

**IN THE MATTER OF  
THE ENGINEERS AND GEOSCIENTISTS ACT,  
R.S.B.C. 1996, c. 116, as amended  
and  
IN THE MATTER OF JAMES W.E. HALAREWICZ, P. Eng.**

**DETERMINATION OF THE DISCIPLINE COMMITTEE  
ON PENALTY AND COSTS**

Hearing Date: By written submissions

Discipline Committee Panel: Thomas Leung, P.Eng., Struct. Eng., F.E.C., Chair  
Dr. Peter Bobrowsky, P.Geo.  
Jaswinder Bansal, P.Eng.

Counsel for the Association: Andrew Gay, Q.C.  
Kyle Ferguson

Counsel for the Member: None

**I. INTRODUCTION**

[1] The Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC (the "Association"), acting under the authority of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116 (the "Act"), conducted an inquiry on August 28 and 29, 2018 to consider whether James W.E. Halarewicz, P.Eng. engaged in unprofessional conduct and contravened ss. 30(4) and 44 of the Act and Principle 7 of the Association's *Code of Ethics* ("Principle 7").

[2] The Panel issued a written determination on October 11, 2018 in which it made the following findings:

- (a) Mr. Halarewicz engaged in unprofessional conduct and contravened Principle 7 by sending crude, sexist, lewd, demeaning and profoundly disrespectful emails to female staff members at the Architectural Institute of British Columbia ("AIBC");
- (b) Mr. Halarewicz contravened Principle 7 by providing irrelevant comments in response to issues raised by AIBC which demonstrated a lack of good faith in dealing with another regulatory body investigating his conduct;
- (c) Mr. Halarewicz engaged in unprofessional conduct and contravened s. 30(4) of the Act and Principle 7 by failing to adequately respond to the subcommittee's questions in relation to the AIBC complaint;

- (d) Mr. Halarewicz engaged in unprofessional conduct and contravened Principle 7 by providing a discourteous response to the Association accusing it of colluding with the AIBC, hacking into his website, attacking the integrity of Association staff, and describing his sexual objectives with female staff at AIBC;
- (e) Mr. Halarewicz engaged in unprofessional conduct and contravened s. 44(a) of the Act by failing to comply with the Practice Review Committee's request for a site visit, including an interview, in 2016 and 2017;
- (f) Mr. Halarewicz engaged in unprofessional conduct and contravened Principle 7 by sending emails on December 23, 2016 and October 18, 2017 to the Association which were discourteous, disrespectful and contained irrelevant and unsubstantiated allegations of fraud and corruption on the part of the Association;
- (g) Mr. Halarewicz engaged in unprofessional conduct and contravened s. 30(4) of the Act and Principle 7 by failing to provide information requested by the subcommittee during his investigation and providing responses that were discourteous and disrespectful and alleged criminal conduct on the part of the Association and professional impropriety on the part of its senior personnel; and
- (h) Mr. Halarewicz engaged in unprofessional conduct and contravened Principle 7 by writing a letter on June 24, 2018 to counsel for the Association that was profane, misogynistic, discourteous and contemptuous of the Association's regulatory function.

[3] The Panel set a schedule for written submissions on penalty.

[4] On November 9, 2018, written submissions on penalty were received from the Association. Mr. Halarewicz did not provide a submission in response although invited to do so.

[5] The Association takes the position that Mr. Halarewicz's membership should be cancelled and he should be ordered to pay 90% of actual costs amounting to \$46,455.82.

## II. JURISDICTION OVER PENALTY AND COSTS

[6] Section 33(2) of the Act provides that if the discipline committee determines that a member, licensee or certificate holder has contravened the Act or bylaws or the *Code of Ethics* under subsection (1), it may 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.

[7] Following a determination under s. 33(1), the discipline committee may also make an order for costs:

35(1) 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.

### III. PENALTY CONSIDERATIONS

[8] The Association cites *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17 which sets out the following non-exhaustive list of factors to consider when determining an appropriate penalty:

- a. the nature and gravity of the conduct proven;
- 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 of 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.

[9] The *Ogilvie* factors were applied in *Re: Ian James Foreman, P.Geo.* (November 23, 2015) and *Re: Eric Chrysanthous, P.Eng.* (August 16, 2018). It is not necessary to consider every *Ogilvie* factor in every case: *LSBC v. Dent*, 2016 LSBC 05. The consideration of the factors, and the weight that is to be given to each of them, must be tailored to the facts of each case.

[10] The Association relies on the following factors to support the proposed cancellation of Mr. Halarewicz's membership:

- a. the nature and gravity of the conduct proven;
- b. the number of times the offending conduct occurred;
- c. whether the member has acknowledged the misconduct and taken steps to disclose and redress the wrong and the lack of remorse;
- d. the need for specific and general deterrence; and
- e. the need to ensure the public's confidence in the integrity of the profession.

[11] The Association notes that Mr. Halarewicz does not have a prior disciplinary record but maintains that this does not diminish the significance of his misconduct or outweigh the other factors.

#### **IV. ANALYSIS**

[12] The Panel agrees that the factors cited by the Association are the most relevant factors to consider in this case but also recognizes that Mr. Halarewicz's lack of a disciplinary record must also be considered as well as the range of penalties imposed in similar cases.

[13] The Panel is unable to consider the impact upon the victims as no evidence was put forward concerning the effect of the email communications on senior AIBC staff or the threats and allegations of misconduct levelled against senior personnel at the Association.

#### **Nature and gravity of the misconduct**

[14] Mr. Halarewicz engaged in communications and conduct in relation to both the AIBC and the Association which reflected a marked departure from the conduct expected of members of the Association.

[15] Mr. Halarewicz's emails to senior female AIBC staff contained sexualized, lewd, harassing, and demeaning content which has no place in professional communications. The communications that the member sent to Association staff which contained threats and unwarranted allegations of fraud, corruption, and incompetence by senior Association staff were equally disturbing. Mr. Halarewicz failed to meet the minimum level of professional conduct required by the *Code of Ethics* which establishes the standard against which the conduct of all members is assessed.

[16] In addition, Mr. Halarewicz repeatedly refused to participate in a mandatory practice review and to provide requested information during an investigation. His communications to the Association regarding these matters was openly contemptuous of the Association's regulatory function. The member's repeated refusal to participate in the mandatory practice review and to cooperate with the investigation eroded the Association's ability to protect the public which is its paramount duty under the Act.

[17] Mr. Halarewicz displayed a willful disregard for his professional legal and ethical obligations as a member of the Association. His communications were threatening, demeaning and harassing to other professionals and his conduct undermined the Association's ability to fulfill its regulatory mandate. The nature and gravity of Mr. Halarewicz's conduct falls at the serious end of the misconduct spectrum. As such, this is an aggravating factor.

#### **Previous character of the member, including details of prior discipline**

[18] Mr. Halarewicz does not have a prior discipline history with the Association. While this is a relevant factor, the Panel agrees with the Association that this does not outweigh the pervasive and significant nature of his misconduct.

### **Number of times the offending conduct occurred**

[19] The Panel agrees with the Association's observation that this was not a case involving a discrete or isolated lapse in professional judgment. On the contrary, Mr. Halarewicz's misconduct in relation to the Association spanned a period of approximately two years. He was asked on five occasions to participate in the mandatory practice review and received several warnings outlining the consequences if he failed to do so. Despite those warnings, Mr. Halarewicz steadfastly refused to participate in the practice review.

[20] Mr. Halarewicz continued to send offensive emails to Association staff despite repeated warnings that his communications were inappropriate and unprofessional.

[21] Mr. Halarewicz failed to respond to specific questions from the subcommittee on three occasions again despite repeated warnings that he was required to comply under the Act.

[22] In relation to the AIBC, Mr. Halarewicz emailed a second disgraceful communication to senior female staff after assuring the General Counsel/Deputy Chief Executive Officer that he would refrain from sending further emails.

[23] The evidence establishes that Mr. Halarewicz engaged in a pattern of conduct by: (a) repeatedly sending disturbing and disgraceful emails; (b) refusing to comply with requests and directions from the Association; and (c) attempting to deflect the investigation into his conduct by raising threats and unwarranted allegations of criminal conduct. The repetitive nature of Mr. Halarewicz's conduct is an aggravating factor.

### **Whether the member has acknowledged the misconduct and taken steps to redress the wrong and the presence or absence of other mitigating circumstances**

[24] Mr. Halarewicz has not acknowledged that his conduct was improper, expressed remorse for his actions, or taken steps to redress the wrongs that he committed.

[25] Specifically, there is no evidence that Mr. Halarewicz acknowledged or apologized to the senior female staff at AIBC for the disturbing emails. Instead, after assuring the General Counsel/Deputy Chief Executive Officer that he would not send further emails, Mr. Halarewicz inexplicably sent a second offensive email that same day to the female staff member. The email was so alarming that the General Counsel/Deputy Chief Executive Officer contacted the police.

[26] There is also no evidence that Mr. Halarewicz acknowledged or apologized for his misconduct in relation to his contraventions of the Act or *Code of Ethics*. Efforts by Association staff to have Mr. Halarewicz participate in the mandatory practice review and to respond to the subcommittee's questions were met with threats and contemptuous and unsubstantiated allegations of professional misconduct against the staff. He repeatedly accused the Association of corruption and criminal behaviour and maintained that the Association directors could "go to hell... where they belong".

[27] Mr. Halarewicz either has no insight into his misconduct or is simply indifferent to his obligations as a professional. He has demonstrated no remorse regarding his disgraceful and unacceptable behavior nor has he taken any steps to redress his wrongdoing.

[28] There is no evidence of mitigating circumstances or the prospect of rehabilitation as Mr. Halarewicz declined to participate in the hearing.

### **Need for Specific and General Deterrence**

[29] There is a strong need for specific and general deterrence in this case. It is imperative to send a strong message to Mr. Halarewicz, and to other members of the profession, that engaging in threatening and offensive communications with a regulatory body and refusing to comply with statutory requirements is unacceptable and will result in harsh regulatory consequences.

[30] Specific deterrence is particularly important in view of Mr. Halarewicz's lack of remorse and lack of insight or indifference to his conduct. Mr. Halarewicz's sexualized, misogynistic and threatening communications to AIBC senior staff and his threatening communications to Association staff were unacceptable. Conduct of this nature must be deterred.

[31] The Association submits that the public would be properly outraged if stern disciplinary action is not taken in response to Mr. Halarewicz's intentionally contemptuous conduct in the face of repeated warnings. The Panel agrees. The penalty must reflect a sufficiently proportionate response to the member's persistent and willful refusal to recognize and fulfill his professional obligations as a member of the Association.

### **Need to ensure the public's confidence in the integrity of the profession**

[32] This is also a factor that warrants significant weight in this case. Mr. Halarewicz identified himself as a professional engineer in his communications to AIBC. His failure to comport himself with fairness, courtesy and good faith towards AIBC staff and his professional colleagues at the Association undermines public confidence in the integrity of the profession and brings it into disrepute.

[33] Mr. Halarewicz's attempts to thwart AIBC and the Association in relation to their regulatory functions, and his attacks on the reputation of the Association and its senior staff, also erode public confidence in the ability of the Association to regulate its members. The misogynistic and sexist nature of many of the member's communications is particularly damaging to the reputation of the profession.

[34] The penalty for this misconduct must reflect the Panel's disapprobation of Mr. Halarewicz's conduct to promote confidence in the integrity of the profession and its ability to self-regulate.

### **The range of penalties imposed in similar cases**

[35] The Association cited *Re: Chrysanthous* in which a panel of the Discipline Committee found that a member with no discipline history engaged in unprofessional conduct and contravened the *Code of Ethics* when he sent inappropriate threatening emails to engineers and members of the public over an approximate five-year period. The panel observed that the emails were deeply disturbing and precipitated a complaint to the police as well as a report to the Association.



[36] The panel further found that the member contravened s. 30(4) of the Act when he failed to appear at an investigation meeting with the Association. The member attended an investigation but maintained that he was unable to speak; he refused to attend a second meeting. The panel observed that the member's actions thwarted the Association's ability to fulfill its regulatory mandate.

[37] Based on the seriousness of the misconduct and the absence of any prospect for remediation, the panel concluded that the appropriate penalty was cancellation of Mr. Chrysanthous's membership and costs. The Association submits that the facts in that case did not involve the degree of ungovernability that Mr. Halarewicz has demonstrated through his persistent and directly contemptuous communications.

[38] In *Re: Ahmed Raza Syed, P.Eng.* (February 5, 2018), a panel of the Discipline Committee found that the member failed to deliver requested files to the Association over a six-month period concerning two separate complaints against him, notwithstanding numerous reminders and an extension. The panel found that Mr. Syed failed to comply with his obligations as a member to respond to requests from the Association and contravened s. 30(4) of the Act and the *Code of Ethics*. The panel concluded that the member failed to demonstrate that he understood the Association requirements and failed to acknowledge the gravity of his actions. The panel ordered the member to pass the Professional Engineering Examination and the Professional Engineering and Geoscience Practice online, directing that the failure to complete these requirements would result suspension of his membership. The panel also imposed a \$5,000 fine and costs.

[39] In *Re: Lorrence Melnechenko, P.Eng.* (February 18, 2014), a panel of the Discipline Committee imposed a \$5,000 fine for the member's refusal to participate in an investigation process. As Mr. Melnechenko was not a member of the Association at the time of the hearing, the panel further ordered that, in the event of reinstatement, his membership would be immediately suspended until he provided a complete response to the Investigation Committee and passed the Professional Practice Examination.

[40] In *Re: Dr. Frank Stromotich, P.Eng.* (August 28, 2007), a panel of the Discipline Committee found that the member demonstrated unprofessional conduct and contravened s. 30(4) of the Act when he failed to provide information and records to the Investigation Committee in response to a complaint and engaged in unprofessional conduct by sending email messages to employees of the Ministry of Transportation questioning the competency of an employee. The panel ordered a two-month suspension of the member's lifetime membership, a \$10,000 fine and costs. The panel also ordered the member to provide a letter of apology and to successfully complete the Professional Practice Examination.

[41] The cases underscore the serious nature of failing to comply with requests for information from the Association and engaging in threatening and improper communications with members of the public and other professionals. The facts in *Re: Chrysanthous* are the most similar to the present case although the Panel agrees that they did not involve the same degree of ungovernability as demonstrated by Mr. Halarewicz.

## V DISCIPLINARY ACTION AND COSTS

[42] The Association's paramount responsibility is to protect and safeguard the public interest. The overriding consideration in determining an appropriate penalty is protection of the public.

[43] Mr. Halarewicz displayed contempt for the Association's actions in attempting to investigate the AIBC complaint and conduct a practice review. The repetitive nature of Mr. Halarewicz's misconduct reflected indifference to his legal and ethical obligations as a professional engineer and the Association's regulatory mandate. The public cannot be protected if members of a profession are not willing to be governed by their regulator: *Kuny v. College of Registered Nurses of Manitoba*, [2018] M.J. No. 50 at para. 3

[44] After considering the range of possible sanctions, the Panel determined that a fine, suspension and/or further education would not be adequate to protect the public in this case. The Panel has no confidence that a fine, suspension and/or further education would secure Mr. Halarewicz's compliance with his professional obligations and prevent the conduct from being repeated.

[45] Given the serious and repetitive nature of Mr. Halarewicz's misconduct despite repeated warnings, his lack of insight or indifference to his professional obligations, and the lack of evidence reflecting remorse or the prospect of rehabilitation, the Panel concluded that his membership should be immediately cancelled. The public interest requires that Mr. Halarewicz be prevented from continuing his email tirades against members of the public and other members of the profession and from circumventing the regulatory requirements imposed on all members of the Association to ensure protection of the public.

[46] The Association is also seeking costs set at 90% of actual costs based on the following breakdown:

Legal Fees	\$42,238.00
Disbursements (Legal)	\$ 1,682.44
Taxes on Legal Fees and Disbursements	\$ 5,261.14
Disbursements (Association)	<u>\$ 2,436.00</u>
Total	\$51,617.58

[47] The Association submits that a costs award is appropriate as it was successful in proving the charges alleged in the Notice of Inquiry. It notes that panels of the Discipline Committee have awarded costs in the range of 70% to 90% of actual costs incurred by the Association in the following cases: *Re: Foreman* at 70%; *Re: Kevin A. Bromley, P.Eng.* (February 24, 2015) at 70%; *Re: Dr. Stromotich* at 80%; *Re: Melneckenko* at 90%; *Re: Syed* at 90%; and *Re: Chrysanthous* at 90%.

[48] The Panel finds the legal costs and disbursements incurred on this matter are reasonable given the numerous allegations contained in the Notice of Inquiry, the requirement for a pre-hearing application, and the fact that the allegations were substantiated. Many of the disputed issues could have been the subject of an agreed statement of facts if Mr. Halarewicz had been willing to engage in

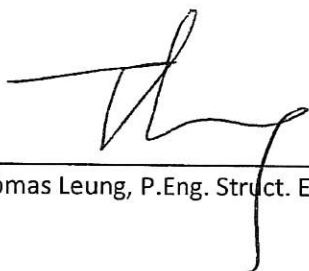


the hearing process. For those reasons, the Panel orders that Mr. Halarewicz pay 90% of actual costs in the amount of \$46,455.82 to the Association.

[49] In summary, the Panel makes the following orders:

- (a) Mr. Halarewicz's membership in the Association shall be immediately cancelled; and
- (b) Mr. Halarewicz shall pay the Association the sum of \$46,455.82 for the Association's legal and related costs.

Dated this 18 day of January, 2019 and signed in counterpart.



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Thomas Leung, P.Eng. Struct. Eng. F.E.C., Chair

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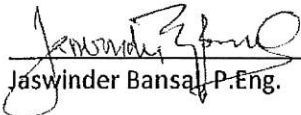
Dated this 15 day of January, 2019 and signed in counterpart.

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Thomas Leung, P.Eng. Struct. Eng. F.E.C., Chair

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Dr. Peter Bobrowsky, P.Geo.



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Jaswinder Bansal, P.Eng.