

IN THE MATTER OF  
THE *PROFESSIONAL GOVERNANCE ACT*,  
S.B.C. 2018, c. 47 as amended and  
IN THE MATTER OF JOHANN G. DUERICHEN, P. Eng.

**DECISION AND REASONS OF THE DISCIPLINE COMMITTEE ON  
EXTRAORDINARY ACTION UNDER SECTION 67**

Discipline Committee Panel: Christopher Newcomb, P. Eng., Chair  
Paul Adams, P. Eng.  
Denise Mullen

Counsel for the Association: Andrew D. Gay, Q.C.  
Gabriel Boothroyd-Roberts

Counsel for the Registrant: Brian Rhodes

**A. Introduction and Overview**

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 67 of the *Professional Governance Act*, S.B.C. 2018, c. 47 (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 registration be suspended on an interim basis pursuant to section 67 of the Act.
3. The parties provided written submissions and affidavit evidence, supplemented by oral submissions and testimony heard by videoconference.
4. For the reasons set out below, the Panel has determined that an interim suspension of Mr. Duerichen's registration is necessary in the public interest.

## **B. Background**

### ***The Revelstoke/Smithers complaint and investigation***

5. A complaint regarding Mr. Duerichen 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").
6. 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 concluded in September 2020.
7. A notice of inquiry<sup>1</sup> 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.
8. The allegations in the Notice of Inquiry include unprofessional conduct, incompetence, and violations of the Association's Bylaws.
9. The hearing of the inquiry (the "Revelstoke/Smithers Hearing") was scheduled for May 11-14, 2021, though this date was adjourned and has not yet been re-scheduled.

### ***The Interim Practice Restrictions***

10. On December 4, 2020, the Association sought an interim order either suspending or restricting Mr. Duerichen's practice of engineering pending the completion of the Revelstoke/Smithers Hearing and the resulting decision. That application was made under section 31(7) of the *Engineers and Geoscientists Act*.
11. The Association and Mr. Duerichen made a joint submission regarding the application for interim action, which was ultimately accepted by the panel convened to hear the Association's application.
12. The result was an order, made December 16, 2020, restricting Mr. Duerichen's practice as follows:

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<sup>1</sup> The Notice of Inquiry was issued under the legislation that previously governed the practice of engineering in British Columbia, the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116, shortly before the Act came into force on February 5, 2021.

- 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.

(the “Interim Practice Restrictions”)

- 13. In ordering the Interim Practice Restrictions, the panel accepted, as the parties had jointly submitted, that the test for an interim order was satisfied.
- 14. Specifically, the panel found that the evidence established a *prima facie* case in support of the allegations in the Notice of Inquiry, that there was a real risk to the public if an interim order was not made, that there was urgency to the matter, and that the Interim Practice Restrictions were sufficient and proportionate.
- 15. The panel’s complete analysis of the need for an interim order pending the Revelstoke/Smithers Hearing can be found in its decision and reasons, dated December 16, 2020 (the “2020 Interim Action Decision”). The 2020 Interim Action Decision contains important context to the present application and should be read alongside this decision.
- 16. The Interim Practice Restrictions remain in effect as of the date of this decision.

***Complaint arising from alleged breach of the Interim Practice Restrictions***

17. In March 2021, the Association received information from two authorities having jurisdiction that Mr. Duerichen may be violating the Interim Practice Restrictions with respect to engineering works in Burns Lake and Vanderhoof (the "Burns Lake Project" and the Vanderhoof Project", respectively).
18. With respect to the Burns Lake Project, based on the material before the Panel, it appears that Mr. Duerichen emailed a Schedule C-B "Assurance of Professional Field Review and Compliance" (the "Burns Lake Letter of Assurance") to a building inspector on February 27, 2021. The Burns Lake Letter of Assurance bears Mr. Duerichen's seal and signature and is dated December 10, 2020.
19. The Association alleges that Mr. Duerichen sealed and submitted the Burns Lake Letter of Assurance at a time when he was prohibited from doing so by the Interim Practice Restrictions. The Association also alleges that Mr. Duerichen backdated the Burns Lake Letter of Assurance to a date before the Interim Practice Restrictions were in place.
20. With respect to the Vanderhoof Project, based on the material before the Panel, it appears that Mr. Duerichen emailed a client a Schedule C-B "Assurance of Professional Field Review and Compliance" (the "Vanderhoof Letter of Assurance") to a client on February 27, 2021. The Vanderhoof Letter of Assurance bears Mr. Duerichen's seal and signature and is dated December 12, 2020.
21. As with the Burns Lake Letter of Assurance, the Association alleges that Mr. Duerichen sealed and submitted the Vanderhoof Letter of Assurance at a time when he was prohibited from doing so by the Interim Practice Restrictions, and that he backdated the Vanderhoof Letter of Assurance to pre-date those restrictions.

***The application for an interim suspension***

22. A citation was issued with respect to the Burns Lake Project and the Vanderhoof Project on December 3, 2021 (the "Citation").
23. A date for the hearing of the Citation (the "Burns Lake/Vanderhoof Hearing") has not been set.
24. Given the allegations underlying the Citation, including in particular the allegation that Mr. Duerichen violated the Interim Practice Restrictions which had been put in place to protect the public pending the Revelstoke/Smithers Hearing, the Association brought this application before the Panel for an interim suspension of Mr. Duerichen's registration.

**C. Proceedings and material before the Panel**

25. This application for an interim order was initiated by a written notice of application submitted by the Association, as contemplated by EGBC Bylaw 10.05(1)(b). Mr. Duerichen provided a written response.
26. Both parties supplemented their written arguments with oral submissions before the Panel by videoconference held on February 14, 2022.
27. The parties also introduced the following documents as exhibits<sup>2</sup>:
  - a. Affidavit #1 of Jeremy Miller (an investigator employed by the Association)
  - b. Affidavit #2 of Jeremy Miller
  - c. Affidavit #1 of Janis Forest (a legal administrative assistant to counsel for the Association)
  - d. Affidavit #1 of Johann Duerichen
  - e. Expert opinion of Douglas Gairns, P. Eng.
  - f. The Citation
  - g. Affidavit #1 of Benjamin Crimp, P. Eng. (a professional engineer who has provided supervision to Mr. Duerichen since May 2021)
28. Additionally, before concluding the proceeding, Mr. Duerichen requested the opportunity to make an oral statement before the Panel. Mr. Duerichen was cross-examined on his statement by counsel for the Association.
29. It is important for the Panel to be clear that in referring to the material above, it is not making any conclusive findings with respect to Mr. Duerichen's conduct.
30. The Panel has received and considered this material for the purpose of determining whether an interim suspension is required in the public interest, as set out in more detail below. The Panel has considered all the materials and submissions provided by the parties, even where not expressly referenced.

**D. Section 67**

31. Section 67(1) of the Act states the authority for an interim order:

**Extraordinary action to protect public**

**67** (1) If the council of a regulatory body, or a discipline committee established under section 75 [*discipline hearings*], considers the action necessary in the public interest during an investigation under section

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<sup>2</sup> The Affidavit #1 of Jeremy Miller and the expert opinion of Douglas Gairns, P. Eng. relate to the Revelstoke Project and the Smithers Project – these materials provided the basis for the Interim Practice Restrictions.

66 (1) (a) or pending a hearing under section 75, the council may, by order and without giving the registrant an opportunity to be heard,

- (a) impose limits or conditions on the practice of the regulated practice by the registrant, or
- (b) suspend the registration of the registrant.

32. The Panel was not directed to any previous decision involving the application of section 67 – likely because the Act is new. However, the Panel agrees with the parties that section 67 should be considered in accordance with the overall framework for interim orders in the regulated professions established by the BC Court of Appeal in the case of *Scott v. Massage Therapists of British Columbia*, 2016 BCCA 180.
33. Based on that authority, and in alignment with the parties' submissions, the criteria for an order under section 67 of the Act can be summarized as follows:
- a. A *prima facie* case;
  - b. A risk to the public interest; and
  - c. Urgency to the matter.
34. Additionally, as set out in the *Scott* case, the Panel must be mindful of the impact of an interim order on the registrant. 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. The Panel must also consider whether practice restrictions would be sufficient and proportionate.

#### **E. Positions of the parties**

35. While the parties agreed that the Panel must apply the criteria from the *Scott* case, they disagreed about the application of those criteria.
36. The Panel has carefully considered all of the written and oral submissions made by both parties and summarizes each party's position below.

#### ***Position of the Association***

37. The Association argues that the material presented to the Panel establishes a *prima facie* case that Mr. Duerichen violated the Interim Practice Conditions as follows:
- a. The investigation of these issues originated based on information received from two building officials, and Mr. Duerichen subsequently "admitted to the essential facts that underlie these allegations".

- b. There is cogent evidence in support of the allegations, in light of the material indicating that Mr. Duerichen did not carry out substantive engineering work on the dates indicated on the Vanderhoof and Burns Lake Letters of Assurance, and that he selected those dates in an attempt to conceal his contraventions of the Interim Practice Restrictions.
38. In the Association's concluding submission, made after the cross-examination of Mr. Duerichen, the Association reiterated its position that Mr. Duerichen's own testimony indicates that Mr. Duerichen knowingly violated the Interim Practice Restrictions, and knowingly included false information in the Burns Lake Letter of Assurance and the Vanderhoof Letter of Assurance.
39. The Association submits that the conduct alleged constitutes a risk to the public interest as follows:
- a. The Panel must consider the public interest by having regard to the Association's statutory duties under the Act, including the duty to "serve and protect the public interest with respect to the exercise of a profession, professional governance and the conduct of registrants in the registrants' regulated practice" and the responsibility to "establish, monitor and enforce standards of professional ethics amongst registrants".
  - b. In directing the Interim Practice Restrictions, the panel in that application found that the allegations in the Notice of Inquiry were 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", justifying the imposition of the Interim Practice Restrictions. The Interim Practice Restrictions include a prohibition on Mr. Duerichen using his seal in relation to structural engineering work.
  - c. Considering the earlier determination that there is a substantial risk that Mr. Duerichen is not qualified to practise structural engineering, Mr. Duerichen's conduct in providing assurances that the Burns Lake Project and the Vanderhoof Project comply with the BC Building Code, when he was prohibited from doing so, presents a clear risk to public safety and the public interest.
  - d. Both the Notice of Inquiry and the Citation include allegations that Mr. Duerichen provided false or incorrect information to authorities having jurisdiction. Such conduct creates a clear risk to public safety and demonstrates an ongoing failure to adhere to the fundamental ethical standard of honesty.
  - e. The alleged breaches of the Interim Practice Restrictions, and the apparent attempt to conceal those breaches, are themselves serious ethical breaches. This indicates that there is a risk of Mr. Duerichen failing to adhere to the

ethical standards required of engineers, including the standards set out in the Association's Code of Ethics.

- f. Finally on this point, the Association submits that there is a clear risk to the public interest if an engineer who is dishonest in fulfilling his obligations, and who has demonstrated that he may not comply with orders made to ensure public safety, is allowed to continue to practice.
40. The Association points out that, unlike equivalent provision in the *Engineers and Geoscientists Act*, section 67 of the Act does not include urgency as an express requirement for an interim order. However, the Association submits that urgency remains a valid consideration for the Panel, relying on the BC Supreme Court decision in *Dr. Larre v. College of Psychologists of BC*, 2007 BCSC 416.
41. On that point, the Association submits that there is an urgent need for an interim suspension because of Mr. Duerichen's "repeated ethical breaches, including the violations of the [Interim Practice Restrictions] and repeated false assurances to authorities having jurisdiction".
42. The Association also submits that it has moved expeditiously to seek an interim suspension, as the investigation into the Burns Lake Project and the Vanderhoof Project concluded on September 22, 2021, the Citation was issued on December 3, 2021. The Association issued the notice of application underlying this proceeding on December 17, 2021.
43. Finally, citing *Scott*, the Association acknowledges that consideration must be given to the impact of an interim order on the registrant. The Association also acknowledges that before issuing an interim suspension, the Panel should consider whether an interim practice restriction would be proportionate and sufficient to protect the public.
44. In this case, given that it was previously determined that the Interim Practice Restrictions on Mr. Duerichen's practice were necessary to protect the public pending a resolution of the Notice of Inquiry, and given that Mr. Duerichen has demonstrated "he cannot be trusted to abide by [them]", an interim suspension is necessary and proportionate. The Association emphasized that the Interim Practice Restrictions appear not to have been effective as it appears that Mr. Duerichen has deliberately violated them.

***Position of Mr. Duerichen***

45. Mr. Duerichen first submits that the Panel should dismiss the application because the "Signing Allegations [with respect to the Burns Lake Letter of Assurance and the Vanderhoof Letter of Assurance] are not based on EGBC's first application [the section 31(7) proceeding concerning the Revelstoke Project and the Smithers Project]".

46. In support of this submission, Mr. Duerichen cites the cases of *Ritchot v. The Law Society of Manitoba*, 2010 MBCA 13 and *Visconti v. The College of Physicians and Surgeons of Alberta*, 2010 ABCA 250. Mr. Duerichen submits that these cases highlight that “the courts have scrutinized very carefully those instances where professional discipline panels go beyond what they are initially tasked to do”.
47. In any event, Mr. Duerichen submits that the criteria from *Scott* are not satisfied in this case.
48. Mr. Duerichen submits that there is a “live issue” around whether a *prima facie* case has been established. The basis for the Interim Practice Restrictions arose out of concerns with the Revelstoke Project, and the risk that it may not be safe for occupancy. However, in a letter dated June 30, 2020 (attached to Mr. Duerichen's affidavit), a building inspector for the City of Revelstoke, who is also himself a professional engineer, determined that many of the Association's concerns with the Revelstoke Project were “inconsequential” as they were not required under Part 9 of the BC Building Code.
49. Mr. Duerichen submits that the Panel should therefore dismiss this application because the concern about the safety of the Revelstoke Project has “been found to be unsupported by the City's own building inspector”.
50. Mr. Duerichen submits that there is no urgency to justify an interim suspension, because there is no evidence to suggest that there will be a delay in addressing the allegations about him. Mr. Duerichen points out that counsel for the parties have been in discussions about hearing dates and the allegations should be considered at “the final hearing, and not at an interim hearing”.
51. Mr. Duerichen submits that there is no serious risk and therefore an interim suspension is not necessary in the public interest:
  - a. The allegations concerning the Letters of Assurance, while concerning, do not meet the legal threshold of a “serious risk” to the public.
  - b. The backdating of the Letters of Assurance is a “regrettable error that will not be repeated”, and these errors do not rise to the level of conduct that has previously been determined to be “serious”. Mr. Duerichen contrasts his alleged conduct to the seriousness of the conduct at issue in the case of *Re: James Camsoon Hum*, in which there were charges of incompetence or unprofessional conduct relating to the respondent's inspections of a retaining wall, guardrails, and a single-family home.

- c. The risk of harm must be real and not speculative. Mr. Duerichen is currently practising engineering related services under the supervision of Benjamin Crimp, professional engineer, and owner of Scouten Engineering.
  - d. Mr. Duerichen acknowledges, regrets, and sincerely apologizes for his back-dating of the Letters of Assurance. He agrees to “implement measures to prevent similar errors in the future”.
  - e. Mr. Duerichen has otherwise remained in compliance with the Interim Practice Restrictions, and there is no evidence that he will continue to “back-date” letters of assurance in the future. Arguments to the contrary are “entirely speculative”.
52. Finally, Mr. Duerichen submits that the impact of a suspension is disproportionate to any risk to the public:
- a. In accordance with the decision in *Scott*, an interim suspension is an “extraordinary remedy that ought to be used sparingly”.
  - b. A suspension of Mr. Duerichen’s registration would be disproportionate to any risk of harm to the public flowing from his “unfortunate administrative error”, and the Association has provided no evidence that there are structural or design issues with the Burns Lake Project or the Vanderhoof Project.
  - c. Mr. Duerichen’s situation, which includes supervision by Mr. Crimp, can be contrasted with the case of *Re: Ahmed Raza Syed*, where it appeared that the respondent was a “seal for hire” and was unable to answer basic engineering questions.
  - d. If Mr. Duerichen were suspended, he would no longer have the ability to generate income for his family. Mr. Duerichen is 79 years old and is the sole income earner for his wife and himself. Mr. Duerichen states that he is responsible for \$330.61 per month in mortgage payments, as well as domestic expenses and the maintenance of two motor vehicles (which amounts to between \$200 and \$500 per month depending on how much travel is required for work).
53. Taken together, Mr. Duerichen has submitted that none of the elements of the test from the *Scott* case have been met.

**F. Mr. Duerichen’s request to dismiss the application**

54. The Panel has considered Mr. Duerichen’s request to dismiss the application for an interim suspension on the basis that it goes beyond the scope of the Revelstoke/Smithers Complaint.

55. The Panel declines to dismiss the application on this basis.
56. First, as the Association has pointed out, Mr. Duerichen had notice of the order the Association was seeking and the basis for seeking it. The application was very capably argued by counsel for both parties in accordance with the notice provided.
57. While the Panel accepts Mr. Duerichen's general submission that panels should not go beyond what they are tasked to do, the Panel does not consider that to be the situation in this case. The Association points out that the *Ritchot* and *Visconti* cases dealt with findings that were not alleged in the charging document - a situation that does not arise here. The Panel therefore does not consider that the decisions in *Ritchot* and *Visconti* to be of assistance.
58. The *Ritchot* and *Visconti* cases also involve determinations and penalties ordered following a discipline hearing. On that point, the Panel notes that section 67 of the Act permits an interim order to be made without notice to the respondent, distinguishing it from the process at a discipline hearing. While that is not the process that was followed in this case, it further diminishes the relevance of the *Ritchot* and *Visconti* cases.
59. Second, the Panel does not agree that the concerns raised with the Letters of Assurance can be entirely separated from the concerns with respect to the Smithers Project and the Revelstoke Project that underlie the Notice of Inquiry. The main issue around the Letters of Assurance is that Mr. Duerichen breached the Interim Practice Restrictions imposed as a result of the concerns identified during the investigation of the Smithers Project and the Revelstoke Project. In those circumstances, and in addition to the fact that Mr. Duerichen had notice that these issues would be considered, the Panel does not agree that it is foreclosed from considering the Association's application for an interim suspension.
60. Finally, considering the points above, dismissing the application without considering its merits would not be in the public interest. The Association's mandate under the Act, set out in section 22(2)(1), requires it to serve and protect the public interest, and exercise its powers and discharges its responsibilities in the public interest:

**General duty and responsibilities of regulatory bodies**

22(1) It is the general duty of a regulatory body at all times to

- (a) serve and protect the public interest with respect to the exercise of a profession, professional governance and the conduct of registrants in the registrants' regulated practice, and

(b) exercise its powers and discharge its responsibilities in the public interest.

61. In other words, the public interest must be at the heart of the Association's processes, decisions, and actions. The Panel considers that dismissing the application without considering the serious issues raised by the Association, with notice to Mr. Duerichen, would not be in the public interest. The Panel declines to do so.

**G. Panel's analysis of the *Scott* framework**

62. Having declined Mr. Duerichen's request to summarily dismiss the application, the Panel provides its analysis of the *Scott* framework below.

i. *A prima facie case*

63. The Panel's role at this stage is not to determine whether the allegations in the Citation 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.
64. There is a *prima facie* case that Mr. Duerichen has not complied with the Interim Practice Restrictions as alleged in the Citation. As the Association points out, the investigation in this matter was triggered by information received from two building officials. There is no basis in the materials to find the allegations have been motivated by improper considerations or are exaggerated or manifestly unfounded.
65. The information from the building officials is further supported from the materials from Mr. Duerichen's file which was submitted to the Association (contained in the Affidavit #2 of Jeremy Miller), and Mr. Duerichen's own submissions and evidence. Mr. Duerichen does not appear to be contesting that he applied his seal to the Letters of Assurance at a time when he was prohibited from doing so by the Interim Practice Restrictions, and that he backdated the Letters of Assurance. The Panel finds that the material before it meets the criteria for a *prima facie* case articulated in *Scott*.
66. The Panel wishes to emphasize that it is not making any final determination regarding the conduct alleged by the Association, and its assessment does not bind a hearing panel. Importantly, Mr. Duerichen maintains the right to defend the allegations in the Citation at the Burns Lake/Vanderhoof Hearing, where additional materials and evidence may be introduced, and where a different, and higher, standard of proof applies. The Panel's analysis at this stage is simply a provisional assessment of the facts for the purposes of an order under section 67.

67. The Panel also considered Mr. Duerichen's submission that there may not be a *prima facie* case based on the letter provided by the City of Revelstoke building inspector, who concluded that the Revelstoke Project was safe to occupy.
68. In response, the Association submitted that it was not open for Mr. Duerichen to challenge the assessment of the panel in the 2020 Interim Action Decision, where it concluded, based on a joint submission, that a *prima facie* case had been established regarding the allegations around Mr. Duerichen's practice of structural, electrical, and geotechnical engineering.
69. The Panel does not entirely agree with that response submission from the Association. In accordance with the Act, and as a matter of fairness to the registrant, interim practice restrictions or suspensions must be immediately removed when they are no longer necessary in the public interest. Such orders must therefore be subject to reconsideration if appropriate evidence is produced.
70. However, that is not the present situation. The Panel finds that the letter from the building inspector does not displace the *prima facie* case presented by the Association and apparent in the materials for the following reasons:
  - a. The Panel's assessment is that the building inspector's letter is a safety assessment of the state of the Revelstoke Project at a specific point in time, not an assessment of Mr. Duerichen's competence as a professional engineer. As stated in the letter "The City's investigation does not overrule or challenge the investigation from the Association but is meant to assess the safety of the building". It is also worth noting that the letter is dated June 30, 2020, approximately six months *before* the 2020 Interim Action Decision, at which time Mr. Duerichen had conceded that there was a *prima facie* case justifying the Interim Practice Restrictions.
  - b. As the Association points out, the letter from the Building Inspector did not address all the allegations regarding the Revelstoke Project set out in the Notice of Inquiry. Further, the concerns that led to the Interim Practice Restrictions related not only to the Revelstoke Project, but also to the Smithers Project, and no submissions were made to suggest that the concerns with the Smithers Project were unfounded.
  - c. Above all, the letter from the building inspector does not respond to the allegations in the Citation, including the allegations that Mr. Duerichen breached the Interim Practice Restrictions and included untrue information in the Letters of Assurance.
71. The Panel finds that a *prima facie* case has been established with respect to the allegations in the Citation.

ii. *A risk to the public interest*

72. The Panel must be satisfied that there is a real risk to the public if an interim order is not made.
73. Every day and in all walks of life in British Columbia and around the world, the public relies on engineers to design buildings and other structures that are safe.
74. This requires that engineers possess and apply sufficient skills, knowledge, and integrity. It requires that engineers abide by regulatory directives and other instruments that relate to public safety and the safety of engineering works. It also requires that engineers be careful, diligent, and honest in the representations they make to clients and authorities having jurisdiction.
75. In considering the risk to the public in this case, the context of the Interim Practice Restrictions is important. In the 2020 Interim Action Decision, the parties agreed, and the Panel determined, that the Interim Practice Restrictions were necessary to protect the public. The allegations in the Citation, and the risk to the public interest at issue in this application, cannot be considered in isolation from the risk to the public that led to the Interim Practice Restrictions.
76. The Interim Practice Restrictions responded to the risk to the public by, among other things, requiring that Mr. Duerichen only practise structural engineering in narrowly prescribed circumstances (including the requirement for direct supervision) and prohibiting Mr. Duerichen from applying his seal to any documents in connection with structural engineering.
77. The material before the Panel indicates a risk that Mr. Duerichen is breaching the Interim Practice Restrictions. Specifically, there is evidence, indicating on a *prima facie* basis, that he practised structural engineering without supervision in February 2021 and that he applied his seal to the Letters of Assurance in February 2021.
78. Mr. Duerichen argued that any breach of the Interim Practice Restrictions can be considered an “unfortunate administrative error”, and in his oral statement to the Panel he expressed the view that he did not at the time understand that sealing and submitting the Letters of Assurance constituted “engineering” and that he was merely “filling out a piece of paper” in February 2021 for work that had been previously done.
79. While the Panel is not making an assessment of Mr. Duerichen’s honesty or credibility, the Panel has some difficulty with those statements – particularly in light of Mr. Duerichen’s later concessions during cross-examination that he knew the Interim Practice Restrictions prohibited him from applying his seal in February 2022 and that the purpose of the “backdating” was to ensure the date on the Vanderhoof Letter of Assurance pre-dated the Interim Practice Restrictions.

80. In any event, the Panel does not accept the characterization of these things as mere “administrative” errors. This characterization undermines the importance of the Interim Practice Restrictions that were put in place to protect the public. It also undermines the role of letters of assurance and the role of a professional engineer in the safety of structures in British Columbia.
81. The Panel has considered Mr. Duerichen’s submission that there is no serious ongoing risk to the public because of his supervision by Mr. Crimp. The Panel notes that Mr. Duerichen was required to have supervision under the Interim Practice Restrictions which were effective as of December 2020, and the material provided indicates that Mr. Duerichen only began working with Mr. Crimp in May 2021. Further, as the Association points out, Mr. Crimp can only supervise works that are actually brought to his attention by Mr. Duerichen, and which fit within the supervision requirements set out in the Interim Practice Restrictions.
82. In the Panel’s assessment, the evidence that Mr. Duerichen may now be doing what was always required to comply with the Interim Practice Restrictions is not an adequate response to the concerns raised by the Association. It is not sufficient to displace the risk to the public in circumstances where the Association has established a *prima facie* case of two instances of non-compliance, and where Mr. Duerichen’s statements indicate that he may have deliberately attempted to conceal his non-compliance.
83. In addition to the possible breaches of the Interim Practice Restrictions, the Panel has considered the resurfaced allegations that Mr. Duerichen has included false or incorrect information in letters of assurance. The Association points out that the Notice of Inquiry contains allegations of false information in letters of assurance related to the Smithers Project, and that the Citation contains allegations that the date was deliberately misstated in the Letters of Assurance.
84. The Panel agrees with the Association that letters of assurance, relating to safety as they do, are very important documents. The Panel also agrees with the Association that an engineer who provides false information to authorities having jurisdiction in letters of assurance may constitute a risk to public safety. The Panel is concerned, based in part on his statements before the Panel, that Mr. Duerichen does not appreciate the significant role letters of assurance play in ensuring public safety.
85. Overall, the Panel has determined that the allegations in this case present a real risk to the public interest in two ways:
  - a. Mr. Duerichen may not be complying with the Interim Practice Restrictions, which were put in place to protect the public, and
  - b. Mr. Duerichen may be including untrue statements in letters of assurance, which are relied upon by clients and authorities having jurisdiction.

iii. *Urgency to the matter*

86. Despite it not being an express statutory requirement, the Association submitted, and Mr. Duerichen agreed, that urgency is a consideration in an application for an interim order under section 67 of the Act.
87. The Panel agrees that the Association moved expeditiously to seek an interim order following the conclusion of the investigation. While it may have been open to the Association to seek an interim order earlier in the process, the issues in this case are pressing, and, in the Panel's assessment, they cannot wait until a final determination following a hearing, which may take several months
88. Both parties raised the issue of the potential hearing date for the Citation as relevant to the Panel's consideration of urgency. No date is currently set. The Panel acknowledges Mr. Duerichen's submission that counsel are working together to find an agreeable hearing date, and it was suggested that a hearing might take place in approximately two months.
89. The Panel encourages the parties to move this matter forward expeditiously, but as of the date of the application before the Panel, no hearing date had been set. In any event, the Panel does not consider that identifying a prospective hearing date is a sufficient response to the risk to the public identified in this case.
90. The Panel finds that there is urgency indicating a need for an interim order.

iv. *Sufficiency and proportionality*

91. The Panel must consider the sufficiency and proportionality of an order under section 67.
92. This requires the Panel to consider whether restrictions on Mr. Duerichen's practice, rather than a suspension, would be sufficient to address the risk. The analysis of practice restrictions in this case is complicated by the fact that the catalyst for this application for an interim suspension is Mr. Duerichen's alleged non-compliance with an earlier interim order.
93. In the 2020 Interim Action Decision, the panel decided, as submitted by the parties, to impose the Interim Practice Restrictions on Mr. Duerichen rather than suspend his registration. This was deemed sufficient at that time in those circumstances. However, the Interim Practice Restrictions are only an effective response to the risk to the public identified in the 2020 Interim Action Decision if they are complied with.
94. The Association submits that a suspension is required because, among other things, Mr. Duerichen has "demonstrated he cannot be trusted to abide by the Interim Practice Restrictions".

95. The Panel agrees. The Panel could not be comfortable that Mr. Duerichen would abide by restrictions on his practice, given that he may have knowingly disregarded the Interim Practice Restrictions that were previously ordered. The Panel also has serious concerns about the resurfaced allegations that Mr. Duerichen included false information in letters of assurance. This is a concern that transcends discrete areas of engineering practice, and weighs in favour of a suspension rather than practice restrictions.
96. The Panel must also consider the impact of an interim suspension on Mr. Duerichen. The information the Panel has received shows that Mr. Duerichen is the sole income earner for himself and his wife, and that he has vehicle and mortgage expenses of \$500-\$800 a month, in addition to "domestic expenses".
97. The Panel notes that these expenses are relatively modest, and no information was provided to the Panel about Mr. Duerichen's overall financial situation. There was no evidence that a suspension of Mr. Duerichen's registration would effect a significant hardship on either himself or third parties.
98. Ultimately the Panel must be guided by the Association's overriding public interest mandate in the Act, and its consideration of whether a suspension of Mr. Duerichen's practice is necessary to protect the public interest.
99. While the Panel regrets that an interim suspension will have a financial impact on Mr. Duerichen, the Panel concludes that an interim suspension is necessary. The Panel finds that a suspension is proportionate response to the risks identified, including the fact that there is *prima facie* evidence that the Interim Practice Restrictions that were previously put in place to protect the public were breached.
100. Overall, the Panel has determined that restrictions on Mr. Duerichen's practice would not be sufficient and that an interim suspension of his registration is necessary in the public interest, notwithstanding the impact that will have on Mr. Duerichen.
101. In reaching that conclusion, the Panel reiterates the requirement of section 67(4) of the Act that an interim order should be cancelled as soon as it is no longer necessary, and the Panel urges the parties to proceed expeditiously to an adjudication or resolution of these matters.

#### **H. Duration of the suspension**

102. The Association sought an interim suspension "until the date an inquiry is held and a decision is rendered" with respect to the Citation.

103. The Association further submitted that an order for an interim suspension would essentially operate independently of the Interim Practice Restrictions: an interim suspension would “supersede” the Interim Practice Restrictions (because of the nature of a suspension), but when the interim suspension ceased to have effect, the Interim Practice Restrictions would no longer be superseded and would then resume being in force pending the resolution of the Notice of Inquiry.
104. In considering this submission, the Panel has reviewed EGBC Bylaw 10.5(8) which states as follows:
- (8) An order made by an Extraordinary Action Panel pursuant to section 67(1)(a) or (b) of the PGA [Extraordinary action] is effective until the final disposition of the matter by the Discipline Committee
105. However, the duration of the order in this case is somewhat complicated by the possibility of parallel proceedings in the Notice of Inquiry and the Citation. The allegations in the Notice of Inquiry regarding the safety and competence of Mr. Duerichen’s practice of engineering underlie, to some extent, both the Interim Practice Restrictions and the Panel’s present order for an interim suspension.
106. That being the case, the Panel does not believe that the two interim orders can operate completely in isolation of one another. It is possible, for example, that the resolution of the Notice of Inquiry will occur before the resolution of the Citation and might lead to an outcome that renders an interim suspension no longer necessary. As pointed out by Mr. Duerichen, pursuant to section 67(4) of the Act (and as restated in EGBC Bylaw 10.5(7)), an interim order under section 67 must only be in place as long as is necessary to protect the public.
107. Therefore, the Panel’s order will be in effect until the final disposition of the Citation by the Discipline Committee pursuant to EGBC Bylaw 10.5(8), with the express qualification that Mr. Duerichen may apply to be relieved of the interim suspension following the final disposition of the Notice of Inquiry if that occurs before the final disposition of the Citation.
108. In such an application, the question to be determined will be whether the interim suspension continues to be necessary to protect the public interest, as set out in section 67(4) of the Act and EGBC Bylaw 10.5(7).

**I. Conclusion and Order**

109. For the reasons set out above, the Panel orders that Mr. Duerichen’s registration is suspended pursuant to section 67(1)(b) of the Act.
110. As set out in section 67(3) of the Act, the suspension of Mr. Duerichen’s registration is 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 at his last address recorded in the Association's register, whichever is earlier.

111. The interim suspension of Mr. Duerichen's registration is to remain in place until the final disposition of the Citation by the Discipline Committee, as provided for in EGBC Bylaw 10.5(8).

112. However, because this interim suspension arises as a result of the two related disciplinary matters, Mr. Duerichen may apply to be relieved of the interim suspension following the final disposition of the Notice of Inquiry if that occurs before the final disposition of the Citation.

Dated this 28<sup>th</sup> day of February 2022 and signed in counterpart:

<original signed by>

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Christopher Newcomb, P. Eng., Chair

<original signed by>

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Paul Adams, P. Eng.

<original signed by>

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Denise Mullen