

IN THE MATTER OF
THE *ENGINEERS AND GEOSCIENTISTS ACT*,
R.S.B.C. 1996, c. 116 as amended

and

IN THE MATTER OF THOMAS LYNN TROTT, P. Eng.

DETERMINATION OF THE DISCIPLINE COMMITTEE

Decision Date:	August 17, 2021
Discipline Committee Panel:	John Haythorne, P.Eng., Chair Neil Cumming, P.Eng. Jurgen Franke, P.Eng.
Counsel for the Panel:	Susan Precious
Counsel for Engineers and Geoscientists BC:	Allan Doolittle

A. Background

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 was convened to consider pursuant to section 34 of *the Engineers and Geoscientists Act*, R.S.B.C., 1996 c. 116 (the "Act" or the "EGA") whether Thomas Lynn Trott, P. Eng. failed to comply with a consent order.
2. On December 4, 2000, Engineers and Geoscientists BC issued a Notice of Inquiry against Mr. Trott alleging that he demonstrated unprofessional conduct when he signed, sealed and submitted on May 16, 2000, structural design drawings for the proposed [REDACTED], in the City of Vancouver (the "Project") because the design did not comply with the then current edition of the Vancouver Building By-Law. Specifically, Engineers and Geoscientists BC alleged that the design did not adequately address seismic or vertical loads nor did the design provide sufficient details to properly construct the Project.
3. On April 23, 2001, Mr. Trott and Engineers and Geoscientists BC entered into a stipulated order settling the Notice of Inquiry allegations by consent.
4. In 2009, the British Columbia Court of Appeal released its decision in *Salway v. Association of Professional Engineers and Geoscientists of British Columbia*, 2009 BCCA 350. That decision held that Engineers and Geoscientists BC had no jurisdiction to enter into stipulated orders.
5. As a result of the *Salway* decision, Mr. Trott and Engineers and Geoscientists BC agreed to convert Mr. Trott's stipulated order of April 23, 2001 into a consent order. On October 30, 2009, Mr. Trott and the Discipline Review Panel entered into a consent order, which was signed on November 9, 2009 ("Consent Order").
6. The Consent Order contains the following terms:
 1. Lynn Trott admits the allegations of unprofessional conduct set out in the Notice of Inquiry.
 2. Lynn Trott's penalty for this unprofessional conduct is as follows:
 - a) Lynn Trott may not provide structural engineering designs of buildings requiring the application of Part 4 of the British Columbia Building Code or Part 4 of the City of Vancouver Building Bylaw. Lynn Trott's practice of structural engineering shall be restricted to the design of wood frame buildings to which Part 9 of the BC Building Code and the Vancouver Building Bylaw applies, but may include the design of structural elements within such buildings, that are governed by the provisions of Part 4 of the BC Building Code and the Vancouver Building Bylaw.
 - b) Lynn Trott may apply for the above condition to be removed upon:

- i. providing proof, satisfactory to the Discipline Committee, that he has successfully undertaken structural engineering courses addressing the issues identified in the Notice of Inquiry; and
 - ii. successfully completing an oral examination on those same issues before the Association's Structural Qualifications Board.
7. By correspondence dated December 1, 2020 from counsel for Engineers and Geoscientists BC, Engineers and Geoscientists BC asserted that Mr. Trott has on several occasions contravened the conditions of the Consent Order and has asked the Panel to invoke the provisions of section 34 of the Act.
8. Counsel for Engineers and Geoscientists BC provided the Panel with:
 1. Written submissions;
 2. Affidavit #1 of Jesse Romano dated November 12, 2020; and
 3. Expert report of Brian Lytton, P.Eng. dated August 26, 2020.
9. Mr. Romano's affidavit confirms that Mr. Trott has not removed the practice restriction in paragraph 2(a) of the Consent Order by completing the educational requirements set out in paragraph 2(b) of the Consent Order.
10. On August 15, 2019, Engineers and Geoscientists BC received a complaint from Richard Lau, P.Eng., a building engineer with the City of Surrey. The complaint concerns deficiencies in a drawing sealed by Mr. Trott accompanying a building application.
11. On October 15, 2019, through further correspondence with Mr. Lau, Engineers and Geoscientists BC received documents relating to a church renovation at [REDACTED], Surrey, BC, signed and sealed by Mr. Trott on March 18, 2010 (the "100th Avenue Project").
12. On October 15, 2019, Engineers and Geoscientists BC communicated with Jason Watt, City of Abbotsford Director, Building Permits and Licences, who provided documents including sealed drawings by Mr. Trott relating to two poultry barns in Abbotsford located at [REDACTED] King Road (the "King Road Project") and [REDACTED] Huntington Road (the "Huntington Road Project").
13. Brian Lytton, P. Eng. prepared an expert report dated August 26, 2020. Mr. Lytton's curriculum vitae indicates that he is a principal and senior structural engineer for Peak Engineering Ltd. with over 38 years of project management engineering experience.
14. Mr. Lytton provided the following opinions:
 1. The Huntington Road Project structure requires the application of Part 4 of the BC Building Code 2018. The area of the poultry barn area is over 600

m² therefore Part 9 of the BC Building Code is not applicable. The structure is not a structural element within a building as the structure is a new building.

2. The King Road Project requires the application of Part 4 of the BC Building Code 2018. The poultry barn area is over 600 m², therefore Part 9 of the BC Building Code is not applicable. The structure is not a structural element within a building as the structure is a new complete design.
3. The 100th Avenue Project building is used as a church, i.e., a place of assembly which necessitates Part 4 design. The church was still a church when it was renovated in 2010. However, even if it had not been a church in 2010, it will always be classified as Group A, assembly according to the BC Building Code 2006. Part 9 of the BC Building Code is not applicable as the church is always classified as a Group A building.
4. In addition, according to the "Proposed Partial Floor Plan", the existing load-bearing walls in the 100th Avenue Project building are proposed to be removed, with new beams and posts proposed to accommodate the vertical design loads. The walls to be removed assist in the lateral load-resistance of the building from wind and earthquake loads. Replacing the existing walls with proposed new "post and beam" construction is a significant change to the building design concept which requires seismic analysis and therefore the application of Part 4 of BC Building Code 2006. The church renovation work is therefore Part 4 of the BC Building Code 2006 and not Part 9 of the BC Building Code 2006.

B. Legal Framework

15. Section 34 of the Act provides:

Conditions not met

34 (1) If the discipline committee imposes conditions under section 33 (2) (b) and the discipline committee subsequently is satisfied that these conditions have not been met, it may propose, in addition to any order under section 33 (2), one or more of the following:

(a) imposition of further conditions;

(b) suspension or cancellation of the membership, licence or certificate of authorization;

(c) imposition of a fine, payable to the association, of not more than \$25 000 on the member, licensee or certificate holder.

(2) Notice of the proposal in subsection (1) and the reasons for it must be given, in the manner set out in section 32 (2), to the person on whom the conditions were imposed, setting out the proposal and giving the person at least 28 days from the date that notice

is given to deliver to the discipline committee any written submissions the person wishes to make.

(3) After the time for delivering written submissions has elapsed, the discipline committee may take the proposed action without a further inquiry if

(a) no submissions have been made, or

(b) on reviewing the submissions that have been made the discipline committee remains satisfied that the conditions have not been met.

16. Section 32.1(4) of the Act provides that a consent order has the same effect as an order made by the Discipline Committee under section 33(2), and may be dealt with under section 34:

Consent orders

32.1

(4) A consent order made under subsection (2)

(a) has the same effect as an order made under section 33 (2), and

(b) may be dealt with under section 34 if conditions in the consent order are not met.

C. Analysis

17. The Panel reviewed the materials provided by Engineers and Geoscientists BC and found that the evidence presented by Engineers and Geoscientists BC established a *prima facie* case that Mr. Trott had not met the conditions of the Consent Order.
18. By correspondence dated January 26, 2021, the Panel gave notice to Mr. Trott of proposed sanctions as set out in its proposal under section 34 of the Act (the "Proposal"). The Panel advised Mr. Trott that he had until March 5, 2021, to deliver any written submissions he wanted the Discipline Committee to consider.
19. By letter dated February 10, 2021, Mr. Trott provided a response to the Discipline Committee's Proposal. Mr. Trott stated that he prepared and submitted documents with the City of Abbotsford in good faith and believing he was acting within the practice conditions of the Consent Order. Mr. Trott indicated that after he signed the Consent Order, he phoned Paul Bogunovic, a senior plan reviewer at the City of Abbotsford. Mr. Trott states "I asked Paul is there would be a problem if I made a submission for another poultry barn given its size. Paul told that he didn't think so since it was a farm building with low human occupancy and governed by the Canadian Farm Code." Mr. Trott stated that on that advice, he prepared and filed submissions for the poultry barns. With respect to the 100th Avenue Project, Mr. Trott submitted that he only provided "as built" drawings. In his view, he was not providing engineering services, rather those of a competent technician.

20. On February 5, 2021, the *Professional Governance Act*, S.B.C. 2018 c.47 (the “PGA”) repealed and replaced the EGA. On February 23, 2021, counsel for the Discipline Committee wrote to the parties seeking any submissions they wanted to make on the implications of that change. On March 12, 2021, Engineers and Geoscientists BC delivered written submissions. Engineers and Geoscientists BC submitted that pursuant to the *Interpretation Act* and the transitional provisions of the PGA, the Discipline Committee remains empowered to make a determination pursuant to section 34(3) of the EGA. Mr. Trott’s submissions were due on March 26, 2021. He did not provide any written submissions on the implications of the PGA. The Panel agrees with Engineers and Geoscientists BC’s submissions that the Discipline Committee remains empowered to make a determination pursuant to section 34(3) of the PGA.
21. The Panel has considered the submissions that have been made and remains satisfied that Mr. Trott did not meet the conditions of his Consent Order. Indeed, the Panel considers that Mr. Trott has admitted all of the alleged conduct but submits that he either had prior authorization from the City of Abbotsford to perform the work, or that the work performed did not fall within the scope of his Consent Order. The Panel does not accept either of those submissions. Rather, the Panel remains satisfied that:
 1. Mr. Trott’s practice conditions, as imposed by the Consent Order, remain in place such that he “may not provide structural engineering designs of buildings requiring the application of Part 4 of the British Columbia Building Code or Part 4 of the City of Vancouver Building Bylaw. Lynn Trott’s practice of structural engineering shall be restricted to the design of wood frame buildings to which Part 9 of the BC Building Code and the Vancouver Building Bylaw applies, but may include the design of structural elements within such buildings, that are governed by the provisions of Part 4 of the BC Building Code and the Vancouver Building Bylaw.” The Panel notes that the restriction on his scope of practice is clear, and that it was not appropriate for Mr. Trott to breach the condition on the consent of a building official. With reference to the 100th Avenue project, Mr. Trott submits that he provided only as built drawings, which is not a breach of the conditions on his practice. The Panel notes that the title of the drawing is “Church Renovation”, it shows structural alterations falling within the scope of Part 4, and bears Mr. Trott’s seal. There is no reference on the drawing to suggest it is a record of as built conditions.
 2. The Panel is satisfied that Mr. Trott provided engineering designs for the 100th Avenue Project, the King Road Project, and the Huntington Project all of which required the application of Part 4 of the BC Building Code, and that his engineering designs were not limited to structural elements of the buildings that were governed by part 9 of the BC Building Code.
22. Engineers and Geoscientists BC submitted that the factors set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17 and *Law Society of BC v. Dent*,

2016 LSBC 05 are relevant to the assessment of any order the Panel chooses to make under section 34 of the Act.

23. In *Ogilvie*, the following factors were identified as relevant to any penalty:
1. the nature and gravity of the conduct proven;
 2. the age and experience of the respondent;
 3. the previous character of the respondent, including details of prior discipline;
 4. the impact upon the victim;
 5. the advantage gained, or to be gained, by the respondent;
 6. the number of times the offending conduct occurred;
 7. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstance;
 8. the possibility of remediating or rehabilitating the respondent;
 9. the impact on the respondent of criminal or other sanctions or penalties;
 10. the impact of the proposed penalty on the respondent;
 11. the need for specific and general deterrence;
 12. the need to ensure the public's confidence in the integrity of the profession;
and
 13. the range of penalties imposed in similar cases.

[the "Ogilvie Factors"]

24. The more recent decision of *Dent* held that it is not necessary to consider each *Ogilvie* factor in every case, and that the factors can be consolidated. In *Dent*, the following consolidated list was suggested:
1. Nature, gravity and consequences of conduct;
 2. Character and professional conduct record of the respondent;
 3. Acknowledgement of the misconduct and remedial action; and
 4. Public confidence in the legal profession including public confidence in the disciplinary process.

25. Engineers and Geoscientists BC submits that while punishment is one factor, the dominant concern is the protection of the public.
26. The Panel agrees that the *Ogilvie* and *Dent* factors are relevant for the assessment of an appropriate proposal to Mr. Trott under section 34. The Panel notes that not all of the *Ogilvie* and *Dent* factors are relevant in this instance.
27. The Panel agrees with Engineers and Geoscientists BC's submissions that Mr. Trott's violation of his practice restriction poses a public protection risk. The practice restriction was imposed following Mr. Trott's submission of structural design drawings for [REDACTED] in 2000 as they did not comply with applicable building bylaw requirements. The Consent Order imposed a practice restriction which prohibited Mr. Trott from providing structural engineering designs of buildings requiring the application of Part 4 of the BC Building Code. A mechanism to lift that practice restriction is provided in the Consent Order, whereby Mr. Trott could complete educational requirements and apply to Engineers and Geoscientists BC to lift the condition. Mr. Trott has not done so. The Panel notes that while practicing under a restriction, it is the registrant's responsibility to determine which work is permitted and which is not. In the case of uncertainty the appropriate course of action is to seek clarification from Engineers and Geoscientists BC. Third parties are not in a position to provide clarification or guidance.
28. By continuing to submit structural design drawings for buildings requiring the application of Part 4 of the BC Building Code, Mr. Trott has endangered the public. This is particularly concerning with the 100th Avenue Project, which is a church, and therefore a place of assembly. The Consent Order was put in place following concerns that arose with respect to the design of the previous St. Patrick's Parish church.
29. The Panel finds that the conduct in this case is at the serious end of the spectrum. The Panel agrees with Engineers and Geoscientists BC's submission that Mr. Trott has not only put the public at risk but also shown disregard for Engineers and Geoscientists BC as his professional regulatory body.
30. The conduct has arisen on three known instances over a period of approximately ten years.
31. The Panel finds that there is a need for both specific deterrence and general deterrence. A message should be sent to Mr. Trott and the profession as a whole that this conduct is not acceptable. Moreover, the need to ensure the public's confidence in the profession favours the imposition of a serious penalty.
32. Engineers and Geoscientists BC has pointed to three cases, all of which imposed cancellation of membership for similar conduct:
 1. *Re Robert Bruce Cheadle*, P.Eng. (2010);

2. *Re William J. Lund*, P. Eng. (2015); and
 3. *Re Desmond Ho*, P.Eng. (2019).
33. Engineers and Geoscientists BC submits that the appropriate penalty in this case is:
1. A declaration that Mr. Trott has not complied with the conditions set out in the Consent Order;
 2. Mr. Trott's membership is cancelled; and
 3. Mr. Trott pay a fine of \$5000 within 60 days of the issuance of the Panel's order.
34. In this instance, the Panel has considered the evidence and factors in *Ogilvie and Dent*, noting those factors favour the imposition of a serious penalty.
35. The Panel is satisfied that the conditions of the Consent Order have not been met and orders that Mr. Trott's registration is cancelled effective the date of this decision.

<original signed by>

John Haythorne, P.Eng., Chair

<original signed by>

Neil Cumming, P.Eng.

<original signed by>

Jurgen Franke, P.Eng.