

Decision Issued: May 15, 2019

**IN THE MATTER OF  
THE ENGINEERS AND GEOSCIENTISTS ACT,  
R.S.B.C. 1996, chapter 116, as amended (the "Act")**

**and**

**IN THE MATTER OF EDWARD K. Y. LIM, P. Eng.**

**DECISION AND ORDER OF THE DISCIPLINE COMMITTEE  
ON PENALTY AND COSTS**

Hearing Date: May 2, 2019

Discipline Committee Panel: Dr. Ronald Yaworsky., Ph.D., P.Eng., Chair,  
Neil Cumming, P. Eng.,  
Christopher Arthur, P. Eng.

Counsel for the Association: David Volk

Counsel for the Member: Mr. Lim, P.Eng., attended in person, without  
counsel

1. In its decision issued March 4, 2019, this panel of the Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of British Columbia, doing business as Engineers and Geoscientists BC (the "Association") determined that Mr. Lim sealed and submitted drawings in support of a building application that were deficient in a manner that constitutes unprofessional conduct, and thereby acted in breach of s. 33(1)(c) of the Act.

2. The Panel received written submissions on penalty from Mr. Volk on behalf of the Association on April 1, 2019. As provided in the Panel's Decision, Mr. Lim chose to make submissions in person, and therefore the hearing was arranged for May 2, 2019. Mr. Volk provided supplementary submissions on April 29, 2019. At the penalty hearing, Mr. Lim provided written submissions and other documentation in support of his position.

**Framework for Assessing Penalty**

3. Section 33(2) of the Act states that if the Panel finds a member has contravened the Act, the Panel may order one or more of the following:

- a) reprimand the member, licensee or certificate holder;
- b) impose conditions on the membership, license or certificate of authorization of the member, licensee or certificate holder;
- c) suspend or cancel the membership, license or certificate of authorization of the member, licensee, or certificate holder
- d) impose a fine, payable to the association, of not more than \$25,000 on the member, licensee or certificate holder.

4. The Association relied upon *Re Chrysanthous* (2018), a decision of the Discipline Committee on Penalty and Costs, which approved the framework for the consideration of penalty set out in the Law Society of British Columbia decision in *Law Society of British Columbia v. Ogilvie*, [1999]. The factors to be considered are as follows:

- a) the nature and gravity of the conduct prove;
- b) the age and experience of the member;
- c) the previous character of the member, including details of prior discipline;
- d) the impact upon the victim;
- e) the advantage gained, or to be gained, by the member;
- f) the number of times the offending conduct occurred;
- g) whether the member has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstances;
- h) the possibility of remediating or rehabilitating the member;
- i) the impact on the member of criminal or other sanctions or penalties;
- j) the impact of the proposed penalty on the respondent;
- k) the need for specific and general deterrence;
- l) the need to ensure the public's confidence in the integrity of the profession and;
- m) the range of penalties imposed in similar cases

5. Additionally, the Association relied upon *Re Chrysanthous* in that it referred to a more recent Law Society decision, *LSBC v. Dent*, 2016 LSBC 05. In *Dent*, it was held that it is not necessary to consider each and every *Ogilvie* factor in all cases, as the factors can be consolidated, and only those of relevance need to be addressed in a decision (*Dent*, paras. 20-23).

6. Mr. Lim did not dispute this general framework for the analysis of penalty.

7. The Association emphasized items a, b, g, h, k, and l of the *Ogilvie* factors, and submitted that the appropriate disposition is a three month suspension, a practice review, and an order that Mr. Lim complete the Professional Practice Examination and pay costs.

8. Mr. Lim disputed the Association's submissions. He did not make any submissions as to a suitable penalty.

### Analysis

9. The Panel's analysis of the submissions of both parties and the relevant factors is set out below.

#### *Nature and Gravity of the Conduct*

10. In the Panel's view, Mr. Lim's conduct was serious. An engineer's seal is an attestation that the documents sealed meet the standards of the profession. The Panel rejected Mr. Lim's argument that plans only need to be completed to the extent that they can be "checked" by a municipal plan checker. These individuals do not have the same accreditation as structural engineers and therefore rely on the engineer's seal to determine that the design complies with the applicable building code. It is for this reason that the seal has unique import.

11. The British Columbia Building Code requires that plans that are sealed and submitted to seek a building permit must contain sufficient detail of all the structural elements to permit a design check. While plans can be modified at a later date, this does not derogate from the requirement that this standard be met in building permit plans.

12. Mr. Lim stressed that the permit was issued in this case. In the Panel's view, this illustrates the problem – the risk that construction will be based upon incomplete plans.

#### *The Age and Experience of the Member/Prior Discipline*

13. The Panel notes that Mr. Lim has no prior discipline proceedings.

14. The Panel also notes that Mr. Lim is an experienced engineer with a long and successful in his practice. These proceedings do not assail Mr. Lim's technical engineering proficiency; but rather that he acted unprofessionally by sealing and submitting incomplete plans.

#### *Impact upon the victim*

15. Mr. Lim's former client made the complaint to the Association after he received the building permit but was unable to obtain quotations for building costs using the plans that had been prepared by Mr. Lim for the purposes of the building permit submission. There is no evidence of specific harm to the former client here, other than the inconvenience and presumably costs occasioned.

16. Mr. Lim attributed the deficiencies in the plans to the difficulties he had in obtaining information from the client. This does not justify such unprofessional conduct.

*Acknowledgement of misconduct/possibility of remediation and rehabilitation*

17. The Association emphasized that Mr. Lim has not acknowledged any wrongdoing.

18. The Panel is particularly troubled that, at the penalty hearing, and despite the Panel's express rejection of his arguments, Mr. Lim essentially advanced the same position as he had at the earlier hearing. He described the Schedule B Assurance provided to the Municipality with the building plans as a "promissory note". The Panel has expressly found that the Schedule B Assurance applies to the plans as submitted. In addition, Mr. Lim again argued that drawings may be sealed and submitted for a building permit in a form that meets the criteria for a review by a plan checker rather than an engineering design check. Contrary to Mr. Lim's argument, building officials do not engage in engineering analysis when they review structural engineering drawings, as they are not qualified to do so.

19. When asked directly by the Panel whether he had changed his practice, Mr. Lim responded that he understood and accepted the Panel's determination; however, his explanation undermined this claim. For example, he said he would put more content in his drawings but this seemed to be directed at the form rather than the substance of the drawings. He made it quite clear that he disagreed that additional detail was necessary in order to meet the standards required for a building permit application.

20. The Panel accepts the Association's argument that Mr. Lim is likely to continue his practice in the area of structural design, and that it is therefore important to emphasize rehabilitation in penalty. It also recognizes Mr. Lim's lengthy and successful career, and believes that he can remediate the behaviors giving rise to this complaint.

21. The Panel's decision on penalty is largely driven by the desire to ensure that Mr. Lim recognizes the shortcomings of his building permit submissions and to ensure that the conduct is not repeated. The Panel does not feel that Mr. Lim requires supervision of his engineering designs on a day by day basis nor that a general review of his practice is required. However, the Panel is of the view that it is necessary to require oversight of design drawings that he submits for building permit purposes for a period of time in order to ensure that he consistently meets the required standard.

*The need for specific and general deterrence and the need to ensure the public's confidence in the integrity of the profession*

22. By Mr. Lim's argument, submission of incomplete drawings was a relatively common practice in the housing boom in Whistler in 2016. This was driven by a desire to "get into the queue" due to the length of time necessary to obtain a building permit.

23. In the Panel's view, an appropriate penalty should express to the public and members of the Association that such a practice is unacceptable. Members of the public must be able to rely upon an engineer's seal as a mark that the sealed document meets the standards of the profession.

24. Similarly, the penalty should help to deter other engineers from "cutting corners" when preparing and submitting plans.

25. Incomplete drawings bearing an engineer's seal and upon which a building permit has been issued pose both an obstacle for construction and a potential risk to public safety.

*Penalties imposed in similar cases*

26. The Association referred to three past decisions as precedent.

- In *Re Familamiri, P. Eng.* (2002), the complaint involved a structural engineer who affixed his seal to structural drawings for building permits when the drawings did not conform to the Building Code. Six of the seven allegations were proven, and he was found to have engaged in unprofessional conduct. The Panel ordered that Mr. Familamiri be restricted from providing any structural engineering designs on buildings until he completed a Practice Review, consisting of both a general review and a reviewer appointed by the Association, all at his own expense.
- *Re Filippi, P. Eng.* (2004) involved a structural engineer who signed and sealed drawings which were prepared by another party, but were also deficient in numerous ways. Mr. Filippi admitted the charges and agreed to a suspension of three months.
- *Re Madsen, P. Eng.* (2005) involved a geotechnical engineer who prepared a design drawing for a single family residence. Upon inspection of the project, which was already underway, Mr. Madsen prepared and sealed a foundation design drawing, but observed that the construction was differing from his design. He nonetheless approved the construction. For penalty, the panel ordered that Mr. Madsen be suspended for three months, that he must write and pass the Professional Practice Examination, that he undergo a 13 month period of peer review at his own cost, and that he undergo a practice review at his own cost within three months after his suspension.

27. In the Panel's view, the facts and contextual factors in the precedent cases are aligned with those of the present case. However, the deficiencies in *Re Filippi* and *Re Madsen*, the cases in which a three month suspension was imposed, were more serious and more extensive than the present case.

28. In this case, the Panel emphasizes the importance of remediation of Mr. Lim's practice.

29. The Panel is therefore of the view that, coupled with the conditions of membership described below, a 30 day suspension is appropriate and sufficient.

**Penalty**

30. Having considered the above materials and the submissions of the parties, the Panel is satisfied that the appropriate penalty is that Mr. Lim will be suspended from practice for a period of 30 days, commencing on June 15, 2019.

31. In addition to the suspension, effective upon expiration of Mr. Lim's suspension, as a condition of membership, structural design drawings prepared by Mr. Lim for building permit applications shall be subject to a Limited Peer Review, the scope of which is defined as follows:

- a) The Limited Peer Review is to be undertaken by a Peer Reviewer who must be approved in advance in writing by the Association Registrar. The Peer Reviewer must be a member of the Association who has experience in submission of structural drawings for building permits in multiple jurisdictions in BC, including the Resort Municipality of Whistler.
- b) Mr. Lim may not submit any drawings to an authority having jurisdiction for the issuance of a building permit unless the Peer Reviewer has previously ascertained that the drawings prepared by Mr. Lim for submission for a building permit:
  - (i) have been prepared in substantial compliance with section 2.2.4.3 of the BC Building Code 2012 and thus include sufficient detail for the structural design to be checked; and
  - (ii) comply with the Association's Quality Management Guideline on the Use of the Seal as applicable to drawings submitted for permit applications.
- c) After twelve months of Limited Peer Review, the Peer Reviewer shall submit a written opinion to the Registrar as to whether Mr. Lim's building permit applications in the future will consistently meet the above conditions, or not. If the Peer Reviewer states they likely may not, then Mr. Lim shall be subject to a further six-month period of Limited Peer Review, at which time the Peer Reviewer shall submit a further written opinion to the Registrar. Upon receipt by the Registrar of the final report from the Peer Reviewer, this membership condition shall expire.

- d) All expenses pertaining to the Limited Peer Review, any reports and any application for removal of the membership condition are to be borne by Mr. Lim.

32. Insofar as considered necessary by the Peer Reviewer over and above the specific order made above, the Limited Peer Review shall generally be in accordance with Association's Discipline Committee Ordered Peer Review Guideline, revised March 21, 2019.

33. As a further condition of membership, Mr. Lim shall, at his own expense, successfully complete and pass the Professional Practice Examination offered on June 10-12, 2019.

### Costs

34. Section 35 of the act permits the Panel to 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", and to fix the amount of costs.

35. In the Panel's view it is reasonable that Mr. Lim bear the costs of these proceedings. As argued by the Association, all of the charges in the Notice of Inquiry were proven, and all of Mr. Lim's arguments were rejected by the Panel.

36. The Association submitted that \$64,437.05 is approximately 90% of the costs incurred, and in supplementary submissions sought additional costs associated with the penalty hearing. The Association cited a number of precedent cases to indicate that costs awards of 70 to 90% are typical in discipline cases.

37. The Panel noted that the costs sought are somewhat higher than those for other one or two day hearings. The Association explained that this is due in part to the technical nature of the evidence and the expert evidence required.

38. Mr. Lim has cooperated in the hearing process and did not cause any undue delays.

39. After the hearing, the Association advised that it would claim a GST credit. Therefore, the costs should be reduced insofar as the claim includes GST.

40. Mr. Lim submits that the costs are "excessive". One area about which he expressed concern was the use of two lawyers. Mr. Volk explained that his firm reduced costs to avoid charges for duplication of effort. However, the detailed accounts are not before the Panel and the Association wishes to protect privilege until the expiry of any appeal period.

41. Mr. Lim also explained the costs that he has incurred through a substantial reduction of revenue during the period leading up to the discipline hearing. The Association did not dispute this evidence.

42. The Panel is satisfied that the costs represent a particularly large burden on Mr. Lim, as a sole practitioner.

43. Mr. Lim will incur further loss of income and further costs due to the remediation program.

44. For these reasons, the Panel sets the costs at \$25,000, to be paid by May 15, 2020. Should Mr. Lim fail to pay such costs by this date, his membership will be suspended until such time as he does.

### Summary of Decision

45. In summary, the Panel orders as follows:

- a) Mr. Lim must, as a condition of membership, at his own expense, successfully complete and pass the Professional Practice Examination offered on June 10-12, 2019.
- b) Mr. Lim will be suspended for thirty (30) days, commencing on June 15, 2019.
- c) After the conclusion of the suspension, Mr. Lim's membership will be subject to the requirement for a Limited Peer Review. The particular terms of the Limited Peer Review and its duration are set out above in paragraph 31.
- d) Mr. Lim must pay costs of \$25,000 to the Association by May 15, 2020, and if not, his membership will be suspended until he does so.

DATED this 15<sup>th</sup> day of May 2019.

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Dr. Ronald Yaworsky, Ph. D., P. Eng., Chair

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