

**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 and T16-080**

DETERMINATION OF THE DISCIPLINE COMMITTEE

Hearing Date: July 20, 2017

Discipline Committee Panel: Oliver Bonham, P. Geo., Chair,
Ed Bird, P. Eng.,
Christopher Arthur, P. Eng.

Counsel for the Association: David Volk

Counsel for the Member: Mr. Syed attended in person, without
counsel

1. A panel of the Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of BC (the "Association") conducted an inquiry to determine pursuant to s. 33 of the Act, whether Mr. Syed has acted contrary to s. 30(4) of the Act.

2. The particulars of the allegations against Mr. Syed are set out in two Notices of Inquiry, both issued June 15, 2017, which were marked Exhibit 1.

3. The Notice of Inquiry on File No. T16-039 alleges:

In relation to an investigation concerning Mr. Syed's conducting of field reviews at projects located at [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (together, the "Projects") in the City of Abbotsford, British Columbia, contrary to section 30(4) of the Act, Mr. Syed failed to comply with the January 24, 2017 request of APEGBC's Investigation Committee that he provide his complete files for the Projects.

4. The Notice of Inquiry on File No. T16-080 alleges:

In relation to an investigation concerning Mr. Syed's involvement in the design and approval of glass guards at projects located at [REDACTED], [REDACTED],

[REDACTED], [REDACTED], [REDACTED], and [REDACTED] (together, the "Projects") in the City of Langford, British Columbia, contrary to section 30(4) of the Act, Mr. Syed failed to comply with the January 27, 2017 request of APEGBC's Investigation Committee that he provide a number of documents, including his complete files for each of the Projects.

5. Mr. Syed attended the hearing and there was no dispute that service had been properly effected.

6. As a preliminary matter, the Panel heard submissions about the manner in which the hearing should proceed given that two separate Notices of Inquiry were issued. Mr. Volk requested that the two matters be considered together. In his submission he referred to *Re Martin*, 2015 CMTBC 01 (BOA, Tab 3) (*Martin*) a decision of a discipline panel acting pursuant to the *Health Professions Act*, R.S.B.C. 1996, c. including the following factors to be considered:

- a. The similarity of the charge or allegations made against the member;
- b. The presence or absence of manifest prejudice to the member;
- c. The greater efficiency of a single hearing;
- d. The public interest in avoiding the delay that would be incurred by separate hearings; and,
- e. The possibility of inconsistent findings.

7. Mr. Syed was asked and did not object to the request to hear both matters together.

8. The Panel ruled that it was satisfied that it would be appropriate to proceed with both Notices of Inquiry together and hear the matters at the same time.

9. The Panel heard opening submissions from Mr. Volk about the matters to come before the Panel. At this point Mr. Volk informed the Panel that Mr. Syed had, immediately prior to the hearing commencing, provided the Association with two folders of documents described as containing files from Mr. Syed pertaining to both matters. Mr. Volk went on to explain that these were currently being copied and they had yet to be reviewed by the Association in any detail. He went on to submit that this action should not change the situation at issue in the charges, namely failure by Mr. Syed to comply with the letters of the Association as stated.

10. Mr. Syed was asked if he wished to make any opening submissions. He indicated he did not.

Onus and Burden of Proof

11. The standard to be met by the Association is proof on the "balance of probabilities", meaning this Panel must find that it is "more likely true than not" that the

alleged facts occurred (*Kaminski v. Assn. of Professional Engineers and Geoscientists of British Columbia*, 2010 BCSC 468 at para. 52).

Evidence

12. The Association called a single witness Ms. Kayla Vantriet. She testified.
- a) Ms. Vantriet identified herself and explained her job of Compliance Officer at the Association.
 - b) Ms. Vantriet gave a description of the step-by-step process by which complaints are received and investigations commenced at the Association. She explained how matters are first referred to a designated reviewer, and then to the Investigation Committee, which may assign the matter to a subcommittee, and her role in communicating with members, as directed by the Association, at different points in the process.
 - c) Referring to documents in a binder entitled “Witness binder of Ms. Kayla Vantriet, APEGBC, Compliance Officer”, which was marked Exhibit 2, Mr. Volk questioned Ms. Vantriet.
 - d) Ms. Vantriet testified that she had written and sent to Mr. Syed the Association’s letter dated 24 January 2017 at Tab 8 in the binder. The letter is with reference to “Professional Misconduct Complaint against Amed R. Syed, P.Eng Our File No T16-038”. The letter describes a complaint to the Association concerning field reviews on 4 projects located in Abbotsford, BC. It informs Mr. Syed of the request of the Subcommittee of the Investigation Committee that Mr. Syed deliver his complete project files concerning work on the 4 projects to the Association, for the attention of the Subcommittee, by no later than February 14, 2017.
 - e) Ms. Vantriet testified that she had written and sent to Mr. Syed the Association’s letter dated 27 January 2017, at Tab 9 in the binder. The letter is with reference to “Professional Misconduct Complaint against Amed R. Syed, P.Eng Our File No T16-080.” The letter describes a complaint to the Association concerning glass guards and 6 projects located in Langford, BC. It informs Mr. Syed of a report on the complaint by a designated reviewer and a review by the Investigation Committee, and the request of the Investigation Committee that Mr. Syed deliver his complete files concerning work on the 6 projects, and respond to three specific requests for information concerning the complaint, to the Association, for the attention of the Subcommittee, by no later than February 17, 2017.
 - f) Ms. Vantriet was questioned about e-mail correspondence, at Tab 10, between Mr. Syed and Ms. Vantriet between 24 January 2017 and 21 February 2017, concerning a request by Mr. Syed for an extension of time

to meet the requests of the Association and the response from the Association that the Subcommittee required a formal letter from Mr. Syed seeking such as an extension. Ms. Vantriet testified she engaged in this correspondence with Mr. Syed.

- g) Ms. Vantriet testified that she had written and sent to Mr. Syed the Association's letter of March 16 2017, at Tab 11 in the binder. This letter indicates that as of that date (17 March 2017) the Association had not received a formal letter from Mr. Syed seeking an extension of time.
- h) Ms. Vantriet acknowledged receipt of the letter of Mr. Syed, at Tab 12 in the binder, requesting an extension of time for both matters until 10 April 2017; and she testified sending her response to Mr. Syed by email, at Tab 13 in the binder, indicating to Mr. Syed that the Subcommittee had agreed to an extension of time to no later than 10 April, 2017.
- i) Ms. Vantriet described an email she had written to the Subcommittee on 11 April, 2017, at Tab 14 in the binder, recounting a meeting she and Efreem Swartz had with Mr. Syed at the Association's office on 11 April, 2017. She indicated the meeting lasted about 20 minutes. She identified Mr. Swartz as the Director Legislation, Ethics and Compliance at the Association. In her account of the meeting, Ms. Vantriet stated that Mr. Syed explained that he had not been able to respond to the Association's requests because of business and family matters. He said he had files for his projects but they were electronic and they still needed to be printed off. At the conclusion of the meeting, Ms. Vantriet reported, that Mr. Swartz explained to Mr. Syed that Mr. Syed needed to respond to the requests of the Subcommittee and he told Mr. Syed that the Investigation Committee would be meeting at the end of the month; and if the requested information was not received by then the matters were likely to be referred to the Discipline Committee. Ms. Vantriet testified that she had written and sent the Subcommittee her account of this meeting, immediately following the meeting.
- j) Ms. Vantriet testified she received two letters from Mr. Syed one dated 20 April, 2017 referring to Complaint T16-038 at Tab 15, the other dated 25 April, 2017 referring to T16-080, at Tab 16 in the binder. Both letters make reference to the listed projects and their locations, and provide comments, in point form, concerning Mr. Syed's work on the projects. Ms. Vantriet was asked if Mr. Syed had provided his project files or any other documentation in connection with these letters. She responded that no project files or any other documentation was received with these letters.
- k) Mr Volk concluded by asking Ms. Vantriet if she had received any additional documentation since from Mr. Syed. Ms. Vantriet testified that she had not received any further documents from Mr. Syed.

13. Mr. Syed advised that he had no questions of Ms. Vantriet.
14. Mr. Volk indicated that he had no further witnesses.
15. Mr. Syed was asked to proceed. Mr. Syed indicated he had no witnesses and proceeded to make some statements in his defense. It was pointed out to Mr. Syed by the chair of the Panel that he would need to stand as a witness in order to have his remarks qualify as evidence. Mr. Syed was invited by the chair to testify on his own behalf and he elected to do so. After Mr. Syed had been affirmed, the Chair invited Mr. Syed to address the Panel as he wished on the matters.
16. Mr. Syed testified that he had delayed in providing the requested records, and went on to explain his reasons
17. Mr. Syed stated that his company did the inspections in question and he intended to give the Associations every related file, but he was having difficulty providing the files because of management problem at his office. Not all files were on the same computer system and he there had been staff turnover. He stated that whatever files he could get from his computer person he had submitted to the Association earlier in the day.
18. In response to questions from the Panel, Mr. Syed confirmed that his project files are electronic. He stated the reason he did not submit the information to the Association as requested was because his computer person was having difficulties retrieving the files for him. He said he did not explain this to the Association. He said he believed he could submit a reply to the Association first and then if the Association really needed further information, it could be provided later. He stressed it was a misunderstanding.
19. In cross-examination, Mr. Volk took Mr. Syed through documents in two folders, labelled T16-038 and T16-080, marked Exhibits 3 and 4, which Mr. Syed confirmed were the documents he had provided to the Association just prior to the hearing. He stated he did not, himself, look for these documents provided from the computers in his office; they were provided to him by a member of staff in his office. Mr. Syed acknowledged that some of the documents in the folders had been sealed, dated and signed by Mr. Syed on July 16, 2017 - the day before the hearing. In responses to other questions, Mr. Syed acknowledged that he had received correspondence from the Association requesting he provide copies of his complete project files. Mr. Syed restated that he believed he could submit a reply to the Association first and provide project information later, if needed.
20. In response to a question of clarification from the Panel, Mr. Syed confirmed that the computer person who was asked to provide Mr. Syed with his project files, reports directly to Mr. Syed.

Closing Submissions

21. Closing submissions on behalf of the Association were brief. Mr. Volk referred the Panel to the Written Submission of the Association in the matter of Amed Raza Syed P.Eng, Hearing – July 20, 2017, provided to the Panel at the outset of the hearing, together with a binder entitled Book of Authorities with the same subject reference.

22. Mr. Syed was asked if he had closing submissions. Mr. Syed had no closing submissions.

23. At the conclusion of submissions, the Chair of the Panel called for a recess, in order for the Panel to deliberate, with proceedings expected to resume in one hour.

Verbal Statement of Findings

24. Upon reconvening the hearing, the Chair of the Panel stated the Panel had reached a decision of findings. The Chair then read the following statement, following which the hearing closed:

- a) *“I can advise you that the Panel has concluded that the allegations contained in the notices of inquiry T16-038 and T16-080 have been proven by the Association to the required standard. Mr. Syed that means that we have found that you failed to comply with the requests by the Investigations Committee, contrary to Section 30 (4) of the Act. We will prepare and issue written reasons and those will be delivered to you by the Association. We will then call for submissions on disciplinary action or penalty”*

Analysis

25. The Panel was faced with three issues in considering the evidence:

- a) Had Mr. Syed been appropriately notified and informed by the Association of the requests of the Subcommittee and the Investigations Committee?
- b) Had Mr. Syed complied with the request of the Subcommittee and the Investigations Committee as specified?
- c) And thus, had Mr. Syed’s conduct amounted to a breach of s. 30(4) of the Act.

26. The Panel accepts the evidence of Ms. Vantriet and adopts the facts set out above in paragraph 12 a) to k).

27. The letters of the Association referred to by Ms. Vantriet in paragraphs 12 d) and e) above are clear as to requirements of the Association, the importance of the matters and the specification of the dates for delivery of the documents.

28. In the correspondence between Mr. Syed and Ms. Vantriet referred to in paragraph 12 f), it is clear that Mr. Syed was aware of the correspondence from the Association and the need to comply, in that he requested an extension of time.

29. Mr. Syed requested and was given an extension of time to 10 April 2017 to respond to the Association as specified, which indicates he understood he needed to provide the project files to the Association.

30. By 11 April 2017 – the day following the expiry of the extension of time given by the Association, the project files had not been provided to the Association by Mr. Syed. Furthermore, it was explained to Mr. Syed at the meeting at the Association's office that he needed to provide the required files and responses and that if they were not provided in time for the next meeting of the Investigation Committee, at the end of the month, the matters were likely to be referred to the Discipline Committee.

31. In the letters sent to the Association by Mr. Syed, dated 20 April, 2017 and 25 April, 2017 referred to by Ms. Vantriet in paragraph 12 j) above, Mr. Syed makes a number of points in discussing aspects of his work on the projects in Abbotsford and Langford but these letters are not accompanied by his complete files for each of the 10 projects as specifically requested in the January letters from the Association.

32. Ms. Vantriet, in paragraph 12 k), explained that the Association had not been delivered any additional documents from Mr. Syed since. The only documents provided by Mr. Syed since his letters of 20 and 25 April 2017 are the documents he provided the Association immediately before the hearing.

33. Mr. Syed explained, as set out in paragraphs 17-20 of this decision, that his project files were stored on computers and he was dependent on a member of his staff to locate and print his project files for him. He also explained that he did not understand the need to provide his files directly; he said he would have the opportunity to reply to the Association first and then provide his project files later as needed. This shows a lack of appreciation of the seriousness and urgency of the matter by Mr. Syed. When required by the Association to respond to the request of the Investigation Committee a member must comply.

34. In cross-examination by Mr. Volk, Mr. Syed further acknowledged that he had received correspondence from the Association requesting he provide copies of his complete project files. This provides further evidence that Mr. Syed understood what was required of him.

35. In allowing the original dates to submit his files, 14 and 17 of February, 2017 [paragraph 12 d) and e)] to pass and then later agreeing to an extension of time, as requested by Mr. Syed, to April 10, 2017 [paragraph 12 h)] the Association provided more than a reasonable amount of time to allow Mr. Syed to respond to the request of the Investigation Committee and the Subcommittee.

36. In considering the evidence presented, the Panel is satisfied on the balance of probabilities that Mr. Syed was appropriately notified and informed by the Association of the requests of the Subcommittee and the Investigations Committee. It is also evident that Mr. Syed did not comply with the request of the Subcommittee and the Investigations Committee as specified and within the timeframes specified.

37. The Panel then turns to the Act.
38. The relevant sections of the Act are section 30(3) and (4) which provide:
- (3) The investigation committee or a subcommittee composed of one or more of its members appointed by the investigation committee may, on receipt of a report under section 29 or subsection (7.1) of this section or whenever it considers it appropriate, investigate a member, licensee or certificate holder.
 - (4) A member, licensee or certificate holder being investigated under subsection (3) must
 - (a) provide the committee or subcommittee conducting the investigation with any information or records in the possession or control of the member, licensee or certificate holder that the committee or subcommittee may require,
 - (b) answer, within a reasonable time and in the manner specified by the committee or subcommittee, any inquiries of the committee or subcommittee, ...
39. The Panel took guidance from the Determination of the Association in the matter of Re Hartford, P.Eng in 2006, referred to in the Written Submission of Association (“Re Hartford”), a case concerning the same issue as the present case. The relevant paragraphs from the decision are as follows:
- a) [43] “In assessing whether Mr. Hartford took reasonable steps to respond to the Association’s request for the production of records, we are guided by the philosophy of what a reasonable member of the Association, knowing the serious professional implications of a complaint from a member of the public, and having the information in the member’s possession, would do in the circumstances”.
- [50[...”As a self-governing profession that is responsible, in the public interest, for regulating members, it is important that complaints from the public are addressed expeditiously in a fair and transparent manner. It is not in the public interest or the interest of the Association, that the complaints procedure be stifled, because, for whatever reason, a member declines to respond to legitimate regulatory requests or maintains such scant records, that documents cannot be retrieved or examined”.
40. We also note that in Re Hartford, Mr. Hartford failed to provide any response prior to appearing before the Discipline Committee to provide testimony and that one of the findings of the Discipline Committee was that Mr. Hartford was indifferent to the process (para. 48)”.

41. The explanation given by Mr. Syed as to why his project files were not provided as requested cannot be used as an excuse for not responding to the Association requests. Section 30 (4) of the Act is very clear. A member, licensee or certificate holder being investigated must (a) provide the committee or subcommittee conducting the investigation with any information or records in the possession or control of the member, licensee or certificate holder that the committee or subcommittee may require and, (b) answer, within a reasonable time and in the manner specified by the committee or subcommittee, any inquiries of the committee or subcommittee.

The fact that some files were provided on the day of the hearing, does not change matters. It is the analysis of the Panel that all the charges are proven. The requests of the Association's Investigations Committee and Subcommittees that Mr. Syed provide his complete project files for his projects under investigation in Abbotsford and Langford, were not complied with, either, within reasonable time or in the manner specified.

Findings

42. The Panel accepts the evidence of Ms. Vanfriet and adopts the facts set out above in paragraph 12 a) to k), which set out the Association's communications to Mr. Syed and his failure to provide the requested records.

43. The Panel further finds that Mr. Syed's explanations do not alter its conclusions.

44. For the reasons set out above the Panel has concluded that the allegations against Mr. Syed are proven on the balance of probabilities and constitute a breach of s. 30(4) of the Act.

Penalty and Costs Submissions

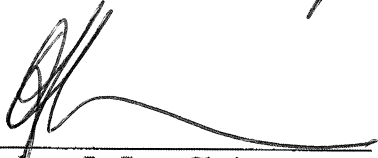
45. The Panel is now required to determine whether sanctions should be imposed upon the member pursuant to s. 33(2) of the Act and whether to impose costs pursuant to s. 35 of the Act.

46. The Panel requests written submissions on appropriate sanctions and whether costs should be imposed. We set the following schedule for submissions.

- a) Submissions must be delivered by counsel for the Association to Mr. Syed and to the Panel no later than 2 October 2017. Submissions must be delivered by Mr. Syed to counsel for the Association and to the Panel no later than 23 October 2017.
- b) Reply submissions may be delivered by counsel for the Association to Mr. Syed and to the Panel by 30 October 2017.

Submissions for the Panel shall be delivered to Panel. Submission may be delivered electronically.

DATED this 18th day of September, 2017.



Oliver Bonham, P. Geo., Chair



Ed Bird, P. Eng.



Christopher Arthur, P. Eng.