

IN THE MATTER OF THE ENGINEERS AND GEOSCIENTISTS ACT

R.S.B.C. 1996, CHAPTER 116 AS AMENDED

- and -

IN THE MATTER OF Paullus Yeung, P.Eng

Discipline Committee Panel: Alexander Black P.Eng., Chair
Darryl Chambers P.Eng.
David Ricketts P.Eng.

Counsel for the Association: Kerry Short

Council for the Member: Paullus K.F.Yeung P.Eng. on his own behalf

Date of Hearing: January 30, 2012

Place of Hearing: 1000 - 840 Howe Street, Vancouver, BC.

DETERMINATION

INTRODUCTION

1. 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*, R.S.B.C. 1996, C. 116 (the Act), held an Inquiry to examine the alleged contraventions of the Act by Paullus K. F. Yeung, P.Eng.
2. Mr. Yeung was a member of the Association under the Professional Engineer (P.Eng.) designation at all times relevant to the matters in question.
3. The allegation of unprofessional conduct against Mr. Yeung is found in the second paragraph of the Notice of Inquiry dated December 21, 2011.

" contrary to the Act, you have demonstrated unprofessional conduct 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 October 5, 2011 regarding APEGBC File No. T11-025

2. *email to you dated October 31, 2011 regarding APEGBC File No. T11-025*

3. *email delivery notifications October 6, 2011 and October 31, 2011 regarding APEGBC File No. T11-025*

4. Mr. Yeung appeared without counsel at the hearing into the Notice of Inquiry held January 30, 2012. Mr. Yeung was advised of his right to be represented by a lawyer or another member and he did not desire to be represented. Mr. Yeung was asked if he has read and understood the charge in the Notice of Hearing and he replied that he did.
5. Mr. Yeung agreed to the jurisdiction of the Panel and to its composition. At the outset of the hearing, the charge was read to Mr. Yeung and Mr. Yeung admitted the charge set out in the Notice of Inquiry. The remainder of the hearing was therefore only on the issues of penalty and costs.

EVIDENCE

6. A binder entitled "Book of Exhibits" was introduced into evidence by Mr. Short, containing the Notice of Inquiry, the Affidavit of Service and a document pertaining to the conduct of the hearing.
7. A second binder entitled "Inquiry Documents" was presented and introduced into evidence as Exhibit No. 1.
8. No objection was taken to the introduction of this evidence.
9. Mr. Short, counsel for the Association, did not call any witnesses.
10. Mr. Yeung was self represented and did not call any witnesses.
11. The evidence presented by Mr. Short confirmed the requests for information that were set out in the Notice of Inquiry and to which Mr. Yeung did not reply.

SUBMISSION ON PENALTY

12. The Panel heard submissions on penalty from Mr. Short. Mr. Short introduced a binder entitled "Brief of Penalty" with respect to Penalty. In his submission, Mr Short referred 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 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 cancel the membership, licence 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.”*
14. Mr. Short argued that the penalty imposed by this panel should take into account four factors, all measured within the context of the misconduct. These factors are:
- a) the need to protect the public;
 - b) the need to deter not only this member, but other members of the Association from similar actions;
 - c) the need to deter Mr. Yeung from repeating the offence; and
 - d) the need for rehabilitation of Mr. Yeung.
15. Mr. Short referred to document in Tab 3 of “Brief of Penalty” which indicated that this was the second time that Mr. Yeung had admitted liability for failure to provide documentation as required under the Act. The first time, a suspension was imposed but no fine. Mr. Short referred to Documentation in Tab 3 which indicated that two years expired before Mr. Yeung provided the required documentation. Mr. Short argued that since this is a repeat offence, a fine of twice the fine for a first offence is warranted. Mr. Short referred to documentation on other Discipline Hearings of the Association included in Tabs 1 and 2 in binder entitled “Brief of Penalty” where fines of \$5,000 were imposed for a first offence. Mr. Short, therefore, argued that a fine of \$10,000 in this case was warranted.
16. Mr. Short stated that a panel of the Investigation Committee was meeting on February 24 2012 and argued that Mr. Yeung be required to provide a complete response for required information referred to in the Notice of Inquiry dated December 21, 2011 on or before February 23, 2012. Mr. Short argued that if Mr. Yeung fails to provide the Association with this information by February 23, 2012, his membership in the Association be suspended effective February 24, 2012 until such time he provides this information.

SUBMISSION ON COSTS

17. The panel heard submissions on costs from Mr. Short. Mr. Short introduced a Binder entitled “Brief of Authorities” with respect to Costs. In his submission, Mr. Short referred the Panel to the relevant section of the Act, relevant case law for professional discipline cases and guiding principles by which discipline panels for self regulating professions can impose sanctions.

18. Section 35(1) of the Act 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.”

19. Section 35(3) of the Act states;

“ If the discipline committee directs that costs be paid and determines the amount under subsection (1) or (2), the amount may be assessed by the registrar or district 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. Short referred to decisions from the British Columbia Supreme Court and the British Columbia Court of Appeal in Tabs 1 to 4 of the Binder entitled “Brief of Authorities”. Mr. Short argued these decisions set out what are considered to be reasonable special costs and that special costs are generally awarded by our courts between 70% to 90% of the actual legal costs and fees. Mr. Short stated that the Association’s special costs amounted to \$6,000 and argued that Mr. Yeung be required to pay special costs of \$5,000 representing approximately 83% of the special costs.

21. Mr. Yeung was asked if he wished to make a submission on Penalty or Costs. Mr. Yeung asked who would determine if the documents he would produce were adequate. Mr. Short replied that Mr. Yeung should respond to the request for information stated in the Notice of Enquiry dated December 21 2011 at the earliest possible opportunity and in any event no later than February 23, 2012. The Investigation Committee would then determine their adequacy.

22. The hearing was adjourned and the panel retired to consider the submissions on penalty and costs.

CONCLUSION

23. The Discipline Panel reconvened following adjournment of the hearing, and considered the 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:

- 1) the need for protection of the public;

- 2) the need to deter other members of the Association from similar actions;
 - 3) the need to deter Mr Yeung from repeating the offence; and
 - 4) the need for rehabilitation of Mr Yeung.
24. The Panel carefully considered all of the evidence and submissions. After careful consideration, the panel considered that as this was the second time that Mr. Yeung had admitted to failing to respond to requests for information, that the penalty should be appropriate for a second offence. The panel concluded that it is important to specifically deter Mr. Yeung from continuing to defy the Investigation Committee in breach of Section 30(4) and to generally deter others who may look at our Determination and Orders. Mr. Short argued that the penalty can within the confines of Section 33 be creative to permit Mr. Yeung to redeem himself and promote his rehabilitation by being given until February 23, 2012 to submit required information. If Mr. Yeung fails to provide this information by February 23, 2012, Mr. Short argued that Mr. Yeung be suspended from the Association effective February 24 2012 until this information has been provided to the satisfaction of the Investigation Committee. The panel, after careful consideration, determined that if Mr. Yeung fails to provide to the Association the required information by February 23, 2012, his membership in the Association will be suspended effective February 24, 2012.
25. The panel considered the imposition of the fine on Mr. Yeung. It was noted that he was not assessed a fine for his previous failure to responds to requests for information. Mr. Short argued that as this is a repeat offence, a fine of double that for a first offence is warranted, given the need to deter Mr. Yeung from repeating the offence and the need to deter other members from similar action. The Panel, after careful consideration, determined that Mr. Yeung pay a fine to the Association in the amount of \$10,000.
26. 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 costs to be paid.
27. After considering the submission on costs from Mr Short, the Panel orders that Mr. Yeung pay a portion of the costs incurred by the Association in preparing for and conducting this inquiry hearing, that portion being the amount of \$5,000. The panel believes that the inquiry hearing was made necessary solely due to Mr. Yeung's failure to respond to the requests of the Investigation Committee and could have been avoided. These costs should also reflect that this is the second time Mr. Yeung has admitted failing to respond for requests for information.
28. The Panel determined that on or before February 23, 2012, Mr. Yeung shall;
- 1) Provide the Association's Investigation Committee with the requested information or records, in his possession or control, as required by Section 30(4) of the Act stated in the Notice of Inquiry dated December 21, 2012;
 1. letter to Mr. Yeung dated October 5, 2011 regarding APEGBC File

No. T11-025;

2. email to Mr. Yeung dated October 31, 2011 regarding APEGBC File No. T11-025; and
3. email delivery notifications October 6, 2011 and October 31, 2011 Regarding APEGBC File No. T11-025.

2) Pay a fine to the Association in the amount of \$10,000.

3) The panel awards special costs to the Association in the amount of \$5,000

29. Should Mr. Yeung fail to meet any of the above conditions 1) to 3) his membership in the Association will be suspended effective February 24, 2012.

Dated this ^{15th} day of February, 2012

Discipline Committee Panel;



Alexander Black, PEng.

Chair



Darryl Chambers, PEng.



David Ricketts, PEng.