

**IN THE MATTER OF
THE PROFESSIONAL GOVERNANCE ACT, S.B.C. 2018, c. 47
and
IN THE MATTER OF PETER GORDON KOVACIK, P. Eng**

REASONS FOR DECISION

**(Respondent's Motion Requesting that Implementation of the Order
Suspending him from Practice be Delayed)**

Date and Place of Hearing:	By written submissions
Panel of the Discipline Committee	Frank Denton, P. Eng., Chair Pierre Gallant
Counsel for Engineers and Geoscientists BC:	Lindsay Waddell
Counsel for the Respondent:	Jagmeet Virk
Independent Legal Counsel for the Panel:	Fritz Gaerdes

A. Introduction

1. The Respondent requests an order that the implementation of the Discipline Committee panel's November 7, 2024 order that his registration in Engineers and Geoscientists BC will be suspended for a period of two (2) months commencing seven (7) days after the date that the order is served by email to his counsel, be delayed for 42 days to provide him with the opportunity to review his options on an appeal of that order.
2. Engineers and Geoscientists BC opposes the Respondent's request.
3. For the reasons that follow, the Respondent's request is denied.

B. Background Facts

4. 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 Peter Gordon Kovacik, P.Eng. (the "Respondent") pursuant to section 75 of the *Professional Governance Act*, S.B.C. 2018 c. 47 (the "PGA").

5. The citation dated May 27, 2021 (the "Citation") describes the particulars of the allegations against the Respondent as follows:

AND TAKE NOTICE that the allegations against you are that:

1. You have demonstrated unprofessional conduct, incompetence, or negligence by:
 - a. Failing to comply with *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 ss. 14.2 and 14.77 (the "Regulations"), when you did not ensure the welding on a set of Pecco S35/S212 crane anchor stools (the "Anchor Stools") at [REDACTED] (the "Project"), was carried out in accordance with CSA W59 and CSA 47.1 or equivalent standards as required by CSA 2248- 2004 pursuant to the *Regulations*;
 - b. Failing to comply with CSA W47.1 standards as required by CSA 2248-2004 pursuant to the *Regulations* when you failed to test the welding consumable used for the Project, as is required for material not certified by the Canadian Welding Bureau; and
 - c. Signing and sealing an inspection report dated August 8, 2017 recommending the Anchor Stools for service:
 - i. when the Anchor Stools were not serviceable;
 - ii. when the weld repairs had not been completed;
 - iii. without referencing a recognized standard or a documented equivalent; and
 - iv. when you knew or ought to have known that the fabricator was not certified by CWB and you took no steps to mitigate this issue.
2. The conduct set out above at paragraphs 1(a) - (c) was contrary to section 14(b) of the Engineers and Geoscientists BC Bylaws, as it stood at the time, which required that members and licensees shall establish and maintain documented quality management processes for their practices, which shall include, as a minimum:
 - (2) regular, documented checks of engineering and geoscience work using a written quality control

process appropriate to the risk associated with the work.

3. The conduct set out above at paragraphs 1(a) - (c) was contrary to Principle 1 of the Engineers and Geoscientists BC Code of Ethics, as it stood at the time, which required that members and licensees hold paramount the safety, health and welfare of the public, the protection of the environment and promote health and safety within the workplace.
 4. The conduct set out above at paragraphs 1(a) - (c) was contrary to Principle 3 of the Engineers and Geoscientists BC Code of Ethics, as it stood at the time, which required that members and licensees provide an opinion on a professional subject only when it is founded upon adequate knowledge and honest conviction.
 5. The conduct set out above at paragraphs 1(a) - (c) was contrary to Principle 6 of the Engineers and Geoscientists BC Code of Ethics, as it stood at the time, which required that members and licensees keep themselves informed in order to maintain their competence, strive to advance the body of knowledge within which they practice and provide opportunities for the professional development of their associates.
6. On June 12, 2024, the Panel released the reasons for its decision on the misconduct allegations in the Citation (the “Reasons for Decision”). The Panel found that Engineers and Geoscientists BC had proven the allegations in paragraphs 1(c)(i), 1(c) (ii), 3 and 4 of the Citation to the requisite standard. The Panel determined that with respect to the proven allegations contained in paragraphs 1(c)(i), 1(c) (ii), 3 and 4 of the Citation the appropriate finding was that the Respondent committed unprofessional conduct. The Panel further found that the remainder of the allegations set out in the Citation had not been proven on a balance of probabilities and dismissed those allegations.
7. In the Reasons for Decision, the Panel indicated, at paragraph 280, that it had decided to dismiss the allegations contained in paragraph 2 of the Citation:

The Panel accepts the Respondent’s submissions. It finds that although the evidence establishes that there were issues with respect to the retention and dating of relevant project documents, which were primarily caused by Kova switching from a manual to digitized document management system, the Panel is not satisfied that the evidence establishes on a balance of probabilities that Kova breached section 14(b)

of the Engineers and Geoscientists BC's Bylaws. The Panel accordingly dismisses the allegations contained in paragraph 2 of the Citation.

8. However, the Panel inadvertently omitted to include in its summary of the Citation allegations that it dismissed, contained at paragraphs 5 and 286.c. of the Reasons for Decision, that it had also dismissed the allegations in paragraph 2 of the Citation.
9. Accordingly, on November 7, 2024, the Panel issued the following corrigendum to the Reasons for Decision, to correct this slip and to make it clear that its intent was indeed, as it had indicated at paragraph 280 of its Reasons for Decision, to dismiss the allegations contained in paragraph 2 of the Citation:

**CORRIGENDUM TO THE REASONS FOR DECISION OF THE PANEL
DATED JUNE 12, 2024**

290. This is a corrigendum to the Panel's Reasons for Decision initially signed and dated on June 12, 2024 (the "Reasons for Decision").

291. Paragraphs 5 and 286.c. of the Reasons for Decision is deleted and replaced with the following:

5. The Panel also finds that the allegations set out in paragraphs 1(a),1(b), 1(c)(iii), 1(c)(iv), 2 and 5 of the Citation have not been proven on a balance of probabilities and are dismissed.

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c. The allegations set out in paragraphs 1(a),1(b), 1(c)(iii), 1(c)(iv), 2 and 5 of the Citation have not been proven on a balance of probabilities and are dismissed.

(the "Corrected Conduct Decision").

5. On November 7, 2024, the Panel also issued the following orders with respect to penalty and costs:
 - a. The Respondent's registration in Engineers and Geoscientists BC will be suspended for a period of two (2) months commencing seven (7) days after the date that this order is served by email to the Respondent's counsel (the "Suspension Period").
 - b. Six (6) months after the conclusion of the Suspension Period, the Respondent will undergo a practice review conducted by Engineers and

Geoscientists BC (the "Practice Review"), at his own expense, and the precise timing and process of the Practice Review will be determined by the Audit and Practice Review Committee.

- c. The Respondent shall, within 30 days after this order is served by email to his counsel, pay to Engineers and Geoscientists BC costs in the amount of \$108,286, which is equivalent to 40% of Engineers and Geoscientists BC's reasonable actual costs incurred in pursuing the allegations in the Citation against the Respondent.

(the "Penalty and Costs Decision")

6. On November 8, 2024, independent legal counsel for the Panel ("ILC") emailed the Corrected Conduct Decision to counsel for the parties with the following message:

Dear Mr. Virk and Ms. Waddell,

Please find attached the Panel's corrected Reasons for Conduct Decision.

You will note that paragraphs 5 and 286.c. have been corrected to also indicate that the Panel found that allegation 2 of the Citation has not been proven.

The Panel's Reasons for its Penalty and Costs Decision will be emailed to you after this email.

Kind regards,

7. In reply to his email, ILC received an out of office email message from counsel for the Respondent's email address which stated that: "*I will out of the office and return on November 13, 2024. I will be...checking my email messages sporadically during this time. If you need urgent assistance, please contact my...assistant...*" This out of office email message also indicated the name and email address of the Respondent's counsel's assistant.
8. Later that day, ILC emailed the Penalty and Costs Decision to counsel for the parties. ILC also included the Respondent's counsel's assistant on this email.
9. On November 14, 2024, the Respondent's counsel emailed ILC with the following request:

I write further to the issuance of the reasons for Penalty and Costs ("Penalty

Reasons”) in this matter, Mr. Kovacik wishes to seek an extension as to the implementation of the suspension order in paragraph 159(a) of the Penalty Reasons.

Section 39(1) of the Engineers and Geoscientists Act allows Mr. Kovacik 42 days from the date of issuance of the Penalty Reasons to file a Notice of Appeal. Mr. Kovacik is now reviewing his options with respect to this appeal. As such, we request that the implementation of paragraph 159(a) of the Penalty Reasons be delayed for 42 days from the date of issuance of the Penalty Reasons to provide Mr. Kovacik the opportunity to file an appeal.

I also wish to note that although the Penalty Reasons were emailed to me on November 8, 2024, I was not able to forward the same to Mr. Kovacik and discuss the Penalty Reasons with him until Wednesday November 13, 2024 since I was out of the country. This suspension, if effective on November 15, 2024, would provide very little time for Mr. Kovacik to complete or re-assign his current projects. This may result in significant prejudice to Mr. Kovacik’s clients, and to his employer. This additional requested time would allow Mr. Kovacik to complete or re-assign his current projects in an orderly manner.

I look forward to hearing back from you.

10. ILC replied to the Respondent’s counsel’s email advising that the Respondent’s request would be provided to the Panel. ILC also requested counsel for Engineers and Geoscientists BC to provide the Panel with its position on the Respondent’s request. ILC further informed the Respondent’s counsel that it may not be possible for the Panel to decide the request by November 15, 2024, and that the request does not itself act as a stay of the Panel’s order.
11. On November 19, 2024, ILC again requested counsel for Engineers and Geoscientists BC to provide the Panel with its position on the Respondent’s request. Later that day, counsel for Engineers and Geoscientists BC emailed ILC the following submission:

I now have instructions from my client. It is the EGBC’s position that the Panel is now *functus* with respect to conduct and penalty. As such, Mr. Kovacik’s request to alter the timing of the suspension should be directed to the EGBC – not to the Panel.

In terms of EGBC’s position on the substance of Mr. Kovacik’s request, I can advise that the EGBC is not prepared to agree to what is effectively a stay of the penalty decision in the absence of an application for judicial review (and accompanying stay application). Although I do not have instructions about whether the EGBC might agree to such a stay upon receipt of an application for judicial review, I can advise (on a without prejudice basis) that I have seen the

EGBC consent to a stay upon receipt of an application for judicial review or statutory appeal in other matters. EGBC is not, however, prepared to agree to a stay now in the absence of application for judicial review. Their position is that the suspension should proceed in accordance with the timing set out in the Panel's decision. If and when Mr. Kovacik files an application for judicial review and seeks a formal stay of the penalty decision, the EGBC will consider the request for a stay at that time.

On the subject of next steps, and for the benefit of Mr. Kovacik and his counsel, I believe that Mr. Virk has identified the 42 day timeline formerly applicable to applications for statutory appeal brought pursuant to s. 39 of the EGA. While Mr. Kovacik's conduct in this proceeding was assessed in relation to the EGA which was in force at the time of the events at issue, now that the EGA has been repealed, matters of procedure are to be addressed in accordance with the PGA. Rights of appeal and or judicial review are, in our submission, matters of procedure. Section 81.1 of the PGA thus applies (instead of s. 39 of the EGA) providing a longer 60-day timeline to apply for judicial review of the Panel's decision.

Sincerely,

12. ILC informed counsel for the parties that Engineers and Geoscientists BC's submission would be provided to the Panel. ILC also advised the Respondent that if he wanted to file a Reply to Engineers and Geoscientists BC's submission, then it should be provided to ILC by no later than 5pm, November 20, 2024, for the Panel's consideration.
13. The Respondent did not provide a Reply to Engineers and Geoscientists BC's submission.

C. Analysis and Findings

14. On February 5, 2021, the PGA came into effect and repealed the EGA.
15. The discipline proceeding was initiated by a citation that was issued pursuant to the PGA, while the conduct at issue in the Citation occurred while the Engineers and Geoscientists Act, R.S.B.C. 1996, C116 (the "EGA") was in force.
16. Despite the repeal of the EGA, both it and the Engineers and Geoscientists BC's Bylaws in effect at the time, continue to govern registrants' practice and conduct that took place before February 5, 2021.

17. The Citation was issued under the PGA. The Respondent's unprofessional conduct at issue in the Citation occurred when the EGA was in force. In accordance with sections 35 and 36 of the *Interpretation Act*, the substantive provisions of the EGA (and the Bylaws and Code of Ethics as they applied at that time) applied to the discipline proceeding.
18. However, with respect to matters of procedure, the PGA is the governing legislation.
19. The Panel accepts Engineers and Geoscientists BC's submission that rights of appeal and judicial review of the Panel's determinations are matters of procedure.
20. The Panel accordingly agrees with Engineers and Geoscientists BC's submission that section 81.1 of the PGA applies in the circumstances of this case (instead of section 39 of the EGA), thus affording the Respondent a longer 60-day timeline to apply for judicial review of the Panel's Penalty and Costs Decision, should he choose to do so.
21. There is no evidence before the Panel that the Respondent has filed an appeal or judicial review application of the Penalty and Costs Decision.
22. In this case, the Respondent requests the Panel to delay (or stay) the implementation of its order that his registration in Engineers and Geoscientists BC will be suspended for a period of two (2) months commencing seven (7) days after the date that the order is served by email to his counsel, so that he can consider his legal options; that is, whether to file with the Court a legal challenge to the Penalty and Costs Decision.
23. The order the Respondent is requesting is discretionary relief.
24. The onus is on the Respondent to prove that the Panel has the power or discretion to grant the discretionary relief that he seeks.
25. The Respondent has not provided the Panel with any case law or statutory provision or authority that shows that it has the power or discretion to stay (or revise) the Penalty and Costs Decision in the circumstances of this case.
26. In the absence of any such case law or statutory provision before it, the Panel is not satisfied that the Respondent has met his onus to show that the Panel has the power

or discretion to grant the discretionary relief sought, and the Panel declines to grant such relief.

D. Order

27. The Respondent's request is denied.

Dated: December 4, 2024

Frank Denton, P. Eng., Chair

<original signed by>

Pierre Gallant, Lay Committee Member

<original signed by>