

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

**and**

**IN THE MATTER OF PHILIP BOLTON, P.ENG.**

**SUBMISSION**

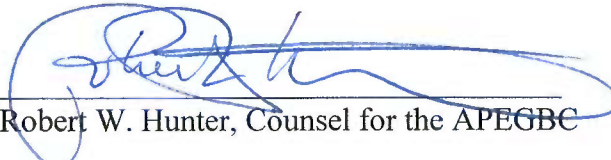
Pursuant to the Judgment of the Discipline Committee panel dated October 26, 1999, this is the submission of the Association as to the appropriate penalty to be imposed upon Philip Bolton, P.Eng. as a result of the panel's finding of liability on both allegations. We understand that these Submissions will be supplemented by an oral presentation before the panel.

It is the Association's submission that due to the serious nature of the breach represented in the second allegation in the Notice of Inquiry, a suspension of Philip Bolton's membership in the Association is appropriate. Further, that the first allegation shows a lack of professionalism on the part of Philip Bolton, P.Eng. and so a remedial course directed at that would be appropriate.

It is, therefore, the Association's submission that the appropriate penalty in all the circumstances is:

- (a) a suspension of Philip Bolton's membership in the Association for three (3) months;
- (b) that a condition attached to Mr. Bolton's membership that he must write the Association's Professional Practice Examination and obtain a passing mark of at least 75%.

All of which is respectfully submitted this 1<sup>st</sup> day of November, 1999.

  
Robert W. Hunter, Counsel for the APEGBC

14925-86A Avenue,  
Surrey, B.C.  
V3S 7E8.

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

and

IN THE MATTER OF PHILIP BOLTON, P. ENG.

SUBMISSION

As requested by the Discipline Committee panel in its judgment dated October 26, 1999, I make the following submissions:

At the hearing on July 27, 1999, it was ruled that it was my responsibility to issue subpoenas to witnesses I intended to call on my behalf. This was contrary to my interpretation of the Act, as a layman, that subpoenas could only be issued by the Committee, but it was consistent with Mr. Hunter, having personally issued a subpoena to me. Incidentally, he had no right to subpoena me as a witness to testify on behalf of the Association nor had he the right under the Supreme Court Rules to have me testify if I was in attendance. That Rule only applies at a trial.

In accordance with the Panel's ruling I, personally, issued subpoenas to three witnesses to attend the hearing on October 13, 1999. However, the City of Surrey's solicitor advised the witnesses that the subpoenas were defective as they had not been issued by the Committee and the witnesses did not attend.

At the hearing on October 13th the panel reversed its previous ruling that it was my responsibility to issue subpoenas and decided that they would require to validate any subpoenas issued by me. The panel also ruled that I would require to convince them in the course of my evidence of the need for and appropriateness of those witnesses. I was instructed to proceed with my defence.

In reaching their decision the panel had followed Mr. Hunter's advice which was that my subpoenas were defective as they had not been issued by the Committee. He admitted that the subpoena he had issued to me was defective for the same reason. Mr. Hunter submitted also that the evidence of my witnesses "would not be relevant to these proceedings."

The panel failed to act judiciously in ruling that my subpoenas were defective and further that I would require to provide evidence to convince the panel that my witnesses' evidence would be relevant.

The panel would have acted judiciously and demonstrated their good faith if they had employed an independent legal counsel to advise them in the matter of issuing subpoenas and whether or not they had the right to demand that I prove the relevancy of the witnesses' testimony before they were called. The panel was entitled to employ independent legal counsel pursuant to sec. 36 of the Act.

I took the view that the Panel's ruling was a serious miscarriage of justice and for that reason chose not to proceed with my defence. The hearing continued on October 15th in my absence and the panel issued their reasons for judgment on October 26th.

In their reasons for judgment the panel found, regarding Allegation 2, that I "did not supply the requested information and records." There was no evidence that I was in possession of any information and records, but the panel nevertheless found that I had committed a breach of the Act. The panel's reason was that I had not indicated to the Committee that I had no information and records. The Act does not provide for any such indication to be given and accordingly there was no breach.

The Association published the reasons for judgment in the November issue of its journal, "Innovation" in the full knowledge of Madame Justice McLachlan's warning in the case of Jory that "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."

My career and status in the Province of British Columbia have been irreparably damaged by the publication of the reasons for judgment which judgment was reached as a result of the Inquiry failing to proceed "in a manner consistent with the Act and the rules of natural justice."

For all of the foregoing reasons I submit that no penalty should be imposed on me.

All of which is respectfully submitted this *14<sup>th</sup>* day of December, 1999.



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PHILIP BOLTON.

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

- and -

IN THE MATTER OF PHILIP BOLTON, P.Eng.

ORDER

Before the Discipline Committee of the )  
of Professional Engineers and Geoscientists )  
of British Columbia ) Wednesday, the 5th day of  
Robert T. Martin, P.Eng., Chair ) January, 2000  
William J. Malcolm, P.Eng., Member )  
Ole F. Simonsen, P.Eng., Member )

AFTER AN INQUIRY before this Discipline Committee Panel of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association") on October 13 and 15, 1999, this Discipline Committee Panel made a determination that Mr. Philip Bolton, P. Eng., had demonstrated unprofessional conduct with respect to both allegations in the Notice of Inquiry. That determination is found in this Discipline Committee's Reasons for Judgment dated October 26, 1999.

AFTER A FURTHER INQUIRY before this Discipline Committee Panel on December 16, 1999, to hear evidence and submissions on the appropriate penalty to be imposed on Mr. Philip Bolton, P. Eng., this Discipline Committee Panel reserved its decision to this day.


THIS DISCIPLINE COMMITTEE ORDERS that:

1. Mr. Philip Bolton's membership in the Association be suspended for a period of one (1) month commencing January 17, 2000, and ending on February 16, 2000, (inclusive).

2. Mr. Philip Bolton, P.Eng., shall write the Association's Professional Practice Examination, and must attain a mark of 75% or higher in order to pass the examination and satisfy this condition. This condition shall be completed within six (6) months from January 17, 2000.

THIS DISCIPLINE COMMITTEE PANEL FURTHER ORDERS, pursuant to Section 35(1) of the *Act*, that Mr. Philip Bolton, P.Eng. pay to the Association the reasonable costs of and incidental to the investigation under Section 30 of the *Act*, and the inquiry under Section 32 of the *Act*, including the reasonable fees payable to solicitors, counsel and witnesses. Counsel for the Association and Mr. Philip Bolton, P.Eng. , will attempt to agree as to those costs, and failing their agreement, the determination of costs shall be remitted to this Discipline Committee Panel within thirty (30) days of the date of this Order, and this Discipline Committee Panel will determine the amount of the costs to be assessed against Mr. Philip Bolton, P.Eng.

The Discipline Committee of the  
Association of Professional Engineers and  
Geoscientists of British Columbia



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Robert T. Martin, P.Eng., Chair

**ORDER OF THE DISCIPLINE COMMITTEE PANEL  
ON COSTS NOT PAID**

**IN THE MATTER OF THE  
ASSOCIATION OF PROFESSIONAL ENGINEERS  
AND GEOSCIENTISTS OF BRITISH COLUMBIA**

**AND**

**PHILIP BOLTON, P. ENG. (#11182)**

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In the *Judgment of the Discipline Committee Panel on Costs* (the "*Judgment*"), dated February 23, 2000, the Discipline Committee Panel (the "Panel") directed that Philip Bolton, P.Eng., pay the Association's costs of and incidental to the investigation under Section 30 and the inquiry under Section 32 of the *Engineers and Geoscientists Act* (the *Act*) in the amount of \$17,236.54.

The Association wrote to Philip Bolton, P.Eng. on February 29, 2000, and provided him with a copy of the *Judgment*; Mr. Bolton was requested to pay the costs assessed immediately, or if full payment was not possible, Mr. Bolton was asked to submit a proposed payment schedule to retire his debt to the Association.

As Mr. Bolton did not respond to the February 29<sup>th</sup> letter, the Association wrote to Mr. Bolton again on March 20, 2000, and reiterated the request contained in the earlier correspondence. Mr. Bolton did not respond to this second letter, therefore, the Panel met on Tuesday, April 18, 2000, to consider this matter and as the costs have not been paid, in accordance with Section 35(5) of the *Act*, the Panel orders that:


- a. Mr. Bolton's membership in the Association be suspended, effective May 1, 2000; and
- b. an application for reinstatement of Mr. Bolton's membership will not be considered until the following condition is met:
  - (i) Mr. Bolton must pay the full costs assessed, in the amount of \$17,236.54, plus interest; or

- (ii) if full payment is not possible, Mr. Bolton must submit an acceptable repayment schedule for the Panel's approval.


**Discipline Committee Panel**

  
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R.T. Martin, P.Eng., Chair

2000/04/26  
Date

  
\_\_\_\_\_  
W.J. Malcolm, P.Eng.

2000/04/28  
Date

  
\_\_\_\_\_  
O.F. Simonsen, P.Eng.

2000/05/01  
Date