

**IN THE MATTER OF
THE ENGINEERS AND GEOSCIENTISTS ACT
R.S.B.C. 1996, CHAPTER 116 AS AMENDED**

- and -

IN THE MATTER OF Randall W. Hartford, P.Eng.

DISCIPLINE COMMITTEE PANEL:

Roy Wares, P. Eng., Chair
Darryl Chambers, P. Eng.
Chris Newcomb, P.Eng.

Counsel for the Association;

Robert W. Hunter
Meagan Lang

Randall W. Hartford, Appearing on his Own Behalf

DETERMINATION

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 to examine the alleged contraventions of the *Act* by Randall W. Hartford, P.Eng.

[2] Mr. Hartford was a member of the Association under the Professional Engineer (Geotechnical) designation at all times relevant to the matters herein in question.

[3] The allegations against Mr. Hartford are:

.. contrary to the Act, you have demonstrated unprofessional conduct by your failure to provide the Association's Investigation Committee with the information or records in your possession or control, as required by section 30(4) of the Act, as requested by the Association in:

- (a) a letter to you dated September 8, 2006;*
- (b) an e-mail message to you dated September 21, 2006; and*

(c) a fax to you dated September 21, 2006

- [4] The Panel convened on Friday December 8, 2006 at 9.30 am. Mr. Hunter informed the Panel that he had been contacted by Mr. Hartford that morning and that Mr. Hartford was attempting to locate a document to fax to both the Association and Mr. Hunter. After an adjournment and receipt of part of the document, the Panel agreed, after a teleconference with Mr. Hartford, to adjourn to Wednesday December 13th, 2006 to allow Mr. Hartford to seek legal counsel, if he so chose, and provide relevant documents. The Panel and Mr. Hunter stressed to Mr. Hartford that the Panel was only addressing the substance of the allegation by the Investigation Committee, not the underlying technical issues that gave rise to the original complaint by a member of the public.
- [5] The Panel reconvened on Wednesday, December 13, 2006 at 9.00 am. Mr. Hartford was present. When asked by the Panel Chair, Mr. Hartford made no objections to the inclusion of the members of the Discipline Committee and verbally stated that he accepted the jurisdiction of the Committee. Mr. Hartford was unrepresented by counsel and indicated he would proceed without counsel. Mr. Hartford denied the allegation.

BURDEN AND STANDARD OF PROOF

- [6] Mr. Hunter opened the hearing by informing the Panel of the rules of evidence, the burden of proof upon the Association and the standard of proof that the Panel must apply in reaching its decision. Mr. Hunter made clear that the burden of proof always rests upon the Association, and that the onus falls upon the Association to demonstrate that the charges had been proven to the appropriate standard of proof.
- [7] The Panel accepted that the standard of proof required is that stated by Madame Justice McLachlan in *Dr. William Jory v. The College of Physicians and Surgeons of British Columbia* (unreported December 13, 1985) which reads in part:

"The standard of proof in cases such as this is high. It is not the criminal standard of proof beyond a reasonable doubt. But it is something more than a bare balance of probabilities. The authorities establish that the case against a professional person on a disciplinary hearing must be proved by a fair and reasonable preponderance of credible evidence ... The evidence must be sufficiently cogent to make it safe to uphold the findings with all the

consequences for the professional person's career and status in the community."

BACKGROUND

- [8] We wish to emphasize that in coming to this Decision, only the evidence put before the Panel during the hearing was considered. We emphasize that the subject matter of the complaint is not at issue in this venue. The chronology of events, which gave rise to this matter being brought to the attention of the Association is summarized below:
- A) A complaint, dated May 03, 2006 was filed with the Association regarding Mr. Hartford in relation to construction of a house and sewage system at Nanoose Bay, BC. The complainant was not a client of Mr. Hartford.
 - B) On May 25, 2006 a letter was sent to Mr. Hartford by Mr. Geoff Thiele, LL.B, Associate Director, Regulatory Compliance, APEGBC requesting a response within three weeks from Mr. Hartford regarding the May 03, 2006 complaint.
 - C) On June 19, 2006, S. Ross Rettie, P.Eng., Director Professional Practice and Ethics, APEGBC wrote Mr. Hartford making a second request for a response and extending the deadline for a response for a further two weeks. Mr. Hartford was advised that if he did not provide a response, the Association would assess the complaint on the basis of the file material.
 - D) On July 12, 2006, Mr. Rettie again wrote to Mr. Hartford, making a third request for a response and extending the deadline for a response to July 27, 2006. Mr. Hartford was also advised that in the absence of any response, the file would be turned over to the Investigation Committee, APEGBC.
 - E) On August 24, 2006, Mr. Rettie, as the Designated Reviewer under Section 29 of the *Act*, wrote a memo to the Investigation Committee detailing Mr. Hartford's failure to respond and recommending that the Investigation Committee demand a response from Mr. Hartford.

- F) On September 8, 2006, Mr. Thiele wrote Mr. Hartford advising him of the Investigation Committee resolution pursuant to Section 30(4) of the *Act*, demanding a response from Mr. Hartford about the original complaint. Mr. Thiele also advised Mr. Hartford that pursuant to Section 30(4), Mr. Hartford must deliver his response to the Investigation Committee by September 19, 2006.
 - G) On September 21, 2006, Ms. Beverley Mitovic, Compliance Officer, APEGBC, sent a fax to Mr. Hartford with a copy of the September 8, 2006 letter.
 - H) On September 21, 2006, Ms. Mitovic also sent an e-mail to Mr. Hartford enclosing another copy of the September 8, 2006 letter.
 - I) On September 21, 2006, Mr. Thiele sent an e-mail to Mr. Hartford warning Mr. Hartford that if he did not respond to the Investigation Committee's request, contrary to Section 30(4) of the *Act*, the Investigation Committee would consider whether a disciplinary inquiry should be held.
 - J) On October 7, 2006, a Discipline Committee member, on behalf of the Discipline Committee, signed a Hearing Notice of Inquiry.
 - K) On October 28, 2006, a process server delivered a Notice of Inquiry, a letter and a summary of Discipline Procedure Information to Mr. Hartford. The process server swore an affidavit to this effect on October 31, 2006.
 - L) On December 8, 2006, on the morning of the Hearing, Mr. Hartford telephoned and faxed a letter to Mr. Hunter.
- [9] When the Panel reconvened on December 13, 2006, Mr. Hunter, on behalf of the Association, stated that there was no written opening statement. Mr. Hunter described the chronology of events that led the Investigation Committee to recommend that a Disciplinary Hearing be held.
- [10] Mr. Hartford then made an opening statement that he had received the initial document, had drafted a reply, but that he was unaware that it had not been received by APEGBC. He also stated that he had not received any of the subsequent documents from APEGBC until he was served with

the Notice of Inquiry on October 28, 2006. Further, the problems were attributable to domestic problems in his personal life.

EVIDENCE

- [11] The first witness for the Association was Geoff Thiele, LL.B, Associate Director, Regulatory Compliance, APEGBC, with the staff responsibility of dealing with complaints from members of the public. Mr. Thiele has been with APEGBC for two years. Mr. Hunter took us to Exhibit #1 (Notice of Inquiry, Affidavit of Process Server, letter from Messrs. Hunter to Hartford dated October 17, 2006 and relevant excerpts from APEGBC by laws).
- [12] The Panel was also shown Exhibit #2 (a copy of the complaint about Randall Hartford, dated May 3, 2006) and Exhibit #3, a copy of the letter dated May 25, 2006. In this letter, written by Mr. Thiele to Mr. Hartford, the letter advised Mr. Hartford of the nature of the complaint made against Mr. Hartford, a copy of the APEGBC complaint procedure and requested Mr. Hartford's response within three weeks of the date of the letter. Mr. Thiele testified that he had double checked the addresses on the letter to Mr. Hartford but that the Association had not received any response to the May 25, 2006 letter.
- [13] The Panel was shown Exhibit #4, the APEGBC file document, File T06-017, written by Ross Rettie, P.Eng. Director, Professional Practice and Ethics, APEGBC, on August 24, 2006. Mr. Rettie, as the Designated Reviewer under Section 29 of the *Act*, wrote the memo to the Investigation Committee detailing Mr. Hartford's failure to respond and recommending that the Investigation Committee demand a response from Mr. Hartford.
- [14] The Panel was shown the September 8, 2006 letter from APEGBC to Mr. Hartford (Exhibit #5). This letter, a professional conduct complaint, formally advises Mr. Hartford that the matter is now under the direction of the Investigation Committee and pursuant to Section 30(4) of the *Act*. Mr. Hartford was now required to provide complete answers to the complaint filed against him. The Panel was also shown Exhibit #6, a copy of the September 21, 2006 e-mail from Ms. Mitovic to Mr. Hartford. The e-mail advises Mr. Hartford that unless APEGBC formally hears from Mr. Hartford by September 28, 2006, the matter will be referred to the Investigation Committee. The same copy of the document, also includes an e-mail from Mr. Thiele to Mr. Hartford, dated September 21, 2006 and noting that the recommendation to the Investigation Committee for the Committee's

September 28, 2006 meeting would be for institution of a disciplinary inquiry.

- [15] Mr. Thiele testified that there had been no "bounce back" from the ISP provider to show that the e-mails had not been received or that the e-mail address was not valid. Mr. Thiele also testified that APEGBC kept track of member information in a data base that tracks address and contact changes. The member records for Mr. Hartford, Exhibit # 7, shows that the contact address for Mr. Hartford had not changed since October 16, 2004, the fax number had not changed since April 30, 2003 and the e-mail address (rhart2004@hotmail.com) had been last updated in the APEGBC records on December 28, 2005. Mr. Thiele testified that this e-mail address, current as of December 28, 2005, was the e-mail used by APEGBC to send material to Mr. Hartford and that there had been no 'bounce back' from this address. Mr. Thiele testified there was no cell phone number on the APEGBC records for Mr. Hartford. The APEGBC records show that Mr. Hartford operated under a business name of Geo-Force Engineering.
- [16] Mr. Thiele also testified that the telephone and fax numbers in the APEGBC records match that of numbers listed on Mr. Hartford's September 13, 2005 letter listed in the material provided by the member of the public in the original complaint. Mr. Thiele also testified that when Mr. Hartford faxed material to both Messrs. Hunter and Thiele on December 8, 2006 (Exhibit #8a, b), the only change in the Geo-Force Engineering letterhead was the addition of the cell phone number, a number not previously provided by Mr. Hartford to APEGBC. Mr. Thiele testified that the phone and fax numbers listed on the covering page in Exhibit #8, dated December 8, 2006 were identical to the numbers in APEGBC records.
- [17] In cross examination by Mr. Hartford, Mr. Thiele testified that he had tried to telephone Mr. Hartford but only could access an answering machine whose mailbox was full. Mr. Thiele also testified that he had tried to reach Mr. Hartford through a Mr. Lukowitz, Mr. Hartford's former employer, but he also did not know how to reach Mr. Hartford.
- [18] In response to a Panel question, Mr. Thiele clarified that the home and business address for Mr. Hartford were identical.
- [19] The Association's second witness was Ms. Beverley Mitovic, Compliance Officer. Ms. Mitovic, testified that among her duties, was preparing documents for Messrs. Thiele and Rettie, assisting Mr. Thiele and sending APEGBC documents.

- [20] In response to a question from Ms. Lang, for the Association, Ms. Mitovic testified that she had drafted a letter for signature by Mr. Rettie that was dated June 9, 2006 and sent to Mr. Hartford. This letter (Exhibit #9) gave Mr. Hartford a further 2 weeks to respond. Ms. Mitovic also sent out a letter dated July 12, 2006 (Exhibit #10) where Mr. Rettie, APEGBC, advised Mr. Hartford that unless there was a response by July 27, 2006, the matter would be turned over to the Investigation Committee.
- [21] Ms. Mitovic testified that she had sent a fax, on behalf of Mr. Thiele (Exhibit #11), to Mr. Hartford on September 21, 2006, including a copy of the September 8 letter to Mr. Hartford. The activity management report for APEGBC shows a three page transmission to 250 714 0126 at 16.00 hrs, September 21, 2006. The activity record shows this as a successful transmission lasting 1.03 minutes. The fax number is the fax number listed on APEGBC records for Mr. Hartford.
- [22] Ms. Mitovic also testified that she sent out an e-mail on September 21, 2006, at 3.33 pm to Mr. Hartford, with scanned copies of the previous documents and requesting a response by September 28, 2006. Ms. Mitovic wrote that unless there was a response by September 28, 2006, the matter would be referred to the Discipline Committee. Ms. Mitovic testified she had used the fax and e-mail numbers listed in the APEGBC records but that there had been no 'bounce back' indicating expired fax numbers or e-mail addresses.
- [23] In cross examination by Mr. Hartford, Ms. Mitovic testified the letters had not been sent by registered mail.
- [24] The third witness was the respondent, Randall W. Hartford. P. Eng. Mr. Hartford testified that his home and office address were the same. He testified that he received the May 25, 2006 letter from APEGBC. He testified that he works from the address listed on the Geo-Force letterhead, his former family home, but he now has a different personal residence. He testified he has had the same address since at least two years. He testified that he has had the same fax number (250 714 0126) for at least two years and the same phone number (250 754 5855) for at least two years. Mr. Hartford claimed that his e-mail address (rhart2004@hotmail.com) ceased a year ago and that his e-mail address changed in February 2006. He testified he believed his hotmail e-mail address expired sometime during the spring 2006. Mr. Hartford testified he had not updated APEGBC records with a new e-mail address.

- [25] Mr. Hartford testified he received the May 25, 2006 letter from APEGBC and met with his client to go over the complaint (which was not from a client), went over the design and the nature of the complaint. Mr. Hartford testified that his wife picked up the mail. He prepared a response to the complaint and provided this information to his wife and asked her to send it to APEGBC. Mr. Hartford explained that he had found it difficult to recover the document from computer files.
- [26] Mr. Hunter for the Association pointed out that the letter has the wrong address and postcode for APEGBC. Mr. Hartford had no explanation.
- [27] Mr. Hartford testified he had not received the June 19, 2006 letter from APEGBC. He explained mail goes to a 'Super Box' where it is picked up by his wife. He had no explanation why the June 19, 2006 letter had not been received.
- [28] Mr. Hartford testified he was in Hawaii from June 15, 2006 to July 29, 2006 but that when he returned, he had some mail awaiting him, but not the July 12, 2006 mail from APEGBC. He testified that his wife continued to receive mail, and continued to help out with the office. He stated he had not received the September 8, 2006 professional conduct complaint letter from APEGBC.
- [29] Mr. Hartford testified that he has a 'finicky' fax machine and did not see the faxes from APEGBC. He later admitted he can still receive faxes from clients. He admitted he did not advise APEGBC of the allegedly defective fax machine.
- [30] In response to a question from the Panel, he admitted he did not respond to APEGBC because he was depressed because of his marital dispute but said he was not under hospitalization or specific medical care.

SUBMISSIONS

- [31] In closing argument, Mr. Hunter for the Association noted that the letter which Mr. Hartford claimed had been sent to APEGBC on June 12, 2006 had an incorrect postcode and address for APEGBC. The first contact with APEGBC by Mr. Hartford was on the morning of December 8, 2006, the start of the hearing. Mr. Hunter questioned why Mr. Hartford could receive mail from other than APEGBC yet Mr. Hartford could claim that his wife just simply failed to put APEGBC correspondence on his desk. Mr. Hunter argued that Mr. Hartford's explanations were tenuous. When APEGBC sent the relevant faxes, the activity record shows a transmission and the e-

mails were not rejected by the server. When Mr. Hartford was personally served on October 28, 2006, Mr. Hartford should have finally realized the significance of what was happening, yet there was no response until December 8, 2006.

- [32] The Association argues that the Panel must assess the credibility of Mr. Hartford by using events after September 21, 2006 as indicators of credibility, specifically the lack of response to APEGBC. Mr. Hunter argues that Mr. Hartford is using his wife as an excuse for the missing documents when the evidence shows that the e-mail account was receiving mail, and the phone answering machine was indicating 'mail box full'.
- [33] The Association argues that it took reasonable steps to notify Mr. Hartford of the charges with the letters, faxes and e-mails of September 8 and September 21, 2006. Mr. Hunter stated that if we accepted Mr. Hartford's testimony that he had not received any of the correspondence, then we should find him not liable but if we rejected Mr. Hartford's testimony, then we should find him liable. It is a matter of credibility.
- [34] In his closing statement, Mr. Hartford said he was not contacted by APEGBC and if he had known of the problem he would have responded. Mr. Hartford said that he was not in control of the correspondence but had relied on others at a time of intense emotional stress. Mr. Hartford said that had he known of the missing correspondence, he would have corrected the deficiency.

ANALYSIS AND FINDINGS

ANALYSIS

- [35] The panel is faced with two issues in reviewing the evidence:

- a) was Mr. Hartford's testimony credible ?
- b) did Mr. Hartford take reasonable steps to respond to the Association's requests ?

Issue (a): Was Mr. Hartford's testimony credible?

- [36] Mr. Hartford testified that he had received the May 25, 2006 letter from the Association regarding a complaint. Until his facsimile transmission to Mr. Hunter and to Mr. Thiele on the morning of December 8, 2006, the opening

of the hearing, there was no direct evidence that Mr. Hartford had directed any communication, written, verbal or electronic to the Association.

- [37] Mr. Hartford claimed he had prepared a written summary of the facts of the complaint and sent it to the Association on June 6, 2006. Mr. Hartford claimed that the December 8, 2006 facsimile was a copy of this letter. We found Mr. Hartford's testimony in this matter not credible. He could not explain why the letter was never received by the Association. Further, the copy we received was a paper recreation from a computer data base of the purported June 6, 2006 letter, was not an original letter and had been signed and stamped by Mr. Hartford as if this was an original letter. Mr. Hartford took no steps to show that the December 8, 2006 facsimile letter was a true copy of the June 6, 2006 letter by reference to data base records, mail records, or by affidavit. We are troubled why Mr. Hartford had the wrong address and post code for the Association and why he was indifferent to checking what is, on the face of it, an important legal document. We are perplexed why Mr. Hartford would stamp and seal on December 8, 2006, what he claimed was a copy of an original letter dated June 6, 2006 without certifying that his professional stamp was placed on a copy of an original document. We find his explanation evasive.
- [38] Mr. Hartford testified he was away from Nanaimo from mid June to late July 2006. We are troubled by Mr. Hartford's insistence that any correspondence during that period from the Association, be it paper, facsimile or electronic was never received, yet the May 25, 2006 letter was received. We are also troubled why Mr. Hartford made no effort to locate and provide facsimile or e-mail records to support his assertion that nothing was received. His explanation that he could not access the e-mail account was evasive. The Association e-mails sent to Mr. Hartford's last known e-mail account were not bounced back to the Association, showing that the account was evidently still current and receiving mail. Mr. Hartford provided no credible explanation or documentation from the server, of why the account was active yet he could not access it or if he took any steps to access the account.
- [39] Mr. Hartford testified that he had a 'finicky' facsimile system that could store facsimile messages in the computer when unattended. We find that Mr. Hartford's explanation of why the key facsimile messages from the Association were neither received as paper copies or stored electronically barely credible. We were surprised that Mr. Hartford could not take us to any data base records or the receipt of the facsimile transmissions on September 21, 2006 when the Association records show them as having been sent.

[40] Mr. Thiele testified that phone messages left at Mr. Hartford's phone number provided a message "mail box full". Mr. Hartford could provide no explanation of who listened or cleared the phone messages. Further, Mr. Hartford never provided the Association with his cell phone number and this further compounded the communication problem.

[41] We know from the evidence, that Mr. Hartford was properly served notice of these proceedings on October 28, 2006. Regardless of whether paper, facsimile and electronic records had previously gone astray, we are surprised that Mr. Hartford made no effort at all between October 28th and December 8, 2006, after properly being served notice, to contact the Association, or Mr. Hunter, in order to address the matter, or seek an adjournment, or seek legal counsel or provide a credible explanation. Mr. Hartford provided no credible explanation for his indifference to the process or why he evidently chose to ignore the matter until the morning of December 8, 2006.

[42] We find Mr. Hartford's testimony evasive and not credible.

Issue (b): did Mr. Hartford take reasonable steps to respond to the Association's requests ?

[43] In assessing whether Mr. Hartford took reasonable steps to respond to the Association's requests, we are guided by the philosophy of what a reasonable member of the Association, knowing the serious professional implications of a complaint from a member of the public, and having the information in the member's possession, would do in the circumstances.

[44] Mr. Hartford testified that he had received the initial May 25, 2006 letter from the Association regarding a complaint from a member of the public. He claimed he prepared a June 6, 2006 written response that he had sent to the Association. The alleged copy of this letter received on December 8, 2006, showed an incorrect address and post code for the Association. Even if the letter had been prepared on that date, and knowing of the serious nature of the inquiry from the Association, in our view a member should have taken reasonable steps to ensure that a copy was retained for file purposes, the letter was correctly addressed and that the delivery of the document be recorded. We find that Mr. Hartford did not take the reasonable, prudent steps that might be expected of a member in this circumstance.

- [45] Mr. Hartford testified that he had changed e-mail addresses early in 2006 and that he could not subsequently access the former e-mail address. The Association's member data base records show that Mr. Hartford did not inform the Association of this e-mail address change or explain why the address was evidently still active but that he could not access it. In our view, a member, acting reasonably and knowing of the importance of professional issues, might have advised correspondents of the new address or asked for retransmission of material sent to the old address. Mr. Hartford never advised the Association of his e-mail change.
- [46] Mr. Hartford testified that the reason for the missing correspondence related to differences with his wife. While we are sympathetic to the stress of domestic disputes, we note that Mr. Hartford continued to use his wife's residence as his business address, and he himself lived there sporadically. We are of the view that even if we were to accept Mr. Hartford's version of events, he has a continuing professional obligation to ensure, for the benefit of himself and his clients, that adequate records are maintained. We find he did not do so.
- [47] We have discussed above Mr. Hartford's troubling lack of response to the service of Notice. In our view, Mr. Hartford was indifferent to the process and, in our view, a reasonable member, knowing of the seriousness of the initial complaint and the Notice of Inquiry, would have responded forthwith and sought some resolution or explanation. We find that Mr. Hartford was neither reasonable or prudent in his total silence until the morning of the hearing.

FINDINGS

- [48] We find as a Panel, that Mr. Hartford's testimony was evasive and not credible. We do not find acceptable Mr. Hartford's explanation of missing written, verbal and electronic communications with the Association. Further, we find that Mr. Hartford did not take reasonable steps to address the ongoing matter of a complaint from a member of the public and was seemingly indifferent to the original complaint or to take reasonable steps to ensure a continuity of communication. While we do have some sympathy for Mr. Hartford's personal predicament which he claims as the cause of the problem, we do not accept his reasons for the failure to respond to the Association's informal and formal regulatory requests.
- [49] After careful consideration, the Panel finds that contrary to the *Act*, Randall W. Hartford, P.Eng., by a fair and reasonable preponderance of credible evidence, demonstrated unprofessional conduct by his failure to provide

the Association's Investigation Committee with the information or records in his possession, as required by section 30(4) of the *Act*, as requested by the Association in:

- a) a letter to Mr. Hartford dated September 8, 2006;
- b) an e-mail message to Mr. Hartford dated September 21, 2006; and
- c) a fax to Mr. Hartford dated September 21, 2006.

[50] Our findings have implications for members. As a self-governing profession, responsible, in the public interest, for regulating members, it is important that complaints from the public are addressed expeditiously in a fair and transparent manner. It is not in the public interest or in the interest of the Association, that the complaints procedure be stifled because, for whatever reason, a member declines to respond to legitimate regulatory requests or maintains such scant records, that documents cannot be retrieved or examined. Whatever the origin of a complaint about a member's work, members have a professional obligation to ensure that the Association's complaint process is credible, transparent and accountable and that each member has proper administrative procedures in place. Failure to do so, has professional consequences for the member and credibility issues for the Association.

CONCLUSION

[51] This Panel has unanimously determined that the Member, Randall W. Hartford, P.Eng. has demonstrated unprofessional conduct by his failure to provide the Investigation Committee with information and records in his possession as required by section 30(4) of the *Act*.

COSTS

[52] The Panel requests that the parties provide their submissions on penalty and costs in writing pursuant to the following schedule:

- 1) written submissions by the Counsel, APEGBC by the close of business, January 18, 2007.
- 2) opportunity for Mr. Hartford to make written submissions within ten days of delivery of the Association's written submissions.
- 3) An opportunity for Counsel, APEGBC to make a written reply to Mr. Hartford's written arguments, if any, within four days of receipt of the argument.

- 4) If the parties so wish, the hearing on sanction may be held by teleconference within a reasonable period after the Panel has received the submissions from the parties.

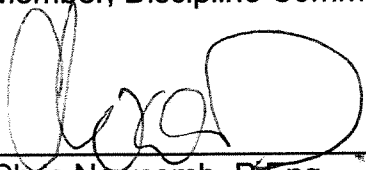
Dated, this 10th day of January, 2007, and signed in counterpart.

Roy Wares, P. Eng.

Panel Chair, Member Discipline Committee, APEGBC.

Darryl Chambers, P. Eng.

Member, Discipline Committee, APEGBC

A handwritten signature in black ink, appearing to read 'Chris Newcomb', written over a horizontal line.

Chris Newcomb, P.Eng.

Member, Discipline Committee

member's work, members have a professional obligation to ensure that the Association's complaint process is credible, transparent and accountable and that each member has proper administrative procedures in place. Failure to do so, has professional consequences for the member and credibility issues for the Association.

CONCLUSION

- [51] This Panel has unanimously determined that the Member, Randall W. Hartford, P.Eng. has demonstrated unprofessional conduct by his failure to provide the Investigation Committee with information and records in his possession as required by section 30(4) of the Act.

COSTS

- [52] The Panel requests that the parties provide their submissions on penalty and costs in writing pursuant to the following schedule:
- 1) written submissions by the Counsel, APEGBC by the close of business, January 18, 2007.
 - 2) opportunity for Mr. Hartford to make written submissions within ten days of delivery of the Association's written submissions.
 - 3) An opportunity for Counsel, APEGBC to make a written reply to Mr. Hartford's written arguments, if any, within four days of receipt of the argument.
 - 4) If the parties so wish, the hearing on sanction may be held by teleconference within a reasonable period after the Panel has received the submissions from the parties.

Dated, this 10th day of January, 2007, and signed in counterpart.

"R. Wares"

Roy Wares, P. Eng.
Panel Chair, Member Discipline Committee, APEGBC.

"Darryl Chambers"

Darryl Chambers, P. Eng.
Member, Discipline Committee, APEGBC

- 4) If the parties so wish, the hearing on sanction may be held by teleconference within a reasonable period after the Panel has received the submissions from the parties.

Dated, this 10th day of January, 2007, and signed in counterpart.



Roy Wares, P. Eng.
Panel Chair, Member Discipline Committee, APEGBC.

Darryl Chambers, P. Eng.
Member, Discipline Committee, APEGBC

Chris Newcomb, P.Eng.
Member, Discipline Committee

**IN THE MATTER OF
THE ENGINEERS AND GEOSCIENTISTS ACT
R.S.B.C. 1996, CHAPTER 116 AS AMENDED**

- and -

IN THE MATTER OF RANDALL W. HARTFORD, P.Eng.

DISCIPLINE COMMITTEE PANEL:

Roy Wares, P. Eng., Chair
Darryl Chambers, P. Eng.
Chris Newcomb, P.Eng.

Counsel for the Association;

Robert W. Hunter

Randall W. Hartford, On his Own Behalf

SUPPLEMENTAL DETERMINATION AND ORDER

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 to examine the alleged contraventions of the *Act* by Randall W. Hartford, P.Eng.
- [2] The hearing was held on December 9, 2006 and December 13, 2006. At the conclusion of the hearing, the Panel reserved its decision. The Panel delivered its written decision on January 10, 2007. The Panel unanimously determined that the Member, Randall W. Hartford, P.Eng. demonstrated unprofessional conduct by his failure to provide the Investigation Committee with information and records in his possession as required by Section 30(4) of the *Act*. In the Determination, the Panel laid out a schedule for submissions on penalty.

BACKGROUND

- [3] Randall W. Hartford, P. Eng., is a registered member, in good standing, with the Association. Mr. Hartford has been a member of the Association since 1992.
- [4] On May 6, 2006, a complaint regarding Mr. Hartford was received by the Association. After a series of letters and requests to Mr. Hartford, none of

which elicited any response from Mr. Hartford, the matter was turned over to the Investigation Committee. Mr. Hartford was informed of this by letter on September 8, 2006. A sequence of letters, faxes and e-mails were sent to Mr. Hartford on September 8, and 21, 2006. This sequence is the correspondence that is central to the Notice of Hearing. None of the correspondence was replied to by Mr. Hartford.

- [5] On October 28, 2006, Mr. Hartford was served legal notice of the date of the Disciplinary Hearing. On the morning of the first day of the hearing, December 9, 2006, Mr. Hartford finally made contact with Mr. Hunter, representing the Association, and Mr. Thiele, Associate Director, Regulatory Compliance, at the Association.

- [6] In the Panel's Decision on January 10, 2007, we wrote:

After careful consideration, the Panel finds that contrary to the Act, Randall W. Hartford, P.Eng., by a fair and reasonable preponderance of credible evidence, demonstrated unprofessional conduct by his failure to provide the Association's Investigation Committee with the information or records in his possession, as required by section 30(4) of the Act, as requested by the Association in:

- a) a letter to Mr. Hartford dated September 8, 2006;*
- b) an e-mail message to Mr. Hartford dated September 21, 2006; and*
- c) a fax to Mr. Hartford dated September 21, 2006*

- [7] The Panel also wrote:

The Panel requests that the parties provide their submissions on penalty and costs in writing pursuant to the following schedule:

- 1) written submissions by the Counsel, APEGBC by the close of business, January 18, 2007.*
- 2) opportunity for Mr. Hartford to make written submissions within ten days of delivery of the Association's written submissions.*
- 3) An opportunity for Counsel, APEGBC to make a written reply to Mr. Hartford's written arguments, if any, within four days of receipt of the argument.*
- 4) If the parties so wish, the hearing on sanction may be held by teleconference within a reasonable period after the Panel has received the submissions from the parties.*

SUBMISSIONS

SUBMISSION ON PENALTY

- [8] Mr. Hunter, on behalf of the Association, made a written penalty submission, dated January 16, 2007.
- [9] Mr. Hartford neither made a submission nor requested a teleconference hearing on sanction. On the face of it, the deadline for Mr. Hartford to make a submission was ten days from the delivery of the Association submission, dated January 16, 2007.
- [10] On the morning of February 7, 2007, the Panel Chair issued instructions to Association staff to issue written instructions to Mr. Hartford, that he had until 4.30 pm, Thursday February 8, 2007, to deliver his submission. Mr. Hartford was to also be informed that, in the absence of his submission, the Panel would proceed without further notice to review the submissions and render a decision. Such instructions were sent by e-mail, facsimile and by regular mail, to addresses used by Mr. Hartford in correspondence with the Association in January 2007.
- [11] No submission was received by the Association from Mr. Hartford by the date and time set by the Panel at 4.30 pm, February 8, 2007.
- [12] In his written submission on January 16, 2007, Mr. Hunter took the Panel to the relevant section of the *Act*, relevant case law for professional discipline cases and guiding principles by which discipline panels in self regulating professions impose sanctions.
- [13] Section 33(2) of the *Act*, provides that if the Discipline Committee Panel finds that a member has demonstrated unprofessional conduct, then the Panel may, by order do one or more of the following:
 - (a) *reprimand the member, licensee or certificate holder:*
 - (b) *impose conditions on the membership, licence or certificate of authorization of the member, licensee or certificate holder:*
 - (c) *suspend or revoke the membership, licence or certificate of authorization of the member, licensee or certificate holder.*
- [14] Mr. Hunter submitted that the 1994 British Columbia Court of Appeal case of *McKee v. College of Psychologists of British Columbia*, is instructive in

relation to the purpose of professional discipline cases. In this case, Finch, J.A. (now C.J.B.C.) stated at para 7:

In the case of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self governing professional body, the legislative purpose is regulation of the professional in the public interest. The emphasis must clearly be upon the protection of the public interest, and, to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional's peers are better able to assess than a person untrained in the particular professional art or science.

[15] Mr. Hunter also submitted that in considering the appropriate penalty, the Panel should be guided by the following principles, which we accept;

- (a) protection of the public:
- (b) specific deterrence – the deterrence to Mr. Hartford from further unprofessional conduct:
- (c) general deterrence – deterrence to other members from engaging in similar conduct: and
- (d) rehabilitation of Mr. Hartford to practice in conformance with professional standards.

[16] Mr. Hunter submitted, on behalf of the Association that the appropriate penalty is

- (a) The membership of Mr Hartford in the Association be suspended:
- (b) Mr Hartford return his professional seal to the Association immediately, in accordance with the Association's bylaw 12(b)
- (c) Mr. Hartford's membership in the Association continue to be suspended until the Investigation Committee of the Association confirms that they are satisfied that Mr. Hartford has properly

responded to their request for information as set forth in the Association's letter to Mr. Hartford dated September 8, 2006; and

- (d) Mr. Hartford be reprimanded and pay a fine in the amount of \$5,000 to the Association by the 1st day of April, 2007, failing which Mr. Hartford's membership in the Association is suspended until he has paid the full amount of the fine to the Association.

- [17] Mr. Hunter pointed out in his submission that there was a high probability that the Investigation Committee would review, on its scheduled January 25, 2007 meeting, Mr. Hartford's response to the September 8, 2006 letter that he provided for the first time to the Association on December 8, 2006. Mr. Hunter pointed out that should the Investigation Committee deem that the December 8, 2006 response by Mr. Hartford was satisfactory, then the suspension would be moot.
- [18] Mr. Hunter pointed out that even if the suspension was moot, the Association still sought the imposition of the reprimand and fine.

SUBMISSION ON COSTS

- [19] Mr. Hunter also addressed the issue of costs. In particular, Mr. Hunter took us to Section 35(1) and 35(3) of the Act, which states:

If the Discipline Committee makes a determination under section 33(1) , the Discipline Committee may direct that reasonable costs of and incidental to the investigation under Section 30 and the Inquiry under section 32, including reasonable fees payable to solicitors, counsel and witnesses, or any part of the costs, be paid by the person, and the costs may be determined by the committee.

If the discipline committee directs that the costs be paid and determines the amount under subsection (1) or (2), the amount may be assessed by the registrar of the Supreme Court, in the judicial district in which the inquiry under section 32 takes place, as special costs under the Supreme Court rules, as nearly as they are applicable.

- [20] Mr. Hunter wrote that the Association's total costs, to January 16, 2007 for the investigation, inquiry and disbursements, was \$13,433.26.

ANALYSIS AND DISCUSSION

ANALYSIS: PENALTY

- [21] In our Determination, we wrote that we were troubled by Mr. Hartford's evasiveness and lack of response to formal and informal regulatory requests from the Association. In our Determination, we set out a schedule for delivery of submissions on sanction. We also set out a provision for a teleconference on the sanctions if the parties so wished.
- [22] We are troubled that on this occasion, Mr. Hartford has neither made a submission setting out his case for or against sanctions or sought the opportunity to present his case by a teleconference. In that absence, and in Mr. Hartford's failure to observe the February 8, 2007 deadline imposed by the Panel, the Panel proceeded to render a decision.
- [23] In his submission, Mr. Hunter argued that failure to respond to one's professional regulatory body is a serious matter. We agree.
- [23] Mr. Hunter also argued that as a self-regulating profession, the general purpose of the *Act* is to protect and safeguard the public interest. Mr. Hunter also argued that the complaints and investigation portion of the *Act* plays an important part in discharging the Association's duty to protect the public. We agree.
- [24] In this case, Mr. Hunter also argued that it is also in the public interest that members not make an "end-run" around the investigation process and circumvent investigations with few, if any, personal and professional consequences. Mr. Hunter also argued that unless the penalties addressed protection of the public interest, general and specific deterrence, the Association's ability to enforce the *Act* and protect the public would be negatively impacted. We agree.
- [25] In this matter, Mr. Hartford was reminded during the hearing on December 13, 2006, that the Panel was addressing the substance of the hearing notice not the substance of the initial complaint from a member of the public.
- [26] We are advised that at the January 25, 2007 Investigation Committee meeting, the Committee decided that Mr. Hartford's December 8, 2006 letter had provided the information originally requested on September 8, 2006.
- [27] That however is not the end of the matter of Mr. Hartford's unprofessional conduct.
- [28] We are of the view that a reprimand and financial penalty must be imposed on Mr. Hartford as a consequence of his unprofessional conduct.

ANALYSIS: COSTS

[29] Mr. Hunter, in his argument, stated:

“costs” refers to an amount of money payable to a party involved in a legal proceeding to compensate that party for his legal expense. Normally, a party who has been awarded costs is entitled to be compensated for a portion of his legal fees, and all of his disbursements.

[30] Mr. Hunter submitted that Section 35(1) of the *Act* sets out a two-step test for the determination of costs. First, the Panel may award costs and then if awarding costs, the Panel must consider the amount of the costs.

[31] Mr. Hunter took the Panel to various legal cases. In civil trials in the Supreme Court of British Columbia, costs are within the jurisdiction of the judge. The unsuccessful party usually pays the costs of the unsuccessful party. For the Association, this principle is reflected in Section 35.

[32] Mr. Hunter took us to the legal precedent of ***Currie v. Thomas (1985), 19 D.L.R (4th) 594 (B.C.C.A.)***. Costs normally follow the event and though the judge has a wide discretion on whether to award costs, the discretion must be awarded in a judicial manner, not in an arbitrary or capricious manner.

[33] Mr. Hunter, on behalf of the Association, submitted that the Panel should take guidance from Section 35(3) of the *Act*, which states that the amount of costs determined by the Panel may be assessed by the Registrar of the Supreme Court as “special costs” under the Supreme Court Rules.

[34] Special costs refer to costs that are proper or reasonably necessary to conduct the proceedings. They are not necessarily equivalent to the actual legal fees. The test, as set out in ***Bradshaw v. Bank of Nova Scotia (1991) 54 B.C.L.R.***, is what a reasonable client would have to pay to a reasonably competent lawyer to do the work for which the costs are claimed. In the case cited, the rule of thumb was special costs as 80-90% of the legal bill assessed for reasonableness.

[35] Mr. Hunter also cited the case of ***Shpak v. Institute of Chartered Accountants of British Columbia, 2003 BCCA 149***. In this case, the accountant was ordered by the British Columbia Court of Appeal to pay 70% of the Institute’s reasonable costs.

[36] With respect to Mr. Hartford, Mr. Hunter argued that the Panel should exercise its discretion on whether to direct Mr. Hartford to pay the Association’s costs. We are of the view that we will exercise our

discretion and direct Mr. Hartford to pay the Association's costs as we deem appropriate.

- [37] Further, Mr. Hunter argued that the Association's reasonable costs for legal fees and disbursements is \$13,433.26 and that the Association would provide copies of the invoices on request.
- [38] Mr. Hunter went on to argue that the Panel should consider Mr. Hartford's credibility and conduct and award the Association 90% of its costs. Mr. Hunter argued that the inquiry was necessitated solely by Mr. Hartford's failure to respond to the Investigation Committee and his unwillingness to admit guilt. Mr. Hunter argued that the costs, if appropriate, should be paid by Mr. Hartford in twelve monthly instalments.
- [39] The Panel found in its Determination, that Mr. Hartford's testimony was neither credible nor persuasive. We are troubled that Mr. Hartford has chosen to not respond to our request for submissions on sanction and provide us with his views, or seek a teleconference. We stressed to Mr. Hartford in our Determination on January 10, 2007, that the integrity of the public complaint process was a key concept of professional self-regulation. We are troubled that Mr. Hartford has chosen to disengage even further from the process of self-regulation.

DECISION ON SANCTIONS

- [40] We find that, in the public interest, Mr. Hartford be reprimanded for his unprofessional conduct and pay a fine to the Association of \$5,000 payable on May 1, 2007.
- [41] We exercise our discretion as a Panel and order Mr. Hartford to pay special costs of the reasonable fees and disbursements of the Association, set at \$13,433.26. We also exercise our discretion as a Panel and set the special cost levy at 90% of the costs. The special cost levy is \$12,089.93. Mr. Hartford is entitled access to copies of the fees and disbursements.
- [42] We order Mr. Hartford to pay the costs in 12 (twelve) monthly instalments commencing on May 1, 2007 and thereafter on the 1st day of each month until the costs are paid in full. Mr. Hartford is of course free to pay the fine and costs remaining in advance of this payment schedule.
- [43] In the event that Mr. Hartford fails to either pay the fine on the due date and/or fails to pay the portions of the special cost levy on the dates agreed to with the Association, Mr. Hartford's membership in the Association will be suspended forthwith and he will be required to return his professional

seal to the Association until all of the payments scheduled above are returned to good standing.

- [44] In the event that there is a disagreement between the Association and Mr. Hartford that he has fully complied with the foregoing Order, this Panel retains the jurisdiction to determine whether there has been compliance.

Dated, this 5th day of March, 2007, and signed in counterpart.

"R. Wares"

Roy Wares, P. Eng.
Panel Chair, Member Discipline Committee, APEGBC.

"Darryl Chambers"

Darryl Chambers, P. Eng.
Member, Discipline Committee, APEGBC

"C Newcomb"

Chris Newcomb, P.Eng.
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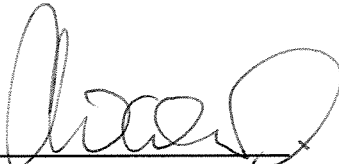
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Panel Chair, Member Discipline Committee, APEGBC.

Darryl Chambers, P. Eng.
Member, Discipline Committee, APEGBC

A handwritten signature in black ink, appearing to read "Chris Newcomb", written over a horizontal line.

Chris Newcomb, P.Eng.
Member, Discipline Committee

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