

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

- and -

**FRANK LOUIS STROMOTICH (#4819)  
ORDER TO REVOKE MEMBERSHIP FOR FAILURE TO COMPLY WITH THE ORDER OF  
THE DISCIPLINE PANEL OF AUGUST 28, 2007**

A Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia held an inquiry under the authority of the *Engineers and Geoscientists Act* (the "Act") to examine two charges against Dr. Frank Louis Stromotich. Dr. Stromotich was unrepresented throughout the hearing.

The Panel heard evidence on April 11, May 1, 7 and 14, 2007. At the end of the evidentiary portion of the hearing, the Panel called for written argument from the parties. On July 3, 2007, the Panel found Dr. Stromotich liable on both charges. The Panel called for written submissions on penalty and costs and laid out a timetable for when such submissions were to be received. The Association's submission was received on July 11, 2007. Dr. Stromotich made a number of requests for information relating to costs. The Panel agreed and requested Mr. Hunter to provide the back up information on the legal fees and other costs referenced in Mr. Hunter's submission. That information was provided to Dr. Stromotich on July 23, 2007. Dr. Stromotich requested similar accounting information on a prior case. The Panel denied Dr. Stromotich's request. The Panel extended its ruling on costs to July 30, 2007. On July 31, 2007, Dr. Stromotich requested a further week to complete his submission. This request was granted and ordered due on August 7, 2007. On August 10, 2007 the Panel advised Dr. Stromotich that it would accept his submission up to 5:00 p.m. on August 13, 2007. The Panel never received a submission on penalty and costs from Dr. Stromotich.

The Panel's written reasons on penalty and costs were issued on August 28, 2007. The Panel ordered that Dr. Stromotich's lifetime membership in the Association was suspended for a period of two months. Dr. Stromotich was ordered to pay a fine of \$10,000.00, to prepare an unequivocal letter of apology to Mr. Galambos in a form approved by the Association's Registrar and to write and pass the Association's Professional Practice Exam within two months of the date of the order.

Dr. Stromotich was directed to pay the partial costs of the Association in preparing for and conducting the investigation and inquiry in the amount of \$41,935.35.


Copies of the decision on liability and the order on penalty and costs were mailed to Dr. Stromotich and were published on the Association's website. Notices were published in the Association's magazine and electronic newsletter, and in the newspaper. To date Dr. Stromotich has failed to comply with the Panel's order on penalty and costs.

**Further Penalty – Dr. Frank Louis Stromotich**

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The Panel unanimously agrees that the conditions set out in the order on penalty and costs have not been met. Pursuant to its powers under subsections 34(1) and 35(5) of the Act, Dr. Stromotich's membership in the Association is revoked and shall remain revoked until he has paid the costs ordered against him. This is in addition to any conditions Council may apply for reinstatement of Dr. Stromotich's membership in the Association.

Discipline Committee Panel:



Paul Adams, P. Eng.  
Chair

March 13, 2008  
Date:

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

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

- and -

IN THE MATTER OF  
DR. FRANK LOUIS STROMOTICH, P. ENG.

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DECISION OF THE DISCIPLINE COMMITTEE ON LIABILITY

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**Discipline Committee Panel:**

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

**Independent Counsel for the Panel:**

David Martin

**Counsel for Association:**

Robert Hunter and Sonia Sahota, P.Eng.

**For the member:**

Dr. Frank Louis Stromotich, P.Eng  
representing himself

## 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, RSBC 1996 c. 116 as amended (the “Act”) held an inquiry to examine two charges against Dr. Frank Louis Stromotich, P.Eng.

2 Dr. Stromotich was unrepresented throughout the hearing although the Panel encouraged him to have a lawyer.

3 The Panel heard evidence on April 11, May 1, 7 and 14, 2007. The oral hearing took place in the Association’s Boardroom on April 11 and May 14, 2007 and in the Boardroom of Miller Thomson LLP (Vancouver) Barristers & Solicitors, on May 1 and 7, 2007. At the end of the evidentiary portion of the hearing, the Panel called for written argument from the parties and set appropriate dates. Following submission of the written argument on behalf of the Association the Panel asked Mr. Hunter for a further submission and amended the deadlines for submissions and submissions in response, accordingly.

## THE HEARING PROCESS

4 The two charges against Dr. Stromotich which the Panel was directed to adjudicate on were as follows:

1. *“That contrary to the Act, you have demonstrated unprofessional conduct by your failure to provide the Association’s Investigation Committee’s with 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 20, 2006, as required by section 30(4) of the Act, and*
2. *Contrary to the Act, you have demonstrated unprofessional conduct by your e-mail messages, on September 19 and/or 20, 2006, to employees of the BC Ministry of Transportation (“Ministry”) questioning the competency of another employee of the Ministry.”*

5 At the opening of the inquiry, Dr. Stromotich challenged the jurisdiction of the Panel. Dr. Stromotich raised two points with respect to the Panel; first that the Panel was not knowledgeable of the law and second, that the Panel did not have the technical competency to hear the case. Dr. Stromotich also challenged the competency of Counsel for the Association.

6 The Panel ruled that it was properly appointed under the **Act** which gives the Association the power to appoint such panels, that it was properly constituted and that there was no jurisdiction impediment to its ability to adjudicate the charges. With respect to the knowledge of the law, the Panel did have independent legal counsel available to advise it on questions of law and further, it is not expected that a Panel of this type have a broad knowledge of the law. On the question of technical competency, the role of this Panel is to make its decision based on the evidence that is put before it and not to rely on its particular technical expertise. Finally, with respect to Dr. Stromotich's challenge to the competency of counsel for the Association, the Panel ruled that this did not have any bearing on the Panel's jurisdiction.

7 Before Mr. Hunter began to present his evidence on the first day of the hearing Dr. Stromotich made a submission requesting copies of all past Association discipline cases and asked that the inquiry be adjourned until he has had an opportunity to review the documents. The Panel ruled that it would proceed with the inquiry and it arranged that Mr. Hunter's copy of the published discipline cases would be made available to Dr. Stromotich for his inspection at the Association's offices at a time before the next sitting date. We were advised that Dr. Stromotich did not take up this offer.

8 During the course of the inquiry Dr. Stromotich absented himself on three separate occasions; in the late afternoon of April 11, in the morning of May 7 and in the afternoon of May 14. As a result of his absence on May 7, he was not present for the evidence in chief of Mr. Patrick Livolsi or Mr. Geoff Thiele and did not, of course, cross-examine those witnesses.

9 Near the end of day 2, May 1, Dr. Stromotich left the inquiry before the inquiry had been adjourned for the day and was not present when Mr. Galambos said that he had not expected to be required for the third day of the hearing on May 7 and had made a commitment for a meeting where his attendance was critical. The Panel agreed to stand Mr. Galambos down and allow Mr. Hunter to call additional witnesses on the next scheduled hearing date, which was May 7, and to have Mr. Galambos recalled on May 14.

10 At the beginning of day 3, May 7, 2007, Dr. Stromotich made a submission to the Panel requesting that the inquiry not proceed until he had completed his cross-examination of Mr. Galambos. To support his submission he introduced two documents into evidence:

Exhibit 14. Letter from Mr. Hunter to Dr. Stromotich, March 9, 2007

Exhibit 15. Letter from Mr. Hunter to Dr. Stromotich, May 20, 2007 with annotations by Dr. Stromotich

11 In Exhibit 15 Dr. Stromotich states:

*"... Mr. Hunter came up with the ruse that his client Mr. Allan Galambos, the complainant, could not be available for the continuation of his cross-examination."*

and he goes on to state:

*"...It can be reasonably concluded that Mr. Hunter asked Mr. Martin to take the Panel out for a time, and that he would advise Mr. Galambos that they would implement the Post-it Note play and step him down and bring Patrick in as requested."*

12 The Panel found no evidence to support these and other statements in Dr. Stromotich's argument and accepted the evidence given at the end of day 2 believing that Mr. Galambos' business commitments were legitimate. Exhibit 14 is the stipulated order that was offered to Dr. Stromotich as an alternative to this inquiry and it contained nothing that the Panel found relevant to the question of proceeding with other witnesses before Dr. Stromotich had finished his cross-examination of Mr. Galambos.

13 The Panel ruled that the hearing would continue with the Association's other witnesses and that Mr. Galambos would be recalled on May 14. Dr. Stromotich left the hearing knowing that it would continue in his absence. Before Dr. Stromotich left the hearing he stated:

*"I just wanted to say that I'm not abandoning my defense of the allegations of Mr. Galambos. I'm just allowing you to do whatever you want to do in the interim and I understand you have two witnesses but I will be back when the hearing reconvenes on Monday to – and I presume that Mr. Galambos will be taking the witness stand again."*

14 On the final day of the hearing, May 14, the Panel heard a submission from the Association requesting that the Panel limit further cross examination of the Association's witness, Mr. Galambos, to one additional hour. Mr. Hunter supported that application with various court decisions and pointed out that Mr. Galambos had already been questioned for 1 and ½ days by Dr. Stromotich in cross examination.

15 Dr. Stromotich opposed any limitation and referred to a Supreme Court of Canada decision in **Krieger v. Law Society of Alberta** and a publication titled "**Natural Justice in Canada**" by W. Wesley Pue and entered these two documents into evidence as Exhibits 37 & 38.

16 After a considered review of the arguments and referenced court decisions and after hearing from Dr. Stromotich that he only needed an additional 1 ½ hours to complete his cross examination, the Panel ruled that further cross examination of the witness by Dr. Stromotich would be limited to an additional 1 and ½ hours. As a result, Dr. Stromotich concluded his cross-examination within the allotted time.

17 On the final day of the hearing, May 14, Mr. Hunter called Dr. Stromotich as a witness for the Association. Dr Stromotich had been served with a subpoena by the Association earlier that same day. However, Dr. Stromotich refused to be called as a witness and walked out of the hearing and was absent until the evidentiary portion of the hearing concluded.

18 Dr. Stromotich did not present any evidence in his own defense by giving evidence himself or by calling any witnesses.

#### **READING OF THE CHARGE**

19 After the Panel ruled against Dr. Stromotich on his jurisdiction objections on April 11, it called on Mr. Hunter to present the case for the Association. Mr. Hunter then read out the charges as presented in the Notice of inquiry dated the 26th day of February, 2007 (Exhibit 1, Tab 1). In response Dr. Stromotich denied the charges.

## BURDEN AND STANDARD OF PROOF

20 Mr. Hunter in his opening provided a summary of the intended evidence and advised the Panel with respect to the burden of proof, which is always upon the Association, and the standard of proof that the Panel must apply in reaching its decision in the matters before it.

21 Mr. Hunter 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...”*

22 The Panel accepts that the burden of proof is always upon the Association and has applied to the evidence in this case the above stated standard of proof.

## THE EVIDENCE

23 Mr. Hunter entered into evidence a cirlox binder:

- Exhibit 1. A cirlox binder (marked Exhibit 1) containing four tabs as follows:
- the Notice of inquiry
  - the Affidavit of Service sworn by Catrina L. McManus on March 30, 2007;
  - the Engineers and Geoscientists Act; and
  - the Bylaws of the Association

24 Mr. Hunter called Mr. Allan Galambos, P.Eng. as a witness and entered the following into evidence:

- Exhibit 2. Copy of article from North Shore News, September 10, 2006
- Exhibit 3. E-mail string ending September 19, 2006 from Dr. Stromotich to Mr. Livolsi; attached sketch
- Exhibit 4. Copy of sketch with notation, “Typical location of fatigue crack”
- Exhibit 5. E-mail from Mr. Galambos to APEGBC, September 20, 2006; attached e-mail from Dr. Stromotich to John Dyble

25 Mr. Galambos, an Engineer and member of the Association, gave evidence on the exchange of e-mails with Dr. Stromotich (Exhibit 3 & 4) which ultimately led to his complaint to the Association (Exhibit 5) and the Association’s charge of unprofessional conduct against Dr. Stromotich (charge 2). The e-mails which lead to Mr. Galambos’ complaint to the Association are those dated September 18, 19 and 20, 2006. They began with Dr. Stromotich’s request for information on September 18 at 11:59 AM (Exhibit 3) and culminated in an e-mail to Mr. John Dyble P.Eng., Deputy Minister of the Ministry of Transportation (Exhibit 5). The e-mail string contains the following statements by Dr. Stromotich.

26 The e-mail from Dr. Stromotich to Mr. Galambos at 8:49 AM on September 19 states:

*“Would it be fair to say, that the longest stringer with stress cracks is more than 60 feet long? Would it be fair to say, that the longest stringer with stress cracks is more than 100 feet long?”*

*If you don’t know the answer without reference to drawings then you are obviously not on top of the problem.”*

27 The e-mail to Mr. Galambos at 4:09 PM on September 19 states:

*“Please advise the name of your immediate supervisor.*

*I understand you are taking the position that you are not competent to answer the questions I put to you.”*

28 The e-mail sent at 5:06 PM on September 19 to Mr. Galambos’ supervisor, Patrick Livolsi, P.Eng. states:

*“It concerns me that Mr. Galambos PEng is unable to answer rudimentary questions on structural problems on the Second Narrows Bridge.*

*Please advise are you professionally qualified to answer questions related to the stress cracks on the stringers --- specifically the length, depth and flange width of the longest stringers effected?”*

29 The e-mail sent to Mr. John Dyble, P.Eng., Mr. Galambos’ superior, on September 20 at 8:01 AM states:

*“It concerns me that Mr. Galambos PEng Manager of Structural Engineering is unable to answer rudimentary questions on structural problems on the Second Narrows bridge, and his superiors are not professionally qualified.*

*Please advise the length, depth and flange width of the longest stringers that show stress cracks?*

*Undoubtedly the stress cracks are caused by heavy truck traffic on the bridge, specifically the 70 ton, 30-wheel trucks.*

*The public interest requires that you immediately respond to these questions of threat to public safety.””*

30 Mr. Galambos testified that he filed a complaint with the Association against Dr. Stromotich in an e-mail to Ms. Lina Bowser dated September 20, 2006, Exhibit 5. The text of this e-mail is as follows:



*“Dear Sir or Madame:*

*I wish to lodge a formal complaint against Dr. Frank Stromotich, P. Eng., registered with APEGBC. I offer as evidence the email chain below, which has culminated today with an email from Dr. Stromotich to the Assistant Deputy Minister of the Ministry of Transportation (copied, calling into question my professional competency. I believe I have acted reasonably in this matter, offering Dr. Stromotich access to our drawings for the information he requested as well as initial sketches.*

*Should Dr. Stromotich choose to offer a complete and unconditional apology by email, copying all those currently included in this email, I will consider withdrawing my complaint.”*

31 Mr. Galambos reiterated his complaint in his testimony before the Panel and also testified that he did not receive an apology from Dr. Stromotich.

32 During cross-examination of Mr. Galambos, Dr. Stromotich entered the following documents into evidence:

- Exhibit 6. E-mail string ending September 20, 2006 from Mr. Galambos to APEGBC
- Exhibit 7. Copy of Post-it note by Mr. Galambos, “Bring Patrick in?”
- Exhibit 8. Copy of printout from cbc.ca, September 6, 2006
- Exhibit 9. E-mail from Don Kennedy to Frank Stromotich, April 19, 2007
- Exhibit 10. E-mail string ending April 16, 2007 from Mr. Kennedy to Dr. Stromotich
- Exhibit 11. Copy of photograph
- Exhibit 12. Copy of photograph
- Exhibit 13. Copy of audio CD of CBC Radio interview with Mr. Galambos, September 6, 2006

33 Due to Mr. Galambos’ prior commitment for May 7 he was stood down as a witness at the end the day 2, May 1, and was not recalled until the fourth day of the inquiry, May 14, 2007, when his cross-examination by Dr. Stromotich continued. Dr. Stromotich entered the following documents into evidence:

- Exhibit 39. E-mail from Peter Milburn to Dr. Stromotich, December 8, 2006, copied to Mr. Galambos
- Exhibit 40. E-mail chain ending September 6, 2006 from Mike Long to Allan Galambos
- Exhibit 41. Copies of two photographs
- Exhibit 42. Video DVD of CBC TV interview, September 6, 2006

34 A number of times during the cross-examination of Mr. Galambos, Mr. Hunter objected to technical questions relating to fatigue cracks<sup>1</sup> in the stringers of the Ironworkers Memorial Second Narrows Bridge (“the bridge”) and to questions related to the technical competency of Mr. Galambos. Mr. Hunter argued that neither line of questioning was relevant to the two charges against Dr. Stromotich.

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<sup>1</sup> During the hearing there was much made of the description of the cracks as “fatigue cracks” or “stress cracks”, but the evidence was that Mr. Galambos consistently referred to them as “fatigue cracks” although others, including Dr.

35 Dr. Stromotich's argument with respect to the relevancy of these lines of questioning was difficult to follow, but the Panel concluded that Dr. Stromotich's position was that Mr. Galambos' technical competency was fundamental to his case, that his comments on Mr. Galambos' competency were accurate, and that technical evidence on the safety of the bridge was required to understand Mr. Galambos' technical competency. The Panel was not convinced that the questioning was relevant, but did take into consideration the fact that Dr. Stromotich was representing himself at the inquiry and gave him wide latitude to pursue these questions. However, on a number of occasions the questions were repetitive or clearly irrelevant and the Panel instructed Dr. Stromotich to move on to other questions.

36 Dr. Stromotich attempted to demonstrate that Mr. Galambos was not competent and cross-examined Mr. Galambos on what Dr. Stromotich said were a number of inconsistencies in the statements Mr. Galambos made to the media. In particular, he pursued the following points in his cross examination:

- At one point Mr. Galambos said that the fatigue cracks were 2 cm long and at other times he said that they were "...only about a cm long".
- During the CBC radio interview (Exhibit 13) Mr. Galambos referred to "movement" of the cracks which he later changed to "growth".
- The limited success of the experiment designed by the Ministry's consultants to remove some of the bolts somehow reflected negatively on Mr. Galambos' competency since his department oversaw the consulting contract.

37 Dr. Stromotich repeatedly asked Mr. Galambos how many cracks were in the bridge and Mr. Galambos refused to answer stating that the Minister had told him that no further information on the fatigue cracks would be given to Dr. Stromotich. The Panel was not asked to direct Mr. Galambos to answer the question. In any event, it was the Panel's opinion that the answer would not have been relevant to the inquiry.

38 Mr. Hunter called Mr. Patrick Livolsi, P.Eng. as his second witness and, as noted above, Dr. Stromotich was not present for Mr. Livolsi's testimony. His testimony mainly concerned his receipt of the email from Dr. Stromotich and Mr. Dyble's reply. The following document was entered into evidence:

Exhibit 16. E-mail from John Dyble to Dr. Stromotich, November 23, 2006

39 Mr. Hunter then called Mr. Geoff Thiele as a witness and entered the following into evidence:

Exhibit 17. Letter from Mr. Thiele to Dr. Stromotich, September 26, 2006

Exhibit 18. Letter from Mr. Thiele to Dr. Stromotich, October 18, 2006; attached copy of envelope

Exhibit 19. E-mail string ending October 23, 2006 from Mr. Thiele to Ms. Mitovic

Exhibit 20. E-mail from Ms. Mitovic to Dr. Stromotich, October 24, 2006

Exhibit 21. E-mail string ending October 30, 2006 from Mr. Thiele to Ms. Mitovic

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Stromotich, referred to them as "stress cracks". It is the opinion of the Panel, based on the evidence, that the correct terminology should be "fatigue cracks".

- Exhibit 22. E-mail string ending November 1, 2006 at 10:37 AM from Dr. Stromotich to Mr. Rettie
- Exhibit 23. E-mail string ending November 1, 2006 at 12:00 PM from Dr. Stromotich to Mr. Rettie
- Exhibit 24. E-mail string ending November 2, 2006 from Mr. Thiele to Ms. Mitovic
- Exhibit 25. Memo from Mr. Thiele to Mr. Rettie, November 15, 2006
- Exhibit 26. Memo from Mr. Rettie to the Investigations Committee, November 16, 2006
- Exhibit 27. Amended minutes of the Investigation Committee e-mail meeting, November 16, 2006
- Exhibit 28. Letter from Mr. Thiele to Dr. Stromotich, November 27, 2006
- Exhibit 29. E-mail from Dr. Stromotich to Mr. Rettie, December 3, 2006; with attachments
- Exhibit 30. Memo from Mr. Thiele to the Investigations Committee, December 5, 2006
- Exhibit 31. Minutes of Investigations Committee meeting, December 7, 2006
- Exhibit 32. Letter from Mr. Thiele to Dr. Stromotich, December 20, 2006
- Exhibit 33. E-mail from Ms. Mitovic to Dr. Stromotich, December 20, 2006; attached letter to Dr. Stromotich
- Exhibit 34. E-mail from Ms. Mitovic to Dr. Stromotich, January 16, 2007
- Exhibit 35. Memo from Mr. Thiele to Investigations Committee, January 17, 2007 with attached documents under 4 tabs as follows:
  - Tab A Letter from Mr. Thiele to Dr. Stromotich, December 20, 2006
  - Tab B E-mail from Dr. Stromotich to Ms. Mitovic acknowledging receipt, January 18, 2007
  - Tab C E-mail from Ms. Mitovic to Dr. Stromotich, January 16, 2007
  - Tab D E-mail from Dr. Stromotich to Mr. Rettie, January 17, 2007 at 9:28 AM; with attached annotated copy of the December 20, 2006 letter (Exhibit 32); and a second e-mail from Dr. Stromotich to Mr. Rettie, January 17, 2007 at 12:36 PM with attached annotated copy of the December 20, 2006 letter (Exhibit 32) that was revised by Dr. Stromotich to correct some errors
- Exhibit 36. Draft minutes of Investigations Committee meeting, January 25, 2007

**40** The evidence provided by Mr. Thiele was the only evidence presented which dealt with the first charge against Dr. Stromotich, that of the allegation of unprofessional conduct by not responding to requests for information from the Investigations Committee. Dr. Stromotich was not present to hear the evidence or to cross examine Mr. Thiele. The gist of Mr. Thiele's evidence was that Dr. Stromotich did not adequately respond to requests for information concerning Mr. Galambos' complaint. Exhibit 29 is an e-mail from Dr. Stromotich to Mr. Rettie, P.Eng., Director, Professional Practice and Ethics, with an annotated copy of Mr. Thiele's November 27, 2006 letter attached. The annotation to this letter includes the following:

*"Frank Stromotich, PhD PEng, denies each and every allegation and puts the complainant to burden of proof on each and every claim"*

41 Exhibit 35 at Tab D contains what may be a response to the December 20, 2006 letter from Mr. Thiele. It is the December 20 letter that is the subject of first charge against Dr. Stromotich and the Panel asked Mr. Hunter to address the question as to why this reply is adequate or inadequate in meeting the requirements under section 30(4) of the **Act** when he made his final submission.

## WRITTEN SUBMISSIONS

42 Mr. Hunter's submission titled "Closing Submission" was provided to Dr. Stromotich with a covering letter dated May 18, 2007 and sent to the Panel. The Panel wrote to Mr. Hunter on May 20, 2007 requesting a further closing submission with additional argument and precedents and setting a new schedule for final submissions. Mr. Hunter made a second submission titled "Further Closing Submission" on May 25, 2007. Dr. Stromotich's only responses to Mr. Hunter's submissions consisted of an annotated copy of Mr. Hunter's "Further Closing Submission" dated May 25, 2007 and a covering e-mail addressed to the Panel Chair, and dated June 8, 2007.

43 Mr. Hunter, in his submission dated May 25, 2007, reviewed Dr. Stromotich's reply to Mr. Thiele's December 20, 2006 letter, Exhibit 32, point by point to compare Dr. Stromotich's responses to the questions asked and for the purpose of arguing that the questions put to Dr. Stromotich in Mr. Thiele's December 20, 2006 letter were not answered. He concluded:

*"In conclusion, I submit that on a fair reading of Dr. Stromotich's January 17, 2007 e-mail, Exhibit 35 Tab D, there are no responses provided to the Investigation Committee's questions as set out in Exhibit 32."*

44 Dr. Stromotich's final submission did not contain anything to refute Mr. Hunter's conclusion.

45 In the covering e-mail to his response to the Closing Submission Dr. Stromotich stated:

*"Mr. Galambos PEng put his competency in question when he brought a complaint to the APEGBC in an attempt to cover up that he was not on top of the problem of the threat to public safety of the continuing erosion of the structural integrity of the Second Narrows bridge from stress cracks at the cope in the I beams that comprise the stringer which are part of the composite deck.*

*The interviews Mr. Galambos gave to the TV Networks and CBC Radio – and reports in the Vancouver Sun, etc. which Mr. Galambos refused to produce, even though the law requires him to produce them, can only be interpreted as Mr. Galambos' last ditch attempt to cover up.*

*I swore an affidavit and had it available for submission to the panel on 11 Apr 07, on opening day. I will scan it into Acrobat and forward it to the panel, et al."*

46 There was no evidence presented during the hearing to support Dr. Stromotich's allegation of cover up although Dr. Stromotich did make such allegations during the hearing. Mr. Galambos testified that he did not have the television reports in his possession, and in fact he had not even seen them. The affidavit Dr. Stromotich referred to was not submitted to the Panel during the hearing and was not submitted to the Panel following Dr. Stromotich's June 8, 2007 closing submission, as he said he would do in the above e-mail.

47 Dr. Stromotich's closing submission includes a number of comments as annotations to Mr. Hunter's "Further Closing Submission"; however, none of them provide any further argument to refute the second allegation of unprofessional conduct

## **DECISION OF THE PANEL**

48 Dr. Stromotich demonstrated contempt for the Panel by his failure to attend as a witness for the Association, even though he had been properly served with a subpoena that was properly prepared and signed by a member of the Discipline Committee, as required by the clause 32(6) of the **Act**. In addition, Dr. Stromotich, throughout the hearing, called into question the professional integrity and competence of the Panel, Mr. Hunter, Ms. Sahota, Mr. Martin and even the Court Reporter, Ms. Mulek. He did this verbally during the inquiry proceedings and in writing while the inquiry was in recess.

49 Despite Dr. Stromotich's failure to comply with the Panel's subpoena, the style of his cross examination of the witness, Mr. Galambos, and his comments to and about the Panel and other participants, the Panel wishes to make it clear that it was not influenced by these actions and ruled solely on evidence put before it that was relevant to the two charges against Dr. Stromotich.

50 After full consideration of the evidence the Panel unanimously concluded that Dr. Stromotich is guilty of both of the charges contained in the Notice of Inquiry.

### **Charge 1**

51 Dr. Stromotich is a member of the Association and was advised by the Association of the complaint against him and it is clear that Dr. Stromotich was informed of the complaint.

52 It is clear that Dr. Stromotich received the requests from the Investigations Committee for information and records and that he was advised of his obligation under the **Act** to provide any information and records in his possession. Section 30(4) of the **Act** is mandatory. A member must provide the information or documents requested. In response to the first request from the Investigations Committee, Mr. Thiele's September 26, 2006 letter (Exhibit 17), Dr. Stromotich denied the charges, but did not provide any information to help the Investigations Committee examine if there were reasonable and probable grounds to believe that Dr. Stromotich was guilty of unprofessional conduct as the Committee was required to do under the **Act**. The Investigations Committee's made a further request for information from Dr. Stromotich asking 19 specific questions as set out in Mr. Thiele's December 20, 2006 letter (Exhibit 32). In response, Dr. Stromotich wrote an e-mail to Mr. Rettie on January 17, 2006 (Exhibit 35, tab D).

53 The Panel examined the evidence closely and concluded that even though the December 20 letter contained numbered requests for information and the January 17 reply contains a numbered list of statements, there is no correlation between the numbering, or more importantly in the content. It is clear to the Panel that Dr. Stromotich did not respond in any meaningful way to the questions asked by the Investigations Committee in Mr. Thiele's December 20 letter. Therefore, the Panel concluded that Dr. Stromotich's responses to the Investigations Committee failed to comply with section 30(4) of the Act and he is, therefore, guilty of the unprofessional conduct alleged in charge 1.

## **Charge 2**

54 Dr. Stromotich is a member of the Association and Mr. Galambos is also a member of the Association. They exchanged e-mails on September 18 and 19, 2006 regarding the fatigue cracks on the Ironworkers Memorial Second Narrows Bridge. Mr. Galambos was courteous in his response to Dr. Stromotich and provided information to Dr. Stromotich and offered to provide Dr. Stromotich with an opportunity to view the bridge drawings at the Ministry's office. This offer was not taken up by Dr. Stromotich. On September 19 and 20, Dr. Stromotich sent e-mails containing statements that questioned the competency of Mr. Galambos. The e-mail which culminated in the complaint by Mr. Galambos was sent by Dr. Stromotich to the Deputy Minister, Mr. John Dyle, P.Eng., and contained the following, in part:

*"It concerns me that Mr. Galambos PEng Manager of Structural Engineering is unable to answer rudimentary questions on structural problems on the Second Narrows bridge"*

55 Although in these e-mails Dr. Stromotich did not directly accuse Mr. Galambos of being incompetent his statements lead to the inescapable conclusion that he was calling into question the competence of Mr. Galambos.

56 Dr. Stromotich challenged the competency of Mr. Galambos during his cross examination of the witness. However, Mr. Galambos' competency was not the subject of the charge. Rather, the issue was whether Dr. Stromotich breached the Code of Ethics by calling into question Mr. Galambos' competency in the manner he did. In any event, the Panel found no evidence that Mr. Galambos was incompetent in any way.

57 The reputation of any engineer or geoscientist is of extreme importance and its erosion may impact a practitioner's ability to earn a living. In the case of engineers or geoscientists who are spokespeople to the public on matters of public safety, such as is the case with Mr. Galambos, an erosion of the engineer's or geoscientist's technical reputation impacts his or her credibility with the public.

58 By-Law 14 of the Association is a Code of Ethics to which all members must comply. The Code of Ethics contains the following:

*"Professional Engineers and Geoscientists shall act at all times with fairness, courtesy and good faith to their associates, employers, employees and clients, and with fidelity to the public needs..."*

*... (7) conduct themselves with fairness, courtesy and good faith towards clients, colleagues and others, give credit where credit is due and accept, as well as give, honest and fair professional comment;”*

59 Mr. Hunter in his closing submission at paragraph 25 and 27 makes two important points, which the Panel accepts and adopts as its own.

*“The Association does not question the right of Dr. Stromotich to correspond with public officials and question their actions. That is the right of every citizen. But Dr. Stromotich, as a member of the Association, has a professional obligation to conduct any such exchange, including one with another member of the Association, with fairness, courtesy and in good faith, in accordance with the Association’s Code of Ethics. If he does not, that is unprofessional conduct.*

*However, it is the Association’s submission that Dr. Stromotich could not call into question the competency of Mr. Galambos because Mr. Galambos would not answer certain questions and instead suggested that Dr. Stromotich review the Bridge drawings and draw his own conclusions. To suggest to Mr. Galambos’ superiors that he was unable to answer rudimentary questions on the structural issues related to the Bridge was uncalled for and unprofessional. Dr. Stromotich had no basis for such an unprofessional comment.”*

60 The Panel concluded that Dr. Stromotich’s challenge to Mr. Galambos’s technical competence is a violation of the above referenced section of the Association’s Code of Ethics and therefore he is guilty of the unprofessional conduct alleged in charge 2.

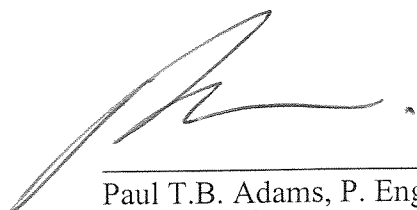
## CONCLUSION

61 The Panel has concluded that Dr. Stromotich is guilty of both of the charges set out in the Notice of Inquiry and orders that submissions on penalty be made in writing in accordance with the following schedule:

- July 13, 2007** Submission on penalty by the Association
- July 27, 2007** Submission by Dr. Stromotich in response to the Association's submission
- August 3, 2007** Submission by the Association in reply to the submission from Dr. Stromotich

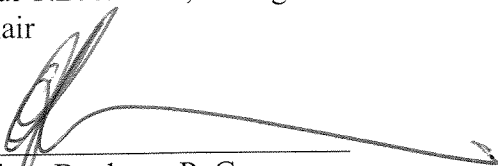
Dated this 3<sup>rd</sup> day of July, 2007.

Discipline Committee Panel:



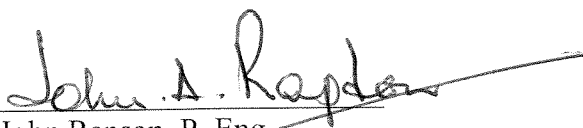
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Paul T.B. Adams, P. Eng.  
Chair



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Oliver Bonham, P. Geo.,  
Member



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John Rapson, P. Eng.  
Member



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

**- and -**

**IN THE MATTER OF  
DR. FRANK LOUIS STROMOTICH, P. ENG.**

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**DISCIPLINE COMMITTEE ORDER ON PENALTY AND COSTS**

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**Discipline Committee Panel:**

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

**Independent Counsel for the Panel:**

David Martin

**Counsel for Association:**

Robert Hunter and Sonia Sahota, P.Eng.

**For the member:**

Dr. Frank Louis Stromotich, P.Eng.  
representing himself

## 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, RSBC 1996 c. 116 as amended (the “Act”) held an inquiry to examine two charges against Dr. Frank Louis Stromotich, P.Eng.

2 Dr. Stromotich was unrepresented throughout the hearing although the Panel encouraged him to have a lawyer.

3 The Panel rendered its decision on the charges against Dr. Stromotich on July 3, 2007 finding Dr. Stromotich guilty of unprofessional conduct with respect to the two charges that were before it. The two charges against Dr. Stromotich which the Panel was directed to adjudicate on were as follows:

1. *“That contrary to the Act, you have demonstrated unprofessional conduct by your failure to provide the Association’s Investigation Committee’s with 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 20, 2006, as required by section 30(4) of the Act, and*
2. *Contrary to the Act, you have demonstrated unprofessional conduct by your e-mail messages, on September 19 and/or 20, 2006, to employees of the BC Ministry of Transportation (“Ministry”) questioning the competency of another employee of the Ministry.”*

4 The Panel called for written submissions on the issue of Penalty and Costs, and laid out a time table for when such submissions were to be received.

5 The Association’s submission was received on July 11, 2007.

6 Dr. Stromotich made a number of requests for information relating to costs. The Panel agreed with his request to be given the back up information on the legal fees and other costs that were referenced by Mr. Hunter (\$52,419.19) in his submission. That was provided to Dr. Stromotich by Mr. Hunter on July 23, 2007. However, the Panel denied Dr. Stromotich’s request for similar accounting information on a prior case (that of Dr. Perry) on the basis that the costs of that case had no relevance to the case before us.

7 In its ruling on the costs issue the Panel extended the time for Dr. Stromotich’s reply submission on penalty to July 30, 2007. On July 31, Dr. Stromotich asked for “another week” to complete his submission and this was granted and ordered due on August 7. On August 10, the Panel advised Dr. Stromotich that it would accept his submission up to 5:00 p.m. on August 13.

8 Despite the extensions the Panel never received a submission on Penalty and Costs, from Dr. Stromotich.

## THE ASSOCIATION'S SUBMISSION

9 On July 11, 2007 the Association made a submission on Penalty and Costs which concludes in paragraphs 42 and 43 with the following:

*"42. For the foregoing reasons, the Association submits that the suggested penalty is appropriate in all the circumstances:*

- (a) Dr. Stromotich's life membership in the Association be suspended for 3 months commencing from the date of the Panel's order on penalty;*
- (b) During the term of his suspension Dr. Stromotich prepare an unequivocal apology letter to Mr. Galambos, in a form approved by the Association's Registrar, and send the approved letter of apology to all those who received Dr. Stromotich's offending e-mails, Mr. Galambos and the Association;*
- (c) If Dr. Stromotich complies with sub paragraph (b) above within 2 weeks of the date of the Panel's order on penalty, the period of suspension set out in sub paragraph (a) above be reduced to 1 month;*
- (d) During the term of his suspension, Dr. Stromotich, at his expense, write and pass the Association's Professional Practice Examination with a score of 75% or better;*
- (e) Dr. Stromotich pay a fine in the amount of \$15,000 to the Association within 4 weeks of the date of the Panel's order on penalty; and*
- (f) If Dr. Stromotich fails to comply with any of sub paragraphs (b), (d) or (e) above, his membership will remain suspended until those conditions have been satisfied.*

*43. In all the circumstances, the Association submits that the Panel should award costs in favour of the Association. The Association's reasonable legal fees and disbursements total \$52,419.19. The Association submits that it is up to the Panel to exercise its discretion and determine the reasonableness of the legal fees and disbursements and the appropriate level of indemnity to the Association. The Association submits that the level of indemnity awarded to the Association should be 100% of the reasonable legal fees and disbursements as determined by the Panel. Further, whatever the costs awarded against Dr. Stromotich, the payment of those costs should be ordered to be paid within 4 weeks of the Panel's order on penalty and if they are not so paid that Dr. Stromotich's membership in the Association be suspended until those costs are paid to the Association, pursuant to the Act section 35(5)."*

## DR. STROMOTICH'S SUBMISSION

10 As noted above Dr. Stromotich made no submission on Penalty and Costs in response to the Association's submission despite several extensions being granted by the Panel.

## DECISION OF THE PANEL

11 If the Panel finds a member guilty of unprofessional conduct, section 33(2) of the Act defines the penalty that a Panel may order, as follows:

- (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 revoke 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.*

12 Section 35(1) and 35(3) of the **Act** provides for the Panel to order costs as follows:

- (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.*
- (3) *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.*

13 In considering the appropriate penalty, the Panel has been guided by the following principles:

1. protection of the public
2. specific deterrence to Dr. Stromotich from committing further similar acts of unprofessional conduct;
3. general deterrence to other members; and
4. Dr. Stromotich's rehabilitation.

14 The Association's primary responsibility is to protect and safeguard the public interest and to regulate the practice of professional engineering and professional geoscience in the public interest. The **Act** provides for a complaints and investigation process which plays an important role in discharging the Association's duty to protect the public.

15 Section 30(4) of the **Act** compels a member that is being investigated to provide the Investigation Committee with information and records. A member's refusal to respond to the Investigation Committee's requests goes to the very root of the Association's ability to fulfill its mandate. A member cannot remain silent or fail to provide meaningful information.

16 Unless a member who has been found liable for failing to respond to the Investigation Committee is properly penalized, the complaints and investigation portion of the **Act** would be circumvented, and the public interest compromised.

**17** The purpose of the Code of Ethics is to define the minimum level of conduct for the Association's members. The Code of Ethics is a standard against which the conduct of professional engineers and geoscientists can be assessed and if the member fails to meet that standard he or she is guilty of unprofessional conduct.

**18** A member's failure to conduct his or herself with fairness, courtesy and good faith towards his or her colleagues undermines the integrity of the Profession and diminishes the Profession as a whole in the eyes of the public.

**19** The penalty in this case should have the objective of securing Dr. Stromotich's compliance with the **Act** and assuring Dr. Stromotich's observance of the Code of Ethics.

**20** Throughout the hearing, Dr. Stromotich continued his challenge of Mr. Galambos' competence. Instead of advancing his own defence, Dr. Stromotich persistently sought, albeit unsuccessfully, to prove Mr. Galambos' alleged incompetence. Dr. Stromotich neither took the stand to give evidence nor did he call expert evidence to establish his claim that Mr. Galambos is not competent. Dr. Stromotich has therefore exacerbated the original unprofessional conduct with his conduct during the hearing and by using the hearing as an opportunity to attack Mr. Galambos' competency without establishing any evidentiary basis for that attack.

**21** Even if Dr. Stromotich had established his assertion of Mr. Galambos' incompetence, to the satisfaction of the Panel, this would not be a defence to the allegation against Dr. Stromotich of unprofessional conduct. The allegation addresses Dr. Stromotich's communications with employees of the B.C. Ministry of Transportation regarding Mr. Galambos, not Mr. Galambos' competency.

**22** The Panel does not question Dr. Stromotich's right to correspond with Mr. Galambos and to question his actions, especially in matters of public safety. However, the Association's Code of Ethics does oblige Dr. Stromotich, as a member of the Association, to conduct himself during such exchanges with fairness, courtesy and good faith, and to stay within his area of competency.

**23** After considering the seriousness of both charges, the Association's submissions on penalty, the penalties imposed in past cases and the need for the penalty to be a deterrence to both Dr. Stromotich and the membership at large, the Panel orders the following penalty:

1. that Dr. Stromotich lifetime membership is to be suspended for a period of two months;
2. that Dr. Stromotich is required pay a fine of \$10,000;
3. that Dr. Stromotich is required to prepare an unequivocal letter of apology to Mr. Galambos in a form approved by the Association's Registrar; and
4. that Dr. Stromotich is required to write and pass the Association's Professional Practice Exam within two months of the date of this order.

**24** With respect to costs the Panel finds that there are no special circumstances that would warrant the Panel to depart from its normal practice of awarding costs to the Association when a member has been found guilty of some or all of the charges.


25 This inquiry was necessitated solely by Dr. Stromotich's failure to respond to the Investigation Committee's requests and his unwillingness to admit his guilt in failing to respond. At the hearing, Dr. Stromotich conducted himself in a manner that was on numerous occasions disrespectful and belligerent towards the Panel, Mr. Galambos and others. Furthermore, Dr. Stromotich used the hearing as a platform to advance his claim against Mr. Galambos' professional competence instead of providing any considered or meaningful defence to the charges against him.

26 After due consideration of the arguments put forward by the Association and the actions of Dr. Stromotich during the hearing, the Panel orders that Dr. Stromotich be required to pay 80% of the Association's costs; that being 80% of \$52,419.19 or \$41,935.35. Although the costs are on the high side, they are consistent with the time it took to complete the hearing - the length of which was primarily caused by Dr. Stromotich's conduct throughout the hearing.

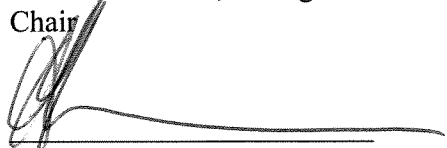
27 The Panel further orders that Dr. Stromotich's membership will remain suspended until he has complied with all aspects of this order, including providing an acceptable letter of apology, writing and passing the Professional Practice Exam and paying to the Association the full amount of the fine and costs (\$51,935.35).

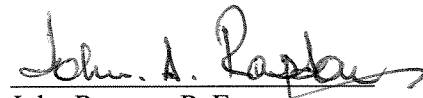
Dated this 28<sup>th</sup> day of August 2007.

Discipline Committee Panel:

  
Paul T.B. Adams, P. Eng.

Chair

  
Oliver Bonham, P. Geo.,  
Member

  
John Rapson, P. Eng.  
Member