

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

**and**

**IN THE MATTER OF Alireza (Danyal) Bahrami, P. Eng**

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

<b>Date and Place of Hearing:</b>	By written submissions (June 10, June 30, July 7, 2022)
<b>Panel of the Discipline Committee (the “Panel”)</b>	Paul Adams, P. Eng., Chair Peter Bobrowsky, P. Geo. Keith Sashaw
<b>Counsel for Engineers and Geoscientists BC:</b>	Lindsay Waddell Sara Hanson
<b>Counsel for the Respondent:</b>	Dan Griffith
<b>Decision Date:</b>	September 29, 2022

## **Background**

1. This panel of the Discipline Committee (the “Panel”) of the Association of Professional Engineers and Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC was convened to conduct a hearing concerning Alireza (Danyal) Bahrami, P.Eng. (the “Respondent” or “Mr. Bahrami”) pursuant to section 75 of the *Professional Governance Act*, S.B.C. 2018 c. 47 (the “PGA”).
2. On May 2, 2022, the Panel released its decision (the “Conduct Decision”) and found that the Respondent had demonstrated unprofessional conduct with respect to the design of a fire suppression system at a dental office in Surrey, British Columbia (the “Project”). The Panel also found that the Respondent failed to provide the Subcommittee of the Investigation Committee with a copy of his complete file for the project as requested and breached section 30(4)(a) of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c.116 (the “EGA”).
3. The Conduct Decision set a schedule for the parties to deliver written submissions on penalty and costs. Those submissions closed on July 7, 2022.
4. Engineers and Geoscientists BC seeks an order that:
  - a. Mr. Bahrami’s registration with Engineers and Geoscientists BC be immediately suspended for a period of four months (the “Suspension Period”);
  - b. Mr. Bahrami complete the Professional Practice Examination at his own expense before the end of the Suspension Period;
  - c. Mr. Bahrami complete the Professional Engineering and Geoscience Practice in BC Online Seminar at his own expense before the end of the Suspension Period;
  - d. Mr. Bahrami pay to Engineers and Geoscientists BC a fine in the amount of \$5000 no later than 30 days from the date of the Panel’s decision on penalty and costs;

- e. Mr. Bahrami pay to the Engineers and Geoscientists BC costs in the amount of \$88,930.20 (an amount equivalent to 90% of its actual investigative and legal costs) no later than 30 days from the date of the Panel's decision on penalty and costs;
  - f. Mr. Bahrami be prohibited from performing any engineering work related to fire suppression systems (the "Practice Restriction"), and, if Mr. Bahrami wishes to lift or modify the Practice Restriction, he must:
    - i. Provide proof to Engineers and Geoscientists BC that he has completed and passed the NFPA 13, Standard for the Installation of Sprinkler Systems Online Training Series, offered by the National Fire Protection Association (the "Course"), at his own expense;
    - ii. After successful completion of the Course, he may apply for reinstatement of full practice rights and request that the Engineers and Geoscientists BC Credentials Committee lift the Practice Restriction (the "Competency Application");
    - iii. In partial fulfilment of the Competency Application, Mr. Bahrami must report his updated experience and competencies through the Engineers and Geoscientists BC Competency-Based Assessment system, using the 34 key competencies with generic indicators and providing registered professional engineers practicing in the fire suppression discipline as Validators, as described in the Engineers and Geoscientists BC *Competency Assessment Guide*, or the competency assessment system that is in place at that time, or as specified by the Credentials Committee. If the Credentials Committee is of the opinion that Mr. Bahrami is competent to practice fire suppression engineering, the Credentials Committee may lift the Practice Restriction and reinstate Mr. Bahrami's full practice rights.
5. The Respondent opposes Engineers and Geoscientists BC's position that he be ordered to pay 90 percent of the costs relating to the proceeding. The Respondent proposes a suspension of two months and a \$2500 fine. The Respondent

consents to the proposed order that he complete the Professional Practice Examination and the Professional Engineering and Geoscience Practice in BC Online Seminar at his own expense during the proposed period.

### **Applicable Legislation**

6. On February 5, 2021, the PGA came into effect and repealed the EGA. This proceeding was initiated by a Citation issued pursuant to the PGA.
7. Engineers and Geoscientists BC submits that the penalty should be determined through the application of the EGA and costs should be assessed pursuant to the PGA. Nevertheless, Engineers and Geoscientists BC notes that it only seeks the reasonable investigative and legal costs it would have been entitled to under the EGA.
8. The Respondent submits that the EGA is the legislation applicable in determining the penalty against the Respondent, except where the current applicable legislation provides rules that are more favourable to the Respondent than the EGA.
9. The *Interpretation Act*, R.S.B.C. 1996 c. 238 provides:

#### Repeal

35 (1) If all or part of an enactment is repealed, the repeal does not

(a) revive an enactment or thing not in force or existing immediately before the time when the repeal takes effect,

(b) affect the previous operation of the enactment so repealed or anything done or suffered under it,

(c) affect a right or obligation acquired, accrued, accruing or incurred under the enactment so repealed,

(d) subject to section 36 (1) (d), affect an offence committed against or a contravention of the repealed enactment, or a penalty, forfeiture or punishment incurred under it, or

(e) affect an investigation, proceeding or remedy for the right, obligation, penalty, forfeiture or punishment.

(2) Subject to section 36 (1), an investigation, proceeding or remedy described in subsection (1) (e) may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed.

Repeal and replacement

36 (1) If an enactment (the "former enactment") is repealed and another enactment (the "new enactment") is substituted for it,

(a) every person acting under the former enactment must continue to act as if appointed or elected under the new enactment until another is appointed or elected in his or her place,

(b) every proceeding commenced under the former enactment must be continued under and in conformity with the new enactment so far as it may be done consistently with the new enactment,

[...]

10. The British Columbia Court of Appeal dealt with the operation of sections 35 and 36 of the *Interpretation Act* in *Thow v. B.C. (Securities Commission)* 2009 BCCA 46. In *Thow*, the registrant was alleged to have violated the *Securities Act* in force at the time of the alleged conduct. The act was subsequently amended and maximum penalties were increased under the new provisions. The Court of Appeal reviewed the presumption against retrospectivity, sections 35 and 36 of the *Interpretation Act*, and held that the penalty provisions of the *Securities Act* as they read prior to the amendment applied. The Court of Appeal clarified that section 35(1)(d) of the *Interpretation Act* has the effect of ensuring that a repealed act does not, subject to section 36(1)(d), affect an offence committed pursuant to the repealed act. The exception contained in section 36(1)(d) applies only if the new act reduces the penalty for an offence.
11. The maximum fine that the Discipline Committee may impose has increased from \$25,000 under the EGA to \$100,000 under the PGA. As a result, section 36(1)(d) of the *Interpretation Act* does not apply to rebut the presumption against retrospectivity.
12. The PGA, however, applies with respect to the assessment of costs. The PGA contains the following transition provisions:

Transition — powers and duties in progress

127 (1) The officers and committees for a regulatory body may exercise any power and perform any duty under this Act that an officer holding the same title with, or a committee having the same mandate of, an affected body

(a) began to exercise or to perform, but did not complete, before

the reference date, or

- (b) could have exercised with respect to a discipline matter referred to in Division 3 [Audits, Practice Reviews and Discipline] of Part 6 [Protection of the Public Interest With Respect to Professional Governance and Conduct] that is alleged to have existed or occurred, but was not investigated, before the reference date.

(2) If a discipline committee for an affected body, or a committee of the former body with similar duties and powers, commenced a hearing before the reference date, that committee is deemed to be a discipline committee for the regulatory body for the purpose of continuing the hearing on and after the reference date.

13. The Discipline Committee recently considered these provisions in the context of the assessment of costs in two cases: *Re Peter Schober, P.Eng.* (April 7, 2021) and *Re Hans Heringa, P.Eng.* (May 19, 2022). In *Re Hans Heringa*, the Discipline Committee held:

15. Section 127(1) and 127(2) of the PGA provide for the Discipline Committee to continue a disciplinary proceeding initiated under the EGA in accordance with the procedures set out in the PGA. Section 35(1) of the *Interpretation Act* makes clear this does not apply in the case of penalties. However, costs are generally considered to be procedural in nature. In *Assn. of Professional Engineers and Geoscientists of The Province of British Columbia v. Mah*, 1995 CanLII 824 (BCCA), the Court of Appeal held that the assessment of costs is procedural in nature and to be assessed in accordance with the provisions in place at the time of the assessment of costs. This is the approach that has been adopted by the Discipline Committee in the recent cases of *Re Peter Schober, P.Eng.* (April 7, 2021) and *Re Mohamed Mussa Swalehe, P.Eng.* (December 1, 2021). The Discipline Committee declined to decide the issue in *Re Laura Fidel, P.Eng.* (February 9, 2022). The Panel has been provided with no caselaw or submissions from either party that would justify departing from the interpretation set out in these decisions.

16. The Panel finds that the PGA governs with the issues of costs in this case. Engineers and Geoscientists BC is an “affected body” for the purposes of section 127 of the PGA. The Panel may continue the discipline hearing it started under the EGA and may exercise any power and perform any duty under the PGA for that purpose. The *Interpretation Act* provides that the continuation of the discipline hearing must be done in conformity with the PGA. The Panel importantly notes that Engineers and Geoscientists BC is only seeking costs in conformity of what would have been available under the EGA.

14. The Panel agrees with and adopts this reasoning in this case.

## **Framework for the Assessment of Penalty**

15. The following penalties were available under the EGA:

33 (2) If the discipline committee makes a determination under subsection (1), it may, by order, do one or more of the following:

(a)reprimand the member, licensee or certificate holder;

(b)impose conditions on the membership, licence or certificate of authorization of the member, licensee or certificate holder;

(c)suspend or cancel the membership, licence or certificate of authorization of the member, licensee or certificate holder;

(d)impose a fine, payable to the association, of not more than \$25 000 on the member, licensee or certificate holder.

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

a. the nature and gravity of the conduct proven;

b. the age and experience of the respondent;

c. the previous character of the respondent, including details of prior discipline;

d. the impact upon the victim;

e. the advantage gained, or to be gained, by the respondent;

f. the number of times the offending conduct occurred;

g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstance;

h. the possibility of remediating or rehabilitating the respondent;

i. the impact on the respondent of criminal or other sanctions or penalties;

j. the impact of the proposed penalty on the respondent;

k. the need for specific and general deterrence;

l. the need to ensure the public's confidence in the integrity of the profession; and

m. the range of penalties imposed in similar cases.

[the "Ogilvie factors"]

17. *Law Society of BC v. Dent*, 2016 LSBC 05 held that it is not necessary to consider each *Ogilvie* factor in every case and that the factors can be consolidated. In *Dent*, the following consolidated list was suggested:
  - a. Nature, gravity and consequences of conduct;
  - b. Character and professional conduct record of the respondent;
  - c. Acknowledgement of the misconduct and remedial action; and
  - d. Public confidence in the legal profession including public confidence in the disciplinary process.
18. The *Ogilvie / Dent* factors have been adopted in many decisions of the Engineers and Geoscientists BC's Discipline Committee, including the *Re Schober* and *Re Heringa* decisions noted above. The Panel finds that is the appropriate approach in this case as well.

### **Nature, Gravity and Consequences of Conduct**

19. Engineers and Geoscientists BC submits that the Panel's finding that the Respondent engaged in unprofessional conduct militates in favour of a more serious penalty. Engineers and Geoscientists BC relies upon paragraph 72 of the Conduct Decision in which the Panel outlined why it made the more serious finding of unprofessional conduct:
  72. The Respondent's failure to design the fire suppression system and the resultant design errors, and his failure to appropriately mark draft drawings for the fire suppression system as drafts for review, are also marked departures from the standard to be expected from a competent professional; they are not minor or inadvertent failures to comply with professional standards. In this case, the Panel has determined that unprofessional conduct is the appropriate finding in relation to allegations 1(a) and 1(b) given that it is the more serious finding.
20. Engineers and Geoscientists BC submits that the Respondent's failure to disclose documents contrary to section 30(4) of the EGA is an aggravating factor that militates towards a more serious penalty in his case. Engineers and Geoscientists BC submits that the Respondent clearly knew what was being requested of him, and while the Respondent testified that he made several phone calls to Ms. Wilson to



advise her that there were additional documents, the Panel preferred Ms. Wilson's evidence on that point.

21. The Respondent submits while a fire suppression system serves an important and potentially life-saving function, the evidence before the Panel established that no lives were ever put at risk as a result of the Respondent's conduct. With respect to the failure to provide documents, the Respondent submits that his evidence was clear that he genuinely believed that the documents would have been in the possession of Engineers and Geoscientists BC due to the earlier investigation involving Mr. Ghodousi. While that does not relieve the Respondent of his obligations, he submits that it indicates the non-disclosure was not intentional. The Respondent further submits that he gained nothing from the non-disclosure.
22. The Panel finds that the nature and gravity of the Respondent's conduct is serious. The Panel found in the Conduct Decision that the Respondent's failure to design the fire suppression system and the resultant design errors, and his failure to appropriately mark draft drawings for the fire suppression system as drafts for review, were marked departures from the standard to be expected from a competent professional. The Panel found they were not minor or inadvertent failures to comply with professional standards. An engineer has a responsibility in all of his or her designs to ensure that the designs are technically competent and where the health and safety of people or the environment is a factor, that responsibility is heightened. In this case, designing a fire suppression system, the health and safety interests are obvious and a competent engineer must take that into consideration in his or her designs.
23. The Panel also considers the Respondent's non-disclosure of investigation documents to be serious. The Respondent admitted that he failed to provide his complete file for the Project as requested. The Panel did not accept the Respondent's evidence that he telephoned Ms. Wilson to advise of additional documents.
24. The Panel considers this factor militates in favour of a more serious penalty against the Respondent.

### **Character and Professional Conduct Record of the Respondent**

25. Engineers and Geoscientists BC notes that the Respondent has been registered with Engineers and Geoscientists BC since February 9, 2016. At the time of the hearing, he was in good standing. The design drawings at issue were dated June 26 and 27, 2017 just one year after the Respondent became a professional engineer. Engineers and Geoscientists therefore submits that this is a neutral factor in the Panel's assessment of penalty.
26. The Respondent submits that the design drawings at issue are dated approximately one year after the Respondent became a professional engineer. The Respondent submits that the Panel should reduce the applicable penalty because of the Respondent's experience at the time. The Respondent also submits that he did not have a conduct record at the time and a clean disciplinary record also favours a reduction in penalty. Finally, the Respondent submits there is no evidence to suggest that his character or reputation is flawed in any manner.
27. The Panel finds that the Respondent had only been an engineer for approximately one year at the time of the conduct. In addition, at the material times, he had no prior disciplinary record. The Panel finds there was no evidence of character from either party which assists this aspect of the penalty analysis.
28. The Panel finds that the Respondent's inexperience and absence of disciplinary history are mitigating factors and favour a lesser penalty.

### **Acknowledgement of the Misconduct and Remedial Action**

29. Engineers and Geoscientists BC submits that the Respondent has completely failed to acknowledge any of the misconduct which led to the Panel's findings that he demonstrated unprofessional conduct and breached section 30(4) of the EGA. Instead, he took the position that his role was minimal, and he only provided assistance to Mr. Ghodousi who the Respondent argued actually designed the fire suppression system. Engineers and Geoscientists BC submits that the Respondent's failure to take any responsibility for his own design and his efforts to

minimize his role are substantial aggravating factors that militate in favour of a more serious penalty in this case.

30. Engineers and Geoscientists BC submits that while the Respondent admitted that he failed to disclose numerous relevant documents during the investigation, he nevertheless took the position that he was less culpable because it was not an intentional breach. Engineers and Geoscientists BC submits that the Respondent's failure to take responsibility for this misconduct, despite his admission, is another aggravating factor that militates towards a more serious penalty. Engineers and Geoscientists BC also finds that the Panel's preference of Ms. Wilson's testimony over the Respondent's testimony about whether he phoned to advise her of the existence of additional documents resulted in the Panel finding that the Respondent was not credible, which is also a factor militating towards a more serious penalty.
31. The Respondent submits it is inaccurate that he failed to take responsibility for his errors and attempted to minimize his position in designing the fire suppression system. Rather, he submits that he was consistent and forthright about his involvement in preparing the drawings and about his lack of experience with fire suppression system design. The Respondent argues he did not deny the existence of any such errors rather that he was not ultimately responsible for those errors due to his limited role in the project. The Respondent submits that at best this should be a neutral factor in assessing the applicable penalty.
32. The Panel finds that the Respondent did admit that he failed to provide his complete file for the Project as requested, and he did not deny the existence of errors in the fire suppression design. The Respondent was entitled to argue that his role was limited. While the Panel did not accept the Respondent's evidence or arguments that he did not design the fire suppression system, the Panel does accept that the Respondent was less experienced than Mr. Ghodousi and that Mr. Ghodousi was the engineer who signed and sealed the drawings.
33. The Panel also heard evidence from the Respondent during the discipline hearing that the Respondent upgraded his fire suppression knowledge with coursework at BCIT in 2020. The Panel considers this to be remedial action.

34. The Panel considers this is a mitigating factor and weighs in favour of a lesser penalty.

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

35. Engineers and Geoscientists BC notes that this factor requires consideration of the need for general and specific deterrence as well as penalties in other similar cases.
36. With respect to specific deterrence, Engineers and Geoscientists BC submits that the Respondent has not suffered any consequences of his misconduct to date other than having to attend the hearing. Engineers and Geoscientists BC submits that the Respondent has not learned anything because at the hearing he failed to take responsibility for his numerous errors. Engineers and Geoscientists BC submits there is therefore a strong need for specific deterrence in this case to ensure that the Respondent learns from his misconduct. This calls for a more substantial penalty.
37. With respect to general deterrence, Engineers and Geoscientists BC submits that it is essential to maintaining public confidence in the integrity of the engineering and geoscientist professions that registrants are held to account for breaches of the governing legislation. Engineers and Geoscientists BC relied upon the following reasoning in *Re Nunn, P. Eng* (April 21, 2021) which also involved a breach of section 30(4) of the EGA:

Members who do not provide full and timely cooperation harm the public's confidence in the profession and the Association's ability to effectively regulate it in the public interest. That is not acceptable, and must be deterred.

38. Engineers and Geoscientists BC cited a number of cases which it submits involved similar misconduct and which provide the appropriate range of penalties to consider in this case. With respect to a registrant's failure to provide documents, Engineers and Geoscientists cited the following cases:
- a. In *Re Ahmed Raza Syed, P.Eng.* (February 4, 2018) the Discipline Committee ordered a \$5000 fine, 90% of Engineers and Geoscientists BC's investigation and legal costs, a requirement to complete and pass the

Professional Practice Examination and fulfill the requirements by a certain date or his registration would be suspended.

- b. In *Re Hans Heringa, P.Eng.* (June 18, 2020) the Discipline Committee ordered the registrant to complete the Professional Engineering and Geoscientists in BC online seminar at his own expense, complete and pass the Professional Practice Examination at his own expense, pay a fine in the amount of \$5000, and pay an amount equivalent to 70% of Engineers and Geoscientists BC's investigation and legal costs.
  - c. In *Re Mohamed Mussa Swalehe, P.Eng.* (December 1, 2021) the Discipline Committee ordered immediate registration suspension until the registrant provided the requested records and information, that he complete and pass the Professional Practice Examination at his own expense, that he pay a fine of \$5000, and that he pay 90% of Engineers and Geoscientists BC's investigation and legal costs.
39. With respect to unprofessional conduct, incompetence or negligence, Engineers and Geoscientists BC cited the following cases:
- a. In *Re Bill Barwig, P.Eng.* (March 8, 2018) the registrant admitted that he demonstrated unprofessional conduct, incompetence, or negligence in connection the design of a raft foundation. He consented to a two month suspension followed by a four month practice restriction, successfully passing an education requirement before the practice restriction could be lifted, and undergoing a practice review at this own cost no later than six months after the practice restriction was lifted. He also agreed to pay \$6000 towards Engineers and Geoscientists BC's legal costs.
  - b. In *Re Reza Ghodousi, P.Eng.* (Non-Practising) (August 18, 2020), the registrant admitted that he demonstrated incompetence, negligence or unprofessional conduct by failing to design and verify a fire suppression system for a dental office to the reasonable standard expected of a professional engineer. The registrant consented to a four month suspension should his registration status revert to practising, and agreed to provide

written notice that he had completed and passed the Professional Practice Examination before returning to practising status. He agreed to undergo a practice review at his own cost if his status reverted to practising, and that he would not perform any engineering work relating to fire suppression systems unless he undertook to fulfil certain educational requirements. He agreed to pay \$3000 towards Engineers and Geoscientists BC's legal costs.

- c. In *Re Heqing (Albert) Jian, P.Eng.* (January 14, 2021), the registrant admitted that he demonstrated unprofessional conduct, incompetence, or negligence in relation to sewerage system design and construction. He agreed to a two month suspension and that if he designed any sewerage systems following the suspension period, all such work would be peer reviewed for a period of at least 12 months. He agreed to complete the Professional Engineering and Geoscience Practice in BC online seminar and the Professional Practice Examination at his own expense and to pay \$5000 towards Engineers and Geoscientists BC's legal and investigation costs.
- d. In *Re Steven Petrovich, P.Eng.* (April 6, 2020) the registrant admitted that he demonstrated incompetence, negligence, or unprofessional conduct by failing to design screw piles for new deck piles. He consented to a three month suspension and agreed that within six months of resuming practice he would undergo a general practice review at his own expense and provide written notice that he had completed and passed the Professional Practice Examination. He agreed to pay \$2000 towards Engineers and Geoscientists BC's legal and investigation costs.
- e. In *Re Hans Heringa, P.Eng.* (May 19, 2022), the Discipline Committee found that the registrant had demonstrated unprofessional conduct with respect to filings for a sewerage system. The Discipline Committee ordered a two month suspension and before the registrant's registration should be reinstated he was required to successfully complete the Professional Engineering and Geoscience Practice in BC online seminar, complete and

pass the Professional Practice Examination, and pay costs of \$77,587.82 (an amount equivalent to 75% of Engineers and Geoscientists BC's legal and investigation costs).

40. Engineers and Geoscientists BC submits that given the Panel's multiple findings that the Respondent not only demonstrated unprofessional conduct on two occasions but also breached section 30(4) of the EGA, the public will be best protected by ordering a four month suspension of the Respondent's registration with conditions requiring that the Respondent complete and pass the Professional Practice Examination, complete the Professional Engineering and Geoscience Practice in BC online seminar, be restricted from performing any engineering work related to fire suppression systems, pay a fine in the amount of \$5000, and pay reasonable costs before his registration is reinstated.
41. The Respondent submits that the misconduct has impacted the Respondent in a multitude of ways. It has negatively impacted his career, finances, emotional state and romantic relationship. The Respondent's written submissions state that the Respondent is currently not working as an engineer and has not done any engineering work for the last two years. His mental health has been affected and he has diminished earnings. For financial reasons, he has had to move in with his parents, is unable to live with his fiancé and has incurred various debts.
42. The Respondent also takes issues with the submission that he has not learned anything from the investigation or disciplinary proceedings. The Respondent argues these assumptions over his subjective state of mind are purely speculative.
43. In terms of specific deterrence, the Respondent argues that any requirement for him to pay costs will already in itself act as a specific deterrent to future similar misconduct. The Respondent also submits that a reduced penalty will provide general deterrence. The cases of *Re Syed* and *Re Heringa*, cited by Engineers and Geoscientists BC, did not result in penalties as high as the ones sought by Engineers and Geoscientists in this case. The Respondent submits that the orders sought are disproportional in comparison with those made in *Re Syed* and *Re Heringa*.

44. Considering the Respondent's inexperience and stage of his career, the errors he admitted making, the remedial action he has undertaken, his involvement in the disciplinary process and the penalties and costs involved, the Panel does not find there to be a high need for specific deterrence in this case.
45. The Panel does consider there to be a need for general deterrence. It is important that other registrants of the profession understand the standards expected of a professional engineer, including those engaged in the design of fire suppression systems. It is also important that a message be sent of the importance of complying with investigation requests for disclosure, given that the investigative and disciplinary processes are critical to a self governing profession.
46. The Panel also considers it is important to maintain the public's confidence in the profession, and specifically in disciplinary procedures against registrants who have departed from the standards expected of professional engineers and breached the statutory requirements for disclosure during investigations. The Panel considers that confidence particularly important to maintain in the fire suppression context given the risks to public safety.
47. The Panel has considered the authorities cited by Engineers and Geoscientists BC and agrees with the Respondent's submission that the orders sought are more significant than the ones in *Re Syed* and *Re Heringa*, which were much more serious cases involving more senior engineers.
48. The Panel considers the consent order in *Re Reza Ghodousi, P.Eng. (Non-Practising)* (August 18, 2020) to be relevant in this matter as the conduct involves the same Project. Mr. Ghodousi admitted the allegations in the Notice of Inquiry, including that he demonstrated incompetence, negligence or unprofessional conduct by failing to design and verify a fire suppression system for the Project to the expected standard by signing and affixing his seal to drawings for the Project. Mr. Ghodousi admitted his conduct was in breach of section 20(9) of the EGA which required that a member receiving a seal or stamp must use it, with signature and date, to seal or stamp estimates, specifications, reports, documents, plans, or things that have been prepared and delivered by the member or licensee in the member or



licensee's professional capacity or that have been prepared and delivered under the member or licensee's direct supervision. He admitted that he breached section 30(4) of the EGA by failing to provide his complete file for the Project as requested by the Subcommittee of the Investigation Committee. He admitted that his conduct was contrary to the Code of Ethics. Mr. Ghodousi agreed to the following penalty:

- a. a four-month suspension if his registration status reverts to practising in future;
- b. written notice that he has completed and passed the Professional Practice Examination;
- c. if Mr. Ghodousi's membership status is changed to practicing in the future, he agreed to undergo a Practice Review and pay the costs associated with the Practice Review, within six months of the completion of the suspension period;
- d. Mr. Ghodousi agreed that he will not perform any engineering work related to fire suppression systems (the "Practice Restriction"). If Mr. Ghodousi wishes to lift or modify the Practice Restriction, he must:
  - i. Provide proof that he has completed and passed the NFPA 13, Standard for the Installation of Sprinkler Systems Online Training Series, offered by the National Fire Protection Association (the "Course"), at his own expense.
  - ii. After successful completion of the Course, he may apply for reinstatement of full practice rights and request that the Credentials Committee lift the Practice Restriction (the "Competency Application").

In partial fulfilment of the Competency Application, Mr. Ghodousi shall report his updated experience and competencies through the Association's Competency-Based Assessment system, using the 34 key competencies with generic indicators and providing registered professional engineers practicing in the fire suppression discipline as

Validators, as described in the Competency Assessment Guide. The validated competency assessment will be assessed by fire suppression Assessors, as described in the Competency Assessment Guide.

iii. After Mr. Ghodousi's Competency Application is reviewed by the Validators and the Assessors, the Credentials Committee shall review Mr. Ghodousi's Competency Application. An interview may be required to further assess Mr. Ghodousi's competency to return to full practice rights. If the Credentials Committee is of the opinion that Mr. Ghodousi is competent to practice fire suppression engineering, the Credentials Committee may lift the Practice Restriction and reinstate Mr. Ghodousi's full practice rights. No fees will be charged to Mr. Ghodousi in relation to the Competency Application.

e. Mr. Ghodousi agreed to pay \$3000 towards the (then) Association's legal costs.

f. Mr. Ghodousi agreed that if he failed to comply with the requirements above, he would be suspended.

49. The Panel considers Mr. Ghodousi's admitted conduct as outlined in his consent order to be much more serious than that of the Respondent. Mr. Ghodousi signed and sealed the design drawings at issue in this case. The Panel considers that a penalty that is less severe than Mr. Ghodousi's is appropriate.

50. Balancing all of the *Ogilvie / Dent* factors, and considering the decisions cited including the consent order of Mr. Ghodousi, the Panel does not consider that a suspension is necessary or appropriate in this case. The Panel has decided the following penalties are appropriate:

a. Mr. Bahrami pay to Engineers and Geoscientists BC a fine in the amount of \$2500 no later than 30 days from the date of the Panel's decision on penalty and costs;

- b. Mr. Bahrami complete the Professional Practice Examination at his own expense within four months of the date of the Panel's decision on penalty and costs;
- c. Mr. Bahrami complete the Professional Engineering and Geoscience Practice in BC Online Seminar at his own expense within four months of the date of the Panel's decision on penalty and costs;
- d. Mr. Bahrami be prohibited from performing any engineering work related to fire suppression systems (the "Practice Restriction"), and, if Mr. Bahrami wishes to lift or modify the Practice Restriction, he must:
  - i. Provide proof to Engineers and Geoscientists BC that he has completed and passed the NFPA 13, Standard for the Installation of Sprinkler Systems Online Training Series, offered by the National Fire Protection Association (the "Course"), at his own expense;
  - ii. After successful completion of the Course, he may request that the Engineers and Geoscientists BC Credentials Committee lift the Practice Restriction (the "Competency Application");
  - iii. In partial fulfilment of the Competency Application, Mr. Bahrami must report his updated experience and competencies through the Engineers and Geoscientists BC Competency-Based Assessment system, using the 34 key competencies with generic indicators and providing registered professional engineers practicing in the fire suppression discipline as Validators, as described in the Engineers and Geoscientists BC *Competency Assessment Guide*, or the competency assessment system that is in place at that time, or as specified by the Credentials Committee. If the Credentials Committee is of the opinion that Mr. Bahrami is competent to practice fire suppression engineering, the Credentials Committee may lift the Practice Restriction.

## Costs

51. Section 81 of the PGA deals with costs and provides the Panel with the authority to issue costs against the Respondent:

### Costs

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

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

(2) Costs assessed under subsection (1)

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

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

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

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

52. Engineers and Geoscientists BC has enacted bylaws pursuant to the PGA. Section 10.9 of the Bylaws govern orders and assessment of costs in relation the costs against the Respondent. Section 10.9(1) provides that:

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

discipline hearing, provided that those actual costs are within the limits set out in section 81(2)(a) of the PGA [Costs].

53. Sections 10.9(2), (3) and (4) set out the calculation of recoverable costs with respect to an investigation and a discipline hearing.
54. Section 10.9(5)(a) of the Bylaws requires the Panel to consider whether Engineers and Geoscientists BC proved all of the allegations against the Respondent in the Citation.
55. Section 10.9(5)(a)(ii) of the Bylaws provides the Panel may consider that a registrant previously rejected a Consent Order proposed by the Investigation Committee or the Discipline Committee.
56. Section 10.10 of the Bylaws provides that a registrant must pay the full amount of any costs within 30 days of the date of the order for costs.
57. Engineers and Geoscientists BC has advised that it is only seeking a percentage of its reasonable costs in conformity with what was available under the EGA. It is not seeking its salary costs for employees or officers engaged in the investigation and discipline hearing.
58. Engineers and Geoscientists BC submits that previous cases have awarded reasonable costs of up to 90% of actual costs incurred:
  - a. *Re Swalehe*: \$19, 125.78 which was approximately 90% of actual costs;
  - b. *Re Syed*: \$7,500 which was approximately 90% of reasonable costs;
  - c. *Re James Halarewicz, P.Eng* (January 15, 2019): \$46,455 which was approximately 90% of actual costs; and
  - d. *Re Eric Chrysanthous, P.Eng*. (October 18, 2018): \$50,000 which was approximately 88% of actual costs.
59. Engineers and Geoscientists BC acknowledges it did not prove every allegation contained in the Citation. It submits that it established the most substantial allegations and those took up the majority of the hearing time. The unproven allegations did not require significant additional hearing time and no additional witnesses needed to be called.

60. Engineers and Geoscientists BC notes that the Respondent rejected a Consent Order from the Discipline Committee proposing terms that are substantially the same as those being sought by Engineers and Geoscientists BC.

61. Engineers and Geoscientists BC submits that it is also relevant that the original hearing dates had to be adjourned due to the Respondent's failure to have disclosed additional relevant documents until the eve of the hearing. It argues this required the issuance of a Citation containing new allegations and contributed to a longer and more costly process than was initially expected.

62. Engineers and Geoscientists BC seeks the following in costs:

Legal fees and disbursements (Moore Edgar Lyster LLP)	\$93,827.58
Hearing costs of EGBC	\$4,983.75
Total	\$98,811.33
90% of total costs	\$88,930.20

63. The Respondent argues that in the cases cited by Engineers and Geoscientists BC in which 90% of the actual costs were awarded (*Re Syed*, *Re Swalehe*, *Re Halarewicz* and *Re Chrysanthous*), all of the allegations were proven. The Respondent noted that in *Re Halarewicz*, the registrant had been found to have communicated with Engineers and Geoscientists BC with sexist, obscene, profane and misogynistic content. He had also been found to have communicated with the organization in shocking, disrespectful, discourteous, misogynistic and disgraceful terms. The Respondent submits that the caselaw demonstrates that an award of 90% of actual costs is reserved to severe cases where all allegations are proven.

64. The Respondent also submitted that In *Re Heringa*, Engineers and Geoscientists BC proved all the allegations made against the respondent, and the respondent was ordered to pay \$23,463.36 in costs, representing 70% of Engineers and Geoscientists BC's actual costs. In *Re Hans Heringa* (May 19, 2022) ("*Re Heringa 2*"), Engineers and Geoscientists BC proved all the allegations made against the respondent, and the respondent was ordered to pay \$77,587.82 in costs, representing 75% of Engineers and Geoscientists BC's actual costs. The

respondent in *Re Heringa 2* had a prior record for *Re Heringa*, and at the time of *Re Heringa 2*, he had over 40 years of experience working as an engineer. In *Re Heringa 2* the panel found that the respondent was responsible for several delays in the proceedings, for late applications, and unfounded, irrelevant, improper, and abusive conduct and communication.

65. The Respondent submits that cases such as *Re Heringa* and *Re Heringa 2* demonstrate that 70 or 75% is a rate applied even in cases where respondents are not favoured by inexperience, clean disciplinary records and unproven allegations.
66. The Respondent argues that there are no reasons to increase costs in this case. The Respondent submits that the only documents he failed to disclose were documents that Mr. Ghodousi delivered to Engineers and Geoscientists BC under the disciplinary proceedings against Mr. Ghodousi relating to the same facts. The Respondent says that he thought the lawyers for Engineers and Geoscientists BC had access to those records. The Respondent submits that there were no delays as occurred in *Re Heringa 2* which was far more serious.
67. The Respondent submits that it is unreasonable to consider his rejection of the Consent Order against him in the assessment of costs. The consent order required him to admit to all of the allegations, which were not all proven against him in the Conduct Decision. The Respondent should not be ordered to pay higher costs for rejecting a consent order which required him to admit to unproven allegations.
68. The Respondent submits that the actual costs claimed in the amount of \$98,827.58 are unusually high. He notes in particular the amounts of relating to document disclosure and preparation of the citation; preparation for and attendance at the discipline hearing by two lawyers, and closing submissions. The Respondent contrasts the actual costs incurred in this proceeding with those in *Re Halarewicz* (\$51,617.58) which involved a two day hearing with two lawyers; and *Re Heringa 2* (\$103,450.43) which involved a three day hearing, two lawyers and multiple pre-hearing conferences. This proceeding did not involve multiple pre-hearing conferences and multiple delays. The Respondent submits that the work involved in

this matter was more similar to *Re Halarewicz*. The Respondent argues that there is insufficient detail to verify the actual costs.

69. The Respondent also submits that Engineers and Geoscientists BC failed to prove eight of the twelve allegations against him.

70. He submits that there should be no costs ordered against the Respondent due to his fragile financial position. Alternatively, costs should be calculated as follows:

92. In the event that the Panel chooses to award costs, it is reasonable to start with the Rate of 75% applied over EGBC's actual costs. That was the Rate applied in *Re Heringa 2*.

93. The Respondent respectfully submits that there are no reasons to increase the Rate beyond 75%.

94. The Rate of 75% should be decreased to about 55% considering that EGBC failed to prove eight of twelve allegations made against the Respondent.

95. The Rate of 55% should be reduced to about 45% to account for the unreasonable portions of EGBC's actual costs in this proceeding.

96. The Rate of 45% should be reduced to 35% to avoid an excessive award, considering that EGBC's actual costs in this proceeding are above average.

97. At most, the costs to be paid by the Respondent should not exceed \$34,583.96, representing 35% of EGBC's actual costs.

71. The Panel accepts the actual costs incurred by Engineers and Geoscientists BC were in the amount of \$93,827.58. The Panel is not persuaded that the three areas identified by the Respondent were unreasonable such that the figure of actual costs incurred should be reduced.

72. The Panel has however, decided that 90% of \$93,827.58 in actual costs would be an inordinately high award in this case. The Panel has decided to reduce the total amount of costs ordered to \$25,000 for the following reasons:

- a. The cases in which a rate of 90% was applied were more serious matters, that involved lengthier hearings, in which all of the allegations against the respondents were proven.
- b. *Re Heringa 2* is not comparable to this case. *Re Heringa 2* involved multiple pre-hearing conferences, unnecessary delays, unfounded applications and



irrelevant, improper, and abusive conduct and communication. While there was one adjournment in this case because of the Respondent's failure to disclose documents, the Panel is not satisfied that resulted in a significant increase in costs to Engineers and Geoscientists BC.

- c. Engineers and Geoscientists BC did not prove all of the Citation allegations against the Respondent. The Panel disagrees with the Respondent's characterization that eight of the twelve allegations were unproven. The Panel simply declined to make findings regarding some allegations because of the overlap with the Panel's findings that the Respondent committed unprofessional conduct. It is correct however that Engineers and Geoscientists BC failed to prove three of the allegations against the Respondent. The Panel appreciates that all of witnesses may still have needed to be called and the unproven allegations may not have resulted in additional hearing time. Nevertheless, there were cost implications associated with the unproven allegations, and the Panel considers that some deduction is still warranted for the unproven allegations in this case.
- d. It was not unreasonable for the Respondent to have rejected a consent order that required him to admit to all of the allegations in the Citation when those allegations were not all proven against him in the Conduct Decision.
- e. The Panel agrees with Engineers and Geoscientists BC that there is no evidence of the Respondent's financial circumstances or emotional state.

## **Summary**

73. In summary, the Panel orders that:

- a. Mr. Bahrami pay to Engineers and Geoscientists BC a fine in the amount of \$2500 no later than 30 days from the date of the Panel's decision on penalty and costs;
- b. Mr. Bahrami complete the Professional Practice Examination at his own expense within four months of the date of the Panel's decision on penalty and costs;
- c. Mr. Bahrami complete the Professional Engineering and Geoscience Practice in BC Online Seminar at his own expense within four months of the date of the Panel's decision on penalty and costs;
- d. Mr. Bahrami be prohibited from performing any engineering work related to fire suppression systems (the "Practice Restriction"), and, if Mr. Bahrami wishes to lift or modify the Practice Restriction, he must:
  - i. Provide proof to Engineers and Geoscientists BC that he has completed and passed the NFPA 13, Standard for the Installation of Sprinkler Systems Online Training Series, offered by the National Fire Protection Association (the "Course"), at his own expense;
  - ii. After successful completion of the Course, he may request that the Engineers and Geoscientists BC Credentials Committee lift the Practice Restriction (the "Competency Application");
  - iii. In partial fulfilment of the Competency Application, Mr. Bahrami must report his updated experience and competencies through the Engineers and Geoscientists BC Competency-Based Assessment system, using the 34 key competencies with generic indicators and providing registered professional engineers practicing in the fire suppression discipline as Validators, as described in the Engineers and Geoscientists BC *Competency Assessment Guide*, or the competency assessment system that is in place at that time, or as

specified by the Credentials Committee. If the Credentials Committee is of the opinion that Mr. Bahrami is competent to practice fire suppression engineering, the Credentials Committee may lift the Practice Restriction.

- e. Mr. Bahrami pay \$25,000 in investigation and legal costs to Engineers and Geoscientists BC, payable in accordance with sections 10.10 and 10.10.1 of the Bylaws, or such other date as agreed to by the Respondent and Engineers and Geoscientists BC in writing.

<original signed by>

Paul Adams, P. Eng., Chair

<original signed by>

Peter Bobrowsky, P.Geo.

<original signed by>

Keith Sashaw