

**IN THE MATTER OF
THE PROFESSIONAL GOVERNANCE ACT, S.B.C. 2018, c. 47**

and

IN THE MATTER OF BRUCE JOSEPH GERON, P.ENG.

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

Date and Place of Hearing:	By written submissions (pleadings closed November 24, 2023)
Panel of the Discipline Committee (the “Panel”)	Colin Smith, P. Eng., Chair Ed Bird, P.Eng. Alison Dennis, BGS, M.Ed.
Counsel for Engineers and Geoscientists BC:	Andrew Gay, K.C.
For the Respondent:	Did not appear
Decision Date:	December 5, 2023

A. BACKGROUND

1. This panel of the Discipline Committee (the “Panel”) of the Association of Professional Engineers and Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC was convened to conduct a hearing concerning Bruce Gernon (the “Respondent”) pursuant to section 75 of the *Professional Governance Act*, S.B.C. 2018 c. 47 (the “PGA”).
2. On October 5, 2023, the Panel released its decision (the “Conduct Decision”) and found that the Respondent acted unprofessionally in relation to the investigatory work, design, inspections, and field reviews of the balcony guardrail system for four apartment buildings in Burnaby, British Columbia (the “Guardrail System”).
3. The Conduct Decision set a schedule for the parties to deliver written submissions on penalty and costs. Those submissions closed on November 24, 2023.
4. The Respondent did not make any submissions in relation to penalty or costs.

B. JURISDICTION

5. On February 5, 2021, the PGA came into effect and repealed the *Engineers and Geoscientists Act* (“EGA”). This proceeding was initiated by a Citation issued pursuant to the PGA. The Respondent’s conduct that was the subject of the Citation occurred when the EGA was in force.
6. As the Panel held at paragraph 4 of the Conduct Decision, in accordance with sections 35 and 36 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, the substantive provisions of the EGA (and the Bylaws and Code of Ethics as they applied at that time) apply to this proceeding. This includes the EGA’s penalty provisions.
7. The Respondent resigned his registration on May 19, 2022. Section 28 of the EGA provides that disciplinary proceedings may be brought or continued against former registrants (section 56 of the PGA also provides for continued jurisdiction against former registrants).
8. Engineers and Geoscientists BC submits that there are many reasons why the Legislature would want to ensure that action can be taken against former registrants following a finding of unprofessional conduct. There are strong policy reasons for

imposing penalties notwithstanding a resignation, even if the penalty has limited impact on the former registrant. Allowing a registrant to avoid discipline would impair the regulator's ability to maintain the integrity of the profession and demonstrate to the public that it takes unprofessional conduct seriously. It would also impair the regulator's ability to pursue the goal of general deterrence. Further, absent an appropriate penalty, a registrant who has resigned could quickly re-apply for registration in British Columbia or in another jurisdiction without restriction. This would be contrary to public policy and the scheme of discipline contemplated by the legislation.

9. Engineers and Geoscientists BC refers to several authorities in support of this position. In *Re Chrysanthous* (August 16, 2018), the Discipline Committee did not accept an argument that the penalty should consider that the respondent was no longer a member (as registrants were then called), because "it is important that the penalty indicates its disapprobation of the conduct and promotes confidence in the integrity of the profession and its ability to self-regulate."
10. In *Re Rice* (April 1, 2021), a panel held that it may "impose any of the sanctions upon a former member that would be applicable to a current member."
11. In *Re Yam* (May 30, 2016), a panel ordered that Mr. Yam's membership be cancelled even though he had already resigned as a member. The *Yam* case was resolved by way of a Consent Order.
12. Engineers and Geoscientists BC also submits that the court in *College of Nurses of Ontario v. Mark Dumchin*, 2016 ONSC 626 reached the same conclusion in a case where the member resigned his membership prior to the discipline hearing.
13. The Panel agrees with Engineers and Geoscientists BC's submissions regarding its jurisdiction over former registrants. Former registrants must not avoid the consequences of their misconduct and must be held to account in order to protect the public. The suspension and cancellation of former registrants must be viewed in the statutory context identified above by Engineers and Geoscientists BC, including the ability to otherwise quickly re-apply for registration in British Columbia or in another jurisdiction. As noted in *Dumchin*, it is not the suspension or cancellation of

a piece of paper confirming one's certificate of registration but the suspension or cancellation of the entitlement to practice a regulated profession.

C. FRAMEWORK FOR ASSESSMENT OF PENALTY

14. The following penalties were available under the EGA:

33 (2) If the discipline committee makes a determination under subsection (1), it 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.

15. The relevant factors to consider in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17:

- a. the nature and gravity of the conduct proven;
- b. the age and experience of the respondent;
- c. the previous character of the respondent, including details of prior discipline;
- d. the impact upon the victim;
- e. the advantage gained, or to be gained, by the respondent;
- f. the number of times the offending conduct occurred;
- g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstance;
- h. the possibility of remediating or rehabilitating the respondent;
- i. the impact on the respondent 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.
16. *Law Society of BC v. Dent*, 2016 LSBC 05 held that it is not necessary to consider each *Ogilvie* factor in every case and that the factors can be consolidated. In *Dent*, the following consolidated list was suggested:
- a. Nature, gravity and consequences of conduct;
 - b. Character and professional conduct record of the respondent;
 - c. Acknowledgement of the misconduct and remedial action; and
 - d. Public confidence in the profession including public confidence in the disciplinary process.
17. The *Ogilvie / Dent* factors have been adopted in many decisions of the Engineers and Geoscientists BC's Discipline Committee, including in *Re Bahrami* (September 29, 2022) and *Re Syed* (August 18, 2020). The Panel finds that is the appropriate approach in this case as well.
18. Engineers and Geoscientists BC submits that in applying the *Ogilvie / Dent* factors, the Panel should be guided by the overarching consideration of the public interest; see *Pharmascience Inc. v. Binet*, 2006 SCC 48.

Nature, Gravity and Consequences of Conduct

19. The Panel found in the Conduct Decision that the Respondent performed no investigations in relation to the design of the Guardrail System for the projects. This includes a failure to investigate existing site conditions to determine whether the building could accommodate the loads imposed by the Guardrail System. The Respondent acknowledged that he was unaware that one of the buildings was 24 storeys.
20. The Panel found that the Respondent performed no investigations or calculations prior to reviewing, signing, and sealing the drawings for the projects. The

calculations performed by the Respondent were performed after the fact, during Engineers and Geoscientists BC's investigation.

21. The Panel further found that the Respondent's design work was deficient and did not meet the standard of a reasonably prudent design engineer, and that the shop drawings signed and sealed by the Respondent were deficient.
22. The Panel found that in relation to one building, the Respondent did not perform any inspections, and that there is no evidence of any field review being performed. In relation to the other three buildings, the Panel found that the inspection reports for two of them are dated after the Respondent signed and sealed the Schedule C-Bs. With respect to the other (fourth) building, there is no inspection report between the dates of two Schedule C-Bs which the Respondent signed and sealed. The Panel found the inspections performed were partial inspections and as such there was no evidence of documentation of field reviews for large portions of the buildings in question.
23. The Panel further found that the Respondent did not perform the field reviews (such as they were) himself and did not engage in direct supervision.
24. The Panel further found that the Respondent failed to comply with the requirement under the Bylaws that members establish documented quality management processes which include documented independent review of structural designs prior to construction.
25. The Panel determined that the Respondent committed unprofessional conduct.
26. Engineers and Geoscientists BC submits that balcony guardrails for residential apartment buildings are critical for human safety. This is reflected in Engineers and Geoscientist BC's guidelines. The failure of a balcony guardrail could lead to a falling accident resulting in death.
27. Engineers and Geoscientists BC submits that in the present case, the misconduct was not a discrete or limited act. Rather, the entirety of the system contemplated by the Building Code and employed by municipalities and by the engineering profession was undermined in connection with the projects. No proper investigations were

carried out. No calculations were performed. The so-called 'testing' performed was in respect of something other than what was built. There were defects and omissions in the design. There was no independent review of the design and there were no, or inadequate, inspections. Engineers and Geoscientists BC submits that it is the combination of these acts and omissions which makes the nature and gravity of the proven conduct very serious. It argues that this was a complete failure of the professional's obligation, including a complete failure to uphold the public interest.

28. Engineers and Geoscientists BC submits that although the Panel did not make a finding of dishonesty *per se*, it did find that the Respondent on two occasions signed Schedule C-Bs before any field inspections had been performed. Such conduct is unethical and dishonourable. It undermines public trust in the profession.
29. The Panel agrees with the Engineers and Geoscientists BC's submissions. The Respondent's conduct was very serious. It was not an isolated act but multiple different kinds of infractions over time involving multiple buildings. It represented a complete failure of the professional's obligations including a failure to uphold the public interest.
30. The Panel considers this factor militates in favour of a more serious penalty against the Respondent.

Character and Professional Conduct Record of the Respondent

31. Engineers and Geoscientists BC notes that the Respondent had been registered with Engineers and Geoscientists BC for approximately 27 years at the time of the conduct in question.
32. Engineers and Geoscientists BC acknowledges that the Respondent does not have a prior disciplinary history.
33. The Respondent did not adduce any information or evidence in relation to his character for consideration in relation to this factor of the test.
34. Engineers and Geoscientists BC submits that an engineer of this seniority and experience is assumed to know his ethical obligations, to know Engineers and Geoscientists BC's guidelines, to know his obligations under the Bylaws, and

generally to know better. Engineers and Geoscientist BC relies upon the following passage from *Re Rice*:

As the Association notes in its submissions, as a senior and experienced engineer and the senior engineer on the Mount Polley project, Mr. Rice ought to have known better. This is an aggravating factor in this case.

35. The Panel recognizes that the Respondent does not have a prior disciplinary record, which is typically a mitigating consideration. However, the Respondent's significant years of experience are such that he ought to have known the requisite standards to apply and his work fell far short of what was required in the circumstances. This is not a situation of an inexperienced member of the profession involving an isolated incident. Overall, the Panel considers this factor to be aggravating and militates in favour of a more significant penalty.

Acknowledgement of the Misconduct and Remedial Action

36. Engineers and Geoscientists BC notes that the Respondent has not taken responsibility for his conduct or shown remorse. Rather than make admissions, the Respondent simply failed to attend the hearing, requiring Engineers and Geoscientists BC to go through the process of proving the allegations.
37. There was no evidence presented to the Panel of any remediation steps or work undertaken by the Respondent.
38. As has been repeatedly held by other panels, the absence of an admission or demonstrated remorse is not an aggravating factor but is the absence of a mitigating factor.
39. The Panel finds that the Respondent did not acknowledge his misconduct and there is no evidence of him having undertaken any remedial action. Accordingly, the Panel finds there to be an absence of mitigating circumstances for the purposes of this factor.

Public Confidence in the Profession including Public Confidence in the Disciplinary Process

40. Engineers and Geoscientists BC submits that municipalities and members of the public rely upon professional engineers to ensure that structural designs comply with the Code, are prepared competently, and that appropriate checks are performed following construction. When professional engineers fail to fulfil these responsibilities, it erodes public confidence in the profession.
41. Further, it argues that the public needs to have confidence that designs for components of large residential buildings undergo diligent review. There is no evidence of any independent structural review in the present case.
42. The public can understand that there will be cases involving discrete omissions or careless acts. Engineers and Geoscientists BC submits that this case goes well beyond that sort of occurrence. This case involved a complete dereliction of duty which undermined the system of professional reliance. This kind of misconduct has the potential to significantly erode public confidence.
43. Engineers and Geoscientists BC submits that a penalty which sends a signal that such misconduct has not been viewed as a very serious matter by the Panel could further impair the public's confidence in the integrity of the profession.
44. In terms of general deterrence, Engineers and Geoscientists BC submits that this case engages core issues of broad application to the profession. At issue is the very role of a professional engineer in the system of professional reliance. This case engages fundamental issues at every level of structural engineering: investigation, calculation, design, review and checking.
45. Engineers and Geoscientists BC relies upon *Re Lim* (May 15, 2019), in which a panel of the Discipline Committee concluded that "the penalty should help to deter other engineers from "cutting corners" when preparing and submitting plans."
46. The Panel finds that there is a need for specific deterrence, general deterrence, and the need to maintain public confidence in the profession in this case. It is imperative

to express to the Respondent, to the profession and to the public that the misconduct in this case is unacceptable.

47. In terms of specific deterrence, the Panel finds that the scope of different forms of misconduct and the number of buildings involved call for a high level of specific deterrence.
48. In terms of general deterrence, the Panel agrees that this case engages issues that are fundamental to every aspect of structural engineering, including investigation, calculation, design, review and checking. The Panel agrees with Engineers and Geoscientists BC's submission that this case is an extreme example of "cutting corners" or a "superficial approach" which should be denounced in strong terms to deter other registrants from engaging in similar misconduct. The Panel finds that a strong message must be sent to the profession that this type of misconduct will not be tolerated, and where this occurs, registrants will be met with very serious penalties.
49. Engineers and Geoscientists BC has statutory duties to act in the public interest. A central purpose of disciplinary proceedings is to protect the public and ensure public confidence in the profession. The Panel finds that there is a strong need to uphold public confidence in the integrity of the profession and in Engineers and Geoscientists BC's ability to regulate the profession in the public interest.
50. The Panel finds that this factor militates in favour of a more significant penalty.

Cases

51. It is appropriate for this Panel to consider outcomes in other similar cases. Engineers and Geoscientists BC has cited the following cases:
 - a. *Re Frey* (January 25, 2023): this is a Consent Order in which the registrant failed to document the calculations necessary to determine the reinforcing requirements needed for balcony slabs to act as cantilevers and failed to adequately document her pre-construction investigation. She also failed to document the calculations necessary to show loads acting on a suspended slab upon which a hot tub was located. She also failed to ensure that

documented independent structural reviews of the balcony assessment and hot tub replacement were conducted. Ms. Frey's registration was cancelled by consent; conditions were placed on her reinstatement (should she ever apply) and a peer review obligation was imposed should she ever be registered again in the future. The same conditions and peer review provision are sought by Engineers and Geoscientists BC in relation to the Respondent.

- b. *Re Syed* (August 18, 2020), a panel of the Discipline Committee found that a series of glass balcony guardrails was installed which failed to meet standards in the Building Code. The registrant agreed to act as the responsible registered professional on the projects after the guards had already been installed, leading the Panel to conclude that he was acting as a "seal for hire". Mr. Syed accepted responsibility for the projects in circumstances where he lacked sufficient training and experience; and he had a prior history of discipline. Mr. Syed failed to perform any calculations, failed to prepare drawings, or prepared drawings after the fact which were inadequate. The Panel cancelled Mr. Syed's registration and held that no application for re-admission to membership would be considered for 24 months. The Panel held that his registration would remain cancelled until the costs ordered against him in the present matter and in a previous matter were paid.
 - c. *Re Balayo* (April 5, 2017) was a Consent Order in which Mr. Balayo signed and sealed a Schedule B and a Schedule C-B in relation to the installation of rooftop guardrails in circumstances where he was not involved in the design of the guardrails and performed no field reviews of the guardrails. The Panel ordered that Mr. Balayo's registration be cancelled and that he be fined in the amount of \$7500.
52. Engineers and Geoscientists BC notes that *Re Balayo* and *Re Frey* were Consent Orders as opposed to outcomes following a contested hearing on the merits. Engineers and Geoscientists BC submits that while many of the facts in *Re Syed*

are factually similar to the present case, this Panel did not make a finding against the Respondent that he was a “seal for hire” as was done in *Re Syed*, and, unlike the Respondent, Mr. Syed had a prior disciplinary history.

53. The Panel recognizes that the present case is less serious in some important respects than *Re Syed*. Notably, the dishonesty findings were more serious in *Re Syed*, and there is no progressive discipline engaged in this case. The Panel also recognizes that *Re Frey* and *Re Balayo* were resolved by Consent Order. Accordingly, the Panel accepts Engineers and Geoscientists BC’s submission that the appropriate penalty in this case includes a 2-year suspension rather than a cancellation.
54. The Panel also accepts Engineers and Geoscientists BC’s submission that the same conditions applied in *Re Frey* with respect to reinstatement are appropriate in this case. This includes the completion of certain courses and examinations, the imposition of a peer review condition, and a practice review. These conditions are necessary to ensure the public interest is protected and that any work performed by the Respondent is safe and in compliance with all laws, regulations and Engineers and Geoscientists BC guidelines.

D. COSTS

55. Section 35(1) of the EGA provided that if the Panel determines that a member has demonstrated incompetence, negligence or unprofessional conduct, or has contravened the Code of Ethics, the Panel 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 member, and the costs may be determined by the Panel.
56. As noted above, on February 5, 2021, the EGA was repealed and replaced by the PGA.
57. The Discipline Committee has, in several recent decisions, held that the PGA, rather than the EGA, applies to the assessment of costs even if the impugned conduct occurred under the EGA.

58. Section 81 of the PGA relates to the award and assessment of costs, and provides:

81 (1) A discipline committee or panel, in the context of a discipline hearing under section 75, may require the respondent to pay the costs of one or both of the following:

- (a) an investigation;
- (b) the hearing under section 75.

(2) Costs assessed under subsection (1)

- (a) must not exceed the actual costs incurred by the regulatory body during the course of the investigation and hearing, and
- (b) may include the salary costs for employees or officers engaged in the investigation and hearing.

(3) The board may make bylaws governing the assessment of costs under subsection (1), including the following:

- (a) the factors to be considered in assessing costs;
- (b) the maximum amount of costs that may be assessed within the limits set out in subsection (2);
- (c) the time allowed for payment of costs;
- (d) the extension of time for payment of costs.

(4) The amount of costs assessed against a respondent under subsection (1) may be recovered as a debt owing to a regulatory body and, when collected, that amount is the property of the regulatory body.

59. Engineers and Geoscientists BC has enacted bylaws pursuant to the above authority. Section 10.9 of the Bylaws provide the following with respect to the assessment of costs:

(1) If an adverse determination is made against a Respondent after a discipline hearing held pursuant to section 75 of the PGA [Discipline hearings] the Discipline Hearing Panel must require, through an order in writing, that the Respondent pay EGBC's costs, which may be up to the actual costs incurred by EGBC as a result of an investigation and a discipline hearing, provided that those actual costs are within the limits set out in section 81(2)(a) of the PGA.

60. In accordance with its practice in past cases where the conduct at issue occurred under the EGA, Engineers and Geoscientists BC has decided to limit the costs it is seeking to those that would have been available to it under the EGA. In other words, even though Engineers and Geoscientists BC is entitled to seek investigation costs, it is not doing so here.

61. Engineers and Geoscientists BC notes that in cases where it has been successful in proving the Citation allegations, it has been the general practice of the Discipline Committee to order that the costs payable are in the range of 70% to 90% of Engineers and Geoscientists BC's actual costs (See *Re Bromley* and *Re Halarewicz*).
62. Engineers and Geoscientists BC cites *Re Rogers* (March 23, 2020) in which a panel of the Discipline Committee noted that the fact that the registrant is no longer practising might serve to mitigate the award of costs. That panel also noted that Ms. Rogers did not engage with the disciplinary process and held that "a significant amount of the Association's costs may have been avoided if Ms. Rogers had engaged in the disciplinary process." Engineers and Geoscientists BC submits that the same is true in the present case, but Engineers and Geoscientists BC is making a claim at the low end of the range (i.e. 70%).
63. Engineers and Geoscientists BC's affidavit materials set out its costs as follows:

Gudmundseth Mickelson LLP:

Fees: \$36,171.50
Disbursements: \$289.04
Taxes: \$4364.36

RJC Engineers (Leonard Pinalto):

Fees and taxes: \$13,117.65

TOTAL \$53,942.55

64. Engineers and Geoscientists BC claims 70% of total costs above which amounts to \$37,760.
65. The Panel is satisfied that Engineers and Geoscientists BC's costs and disbursements are actual costs it incurred as a result of a discipline hearing. The Panel recognizes Engineers and Geoscientists BC's entitlement to claim investigation costs and its decision not to do so in this case. The Panel is satisfied that the costs incurred were necessary and reasonable in the circumstances. The Panel agrees that the range from the past cases cited is between 70% to 90% of

actual costs. While the Respondent did not participate in the hearing, Engineers and Geoscientists BC was still required to incur all the costs that it did in having to prove its case. The Panel finds that 70% of the actual costs is appropriate. The Panel orders costs in the amount of \$37,760, representing 70% of Engineers and Geoscientists BC's costs.

E. ORDER

66. The Panel orders that:

- a. The Respondent's registration be suspended for a period of two years;
- b. The suspension be served if and when the Respondent successfully obtains reinstatement of practising status with Engineers and Geoscientists BC;
- c. The Respondent shall pay to Engineers and Geoscientists BC costs of \$37,760 payable in accordance with sections 10.1 and 10.10.1 of the Bylaws, or such other date as agreed to by the Respondent and Engineers and Geoscientists BC in writing.
- d. If at any time the Respondent wishes to apply for reinstatement of practicing status with Engineers and Geoscientists BC:
 - a) he must have paid to Engineers and Geoscientists BC the costs set out in paragraph c above.
 - b) he must as a condition of such application provide written notice to Engineers and Geoscientists BC that he has at his own expense:
 - i. completed and passed the Engineers and Geoscientists BC Professional Practice Examination;
 - ii. completed the Professional Engineering and Geoscience in BC Online Seminar;
 - iii. completed and passed the E11 National Building Code Structural Design Course offered by the Structural Engineers Association of BC, or in the alternative completed another

equivalent course for which he obtained prior written approval from Engineers and Geoscientists BC in advance; and

- c) he must comply with all requirements of the Credentials Committee of Engineers and Geoscientists BC and all Bylaws, policies, and guidelines respecting registration and competency.
- e. If the Respondent's practising status is reinstated with Engineers and Geoscientists BC at any time in the future, any structural engineering work undertaken by him following his two year suspension must be peer reviewed pursuant to Engineers and Geoscientists BC's Discipline Committee Ordered Peer Review Policy, by a peer reviewer approved by Engineers and Geoscientists BC's Registrar (the "Peer Reviewer") as follows:
 - a) the peer review must continue for a minimum of either one year from the date a peer reviewer is approved by the Engineers and Geoscientists BC Registrar, or the completion of eight (8) structural engineering projects, whichever comes later (the "Peer Review Period");
 - b) the costs of the peer review, if any, shall be borne by the Respondent;
 - c) the Peer Reviewer shall report in writing to Engineers and Geoscientists BC's Registrar either every six months during the Peer Review Period, or after the completion of five (5) projects, whichever comes earlier, on the performance of the Respondent;
 - d) following the Peer Review Period, the Respondent shall obtain an opinion from the Peer Reviewer concerning his competence to undertake structural engineering work and provide that opinion to Engineers and Geoscientists BC's Registrar. If the opinion of the Peer Reviewer is that the Respondent requires further peer review, the Peer Review Period shall continue for a period of either an

additional six months, or completion of four (4) additional structural engineering projects, whichever comes later; and

- f. six months after the completion of the Peer Review Period (including as it may be extended), the Respondent will commence a Practice Review, at his own cost, the precise timing of which will be determined by the Audit and Practice Review Committee.

<original signed by>

Colin Smith, P. Eng., Chair

<original signed by>

Ed Bird, P.Eng.

<original signed by>

Alison Dennis, BGS, M.Ed.