

IN THE MATTER of the *ENGINEERS AND GEOSCIENTISTS ACT*
R.S.B.C. 1996, c. 116 (as amended)

and

ROSS L. MORTON

DETERMINATION OF THE DISCIPLINE COMMITTEE ON LIABILITY

Discipline Committee Panel:

Paul Adams, P.Eng.(Chair)
Oliver Bonham, P.Geo.
John Rapson, P.Eng.

Counsel for Association:

Robert Hunter and Sonia Sahota, P.Eng.

No one appearing on behalf of Mr. Morton

INTRODUCTION

A Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association"), under the authority of the *Engineers and Geoscientists Act*, RSBC 1996 c. 116 as amended (the "*Act*") held an Inquiry to examine the alleged contraventions of the *Act* by Ross L. Morton.

Mr. Morton is a former member of the Association. He did not appear at the Inquiry and no one appeared on his behalf.

The hearing took place in the Association's Boardroom on April 11 and 24, 2007. The charge against Mr. Morton was as follows:

“That you have demonstrated unprofessional conduct by your failure to comply with the Investigation Committee’s request for information or records in your possession or control in response to the complaint against you, as requested by the Association in a letter to you dated December 12, 2006, as required by section 30(4) of the Act.”

The Panel heard the evidence on liability and on the conclusion of the Association’s case took a brief recess to consider liability. The Panel advised Mr. Hunter and Ms. Sahota that it found Mr. Morton liable with written reasons to follow. The Panel then heard the Association’s submissions on Penalty and costs. The following are the Panel’s written reasons for its determination on liability.

BURDEN AND STANDARD OF PROOF

Ms. Sahota opened with a summary of the intended proceedings and advised the Panel with respect to the burden of proof upon the Association and the standard of proof that the Panel must apply in reaching its decision in the matters before it.

Ms. Sahota said that the standard is as 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 required 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...”

READING OF THE CHARGE

Ms. Sahota read out the charge as presented in the Notice of Inquiry dated the 26th day of February, 2007 (Exhibit 1, Tab 1). Ms. Sahota advised that Mr. Morton was deemed to have entered a “Not Guilty” plea to the charges.

EVIDENCE

Ms. Sahota entered into evidence the following :

- A Cirlox binder (marked as Exhibit 1) containing four tabs as follows:
 - the Notice of Inquiry;
 - the Affidavit of Service sworn by Wayne Cipperley on March 22, 2007;
 - the *Engineers and Geoscientists Act*; and
 - the Bylaws of the Association

- copies of letters, reports, emails, internet search results, APEGBC internal records and Minutes of Investigation Committee meetings from the investigation file relating to the complaint against Mr. Morton (marked as Exhibits 2 - 19).

Ms. Sahota called Geoff Thiele, Associate Director, Regulatory Compliance, Beverley Mitovic, Compliance Officer and Assistant to Geoff Thiele, and Peter Mitchell, P.Eng., Associate Director, Professional Practice, of the Association as the Association's witnesses.

BACKGROUND FACTS

Ms. Mitovic received from Lina Bowser, Practice Review Co-ordinator and Assistant to Mr. Mitchell a Memo date November 1, 2006 regarding a resolution by the Practice Review Committee requesting an investigation into Mr. Morton's failure to response to requests made by Mr. Mitchell on behalf of the Practice Review Committee. Mr. Mitchell testified as to his attempts to obtain a response from Mr. Morton to the Practice Review Committee's request for a proposal.

Mr. Thiele, on behalf of the Association, sent a letter dated November 6, 2006 to Mr. Morton requesting his response to the complaint to the last address for Mr. Morton on file with the Association. No response was received to that letter or to a follow up letter dated November 27, 2006.

Mr. Thiele prepared a report to the Investigation Committee providing the background to the complaint and the attempts to contact Mr. Morton. At its meeting on December 7, 2006, the Investigation Committee directed Association staff to write to Mr. Morton requesting a response to the complaint. On December 12, 2006, Mr. Thiele sent a letter to Mr. Morton demanding a response by January 3, 2006 [sic]. Mr. Thiele testified that all his letters were sent to the last address for Mr. Morton on file with the Association. Evidence was also presented of the attempts made by Ms. Mitovic and Mr. Thiele to find alternate addresses for Mr. Morton. Ms. Mitovic emailed Mr. Thiele's December 12th letter to Mr. Morton to two different emails addresses and mailed it to an alternate postal address.

Mr. Thiele and Ms. Mitovic testified that no response was received to Mr. Thiele's letter of December 12, 2006, and that at no time did Mr. Morton contact them or the Association regarding the letters. This was reported to the Investigation Committee, which approved recommending an inquiry to the Discipline Committee at its meeting on January 25, 2007. The Notice of Inquiry (Exhibit 1) is the Investigation Committee's recommendation that an inquiry be held in this matter for the reasons set out in the Notice.

ISSUES

The only issues are:

1. is Mr. Morton a "member" within the meaning of section 28 of the *Act*?
2. was Mr. Morton served with the Notice of Inquiry within the meaning of section 32(5) of the *Act*?
3. has Mr. Morton breached section 30(4) of the *Act*?

DECISION OF THE PANEL

The Panel finds Mr. Morton liable of the charge.

REASONS FOR JUDGMENT

After due consideration of the evidence the Panel unanimously concluded:

1. Mr. Morton 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. Mr. Morton was a member of the Association until March 1, 2007, when he was struck for non-payment of his 2007 annual dues;
2. Mr. Morton was properly served with the Notice of Inquiry within the meaning of the *Act*; and
3. that, in the absence of any response from Mr. Morton, he has breached section 30(4) of the *Act*, as alleged in the Notice of Inquiry.

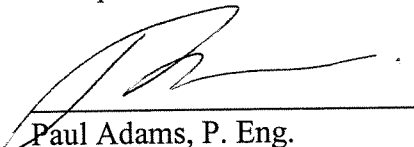
Therefore, the Panel finds that Mr. Morton has demonstrated unprofessional conduct by his failure to provide an acceptable response to the Investigation Committee's request for information.

PUBLICATION

The Panel requests that, in addition to its normal publication procedures, the Association staff notify APEGGA (where Mr. Morton is a member) of the Panel's decision regarding liability.

Dated this 7th day of May, 2007.

Discipline Committee Panel:



Paul Adams, P. Eng.
Chair

IN THE MATTER of the *ENGINEERS AND GEOSCIENTISTS ACT*
R.S.B.C. 1996, c. 116 (as amended)

and

ROSS L. MORTON

DISCIPLINE COMMITTEE ORDER ON PENALTY AND COSTS

Discipline Committee Panel:

Paul Adams, P.Eng.(Chair)
Oliver Bonham, P.Geo.
John Rapson, P.Eng.

Counsel for Association:

Robert Hunter and Sonia Sahota, P.Eng.

No one appearing on behalf of Mr. Morton

INTRODUCTION

A Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association"), under the authority of the *Engineers and Geoscientists Act*, RSBC 1996 c. 116 as amended (the "*Act*") held an Inquiry to hear submissions on penalty and costs with respect to Ross L. Morton.

The penalty hearing took place in the Association's Boardroom on April 24, 2007 following a determination earlier that same day that the allegations against Mr. Morton in the Notice of Inquiry had been proven to the requisite standard. The Panel gave its oral determination on liability on April 24, 2007 with written reasons to follow. Written reasons for the Panel's liability determination are being issued concurrently with this Order.

The charge proven against Mr. Morton was as follows:

That you have demonstrated unprofessional conduct by your failure to comply with the Investigation Committee's request for information or records in your possession or control in response to the complaint against you, as requested by the Association in a letter to you dated December 12, 2006, as required by section 30(4) of the Act.

PENALTY

The Discipline Panel reconvened following adjournment of the liability hearing and determination, and considered the Association's submissions on penalty. In reaching its decision on penalty the Panel was guided by the belief that any penalty imposed on the member should reflect the following principles:

- the need for the protection of the public;
- the need to deter other members of the Association from similar actions;
- the need to deter Mr. Morton from repeating the offence; and
- the need for rehabilitation of Mr. Morton.

The Panel carefully considered all of the evidence and submissions and Orders pursuant to section 33(2) of the *Act* that, within 60 days of the date of this Order:

- 1) Mr. Morton shall pay to the Association a fine of \$5,000.00; and
- 2) Mr. Morton shall provide a response to the request from Investigation Committee contained in the letter from Mr. Thiele of December 12, 2006 that is satisfactory to the Investigation Committee

COSTS

The Panel has the authority under Section 35(1) of the Act to direct that the member pay the Association's costs, or any part of the costs, for the investigation and inquiry, and the Panel may determine the amount of the costs to be paid.

After considering the submissions on costs from Ms. Sahota, the Panel orders that Mr. Morton pay, within 60 days of the date of this Order, a portion of the costs incurred by the Association in preparing for and conducting this inquiry hearing, that portion being the amount of \$5,680.00 (80% of the actual cost of \$7135.00), as the Panel believes that the inquiry hearing was made necessary solely due to Mr. Morton's failure to respond to the requests of the Investigation Committee and could have been avoided.

DIRECTION TO COUNCIL

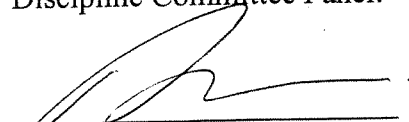
The Panel recommends to Council that Mr. Morton's membership in the Association not be reinstated until he has satisfied the penalty and costs orders set out above.

PUBLICATION

The Panel requests that, in addition to its normal publication procedures, the Association staff notify APEGGA (where Mr. Morton is a member) of the Panel's orders regarding penalty and costs.

Dated this 7th day of May, 2007.

Discipline Committee Panel:



Paul Adams, P. Eng.
Chair

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

- and -

**ROSS LANCE MORTON
PROPOSED ORDER TO REVOKE MEMBERSHIP FOR FAILURE TO PAY FINE, RESPOND
TO THE INVESTIGATION COMMITTEE AND PAY COSTS TO THE ASSOCIATION**

A Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia held an inquiry on April 11 and 27, 2007, into Mr. Morton's contravention of subsection 30(4) of the *Engineers and Geoscientists Act* (the "Act"). Mr. Morton did not attend the hearing. After considering the evidence presented the Panel found Mr. Morton liable of the charge with written reasons to follow.

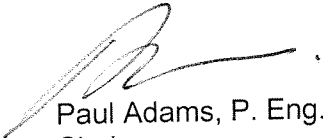
After finding Mr. Morton liable, the Panel proceeded to hear submissions from legal counsel for the Association relating to penalty and costs. The Panel's written reasons on liability and order on penalty and costs were issued on May 7, 2007. The Panel ordered Mr. Morton, within sixty (60) days of the date of the Order, to pay the Association a fine of \$5,000.00 and to provide the Investigation Committee with the information it requested.

Mr. Morton was directed to pay the costs of the Association in preparing for and conducting the investigation and inquiry in the amount of \$5,680.00.

Copies of the decision on liability and the order on penalty and costs were mailed to Mr. Morton and were published on the Association's website. Notices were published in the Association's magazine and electronic newsletter, and in the newspaper. The Association wrote to Mr. Morton on July 10, 2007 requesting Mr. Morton's response to the Investigation Committee and payment of the fine and costs. To date, no response has been received by Mr. Morton.

The Panel unanimously agrees that Mr. Morton has failed to comply with its Order. Pursuant to its powers under subsections 34(1) and 35(5) of the Act, Mr. Morton's membership in the Association is revoked. The Panel also recommends that Council not consider any application for reinstatement for a minimum of two (2) years and then only after Mr. Morton has met all the conditions described in the original order.

Discipline Committee Panel:


Paul Adams, P. Eng.
Chair

Date:

Sept 20, 2007

Members:

Oliver Bonham, P. Geo.
John Rapson, P. Eng.

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

- and -

ROSS LANCE MORTON
FINAL ORDER TO REVOKE MEMBERSHIP FOR FAILURE TO PAY FINE, RESPOND TO
THE INVESTIGATION COMMITTEE AND PAY COSTS TO THE ASSOCIATION

A Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia held an inquiry on April 11 and 27, 2007, into Mr. Morton's contravention of subsection 30(4) of the *Engineers and Geoscientists Act* (the "Act"). Mr. Morton did not attend the hearing. After considering the evidence presented the Panel found Mr. Morton liable of the charge with written reasons to follow.

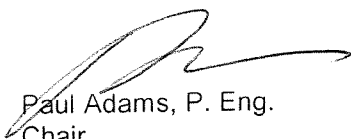
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Discipline Committee Panel:


Paul Adams, P. Eng.
Chair

Date:

November 2, 2007

Members:

Oliver Bonham, P. Geo.
John Rapson, P. Eng.