

**IN THE MATTER OF
THE ENGINEERS AND GEOSCIENTISTS ACT,
R.S.B.C. 1996, chapter 116, as amended (the “Act”)**

and

**IN THE MATTER OF AHMED RAZA SYED, P. Eng.
APEGBC File No. T16-038**

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

Hearing Date:	By Written Submissions
Discipline Committee Panel:	Oliver Bonham, P. Geo., Chair, Jaswinder Bansal, P. Eng., Colin Smith, P. Eng.
Counsel for the Panel:	Robin N. McFee, Q.C.
Counsel for the Association:	David Volk
Counsel for the Member:	Mr. Syed, P.Eng. was not represented by legal counsel

INTRODUCTION

1. On November 27, 2018 a Panel of the Discipline Committee comprised of the members stated above (“the Panel”) of the Association of Professional Engineers and Geoscientists of British Columbia (“the Association”) doing business as Engineers and Geoscientists British Columbia, conducted an inquiry pursuant to the Engineers and Geoscientists Act (“the Act”) to determine whether the member, Mr. Ahmed Raza Syed, had acted contrary to the Act and/or breached the Bylaws of the Association.

2. The Panel considered the allegations against Mr. Syed set out in a Notice of Inquiry dated the 22nd day of August 2018 alleging that Mr. Syed:

1. Demonstrated unprofessional conduct or incompetence in respect of structural engineering services he performed for projects at 4 different residential addresses in the City of Abbotsford, British Columbia (referenced for the purposes of the Panel’s determination as Projects A, B, C & D) by:

- (a) Issuing field review reports that were incorrect and which he knew or ought to have known to be incorrect; and

- (b) Failing to adequately document changes made during construction and to submit a record of those changes to the City of Abbotsford.
 2. Demonstrated negligence or incompetence in respect of structural engineering services he performed for the Projects by:
 - (a) Issuing design drawings and specifications which included missing, incorrect, and inadequate drawing details, in particular, in respect of foundations, joist sizing, and reinforcement of retaining walls;
 - (b) Issuing sealed drawings with footings which had capacities which were inadequate for the holdown capacity; and
 - (c) Issuing sealed drawings with holdowns which were incorrectly located.
 3. Demonstrated negligence or incompetence in respect of structural engineering services he performed for Project A and Project C by issuing designs which included joists with dead load capacity insufficient to meet the specified design dead loads in his signed and sealed design criteria;
 4. Breached Bylaw 14(b) of the Bylaws of the Association in connection with his professional assignment on the Projects by:
 - (a) Failing to retain adequate records of his assessments, designs, load calculations and other engineering and geoscience documents; and
 - (b) Failing to retain adequate records of his field reviews during implementation and construction.
 5. Demonstrated unprofessional conduct or incompetence by sealing drawings he did not create and were [sic] not professionally responsible for, specifically:
 - (a) Section drawings for Project C sealed on May 20, 2015; and
 - (b) TJI Framing plans for Project A sealed on December 9 and 14, 2015
3. Mr. Syed did not attend the hearing.
4. The Panel heard opening submissions from the Association's counsel, Mr. David Volk, and the Association called as its witnesses, Mr. Jesse Romano, Investigation Manager at the Association; Mr. Walter Poh, retired, former Assistant Manager, Building, Permits and Licenses of the City of Abbotsford; and Mr. Brian Lytton, P.Eng.; Mr. Lytton gave evidence in the capacity of an expert witness, acceptable to the Panel.

5. The Panel received written Closing Submissions for the Association.
6. No submissions, written or otherwise, were received from Mr. Syed.
7. The Panel considered the evidence and Closing Submissions, and in its February 15, 2019 Determination, found that Mr. Syed acted contrary to the Act and breached the Bylaws of the Association. In particular, the Panel found that:
 - a) Mr. Syed demonstrated unprofessional conduct and incompetence in respect of structural engineering services he performed for projects at 4 different residential addresses in the City of Abbotsford, British Columbia, by:
 - (a) Issuing field review reports that were incorrect and which he knew or ought to have known to be incorrect; and
 - (b) Failing to adequately document changes made during construction and to submit a record of those changes to the City of Abbotsford.
 - b) Mr. Syed demonstrated negligence and incompetence in respect of structural engineering services he performed for the Projects by:
 - (a) Issuing design drawings and specifications which included missing, incorrect, and inadequate drawing details, in particular, in respect of foundations, joist sizing, and reinforcement of retaining walls;
 - (b) Issuing sealed drawings with holdowns which were incorrectly located.
 - c) Mr. Syed breached Bylaw 14(b) of the Bylaws of the Association in connection with his professional assignment on the Projects by:
 - (a) Failing to retain adequate records of his assessments, designs, load calculations and other engineering and geoscience documents; and
 - (b) Failing to retain adequate records of his field reviews during implementation and construction.
 - d) Mr. Syed demonstrated unprofessional conduct by sealing drawings he did not create and was not professionally responsible for, specifically:
 - (a) Section drawings for Project C sealed on May 20, 2015; and
 - (b) TJI Framing plans for Project A sealed on December 9 and 14, 2015.

8. In its Determination, the Panel requested written submissions on appropriate sanctions and whether costs should be imposed. Written Submissions of the Association on Penalty and Costs dated March 18, 2019 were provided to the Panel. Mr. Syed did not provide submissions on penalty and costs.

STATUTORY FRAMEWORK for ASSESSING PENALTY

9. Having determined that Mr. Syed demonstrated unprofessional conduct, incompetence, negligence, and breached Bylaw 14(b) of the Bylaws of the Association, the Panel must decide whether pursuant to Section 33(2) of the Act what penalty, if any, is appropriate. Section 33 (1) and (2) of the Act state:

(1) After an inquiry under section 32, the discipline committee may determine that the member, licensee or certificate holder

- a) has contravened this Act or the bylaws or the code of ethics of the association, or
- b) has demonstrated incompetence, negligence or unprofessional conduct.

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

FACTORS TO BE CONSIDERED IN DETERMINING APPROPRIATE PENALTY

10. In a previous determination *Re Chrysanthous*, a panel of the Discipline Committee of the Association in its decision on penalty and costs on August 16, 2018 cited with approval and applied the Law Society of British Columbia decision in the Law Society of British Columbia v. *Ogilvie*, [1999] LSBC 17 delineating factors that may be taken into account in deciding an appropriate penalty to be imposed upon a member:

- a) the nature and gravity of the conduct proven;
- b) the age and experience of the member;

- c) the previous character of the member, including details of prior discipline;
- d) the impact upon the victim;
- e) the advantage gained, or to be gained, by the member;
- f) the number of times the offending conduct occurred;
- g) whether the member has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstances;
- h) the possibility of remediating or rehabilitating the member;
- i) the impact on the member 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.

11. In a more recent decision of the *Law Society of British Columbia, LSBC v. Dent*, [2016] LSBC 05, it was held that it is not necessary to consider each and every *Ogilvie* factor in every case and that a panel should consider primary factors that bear more directly on the fact pattern before it. In *Re Chrysanthous* at para. 15, the discipline panel of the Association held that the considerations to be taken into account in assessing penalty must be individualized. This individualized approach was also adopted by a differently comprised discipline panel in a more recent decision in *Re Halarewicz* (18 January 2019).

12. This panel was guided by the approaches used in *Re Chrysanthous* and in *Re Halarewicz* in assessing sanction and penalty in this matter.

SUBMISSIONS OF THE ASSOCIATION ON PENALTY

13. The Association focused its submissions on the following *Ogilvie* factors:

- i. Nature and gravity of the conduct

The Association emphasized that the matter before this Panel involves four different projects for which serious and significant determinations were made of inadequate field reviews, inadequate design and inadequate project documentation. The Association submitted, and this Panel accepts, that the

repetition of the Member's conduct across all four projects demonstrates a general failure on the Member's part in meeting basic and minimum engineering standards and practices.

This Panel took into account that the potentially serious design and construction issues across all four projects were discovered and corrected only because of the diligence of the City of Abbotsford building inspectors.

This Panel notes and accepts the Association's submission that such conduct fundamentally undermines professional reliance by the public and municipalities to ensure that buildings are constructed safely and in compliance with the Building Code, municipal requirements and professional standards.

ii. Number of Times the Conduct Occurred

The Panel notes that it found that the Member demonstrated a general failure to meet basic and minimum engineering standards and practices on all four projects before it.

iii. Prior Discipline

Mr. Syed was previously disciplined for breach of Section 30(4) of the Act for failing to provide records as requested by the Association's Investigation Committee. In that matter, the penalty imposed initially, was an order that Mr. Syed pay a fine of \$5,000 and complete the Professional Practice Examination and the Professional Engineering and Geoscience in B.C. Online Seminar by May 31, 2018. Mr. Syed did not complete the Professional Practice Examination in that timeframe and therefore applied for an extension of time to complete the examination. In a May 24, 2018 written decision, the Panel in that matter refused Mr. Syed's request. This resulted in Mr. Syed being suspended for a period of approximately one month while he completed the outstanding examination, following which his membership was reinstated.

On December 20, 2018, a Panel of the Discipline Committee adjudicated upon a without notice application by the Association for an interim suspension of Mr. Syed's practice pending determination of charges in respect of a complaint originating from the City of Langford, Association File No. T-16-080 ("the Langford matter"). That Panel imposed an interim suspension effective December 24, 2018, which remains in place. This Panel has been informed that the discipline hearing in the Langford matter is currently set for hearing for two days on June 20 and 21, 2019. This Panel notes that no final determination has been made in the Langford matter; therefore, the interim suspension of December 24, 2018 does not weigh upon the Panel's decision on penalty in this matter.

iv. Whether Misconduct has Been Acknowledged and any Steps Have Been Taken to Redress the Wrong

The Panel notes that Mr. Syed has not acknowledged at any time that his conduct constitutes unprofessional conduct, incompetence, negligence or a breach of the Bylaws of the Association. To the contrary, it was necessary for the Association to proceed to a hearing of the allegations in the Notice of Inquiry for this Panel to make its determinations.

v. Need for Specific and General Deterrence

It is the duty of the Association to uphold and protect the public interest respecting the practice of professional engineering and the practice of professional geoscience. This Panel's findings of unprofessional conduct, incompetence, negligence and breach of the Bylaws demonstrate a pattern of conduct that puts members of the public at risk and, if allowed to continue, will bring disrepute to the profession. There is a need for a penalty that brings home to Mr. Syed the need for him to be deterred from further conduct of this nature in the future, and to give a message to all other members of the Association that such conduct is unacceptable.

vi. Penalties Imposed on Similar Cases

The Association brought to the Panel's attention four prior decisions of discipline panels of the Association, including *Re Lebhihan* (10 December 1997), *Re Helin* (10 January 2000), *Re Madhav* (24 February 2014) and *Re Madsen* (18 October 2005). The Panel has reviewed and considered each of these decisions. The Panel notes that in each of these decisions, the member's conduct warranted a suspension and, in addition, the Panels imposed conditions to monitor and assist in the improvement of the Member's practice, either by way of practice review and/or independent review by an engineer approved by the Association.

POSITION OF THE ASSOCIATION ON PENALTY

14. The Association submits that an appropriate penalty to be imposed upon Mr. Syed is:

- a) That Mr. Syed be suspended from practice for a period of six months.
- b) That Mr. Syed shall be subject to direct supervision by a "supervising APEGBC professional" (the "Supervising Professional") as described in the Quality Management Guidelines — Direct Supervision, who is approved in writing and in advance by the Registrar of the Association of Professional Engineers and Geoscientists of the Province of British

Columbia (doing business as “Engineers and Geoscientists British Columbia”). The Supervising Professional shall provide “direct supervision”, as defined in the Act and as set out in the Quality Management Guidelines — Direct Supervision, in respect of all engineering work performed by Mr. Syed (the “Direct Supervision”).

- c) The Direct Supervision shall commence following the conclusion of Mr. Syed’s suspension and shall continue for a period of twelve months, subject to paragraph f, below.
- d) For the first three months of the Direct Supervision, Mr. Syed shall work full time in the Supervising Professional's offices.
- e) The Supervising Professional shall report in writing to the Registrar of Engineers and Geoscientists British Columbia every two months during the period of Direct Supervision on the performance of Mr. Syed.
- f) At the conclusion of the twelve-month period of Direct Supervision, the Supervising Professional shall report in writing to the Disciplinary Committee of Engineers and Geoscientists British Columbia to provide an opinion on whether Mr. Syed requires continuing direct supervision. If the opinion of the Supervising Professional is that Mr. Syed requires further direct supervision, the Direct Supervision shall continue for a period of an additional six months.
- g) The costs of the Supervising Professional providing the Direct Supervision and preparing the reports referenced above shall be borne by Mr. Syed.

15. The Association further submits that in the event this Panel orders a suspension, that suspension should not run concurrently with the interim suspension currently in place with respect to the Langford matter. Rather, it should not take effect until the interim suspension expires.

DETERMINATION OF THE PANEL ON PENALTY

16. Having considered these matters, this Panel finds that the appropriate penalty arising from this Panel’s determinations of unprofessional conduct, incompetence, negligence and breach of the Bylaws is:

- a) Mr. Syed be suspended for a period of six months, which suspension shall not run concurrently with the interim suspension currently in place and/or any additional period of suspension that may be imposed upon Mr. Syed arising from the Langford matter. Rather, this suspension shall commence on the day following the expiry or lapsing of the interim suspension and the expiry of the additional period of suspension, if any, that may be imposed upon Mr. Syed arising from the Langford matter.

- b) Mr. Syed shall be subject to direct supervision by a “supervising APEGBC professional” (the “Supervising Professional”) as described in the Quality Management Guidelines — Direct Supervision, who is approved in writing and in advance by the Registrar of the Association of Professional Engineers and Geoscientists of the Province of British Columbia (doing business as “Engineers and Geoscientists British Columbia”). The Supervising Professional shall provide “direct supervision”, as defined in the Act and as set out in the Quality Management Guidelines — Direct Supervision, in respect of all engineering work performed by Mr. Syed (the “Direct Supervision”).
- c) The Direct Supervision shall commence following the conclusion of Mr. Syed’s six-month suspension and shall continue for a period of twelve months, subject to paragraph f, below.
- d) For the first three months of the Direct Supervision, Mr. Syed shall work full time in the Supervising Professional's offices.
- e) The Supervising Professional shall report in writing to the Registrar of Engineers and Geoscientists British Columbia every two months during the period of Direct Supervision on the performance of Mr. Syed.
- f) At the conclusion of the twelve-month period of Direct Supervision, the Supervising Professional shall report in writing to the Disciplinary Committee of Engineers and Geoscientists British Columbia to provide an opinion on whether Mr. Syed requires continuing direct supervision. If the opinion of the Supervising Professional is that Mr. Syed requires further direct supervision, the Direct Supervision shall continue for a period of an additional six months. At the conclusion of the further six-month period of direct supervision, the Supervising Professional shall report in writing to the Discipline Committee of the Engineers and Geoscientists British Columbia providing an opinion on whether Mr. Syed requires continuing direct supervision. If in the opinion of the Supervising Professional, Mr. Syed continues to require further direct supervision, this matter will be referred back to the Discipline Committee for consideration as to whether the imposition of further conditions on the membership of Mr. Syed are warranted.

COSTS

17. Section 35(1) of the Act stipulates that if the Discipline Committee makes the determination under s. 33(1) (“Disciplinary Actions”), the Discipline Committee may direct that the reasonable costs of and incidental to the investigation under s. 30 and the inquiry under s. 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.

18. Section 35(1) is permissive; therefore, at a threshold level, this Panel must first determine if it should exercise its discretion to award costs to the Association. If this Panel determines that costs are appropriate, it must determine the appropriate level of costs. In *Currie v. Thomas*, [1985] 19 D.L.R. (4th) 594, the British Columbia Court of Appeal gave the following direction with respect to the awarding of costs.

“Discretion must be exercised in a judicial manner and not arbitrarily or capriciously”. ... “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.”

19. The Panel in *Re Halarewicz* reviewed the level of costs imposed in other discipline matters and stated at para. 47:

The Association submits that a costs award is appropriate as it was successful in proving the charges alleged in the Notice of Inquiry. It notes that panels of the Discipline Committee have awarded costs in the range of 70% to 90% of actual costs incurred by the Association in the following cases: *Re : Foreman* at 70%; *Re: Kevin A. Bromley, P.Eng.* (February 24, 2015) at 70%; *Re: Dr. Stromotich* at 80%; *Re: Melneckenko* at 90%; *Re: Syed* at 90%; and *Re : Chrysanthous* at 90%.

20. Having determined that Mr. Syed demonstrated unprofessional conduct, incompetence, negligence and a breach of the Bylaws in various aspects of the four projects that are the subject matter of the Notice of Inquiry, it is appropriate that the Panel exercise its discretion to award costs to the Association.

21. The Association has advised that its costs in this matter are as follows:

Item	Amount
Cost of external legal counsel	\$27,003.00
Expert costs (Brian Lytton, P.Eng.) – Preparation of report and attendance at hearing.	\$5,217.80
Court reporter at hearing	\$257.25
<i>Total</i>	\$32,478.05
<i>Total reduced to 90%</i>	\$29,230.25

22. The Panel notes that in *Re Chrysanthous*, an October 2016 decision, the Panel ordered costs of \$50,000 (90% of actual costs) and in *Re Halarewicz* a January 2019 decision, the Panel ordered costs of \$46,455.82 (90% of actual costs).


23. Having considered the matter, the Panel awards costs to the Association in the amount of \$29,000. These costs are payable on or before 90 days from the date of this decision.

IT IS SO ORDERED.

Dated this 18th day of June, 2019.



Oliver Bonham, P. Geo., Chair



Jaswinder Bansal, P. Eng.



Colin Smith, P. Eng.