (Romano, Tab 8). Attached to that email string was a single PDF containing two documents, both of which were stated to be from the "Kits WPG Citizens' Group". The first of those documents appears to be a PowerPoint that is entitled "Environmental and Social Impacts of Broadway Subway by TransLink in Metro Vancouver" and is dated October 20, 2016. There are key similarities between this document and the emails at issue from "Eric Chris":
- i. Generally, both this document and the emails focus on buses, specifically diesel buses, along the Broadway-UBC route.
  - ii. The slide entitled "Public transit by TransLink picks up 1.4 passengers for each kilometre of service" includes a figure taken from CUTA Canadian Transit Fact Books. Emails e and g also include figures taken from the same study.
  - iii. The slide entitled "Not having public transit adds 52 drivers" includes a number of computer equations detailed on a graph paper background. Similarly, Emails e and g also include computer equations detailed on the same graph paper background.
  - iv. The slide entitled "Broadway's subway perpetuates CO2 emitting diesel and hybrid diesel bus use" makes reference to the "subway fiasco along Cambie Street" over a link to a CBC article. That article is about the Canada Line lawsuit over the use of cut and cover construction but does not use the word "fiasco" or use the word "subway" in reference to the Canada Line. This is notable because Email c dated November 30, 2014, talks about "the subway fiasco on Cambie Street."
  - v. The slide entitled "Broadway's subway perpetuates CO2 emitting diesel and hybrid diesel bus use" also makes reference to the diesel buses on Broadway, describing them as "soot blowing transit buses" that are "making people sick". This is notable because Email d, January 18, 2015, also talks about the diesel buses on Broadway, stating "They blow soot into homes. They make people sick."
  - vi. The slide entitled "Diesel and hybrid-diesel buses interfere with other vehicles on the roads and cost commuters time" makes reference to improved traffic during the last public transit strike, citing a May 8, 2001 online article from trucknews.com ("Transit strike provides for smooth sailing"). Emails e and g cite the exact same trucknews.com article to describe decreased road congestion during the transit strike in 2001.

- f. Mr. Romano testified further that after receiving the PowerPoint document, he performed a Google search to try and find more information about the "Kits WPG Citizens' Group". In doing so he noted that this group was referred to in a comment made by "Eric Chris" on February 28, 2016 in the comment section of an article on the Rail for the Valley website (Romano, Tab 9). No other references on Google were found for "Kits WPG Citizens' Group".
18. Mr. Swartz testified that after informing Mr. Chrysanthous on September 18, 2015 of the complaint, Mr. Chrysanthous left Mr. Swartz a voicemail on September 28, 2015 (Swartz, Tab 2). In the two minute long voicemail, his first contact with the Association regarding the complaint, Mr. Chrysanthous did not deny that he sent the emails in question. Rather Mr. Chrysanthous' comments are directed at questioning why the Association would be concerned about the emails if they were not sent by him at work.
19. Mr. Swartz testified that when the complaint against Mr. Chrysanthous was initiated by ██████████ in April 2015, he recalled that a 2013 complaint from "Eric Chris" had been made to the Association about ██████████, in March 2013 (Swartz, Tab 3). In the initiating March 27, 2013 email (p. 63), "Eric Chris", "on behalf of residents in Point Grey", requested a review into the conduct of City of Vancouver engineers. The focus of the complaint was on statements made by City of Vancouver engineers, in particular ██████████, regarding the feasibility of a subway line under Broadway to UBC. Points 6 and 7 from this email focus on the 99 B-Line and the emissions and noise from those buses. Mr. Swartz testified that, following a review of this complaint by a Designated Reviewer, the Association closed the complaint initiated by "Eric Chris" against ██████████.
20. Mr. Swartz testified that he spoke with Mr. Chrysanthous on October 2, 2015 by telephone. Following the call he prepared a memorandum from that date documenting what was discussed on the call (Swartz, Tab 4). Mr. Swartz testified that one of the points discussed on the call with Mr. Chrysanthous was the previous complaint made by "Eric Chris" in 2013. Mr. Swartz's memorandum records the following on this point:

*I asked him if his complaint would contain any new information as I explained that I am aware that he complained to APEGBC in 2013 about Translink and the complaint was dismissed by APEGBC. Chrysanthous knows that he complained in 2013 but said that he did not remember the content of his complaint. He says that there is a community of people in West Point Grey opposed to the 99 B-Line buses.*

That is, Mr. Chrysanthous acknowledged submitting a complaint to the Association in 2013, which was submitted by "Eric Chris" and not Eric Chrysanthous.

21. The Association argued that aside from the witness testimony, there are a number of references in the emails in question themselves, which closely correspond with the evidence given by the witnesses which strongly indicate that “Eric Chris” is Mr. Chrysanthous.
22. The November 30, 2014 email (Email c) from Eric Chris includes a number of self-descriptive statements:
  - a. That “Eric Chris” lived along [REDACTED] and could see the bus from his “living room window” (Email c, p. 7). According to Constable [REDACTED] testimony, Mr. Chrysanthous also lived on [REDACTED] along the B-Line route.
  - b. That “Eric Chris” had “navigated the corporate shark tank for years and ... Worked on billion-dollar projects for major firms [REDACTED] [REDACTED] (Email c, p. 9). This work history corresponds with Mr. Chrysanthous’ history of working [REDACTED] and the fact that he resigned from the Association between the years 2000 to 2008, during which time “Eric Chris” stated that he worked [REDACTED] in 2001.
  - c. The January 18, 2015 email (Email d) refers at the beginning to a description of an event “near my residence this morning in [REDACTED], corresponding with the location of Mr. Chrysanthous’ residence at [REDACTED].
  - d. The May 3, 2015 email (Email h) from Eric Chris includes at the outset a description of “Eric Chris” last trip on transit. In the account, he states that he lives [REDACTED] and took the [REDACTED] bus from a bus stop near [REDACTED], where he got out, and then had to ride another bus west to his final destination. This description is consistent with “Eric Chris” living at [REDACTED] where Mr. Chrysanthous lived, which is [REDACTED].

#### **A. Analysis and Findings of Fact**

23. Mr. Chrysanthous provided no evidence relating to paragraph 1 of the Notice of Inquiry. In his written submissions he argues that the allegations were unproven, and that the failure to give evidence cannot be held against him.
24. The Panel accepts the evidence set out above and finds that the evidence establishes, on the balance of probabilities, that Eric Chris is a pseudonym used by Mr. Chrysanthous and that he sent the emails that are the subject of this inquiry.

25. In particular, the Panel relies upon the similarity between the pseudonym and proper name, the extensive evidence regarding Mr. Chrysanthous' interest in the Broadway corridor [REDACTED], his admissions to Constable [REDACTED] that he would cease sending emails, and his admission to Mr. Swartz that he had sent a prior complaint to the Association, which had been sent by "Eric Chris".

**B. Unprofessional Conduct/Conduct contrary to Code of Conduct**

26. In its submissions, the Association argued the meaning of 'unprofessional conduct'. It referenced the Association's *Code of Ethics Guidelines* that addresses the standard of professional conduct as follows:

*The APEGBC Code of Ethics serves 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.*

27. The Association relies upon *Re: Ian Foreman P. Geo.*, in which a Discipline Panel of the Association considered the above and referred to decisions of the Law Society of BC regarding professional discipline and held that unprofessional conduct represents a "marked departure from the standard to be expected of a competent professional".
28. In its submission the Association describes the unprofessional content in each of the emails noted in the Notice of Inquiry as follows:

Email A This December 26, 2010 email contains a menacing threat against the recipients that their failure to remove the B-Line buses could result in result in some form of retribution.

Email B In the final paragraph of this December 9, 2012 email (p. 3), the second sentence appears to encourage others to cause violence to staff at TransLink ("go down to TransLink with a big stick to beat the crap out of the indifferent deadbeats"). The description of staff at TransLink as "indifferent deadbeats who merely show up at work every day to collect a paycheck" is harsh criticism and lacks professionalism.

Email C This November 30, 2014 email contains a significant amount of harsh personal criticism levelled at a number of individuals. The following comments stand out:

P. 8: [REDACTED] is described as "a feckless engineer who doesn't appear to understand basic continuity

theory or what intrinsic and extrinsic mean in the context of transit. He obtained a second degree in business (MBA) to climb to the top - telltale sign of someone lacking technical acumen in engineering and suffering from an inferiority complex." Further, in the next paragraph, he claims that [REDACTED] is "blinded by ambition and unfettered by what is right or wrong, he will lie and cheat, and say anything to protect his job." This commentary, coming after the dismissal of the "Eric Chris" complaint to the Association about [REDACTED] in 2013 and which is directed to a fellow engineer, is harsh, unfair and lacking in professionalism.

P. 9: Continuing in his attacks on [REDACTED], he describes him as "a traitor to his profession and is no engineer." Again, such comments against a fellow engineer are extremely harsh and totally lacking in professionalism.

P. 9: Midway down the page, he comments about "navigating the corporate shark tank" and makes the following clear threat of violence or death: "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 in human hunters once did in Canada."

Email D This January 18, 2015 email contains a number of harsh pieces of criticism and derogatory comments directed at Mayor [REDACTED]:

P. 11: At the bottom of the page, he states that "transit is primarily a welfare program, and for unethical snake oil salesman like you [sic] lie about transit reducing road congestion for you and the swindlers at TransLink to profit from the expensive hub to hub transit (subway to UBC) fleecing taxpayers is bothersome, just a bit."

P. 12: At the top of the page in the first full paragraph, he refers to the mayor as an "idiot" (beginning of paragraph) and a "retard" (end of paragraph). At the end of a paragraph midway down the page, he refers to the mayor as "a sham, fool." Near the bottom of the page above the photograph, a clear threat of violence is made where he states "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.

Email E This April 13, 2015 email concludes (on p. 15) with another threat of violence or death (p. 23): "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. The video clip is extremely gory and depicts Rambo firing a large gun and killing many individuals.

- Email F This April 19, 2015 email contains a demand that TransLink remove the 99 B-Line buses from the roads in Point Grey by the end of April 2015 along with a menacing threat of retribution if that demand is not met: "Residents in Point Grey are not going to ask you, one more time. Either the 99 B-Line diesel buses are gone by the end of April 2015 or you are going to be gone, soon. Do you comprehend?"
- Email G This April 20, 2015 email contains a serious threat of death or violence directed at three named individuals, including [REDACTED] (p. 25, top): "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."
- Email H This May 3, 2015 email is a follow-up to the April 19 email in which he demanded the removal of the 99 B-Line buses. The email concludes with a serious threat of violence or death which he says follows from TransLink's failure to comply with his demand (p. 37): "Last month, you were instructed to cease the operation of the 99 B-Line service which is not comply with the motor vehicle act." He continues: "You had until April 30, 2015 to remove the 99 B-Line diesel buses from Broadway. Foolishly, you ignore 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." [Emphasis in original] Below the statement is a YouTube link to a clip from the Dirty Harry television show in which Clint Eastwood shoots and kills a man, uttering the well-known line, "Do you feel lucky punk?"
- Email I This May 18, 2015 email concludes with a clear threat of violence or death against staff at TransLink (p. 43): "there is only one solution for the resident evil at TransLink. We fight the infection at TransLink and curtail its spending which is growing at a geometric rate. We shut down the flow of money financing the \$150 million/year bureaucracy at TransLink siphoning away money from transit operations to pay for the hundreds of grossly overpaid mindless minions at TransLink. It really is the end of

transit and unless ██████ and his friends at TransLink are made extinct.” [Emphasis in original]

29. In Mr. Chrysanthous’ voice mail to the Mr. Schwartz on September 28<sup>th</sup>, and written submissions (Paragraph 11, ca July 24, 2017) he argues that the Association does not have jurisdiction to discipline a member for their off duty behaviour. He argues that the Association’s reference to decisions from the legal, health care and teaching professions do not apply to engineers and that the off-duty behaviour of an engineer outside of professional work is not subject to the governance of the Association.

30. In reply, the Association reviews the intent of the Association’s Code of Ethics and refers to the Code of Ethics Guidelines. In particular the Association refers to preamble of the Code of Ethics as follows:

*The purpose of the code of ethics is to give general statements of the principles of ethical conduct in order that members and licensees may fulfil their duty to the public, to the profession and their fellow members and licensees.*

*Members and licensees shall act at all times with fairness, courtesy and good faith to their associates, employers, employees and clients, and with fidelity to the public needs. They shall uphold the values of truth, honesty and trustworthiness and safeguard human life and welfare and the environment. In keeping with these basic tenets, members and licensees shall...*

31. The Association argues that these basic tenets of the Code of Ethics apply to the emails sent by Mr. Chrysanthous.

32. The Association further argues that Mr. Chrysanthous self-identified as an engineer in the emails in question and that it is because of his self-identification as an engineer in the emails that the Association has jurisdiction over his conduct. Where a member identifies him or herself as a professional engineer or is perceived as such by others, their conduct must be consistent with the ethical and professional obligations that lay upon them as a professional engineer.

33. Mr. Chrysanthous argues in his submissions (paragraphs 12 through 16, ca July 24, 2017) that the Association is seeking to limit his right of free expression.

34. In reply to Mr. Chrysanthous’ arguments with respect to freedom of expression, the Association refers to the decisions *Doré v. Barreau du Quebec*, 2012 SCC 12 and *Foo v. Law Society of British Columbia*, 2017 BCCA 151. Dore sets out a three-part framework whereby an administrative decision maker must balance *Charter* values with statutory objectives (para. 55), ask how the *Charter* value at issue will best be protected in view of the statutory objectives (para. 56) and

balance the severity of the interference of the *Charter* protection with the statutory objectives.

35. The Association emphasizes that it is supportive of free expression and that the concern is the content of the emails that are threatening or unduly harsh in his criticism of others.
36. Mr. Chrysanthous argues in his submissions (paragraph 17, ca July 24, 2017) that there is no evidence of injury or harm to any of the individuals who received the emails and therefore no finding of unprofessional conduct can be made.
37. In paragraph 34 of their July 24, 2017 reply submissions, the Association refers to paragraphs 69 and 70 of their May 17, 2017 submissions that argue that the acts of transmitting the emails which made public statements that were threatening and highly derogatory and linking those statements to his professional position as an engineer do cause harm to the integrity of the engineering profession as a whole.
38. In paragraph 35 the Association further notes that there is evidence of the emails causing harm to individuals. In particular, they refer to [REDACTED] testimony and the impact that the emails had on individuals, specifically [REDACTED].

### **C Findings**

39. The Panel accepts, as set out in *Re: Ian Foreman P. Geo.* that unprofessional conduct is conduct that is a “marked departure from the standard to be expected of a competent professional”.
40. The Panel finds that the Association does have jurisdiction over the off-duty behaviour of Mr. Chrysanthous and that the Code of Ethics does apply to the emails that are the subject of this inquiry. We are particularly mindful that Mr. Chrysanthous identified himself as a professional engineer in his emails.
41. The Panel finds that Mr. Chrysanthous’ right to freedom of expression is not curtailed by the Association in assessing the content of the emails – the concern is the threatening tone and content of the emails that are the subject of this inquiry, as follows:

Email A a threat against the recipients if they fail to remove the B-Line buses.

Email B “go down to TransLink with a big stick to beat the crap out of the indifferent deadbeats”.

Email C [REDACTED] is described as “a feckless engineer who doesn’t appear to understand basic continuity theory or what intrinsic and extrinsic mean in the context of transit. He obtained a second degree in business (MBA) to climb to the top - telltale

sign of someone lacking technical acumen in engineering and suffering from an inferiority complex”, “blinded by ambition and unfettered by what is right or wrong, he will lie and cheat, and say anything to protect his job”, “a traitor to his profession and is no engineer.”

states “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 in human hunters once did in Canada.”

Email D Regarding the Vancouver Mayor, writes: “transit is primarily a welfare program, and for unethical snake oil salesman like you [sic] lie about transit reducing road congestion for you and the swindlers at TransLink to profit from the expensive hub to hub transit (subway to UBC) fleecing taxpayers is bothersome, just a bit”, “idiot”, “retard”, “a sham, fool”.

It includes a threat: “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.

Email E This email concludes with another threat: “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, depicting Rambo firing a large gun and killing many individuals.

Email F Includes a demand that TransLink remove the 99 B-Line buses from the roads in Point Grey by the end of April 2015 along with a threat:

“Residents in Point Grey are not going to ask you, one more time. Either the 99 B-Line diesel buses are gone by the end of April 2015 or you are going to be gone, soon. Do you comprehend?”

Email G A threat is made:

“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.”

Email H Following the email above, another threat:

“Last month, you were instructed to cease the operation of the 99 B-Line service which is not comply with the motor vehicle act.”

“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 the Dirty Harry television show in which Clint Eastwood shoots and kills a man.

Email I A threat: “there is only one solution for the resident evil at TransLink. We fight the infection at TransLink and curtail its spending which is growing at a geometric rate. We shut down the flow of money financing the \$150 million/year bureaucracy at TransLink siphoning away money from transit operations to pay for the hundreds of grossly overpaid mindless minions at TransLink. It really is the end of transit and unless ██████████ and his friends at TransLink are made extinct.”

42. The Panel finds that the content of the emails causes harm to the integrity of the profession.
43. The Panel finds that the threatening tone of the emails causes harm to the individuals named in the emails above.
44. The Panel finds that content of the emails described above include threats of violence, allegations of dishonesty, and professional impropriety and are a significant departure from the standard of professional conduct and in writing the emails Mr. Chrysanthous has demonstrated unprofessional conduct.

**V. Notice of Inquiry Paragraph 2**

45. The second paragraph of the Notice of Inquiry concerns an allegation that the member failed to attend a meeting with the Association on November 17, 2016.

## **A. Evidence**

46. Section 30(4) of the Act states:

A member, licensee or certificate holder being investigated under subsection (3) must

(a) 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,

(b) answer, within a reasonable time and in the manner specified by the committee or subcommittee, any inquiries of the committee or subcommittee, and

(c) appear, on request, before the committee or subcommittee.

47. The Association presented testimony of Mr. Swartz that Mr. Chrysanthous was advised of a scheduled interview on October 28, 2016. Mr. Chrysanthous left a voice mail message for M. Romano stating that he would attend.
48. Mr. Chrysanthous did attend the meeting on October 28<sup>th</sup> but he reported to the sub-committee that he had laryngitis and would not be able to speak. The meeting did proceed for some time but during the interview it was suggested by the Association that the meeting be rescheduled for a time when Mr. Chrysanthous was better able to participate.
49. Mr. Chrysanthous stated that he would not attend another meeting and that his statement gives all the information that he knows. Two written statements were provided at the time of the interview.
50. The Association notified Mr. Chrysanthous by letter dated November 1, 2016 that a second interview was scheduled for November 17, 2016. Mr. Chrysanthous did not attend the second scheduled meeting.
51. In Mr. Chrysanthous written submissions he argues that there is no evidence that the notice of the meeting was served upon him.
52. In response to Mr. Chrysanthous' submission the Association asserts that a requirement of service applies to the original contact with the Association and that a requirement that a requirement to prove service for every request is unreasonable and impractical.

53. The Association notes that Mr. Chrysanthous was in contact with the Association in October, that the letter notifying him of the rescheduled interview was sent to the same email address as was previously successfully used.
54. The Association further noted that Mr. Chrysanthous indicated at the October 28<sup>th</sup> interview that he would not attend the rescheduled interview. Also, on December 2, 2016 Mr. Chrysanthous indicated that if he was made to attend a rescheduled interview, he would show up and say no comment on the basis that he had already given the Association all of the information that he knew.

#### **B. Analysis and Findings of Fact**

55. Mr. Chrysanthous submits that “the Association has failed to tender any evidence to prove service of the request [for attendance] and knowledge of it” (Submissions, para. 9).
56. There is no requirement in the Act that notice of an interview be personally served or delivered in any particular manner. We are satisfied that the request to attend may be made in any manner that brings that request to the attention of the professional engineer.
57. The evidence is clear that Mr. Chrysanthous was notified of the first interview, attended the first interview and at that time advised that he would not attend a rescheduled interview.
58. The evidence is clear that notice of the rescheduled meeting was sent to the same email address as had been previously used to communicate with Mr. Chrysanthous.

#### **C. Breach of the Act**

59. The Panel is satisfied on the balance of probabilities that a request was made and that Mr. Chrysanthous did not appear for the rescheduled interview.
60. The Panel finds that Mr. Chrysanthous failed to comply with the request to attend a second interview and that this contrary to section 30(4) of the Act.

#### **VI. Summary**

61. In summary, the Panel finds that Mr. Chrysanthous did demonstrate unprofessional conduct contrary to the Act, and acted in a manner contrary to Principal 7 of the Code of Ethics.
62. The Panel finds that in failing to appear at the November 17, 2016 scheduled meeting with the Association, Mr. Chrysanthous failed to comply with section 30(4) of the Act.

63. The Panel requests that the parties provide written submissions on appropriate sanctions and whether costs should be imposed. We set the following schedule for submissions:
- a. Submissions must be delivered by counsel for the Association to Mr. Chrysanthous and to the Panel no later than April 13, 2018.
  - b. Submissions must be delivered by Mr. Chrysanthous to counsel for the Association and to the Panel no later than May 15, 2018.
  - c. Reply submissions may be delivered by counsel for the Association to Mr. Chrysanthous and to the Panel by May 31, 2018.
  - d. Submissions for the Panel shall be delivered to Jean Whittow Q.C., counsel for the Panel.
  - e. Submissions may be delivered electronically.

DATED this 12<sup>TH</sup> day of March, 2018.



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Dave Ricketts, P. Eng., Chair

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Ed Bird, P. Eng.

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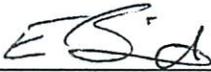
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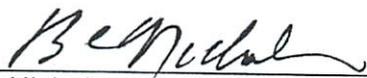
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Dave Ricketts, P. Eng., Chair

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