

IN THE MATTER OF
THE ENGINEERS AND GEOSCIENTISTS ACT
R.S.B.C. 1996 CHAPTER 116 AS AMENDED
And
LORRENCE MELNECHENKO

DISCIPLINE COMMITTEE PANEL:	Neil Cumming, P.Eng., Chair Frank Denton, P.Eng. Upul Atukorala, P.Eng.
COUNSEL FOR THE ASSOCIATION:	Kerry Short
COUNSEL FOR THE MEMBER:	None
INDEPENDENT COUNSEL FOR THE PANEL:	David Martin
DATE OF HEARING:	February 6, 2014
PLACE OF HEARING:	200 – 4010 Regent Street, Burnaby, BC V5C 6N2

DISCIPLINE PANEL ORDER ON PENALTY AND COSTS

INTRODUCTION

[1] A Discipline Committee Panel (the Panel) of the Association of Professional Engineers and Geoscientists of British Columbia (the Association), under authority of the Engineers and Geoscientists Act, R.S.B.C. 1996, C. 116 (the Act), held an inquiry on February 6, 2014 to examine allegations of unprofessional conduct by Lorrence Melnechenko, P.Eng. After consideration of the charges and the evidence presented at the hearing, the Panel found Mr. Melnechenko guilty of unprofessional conduct with respect to the allegations in the Notice of Inquiry dated November 1, 2014 (the Notice). The Panel's Determination was issued orally after conclusion of the hearing and consideration by the Panel on February 6, 2014.

[2] Shortly subsequent to the Determination, at 11:20 am, a hearing on the penalty and costs to be imposed on Mr. Melnechenko was held at the same location as the Inquiry (200 – 4010 Regent Street, Burnaby, BC). The members of the Panel and counsel for the Association were in attendance. Neither Mr. Melnechenko nor anyone representing him was in attendance. The Panel was satisfied that Mr. Melnechenko was, or ought to have been, aware of the hearing, and the hearing therefore proceeded without Mr. Melnechenko or his representative in attendance.

SUBMISSION OF THE ASSOCIATION

[3] The Association's Counsel provided a submission to the Panel, together with a previous case authority.

[4] The Association's Counsel referred the Panel to Section 32(5) of the Act, which states, "*In the event of nonattendance of the person who is the subject of the inquiry, the discipline committee, on proof of service of the notice under subsection (2), which proof may be made by affidavit, may proceed with the subject matter of the inquiry in that person's absence and make findings of fact and its decision without further notice to that person.*" It was the Association's submission that the hearing on penalty and costs could therefore proceed in the absence of Mr. Melnechenko.

[5] In its submission, the Association reminded the Panel of the Association's duty, as set out in the Act, which is to protect and safeguard the public interest.

[6] The Association submitted that the penalty imposed on Mr. Melnechenko should reflect the following principles:

- a. The need for protection of the public;
- b. The need to deter other members of the Association from similar actions;

[7] The Association submits that Mr. Melnechenko's conduct justifies the imposition of a fine. The maximum fine permitted under the Act is \$25,000. The Association submits that the fine should be in the range of \$5,000 to 10,000.

[8] With regard to costs, the Association referred the Panel to Section 35(1) of the Act, which provides that the Panel may, at its discretion, award reasonable costs of and incidental to the Association's investigation and the inquiry, and that the amount of the award may be determined by the Panel.

[9] The Association submits that the Panel should award costs payable to the Association by Mr. Melnechenko in the amount of 90% of its reasonable legal fees and disbursements. The Association asserts that as of February 6, 2014 it has paid legal fees and disbursements of approximately \$7,400.

SUBMISSION OF MR. MELNECHENKO

[10] No submission on penalty and costs was received from Mr. Melnechenko.

DISCUSSION

[11] Upon considering the submission of the Association regarding Section 32(5) of the Act, the Panel determined that the hearing on penalty and costs could proceed without further notification to Mr. Melnechenko.

[12] In making its decision on penalty and costs the Panel has carefully considered the provisions of the Act, the submissions of the Association and the case authority to which the Panel was referred. The Panel has also considered the principles noted in paragraph [5] above.

[13] The Panel is considerably troubled by Mr. Melnechenko's refusal to participate in the investigation process. It is a fundamental part of a self-governing profession's mandate to deal with complaints made to it about the conduct of its members. As a result of Mr. Melnechenko's lack of cooperation, the Association's Investigation Committee's efforts to resolve a complaint against him has been unsuccessful. The Panel is of the opinion, therefore, that Mr. Melnechenko fails to properly understand all his responsibilities as a professional engineer.

[14] On the basis of the information and evidence presented at the hearing, the Panel makes the following order on penalty and costs.

PENALTY

[15] The Panel orders that Mr. Melnechenko pay a penalty in the amount of \$5,000 within 60 days of the date of this order.

[16] The Panel is aware that as of the date of this order, Mr. Melnechenko is not a member in good standing of the Association. The Panel orders that if Mr. Melnechenko's membership in the Association is reinstated, it shall be immediately suspended and remain suspended until completion of the following two requirements:

1. Mr. Melnechenko must provide a complete response, acceptable to the Investigation Committee, to the Investigation Committee's request for information and documents, as presented in the Association's letters of August 6, 2013 and September 24, 2013.
2. Mr. Melnechenko must write and pass the Professional Practice Examination

The Panel recommends that, as Mr. Melnechenko is already a former member of the Association, this Order and its terms be added to his membership record.

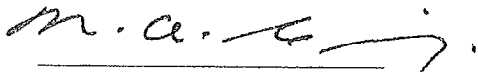
COSTS

[17] The Panel orders that within 60 days of the date of this order Mr. Melnechenko shall pay to the Association \$6,000.00 in costs, the amount being somewhat less than 90% of the Association's reasonable costs of legal fees and disbursements related to the investigations and hearings.

Respectfully submitted,

Vancouver, British Columbia

February 18, 2014



Neil A. Cumming, P.Eng. Chair



Frank Denton, P.Eng.

Upul Atukorala, P.Eng.

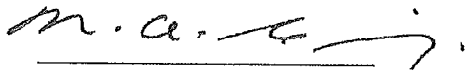
COSTS

[17] The Panel orders that within 60 days of the date of this order Mr. Melnechenko shall pay to the Association \$6,000.00 in costs, the amount being somewhat less than 90% of the Association's reasonable costs of legal fees and disbursements related to the investigations and hearings.

Respectfully submitted,

Vancouver, British Columbia

February 18, 2014



Neil A. Cumming, P.Eng. Chair



Frank Denton, P.Eng.



Upul Atukorala, P.Eng.