

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

**and**

**KEVIN A. BROMLEY, P.Eng.**

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

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<b>Discipline Committee Panel:</b>	Paul Adams, P.Eng. (Chair)
	Dave Ricketts, P.Eng.
	Oliver Bonham, P.Geo.
<b>Counsel for the Panel:</b>	Eric Wredenhagen
<b>Counsel for Association:</b>	Robert Hunter
<b>Member:</b>	Kevin A. Bromley, P.Eng.
<b>Mr. Bromley was not represented by counsel</b>	

## INTRODUCTION

- [1] A Discipline Committee Panel (the “Panel”) of the Association of Professional Engineers and Geoscientists of British Columbia (the “Association”), acting under the authority of the *Engineers and Geoscientists Act*, RSBC 1996 c. 116 as amended (the “Act”), held an Inquiry on November 18 and 19, 2014 to examine alleged contraventions of the Act and of the Association’s Code of Ethics by Kevin A. Bromley, P.Eng.
- [2] The Panel issued a written determination on December 29, 2015. In paragraph 110 and 111 the Panel rendered its decision as follows:

*“110 After a careful review of the evidence, and of the arguments made by the Association and by Mr. Bromley, the Panel has determined that the Association has proven the following allegations on a balance of probabilities, and therefore finds that Mr. Bromley demonstrated unprofessional conduct in his professional services in relation to soil relocation at each of the job sites and times named in the Notice of Inquiry, as follows:*

- 1) At ██████████ in April 2010, by failing to file a Notice of Independent Remediation with the Ministry of Environment;*
- 2) At ██████████ in September 2010, by failing to file a Notice of Independent Remediation with the Ministry of Environment;*
- 3) At ██████████ in September and October 2010, by failing to obtain a Soil Relocation Agreement to transport contaminated soil, by failing to submit soil samples for a Toxic Contaminant Leachate Procedure test, by transporting soil to an unauthorized site when he knew or ought to have known that the soil was contaminated and undertaking excavation and transportation of soil which he knew or ought to have known, was contaminated by tetrachlorethene, without monitoring the air for harmful vapours;*
- 4) At ██████████ in October 2010, by failing to file a Notice of Independent Remediation with the Ministry of Environment, by failing to obtain a Soil Relocation Agreement to transport contaminated soil, by failing to submit soil samples for a Toxic Contaminant Leachate Procedure test and by transporting soil to an unauthorized site when he knew or ought to have known that the soil was contaminated; and*
- 5) At ██████████ in October and November 2010, by failing to file a Notice of Independent Remediation with the Ministry of Environment, by failing to obtain a Soil Relocation Agreement to transport contaminated soil and by transporting soil to an unauthorized site when he knew or ought to have known that the soil was contaminated.*

*111 The Panel finds that the most egregious example of Mr. Bromley’s unprofessional conduct relates to the site at ██████████, where he blatantly ignored*

*the requirements for the safe handling of soil that was potentially harmful. By his own evidence, he did not obtain a Soil Relocation Agreement because he knew that the Ministry of Environment would not agree to the relocation of the soil to [REDACTED]*

[3] In paragraph 112 of its decision the Panel directed

*“...that the Association provide it, and Mr. Bromley, with a submission in writing as to: (1) the appropriate disciplinary action to be taken pursuant to s. 33(2) of the Act; and (2) the appropriate costs payable pursuant to s. 35 of the Act. Mr. Bromley should be given a reasonable amount of time to respond to the Association’s submission on disciplinary action and costs with a written submission of his own. Alternatively, if Mr. Bromley, following his review of the Association’s submission, requests a hearing before the Panel on disciplinary action and costs, he may make that request in writing to the Panel and the Panel will make a decision on that request.”*

[4] Counsel for the Panel, Mr. Wredenhagen, transmitted the Panel’s determination to Mr. Hunter and Mr. Bromley by email on January 2, 2015.

[5] The Association provided a written submission on disciplinary action and costs to Mr. Wredenhagen on January 14, 2015 and suggested that Mr. Bromley provide his submission to the Panel no later than January 30, 2015 or alternatively, provide a request to the Panel for an oral hearing by January 21, 2015.

[6] Mr. Wredenhagen responded the same day (January 14, 2015) by replying to Mr. Hunter and Mr. Bromley and asking Mr. Bromley to advise him (Mr. Wredenhagen) if he took issue with the dates proposed by Mr. Hunter. Mr. Wredenhagen stated to Mr. Bromley that if he did not respond, that he would wait until Monday, February 2, 2015 (the first business day after the January 30 deadline proposed by Mr. Hunter) to forward the Association’s submission to the Panel.

[7] Mr. Wredenhagen received no submission or any other communication from Mr. Bromley, and forwarded the Association’s submission to the Panel on February 2, 2015.

[8] The Panel met by telephone conference on February 13, 2015 to consider the Association’s submission and to make its determination.

## **SUBMISSION ON PENALTY**

[9] In his submission, Mr. Hunter referred the Panel to the relevant section of the Act and relevant case law for professional discipline cases. Mr. Hunter paid particular attention to the Law Society of B.C. v. Ogilvie [1999] LSBC 17 (“Ogilvie”) which sets out a non-exhaustive list of factors that may be considered by a hearing panel in determining an appropriate penalty.

[10] Section 33 (2) of the Act provides that if the Panel finds that a member has demonstrated unprofessional conduct, then the Panel may, by order, do one or more of the following:

- a) Reprimand the member, licensee or certificate holder;
- b) Impose conditions on the membership, licence or certificate of authorization of the member, licensee or certificate holder;
- c) Suspend or cancel the membership, licence or certificate of authorization of the member, licensee or certificate holder;
- d) Impose a fine, payable to the association, of not more than \$25,000 on the member, licensee or certificate holder.

[11] In *Ogilvie*, a discipline panel of the Law Society set out a non-exhaustive list of factors that may be considered by a hearing panel in determining an appropriate penalty. The decision of the Law Society is not a decision of the Court; however, the Panel agrees with Mr. Hunter that the principles are relevant and provide a useful guide to the application of penalty in this case. The Panel generally agrees with Mr. Hunter's submission with respect to the principles listed in *Ogilvie* and in particular:

### **The Nature and Gravity of the Conduct Proven**

[12] The most important obligation of the Association under the Act is to protect the public. The Panel accepts the arguments presented by the Association in their submission in paragraphs 13 through 18, as follows:

*“13. It is fundamental in the area of contaminated site remediation that the legislated procedural requirements be followed by professionals undertaking remediation work. It is that compliance with the statutory scheme which the regulator, the public and owners and occupiers of contaminated property must rely upon to ensure that public health and safety is safeguarded.*

*14. By failing to file a NIR in relation to [REDACTED], [REDACTED], and [REDACTED] and failing to seek a SRA to relocate soil from the [REDACTED], [REDACTED] and [REDACTED] sites when required by the Act, Mr. Bromley's conduct fell below the standards expected of a professional engineer.*

*15. By transporting soil he knew or ought to have known was contaminated to unauthorised sites, failing to conduct soil samples for a Toxic Contaminant Leachate Procedure test, and failing to impose adequate health and safety monitoring in circumstances where these interventions were indicated, Mr. Bromley's conduct fell well below the standards and competency expected of a professional engineer.*

*16. However, Mr. Bromley's deliberate conduct in removing contaminated soils from [REDACTED], a property that he owned, when he knew it was contrary to the regulatory scheme is among the most serious unprofessional conduct imaginable. Mr. Bromley in his letter to the Association dated January 28, 2012 (Exhibit 7 tab 3) pages 4 and 5 acknowledges:*

(a) “Subsequent to a limited Phase II ESA completed by E-Pro large portions of this site was deemed to be contaminated with VOC’s attributed to its former usage as a dry cleaner.” (page 4 last paragraph);

(b) “This idea was agreed to with a caveat; E-Pro take ownership of this land so it would be off their [Accredit Mortgage] books (per se) with them financing me a house/office to work from.” (page 5 top paragraph);

(c) “... migration was attributable to E-Pro. At this point Accredit was not terribly keen to advance E-Pro much more money... The options before me were to declare bankruptcy ... or ... attempt to clean it up as best as possible. Subsequently, the plan to ship this soil to an alternative site to facilitate the interim remediation work...” (page 5 middle paragraph);

(d) “Standard means of shipment of the VOC contaminated soil to a contaminated waste receiving facility located off of Vancouver Island is typically in trucks either via the ferries, or to a barge... E-Pro directed relocation of this soil to Accredit Mortgage’s [REDACTED] site ... in order to partially remediate this soil by knocking down the VOC contaminant concentrations to levels where they could be accepted at a facility located on Vancouver Island.” (page 5 paragraph immediately below middle of page);

(e) “... the only complaint put forth was by a local resident who was concerned that the contaminated material was being “dumped” at the [REDACTED] site. This resident was illegally entering the site while walking her dog (as many local residents do) and thus noted the smell. To the contrary to her concern, this soil was being transferred here solely on an interim basis so that disposal to a contaminated waste facility could be accomplished in a practical manner.” (page 5 last paragraph).

17. Further, as this Panel has found Mr. Bromley exhibited “egregious” unprofessional conduct at the [REDACTED] site, when he “blatantly ignored the requirements for safe handling of soil that was potentially harmful”. At the inquiry, Mr. Bromley said he knew a SRA was required but he did not apply for a SRA to relocate soil from that site because he knew it would not be granted. His evidence was that he knew there was “no site that they're [the MOE] going to approve for me to relocate that soil to”.

(Inquiry Transcript, November 18, 2014, p. 173-174) (Tab C).

18. Mr. Bromley sought to justify his conduct by the fact that he knew the Ministry of Environment would not agree to the relocation of the soil from the [REDACTED] [REDACTED] site to a site not authorized to receive it. In the Association’s submission this constitutes deliberate and deceptive conduct by a professional engineer which warrants the imposition of the most severe penalty.”

[13] The Panel found in its earlier determination that Mr. Bromley’s failure to comply with environmental and safety regulations with respect to the proper handling of contaminated

soil was unprofessional conduct and agrees with Mr. Hunter that Mr. Bromley has fallen well below the standards of professionalism expected of him, violating both the Act and Code of Ethics.

### **The Age and Experience of the Member**

[14] Mr. Bromley, with 15 years of experience in the area of contaminated site rehabilitation, should know and understand the Provincial regulations, and yet he deliberately disregarded those requirements.

### **The Impact on the Victim**

[15] The Panel agrees with Mr. Hunter that the victim in this case is public safety and that the public expect that professional engineers will follow the regulatory requirements set out in the appropriate legislation. Mr. Bromley failed to comply with the regulatory requirements for the safe handling of contaminated soils.

### **The Number of Times the Offending Conduct Occurred**

[16] The Panel determined that Mr. Bromley demonstrated unprofessional conduct in his professional services in relation to soil relocation, as described in paragraph [2] above. This unprofessional conduct was related to his work at 5 sites and included various failures to comply with regulation as described in the Panel's determination.

[17] Mr. Hunter, in his submission on penalty, states:

*“The repetitive nature of his conduct is an aggravating factor which illustrates an unwillingness to conduct his engineering practice in the manner reasonably expected of a professional engineer in the area of contaminated sites remediation.”*

### **Whether Mr. Bromley has Acknowledged the Misconduct and Taken Steps to Disclose and Redress the Wrong, and the Presence or Absence of Other Mitigating Circumstances**

[18] Mr. Hunter suggests, in paragraph 23 of his submission, that there are three aggravating factors to be considered in assessing Mr. Bromley's unprofessional conduct:

*“(a) Mr. Bromley's guilt was only determined after a hearing. Mr. Bromley made few admissions until he was forced to do so by the evidence;*

(b) *The number of instances (seven) of where Mr. Bromley demonstrated unprofessional conduct in violation of the Act in circumstances where he knew or ought to have known his legislated obligations;*

(c) *Mr. Bromley's blatant attempts to deflect responsibility for his violations of the Act onto others, such as Jim West, rather than take ownership of his own unprofessional conduct."*

[19] The Panel accepts the aggravating factors described by Mr. Hunter and Mr. Hunter's assertion that no mitigating factors were presented to the Panel, except Mr. Bromley's financial constraints in dealing with his property at [REDACTED].

### **The Possibility of Remediating or Rehabilitating Mr. Bromley**

[20] Mr. Hunter suggests that the appropriate penalty for Mr. Bromley is cancellation of his membership. In paragraph 26 of his submission Mr. Hunter states:

*"26. When making a determination on penalty, the Association submits that the prospects of rehabilitation should be given proper weight and consideration. While Mr. Bromley's lack of disciplinary record suggests that remediation and rehabilitation may be possible through the application of an appropriate penalty, the number of Mr. Bromley's violations of the Act suggest an unwillingness to follow the legislated regime for contaminated site remediation when it is not convenient to do so. This willful disregard for the requirements of the regulatory scheme for contaminated sites demands the most severe penalty, cancellation of membership, for Mr. Bromley."*

[21] The Panel does not agree that the seriousness and repetitiveness of Mr. Bromley's offences should offset the opportunity for the rehabilitation of Mr. Bromley and therefore, does not accept that Mr. Bromley's membership should be cancelled.

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

[22] The Panel agrees that the penalty must be significant enough to act as both a specific deterrent for Mr. Bromley and as a general deterrent.

### **Maintaining Public Confidence in the Integrity of the Profession to other members of the profession.**

[23] Mr. Hunter, in paragraph 30 of his submission, states:

*"30. The Association submits that the Panel ought to consider how the ultimate penalty for the impugned conduct will be perceived by the wider community. While the Panel should not be unreasonably heavy-handed in dispensing a penalty, neither should it*

*appear to trivialize Mr. Bromley's conduct imposing a penalty which may be perceived as inconsequential."*

[24] As noted in paragraph [7][7] above Mr. Bromley did not provide any submissions in response to Mr. Hunter's submission on penalty and costs. Therefore, in its consideration of the appropriate penalty, the Panel was guided by the Association's submission, the Act and relevant case law.

### **PENALTY SUGGESTED**

[25] Mr. Hunter suggests that the appropriate penalty for Mr. Bromley is cancellation of his membership or, in the alternative, an 18 month suspension of his membership followed by conditions on his membership, including a restriction that Mr. Bromley not practice in the area of contaminated site rehabilitation except under the direct supervision of another professional engineer.

[26] To support his recommendation on penalty, Mr. Hunter refers to three discipline cases. APEGBC vs. Ackbar resulted in a 15 month suspension, but it was noted that Mr. Ackbar cooperated during the investigation, and that he pled guilty. The other two cases, APEGBC vs. Baker and APEGBC vs. Lloyd, both resulted in cancellation of the respondent's membership.

### **SUBMISSION ON COSTS**

[27] Sections 35 (1) and (3) of the Act state:

*"(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 Civil Rules, as nearly as they are applicable."*

[28] Mr. Hunter submits that the awarding of costs under section 30 (1) is a two step process. First, the Panel must determine if it should exercise its discretion and award costs to the Association; second, it must determine the appropriate level of costs.

[29] Mr. Hunter cites *Currie v. Thomas*, 1985 BC Court of, 19 D.L.R. (4<sup>th</sup>) 594 (B.C.C.A.) and states that "Discretion must be exercised in a judicial manner and not arbitrarily or capriciously". He goes on to state that "A successful party usually has a reasonable expectation of obtaining an order for costs unless there are valid circumstances, connected with the case, to depart from the normal rule."



- [30] For these reasons, the Panel determined that it is appropriate to award costs to the Association.
- [31] Mr. Hunter submits that section 35 (3) of the Act states that costs “may be assessed by the Registrar of the Supreme Court as “Special Costs” under the Supreme Court Rules.” Mr. Hunter goes on to state that “Special Costs refer to costs that are proper or reasonably necessary to conduct the proceeding.”
- [32] Mr. Hunter cites various legal precedents, which suggest that reasonable cost awards are in the range of 70% to 90% of actual costs. Mr. Hunter asks the Panel to direct that Mr. Bromley pay 70% of the Association’s actual costs (which were \$50,256.99), which Mr. Hunter calculated to be \$35,179.
- [33] As noted in paragraph [7][7] above Mr. Bromley did not provide any submissions in response to Mr. Hunter’s submission on penalty and costs. Therefore, in its consideration of costs, the Panel was guided by the Association’s submission, the Act and relevant case law.

#### **DETERMINATION ON PENALTY AND COSTS**

- [34] On reaching its decision on penalty, the Panel was guided by the following principles:
- a) the need to protect the public;
  - b) the need to generally deter conduct of this nature by other members of the Association;
  - c) the need to specifically deter Mr. Bromley from conduct of this nature; and
  - d) the need to rehabilitate Mr. Bromley.
- [35] After careful consideration of the submission made by Mr. Hunter on behalf of the Association the Panel has determined that cancellation of Mr. Bromley’s membership is too severe and accepts the Associations alternate suggestion of a lengthy suspension followed by conditions on his membership.
- [36] The Panel was guided by the examples provided by Mr. Hunter in his submission that special costs are generally in the range of 70% to 90% of actual costs. The Panel agrees and has determined that Mr. Bromley should pay costs as set out below.
- [37] After careful consideration of the submission made by Mr. Hunter, the relevant case law and the principles laid out in paragraph [34] above, the Panel makes the following order on penalty and costs.
- a) Mr. Bromley’s membership in the Association shall be suspended for a period of 18 months beginning on the date of this determination.

- b) Mr. Bromley will be the subject of a general practice review and, if so required by the Practice Review Committee, a technical practice review. Both the general practice review and the technical practice review, if required, must be completed before Mr. Bromley's membership is reinstated following the 18 month suspension in a) above. The cost of the general practice review and the technical practice review, if required, will be borne by Mr. Bromley.
- c) Mr. Bromley must complete the Law and Ethics Program and pass the Professional Practice Exam offered by the Association, before his membership is reinstated following the 18 month suspension in a) above.
- d) Following the completion of his suspension, Mr. Bromley will not practice professional engineering except under the supervision of another engineer who is a member of the Association, approved in writing in advance by the Registrar of the Association (the "Supervisor"). Mr. Bromley must submit the names of professional engineers to the Registrar to be considered for appointment as a Supervisor prior to the completion of his suspension. If a Supervisor is not appointed prior to the completion of his suspension, Mr. Bromley's membership in the Association shall remain suspended until such time that a Supervisor is appointed. The supervision of Mr. Bromley by the Supervisor will continue for one year from the date that the Supervisor is approved in writing by the Registrar of the Association. The Supervisor shall provide reports every 90 days to the Registrar about Mr. Bromley's work under supervision (the "Reports"). At the conclusion of the twelve month period of supervision, the Supervisor shall report to the Discipline Committee by providing a written opinion as to whether Mr. Bromley requires continuing supervision and for how long (the "Final Report"). Mr. Bromley shall provide to the Supervisor regular updates to his engineering project list during the Supervision period. The costs of the Supervision, including the cost of the Reports and the Final Report, are to be borne by Mr. Bromley.
- e) Mr. Bromley shall pay to the Association \$35,179 for the Association's legal, investigation and inquiry costs.
- f) If any of the conditions of this Order are not met, Mr. Bromley's membership in the Association will be suspended, or continue to be suspended if his suspension under a) above is not complete, until such time as all of these conditions have been met by Mr. Bromley.

Dated this 24<sup>th</sup> day of February, 2015.

Discipline Committee Panel:



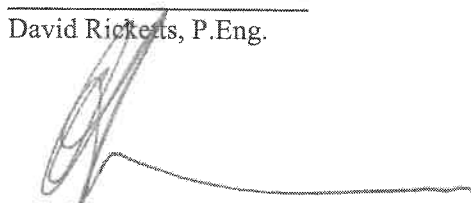
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Paul T.B. Adams, P. Eng.  
Chair



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