

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

and

IN THE MATTER OF LORRENCE MELNECHENKO, P.Eng.

NOTICE OF INQUIRY

TO: Lorrence Melnechenko, P.Eng.
461 Nottingham Drive
Nanaimo, BC V9T 0C2

TAKE NOTICE that a Panel of the Discipline Committee of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association"), will meet at 200 – 4010 Regent Street, in the City of Burnaby, in the Province of British Columbia on Wednesday the 4th day of December 2013 at the hour of 9:00 a.m. for the purpose of taking evidence or otherwise causing an inquiry to be made with respect to the allegations herein pursuant to the *Engineers and Geoscientists Act*, R.S.B.C. 1996, chapter 116, as amended (the "Act").

AND TAKE NOTICE that the allegations against you are that you have contravened the provisions of the *Act* and that further, you have demonstrated unprofessional conduct contrary to the *Act*, by your failure to provide the Association's Investigation Committee with the requested information or records in your possession or control, as required by section 30(4) of the *Act*, particulars of which are you failed to respond to the following requests for information:

1. letter to you dated August 6, 2013, regarding the Association's File No. T13-033;
2. e-mail to you dated August 27, 2013, regarding the Association's File No. T13-033;
3. telephone call to you on September 6, 2013, regarding the Association's File No. T13-033; and
4. letter to you dated September 24, 2013, regarding the Association's File No. T13-033.

AND FURTHER TAKE NOTICE that you, Lorrence Melnechenko, P.Eng., have the right, at your own expense, to be represented by legal counsel at the inquiry by the Panel of the Discipline Committee, and you or your legal counsel shall have the full right to cross-examine all witnesses called and to call evidence in defence and reply in answer to the allegations herein.

AND FURTHER TAKE NOTICE that in the event of your non-attendance at the inquiry, the Panel of the Discipline Committee may, upon proof of service of this Notice of Inquiry upon you, proceed with the taking of evidence or otherwise ascertaining the facts concerning the said allegations, your absence notwithstanding, and may make its findings on the facts and its decision thereon without further notice to you.

DATED at the City of ~~Burnaby~~ ^{Port Hardy}, Province of British Columbia, this 1st day of November, 2013.

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



Per: PAUL ADAMS,
Chairman of the Discipline Committee

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

DETERMINATION ON LIABILITY

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 allegations of unprofessional conduct by Lorrence Melnechenko, P.Eng.
- 2) Mr. Melnechenko was a member of the Association under the Professional Engineer (P.Eng.) designation at all times relevant to the matters herein in question. Mr. Melnechenko communicated his desire to resign his membership on November 18, 2013, and subsequently made his resignation effective.
- 3) The allegations of unprofessional conduct against the member, Lorrence Melnechenko, P.Eng., are found in a Notice of Inquiry dated 1 November 2013 (the Notice). The Notice pertains to four instances of a failure to respond to requests for information from the Association as required by section 30(4) of the Act.
- 4) The Notice advised Mr. Melnechenko that the Panel would meet at 9:30 am on February 6, 2014 at 200 – 4010 Regent Street, Burnaby, BC, for the purpose of taking evidence or otherwise causing an inquiry to be made with respect to the allegations made in the Notice of Inquiry. The Notice advised Mr. Melnechenko that he would have the right, at his own expense, to be represented by counsel at the inquiry, and that he or his counsel would have the full right to cross-examine all witnesses called, and to call evidence in defence and to reply in answer to the allegations. The Notice also gave notice to Mr. Melnechenko that in the event of his non-attendance at the Inquiry, the Panel may, upon proof of service of the Notices, proceed with the taking of evidence or otherwise ascertaining facts concerning the allegations, his absence notwithstanding, and may make its findings on the facts and its decision thereon without further notice to Mr. Melnechenko.
- 5) At 9:30 am on February 6, 2014 at 200 – 4010 Regent Street, Burnaby, BC, the Panel and counsel for the Association were in attendance and were prepared to begin the Inquiry. Mr. Melnechenko was not in attendance. The Panel waited until 9:50am to provide Mr. Melnechenko an opportunity to appear in the event that he was delayed. At that time Mr. Melnechenko had not appeared, and the Chair of the Panel called the proceedings to order and began the Inquiry.

OPENING STATEMENT

- 6) Counsel for the Association, Mr. Short, made a brief opening submission on behalf of the Association. He entered into evidence a binder, marked as Exhibit A, containing four tabs as follows:
 - A. The Notice of Inquiry;
 - B. Affidavit of Attempted Service by
 - C. Affidavit of Attempted Service by
 - D. Copies or records of communications between the initial complainant and the Association, and between Mr. Melnechenko and the Association (sub-tabs 1 to 13).

SERVICE OF NOTICE

7) Counsel for the Association, Mr. Short, reviewed the Affidavit of Mr. . On behalf of Mr. Process Servers and made several attempts to serve Mr. Melnechenko at his address at Nanaimo, BC. Mr. reported that a young man answering the door and, upon being asked for Lorrence Melnechenko, called "Mel" to the door. The latter individual indicated that Mr. Melnechenko was working in Sechelt. Mr. Moes asked that he get Mr. Melnechenko to call him and left without being able to serve the Notice.

8) Mr. Short reviewed the Affidavit of Ms. Ms. made threesite visits in an attempt to serve Mr. Melnechenko at his place of work (the in Langley). Several messages were left for Mr. Melnechenko to contact Ms. including one with a Mr. Mr. specifically agreed that he would phone Mr. Melnechenko and tell him to contact Ms.

9) Ms. Kayla Vantriet was called as a witness for the Association. On the basis of Ms. Vantriet's testimony and the correspondence/records (Exhibit A, tab D), the Panel concluded, with respect to the matter of Notice to Mr. Melnechenko, that:

- a) From Ms. Vantriet's telephone conversation with Mr. Melnechenko on September 6, 2013, it was clear that he had received the requests for information directed to his address at Nanaimo, BC, or to his e-mail at , or both. During the phone call it was learned that Mr. Melnechenko would, henceforth, be working on a bridge project for the Ministry of Transportation and Infrastructure (MOTI) in the Lower Mainland.
- b) Subsequently, an employee of MOTI, Mr. , indicated that Mr. Melnechenko was assisting Mr. on the Langley. Mr advised that Mr. Melnechenko's e-mail was his phone number was . e-mail refers to Mr. Melnechenko by the nickname, "Mel", suggesting that the individual who came to the door at the time that Mr. attempted to deliver the Notice may, in fact, have been Mr. Melnechenko.
- c) Shortly after he had been advised of an initial hearing date (December 4, 2013), a response from Mr. Melnechenko to the Association, dated Nov 18, 2013, indicated that he had been receiving the communications from the Association. His response was sent from his address at Nanaimo, BC.
- d) A letter was sent by Mr. Short to Mr. Melnechenko, dated December 20th, 2013, advising him of a new time and date for the Inquiry. The letter was sent by mail to his address at Nanaimo, BC and by e-mail to
- e) Ms. Vantriet could not specifically recall if the Notice of Inquiry had been sent to Mr. Melnechenko by e-mail, but indicated that this would be a part of the Association's normal procedure.

10) On the basis of the evidence provided the Panel determined that Mr. Melnechenko had been evading service of the Notice and that every reasonable effort had been made to provide notice to him. The Panel further determined that he knew an Inquiry was to be held in the near future and was satisfied that he had been served with notice of the appointed time and place of the Inquiry. The Inquiry,

therefore, proceeded. Mr. Melnechenko did not attend the hearing at any time. No written submissions from Mr. Melnechenko or anyone representing him have been received by the Panel.

THE CHARGE

11) The allegations are contained in the second paragraph of the Notice of Inquiry of November 1st, 2013, namely:

“The allegations against you are that you have contravened the provisions of the Act and that further, you have demonstrated unprofessional conduct contrary to the Act, by your failure to provide the Association’s Investigation Committee with the requested information or records in your possession or control, as required by section 30(4) of the Act, particulars of which are you failed to respond to the following requests for information:

- i) letter to you dated August 6, 2013, regarding the Association’s file No. T13-033;*
- ii) e-mail to you dated August 27, 2013, regarding the Association’s File No. T13-033;*
- iii) telephone call to you on September 6, 2013, regarding the Association’s File no. T13-033;*
- iv) letter to you dated September 24, 2013, regarding the Association’s File No. T13-033.*

EVIDENCE

12) Ms. Vantriet testified that:

- a) At all relevant times she had been a Compliance Officer for APEGBC and been responsible for, or aware of, the requests for information made to Mr. Melnechenko.
- b) No information had been provided by Mr. Melnechenko, pursuant to the requests of August 6 or August 27, the telephone conversation of September 6 or the letter of September 24.

13) Presentation of the evidence concluded at approximately 10:55 am and the Inquiry adjourned for the Panel to consider the evidence. The Panel reconvened at approximately 11:00 am.

PANEL’S DETERMINATION

14) After due consideration of the evidence the Panel unanimously concluded that:

- 1) Mr. Melnechenko is a member within the meaning of section 28 of the Act, which explicitly states that for the purposes of sections 29 to 35 of the Act (the investigation and discipline provisions), “member” includes a former member;
- 2) Mr. Melnechenko has breached section 30(4) of the Act, as alleged in the Notice of Inquiry.

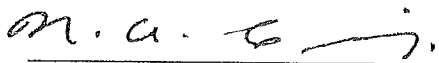
Therefore, the Panel finds that Mr. Melnechenko has demonstrated unprofessional conduct by his failure to provide an acceptable response to the Investigation Committee’s request for information.

15) The Inquiry adjourned at approximately 11:05.

Respectfully submitted,

Burnaby, British Columbia

February 18, 2014



Neil A. Cumming, P.Eng. Chair



Frank Denton, P.Eng.

Upul Atukorala, P.Eng.

15) The Inquiry adjourned at approximately 11:05.

Respectfully submitted,

Burnaby, British Columbia

February 18, 2014



Neil A. Cumming, P.Eng. Chair



Frank Denton, P.Eng.



Upul Atukorala, P.Eng.

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.

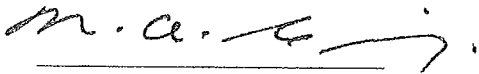
COSTS

[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.

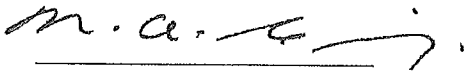
COSTS

[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.