

**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**

**DETERMINATION OF THE DISCIPLINE COMMITTEE**

Hearing Date: November 27, 2018

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

Member: Mr. Syed, P. Eng.

Mr. Syed did not attend. Mr. Syed was not represented by counsel.

1. A panel of the Discipline Committee (the “Panel”) of the Association of Professional Engineers and Geoscientists of BC (the “Association”), doing business as Engineers and Geoscientists BC, conducted an inquiry pursuant to the Act to determine whether Mr. Syed has acted contrary to the Act and/or breached the bylaws of the Association.
2. The particulars of the allegations against Mr. Syed are set out in the Notice of Inquiry, issued August 22, 2018, which was marked Exhibit 1 at the hearing.
3. The Notice of Inquiry dated the 22<sup>nd</sup> day of August 2018 alleges 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 this 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 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

4. Mr. Syed did not attend the hearing.

**Preliminary Matters**

5. With Mr. Syed not present when the hearing was called to order at 9:38 am, the Panel withdrew to wait, in case Mr. Syed had been delayed. At 10:10am with Mr. Syed still not present, the hearing was reconvened. The Association was asked by the Panel if it had any concerns as to the composition of the panel. The Association stated that it had no concerns.

6. The Association provided evidence that Mr. Syed had been appropriately notified of the time and place of the hearing. Mr. Volk tendered a signed Affidavit of Personal Service dated October 2, 2018 together with correspondence from his office and a copy

of the Notice of Inquiry, establishing that Mr. Syed had been served. These were marked as Exhibit 2.

7. The Panel was advised by Mr. Volk of recent email correspondence he had had with Mr. Syed on November 21 and again on November 27 in which Mr. Syed indicated that he wanted an adjournment of the hearing. In his replies to these emails, Mr. Volk instructed Mr. Syed that he should direct his request to Mr. McFee, counsel to the panel; he also indicated that the Association was opposed to an adjournment. These emails were marked as Exhibits 3 and 4.

8. The Panel asked Mr. McFee if he had been contacted by Mr. Syed concerning an adjournment; Mr. McFee indicated that he had not been contacted. The Panel asked if the Association had any concerns if matters proceeding without Mr. Syed being present. The Association had no objections. The Panel then ruled that the hearing should proceed.

#### **Subsequent Preliminary Matters**

9. The hearing had reached the point when the Association's first two witnesses had concluded their testimony, when Mr. McFee learned that an email had been sent to Mr. McFee's office during the morning from Mr. Syed requesting an adjournment of the hearing. Mr. McFee explained that this email had been forwarded to his phone but as he was attending the hearing with his phone turned off, he was not aware of Mr. Syed's email until he checked his email during the mid-day recess. The Panel sought submissions from the Association as to whether, or not, the hearing should continue in these circumstances. Having considered the Association's submissions, the Panel ruled that:

- a) Mr. Syed had not made a proper application for an adjournment of the hearing. Rather, Mr. Syed had merely sent an email on the morning of the commencement of the hearing, requesting that the hearing be adjourned "until after Christmas holidays" without any explanation or justification for the request;
- b) That as the hearing had already commenced with the Association having provided its written submissions and the Association's witnesses present to give evidence, an adjournment of the hearing was not appropriate and therefore the hearing would continue.

10. The Panel instructed its counsel, Mr. McFee, to respond to Mr. Syed's email, advising that he had not submitted a proper application to adjourn and that the hearing

would reconvene at 1:10 p.m. should Mr. Syed wish to attend to tender evidence or make submissions. Mr. McFee sent this email to Mr. Syed; however, Mr. Syed did not respond and did not attend the hearing.

### **Onus and Burden of Proof**

11. The Panel must determine whether the Association has proven the allegations in the Notice of Hearing on the “balance of probabilities”, meaning the 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).

### **Opening Submissions**

12. The Panel heard opening submissions from Mr. Volk about the matters to come before the Panel.

13. Mr. Syed being absent and being unrepresented, there were no opening submissions of the Member.

### **Evidence**

14. The Association called as its first witness Mr. Jesse Romano. He testified.
- a) Mr. Romano identified himself and explained his job of Investigation Manager at the Association.
  - b) Mr. Romano described his duties and explained his role in supporting the work of the Investigations Committee and his responsibility for communicating with members on behalf of the Investigations Committee.
  - c) Mr. Romano gave a description of his involvement in the complaints against Mr. Syed and the processes followed by the Association in investigating a complaint.
  - d) Mr. Volk referred Mr. Romano to a binder entitled “Jesse Romano Hearing Materials” containing letters and emails from the Association to Mr. Syed and from Mr. Syed to the Association between January 7, 2016 and March 21, 2018. The binder was marked Exhibit 5. Mr. Volk then questioned Mr. Romano about documents in this binder.
  - e) Mr. Roman testified that he was familiar with the documents. He explained that while earlier items of correspondence from the Association

had been written by other members of staff, he had written the recent items. He clarified that he had only been directly involved in this file since November or December 2017.

- f) Mr. Romano identified a letter written by the Association on January 7, 2016 to Mr. Syed concerning a complaint by a Mr. Walter Poh about deficiencies in various field review inspections that Mr. Syed had carried out. The inspections pertain to three new homes at different residential address locations in Abbotsford, BC (Referred to respectively for the purposes of this determination as “Projects A” “Project B” and “Project C”). The letter informed Mr. Syed that he had until January 26, 2016 to provide a written response
- g) Mr. Romano identified a letter dated February 22, 2016 received back by the Association from Mr. Syed in response. In the letter Mr. Syed provides a short explanation of his actions at Projects A, B & C, dismissing Mr. Poh’s concerns.
- h) Mr. Romano identified a letter written by the Association on June 30, 2016 to Mr. Syed. The letter explained to Mr. Syed that his earlier response of February 22, 2016 had been copied to Mr. Poh for comment in accordance with the Association’s complaints process. The letter also informed Mr. Syed that Mr. Poh had identified Building Inspection deficiencies at another new home at a fourth residential address in Abbotsford involving the work of Mr. Syed - (Referred to for the purposes of this determination as “Project D”). Mr. Syed was given until 21 July 2016 to respond to the new allegations.
- i) Mr. Romano identified a letter dated April 20, 2017 received back by the Association from Mr. Syed in response. The letter makes references to all four Projects and provides some brief and general comments about the allegations.
- j) At this point, Mr. Volk explained that the subject hearing on four Projects in Abbotsford was only part of the picture and that the Association was also investigating concerns pertaining to the engineering practice of Mr. Syed in another city in BC. He introduced as evidence an earlier Determination of the Discipline Committee - In the Matter of Ahmed Raza Syed, P. Eng., APEGBC File No. T16-038 and T16-080., dated July 20,

2017, which was marked Exhibit 6. That Panel found Mr. Syed to be in breach of the Act for failing to comply with requests of the Investigations Committee that he provide a number of documents including his complete files for each Project pertaining to File No T16-038 (the subject matter of this hearing) and File No T16-080 (the separate matter).

- k)** Mr. Romano then identified email correspondence from the Association on November 22, 2017 to Mr. Syed, asking Mr. Syed if he had any further documents to provide the Association pertaining to Projects A, B, C & D, and requesting they be provided by November 30, 2017. Mr. Volk explained that Mr. Syed had provided some documents to the Association at the start of the July 2017 hearing. These were presented in a binder entitled “Documents Provided by Mr. Syed”, which was marked Exhibit 7.
- l)** Mr. Romano identified an email thread between January 17, 2018 and February 13, 2018 between himself and Mr. Syed. In this thread, Mr. Romano again requests that Mr. Syed provide documents pertaining to the Projects. It concludes by cautioning Mr. Syed that a sub-committee of the Investigations Committee may proceed with a review of the complaints against him without the benefit of his response and documentation.
- m)** Mr. Romano concluded by identifying a short email he sent to Mr. Syed on March 21, 2018, informing Mr. Syed that matters were to be presented to the Investigations Committee.

15. The Panel asked Mr. Romano if the Association had received further documents from Mr. Syed pertaining to the Projects, beyond those in Exhibit 7. He responded that no further documents had been received. Mr. Volk stated that all of the additional documents pertaining to Mr. Syed’s work had been obtained directly by the Association from City of Abbotsford records.

16. The Association called as its second witness Mr. Walter Poh. He testified:

- a)** Mr. Poh identified himself. He stated he was Assistant Manager Building Permits and Licenses at the City of Abbotsford from 2012, then was Manager from 2015 until he retired in January 2017; before that he was employed as a Building Inspector by the same city. He specified that he was certified by BOMA as a Level 3 Building Inspector and explained the examinations and years of experience criteria for achieving this senior

most level of proficiency. Mr. Poh explained he currently does part-time building inspection work, also for the City of Abbotsford.

- b)** Mr. Poh confirmed that he submitted all the complaints concerning the practice of Mr. Syed at the four locations (Projects A, B, C & D), all in Abbotsford. He stated that he was either Assistant Manager or Manager at the time.
- c)** He explained the process for Building Inspections in general. Ordinarily, where there is a structural engineer involved, Building Inspectors would only inspect 10% to 20% of the project. If no problems were identified in that sample involving a high level review of trusses and a review with the engineer of structural details including bracing, beam point loads, floor joints and blocking, the inspection would be passed. Where problems were encountered, Inspectors would continue to other aspects of a project. Where problems were regularly identified in the work of particular engineers, Inspectors would place less trust in the work of those engineers and would conduct more thorough inspections. Mr. Poh stated when there is a structural engineer involved, Building Inspectors require that there be a signed and sealed field review from the structural engineer available prior to conducting an inspection.
- d)** He stated that he assigned inspections. He reviewed inspection reports and he discussed with Inspectors issues they encountered. In addition to completing an Inspection Form (a copy of which is left on site), Inspectors frequently take photographs on site.
- e)** Mr. Poh testified that problems were frequently identified in the work of Mr. Syed - such that those inspecting projects where Mr. Syed was the structural engineer performed more thorough inspections.
- f)** Mr. Poh stated that he made all four complaints regarding Mr. Syed. His initial three complaints were filed after one of his inspectors came to him specifically to discuss structural engineering work of Mr. Syed at three different residential address locations in Abbotsford (Projects A, B & C). The fourth complaint was filed after a different Inspector identified further concerns at a fourth residential address also in Abbotsford (Project D). Mr. Volk then took Mr. Poh through a binder labelled "Hearing Materials"

containing correspondence, Inspection Reports, field reviews, engineering drawings, photographs and other items, which was marked Exhibit 8.

- g)** Mr. Poh specified a recurring problem Inspectors encountered with Mr. Syed's work was that his sealed field reviews would indicate that all work was properly installed, with no changes indicated, however, inspection revealed that the building was not constructed in accordance with the approved plans. As an example, Mr. Poh identified a problematic Schedule B Letter of Assurance sealed by Mr. Syed concerning Project B. He went on to explain how the City relies on sealed field reviews and Letters of Assurance as evidence that the Building Code has been adhered to, particularly with respect to structural engineering. He cited City bylaws to illustrate this.
- h)** Mr. Poh testified about the types of holdowns, straps and blocking specified by Mr. Syed in the wood-frame home construction on all the Projects. He detailed the specification for their proper installation, as set out by the manufacturers. With respect to noted deficiencies relating to blocking, he used as illustration a photograph, which was marked Exhibit 9.
- i)** Mr. Poh then addressed an allegation made by Mr. Syed that he was prejudiced and biased towards Mr. Syed as stated by Mr. Syed in his response to the Association at the time of the initial complaint. Mr. Poh stated that he had subsequently invited Mr. Syed to meet him at the City offices. The meeting was confirmed, but Mr. Syed did not show up to attend. When asked further during the hearing about this, Mr. Poh denied that he is prejudiced or biased against Mr. Syed.

Mr. Poh then testified with respect to specific concerns at each Project, in the following order:

Project B - for this Project, Mr. Poh's complaint explains that, despite a sealed field review from Mr. Syed confirming that the sheathing was nailed adequately and that the required seismic and lateral restraints had been installed and that the installation was acceptable to him, the inspector tasked with performing the sheathing inspection noted: 1) Shearwalls not blocked in accordance with the specification supplied by Mr. Syed; and 2) Tie downs and lateral restraints not



installed. Both the sealed field reviews from Mr. Syed and Inspection Report of the City were put forward in evidence.

- j) Using photographs taken as part of the Inspection, Mr. Poh detailed locations in the building where straps were not installed and shearwalls were not blocked as specified. Mr. Poh referenced Mr. Syed's sealed structural drawings. He also referred to his response to Mr. Syed's response to Mr. Poh's initial complaint about Project B. In his response, Mr. Poh stated:

“Mr. Syed's response to my concern regarding the missing blocking and lateral restraints is that he provided instruction on-site that these items were not required. This should have been noted on his field review as the approved sealed drawings submitted by Mr. Syed clearly show the blocking and straps.

Mr. Syed provided a field review for exterior sheathing dated December 17, 2015. In that report he certified that all seismic and lateral restraints had been installed. He provided a second field review for exterior sheathing dated December 22, 2015 that certifies that the seismic and lateral restraints had been installed. A field review dated December 23, 2015 titled 'Final field review of Structural Framing' was also provided. Copies of both documents are attached. The building inspector noted on December 22 that the required blocking had now been installed”.

Project C – for this Project, the complaint explains that the Building Inspector was provided with a field review from Mr. Syed stating that the structural components of the building substantially complied with the BC Building Code. But on inspection it was found that: 1) The shearwalls located adjacent to the stairwalls as noted on the drawings have not [been] sheathed as required by the engineer's specification, and 2) point loads have not been transferred to the foundation.

- k) Mr. Poh identified Mr. Syed's sealed field review and the Inspection Report for Project C, he also identified photographs taken during the inspection.
- l) Mr. Poh specified two shearwalls, next to the stairs in the den on the main floor and next to the stairs and the bedroom on the upper floor, were not sheathed or blocked as required in the sealed structural drawings
- m) Mr. Poh referenced his response to Mr. Syed following Mr. Syed's response to Mr. Poh's initial complaint about Project C, in which Mr. Poh states:

“Mr. Syed states that the work was approved on December 13, 2015 as it was done as per instructions at the site. Mr. Syed provided a second field review dated January 16, 2016. In that report he states that “the missing point load has been transferred to the foundation”. The building inspector approved the framing on January 7, 2016. The shear walls were sheathed and strapped at that time and the missing support under the point load had been installed”

Project D – For this Project, the complaint explains that the Building Inspector was presented with a sealed field review from Mr. Syed confirming that sheathing was in general conformance with the approved drawings and that required seismic and lateral restraints were installed to meet structural requirements. However, the Building Inspector noted the following before cancelling the inspection and requesting a second review by Mr. Syed: 1) Seismic tie downs not nailed to framing and 2) Required blocking in shearwalls not installed.

- n) Mr. Poh identified Mr. Syed’s sealed field review and the Inspection report for Project D, he also identified photographs taken during the inspection as well as the pertinent structural drawings sealed by Mr. Syed.
- o) Mr. Poh stated seismic holdowns, installed around the base of this building, were not nailed to the framing throughout, according to the manufacturer’s specification; and blocking in shearwalls were not installed as called for in Mr. Syed’s design drawings. Concerning manufacturer’s specification for the nailing of holdowns, Mr. Poh referred to information sheets issued by Simpson Strong Tie, which was marked as Exhibit 10.

Project A – For this Project, the complaint explains that the Building Inspector was presented with a sealed field review from Mr. Syed confirming that the framing was in general compliance with the approved drawings and acceptable to Mr. Syed. However, the building inspector noted the following before cancelling the inspection and requesting a second review by Mr. Syed: 1) The spacing of TJI [Truss Joist International] joists were contrary to the design drawings - The TJIs were installed at 19.2 inch centres, while the design drawings specify they be at 16 inch centres; 2) Required blocking between joists were not installed; and 3) Interior shearwalls were not installed and required tie downs were not installed.

- p) Mr. Poh identified Mr. Syed’s sealed field review and the Inspection report for Project D and Mr. Syed’s pertinent sealed structural drawings.

There are no photographs concerning this complaint. As a result, he acknowledged that, aside from what was stated in the Inspection Report, there is no evidence to establish the second and third points raised in his complaint - specifically the missing blocking and interior shearwalls.

- q) Concerning the spacing of the TJI joists, being contrary to design, Mr. Poh testified he examined Mr. Syed's sealed field review which states: "Joists and walls are adequately installed" By contrast, he identified that the Building Inspector's Report states: "TJI above garage - Layout 16" o/c Installed 19" o/c, Engineer to resolve"
- r) Mr. Poh identified shop drawings from Dick's Lumber pertaining to Project A' which were signed and sealed by Mr. Syed. He went on to state that a change in TJI spacing from 16" to 19.2" is significant because the garage is a significant span and spacing the TJIs further apart would mean a reduction of support for the floor above the garage. This change, Mr. Poh explained, was a "significant" change which he viewed as being captured under bylaw reporting requirements. Reference was made City of Abbotsford, Building Bylaw No 2597-2016, which was marked Exhibit 11. As a result, Mr. Poh testified that this change ought to have been documented by Mr. Syed and submitted to the City for approval. Mr. Poh provided two reasons why this was important: 1) documenting the change would enable the City to ensure that the structural engineer was aware of the change and had approved it; and 2) documenting the change would provide the City with a record of the change which would remain in the City files for the property. Future owners of the property would then be able to review the City's file to understand how the house was constructed. Mr. Poh also made reference to Part 2 Administrative Provisions of the BC Building Code, which was marked as Exhibit 12.
- s) Mr. Poh stated following the unsuccessful inspection on December 11, 2015, Mr. Syed provided the City with revised shop drawings from Dick's Lumber which he had signed and sealed on December 15, 2015 in which the only change is to the TJI spacing from 16" to 19.2" over the garage.
- t) Mr. Poh referenced his response to Mr. Syed following Mr. Syed's response to Mr. Poh's initial complaint about Project A, in which Mr. Poh states:

“In my original submission I noted that the TJI joists were not installed in accordance with the design drawings. The drawings indicate that portions of the floor require the joists to be spaced at 16” o.c. and other areas at 19.2” o.c. The building inspector noted in his inspection report that the joists were not spaced in accordance with the design drawings that were sealed by Mr. Syed. If the installation is not in accordance with the drawings of record then new drawings should have been submitted.

Mr. Syed did not address the missing blocking in the floor system which the building inspector noted nor that the shear walls shown on the structural drawings were not installed. It should be noted that the original field review, dated December 9, 2015 indicated that structural components had been installed correctly. A second field review of the interior sheathing (attached) was conducted by Mr. Syed on December 17, 2015. In that report he certifies that all interior sheathing and lateral restraints have been installed”.

17. The Association called its third witness Mr. Brian Lytton, as an expert witness. Mr. Lytton is a Professional Engineer who has been a member of the Association since 1981. He described his training and experience in structural engineering, including that he currently specializes in the design of wood-frame buildings. The Panel accepted Mr. Lytton as an expert. Mr. Lytton testified:

- a) Mr. Lytton stated that he was engaged by the Association to act as an expert witness. Specifically, in respect of each of the Projects, he was asked to provide his opinion on the following points:
  - (i) For each of the Projects, please assess whether the Structural Engineering Design Materials contain any material omissions or deficiencies. In providing your opinion, for each of the Projects, please specifically examine:
    - (A) foundations;
    - (B) joists;
    - (C) retaining walls;
    - (D) footings; and
    - (E) holdowns.
  - (ii) Please provide your opinion as to whether, for each of the Projects, the structural design contained in the Structural Engineering

Design Materials substantially complies with the BC Building Code 2012?

- b) In response, Mr. Lytton prepared a written report dated October 17, 2018, which was provided and marked as Exhibit 13. In his report, Mr. Lytton states that he conducted his review of each Project on the following basis:

- “1) I have identified the documents which I was provided with for review;
- 2) I have provided detailed specific comments on the structural design, in particular, whether I identified any material omissions or deficiencies; and
- 3) I have provided my general opinion as to whether the structural engineering details are completed and meet the expected standard of a reasonable and prudent structural engineer experienced in this type of engineering”.

Mr. Lytton’s report contains detailed commentary on each of the Projects and it addresses missing information, discrepancies, or issues he identified.

- c) Referring to Project A, B & C. Mr. Lytton reaffirmed his general opinion set forth in conclusion to the sections in his report for each of these three Projects “In my professional opinion, the structural engineering details for this residential building are not complete and are significantly below the expected standards of a reasonable and prudent structural engineer experienced in this type of engineering”.
- d) Referring to Project D, Lytton explained due to the unavailability of full-size structural drawings at the time of his review, he was only able to comment on select aspects of the structural design and he did not provide a general conclusion about the standard of design for that Project.
- e) Mr. Lytton provided the Panel with additional explanation of the issues he identified in his written report. Mr. Lytton stated many of the problems he identified, were evident on multiple Projects.
- f) Mr. Lytton characterized Mr. Syed’s structural engineering for the four Projects as suffering from a general sloppiness that created significant confusion that could not be resolved by reviewing the drawings alone.

Mr. Lytton then testified with respect to specific concerns at each Project, in the following order.

Project C

- g)** Mr. Lytton stated the basement plan for the rear stairs showed no structural details for the stairs or any footings under the retaining walls. He also noted the lack of any detail as to size, spacing, or type of TJIs to be used.
- h)** Mr. Lytton identified many discrepancies between Mr. Syed's sealed structural and the shop drawings issued by Canex, a lumber supplier for the Project. Specifically, Mr. Lytton found that the structural drawings called for beams made up of 2x12 lumber whereas the Canex shop drawings show all the beams as manufactured, significantly larger, parallam or Timberstrand beams. Mr. Lytton explained that these discrepancies created confusion as to whether Mr. Syed, the structural engineer, checked to ensure that the new beams were appropriate and would work. Notably, nothing on the Canex drawings indicates that Mr. Syed reviewed and approved the lumber called for on those drawings.
- i)** Mr. Lytton spoke of a discrepancy between those pages of the structural drawings with floor plans and the section drawings. A note on the section drawing, for exterior walls, states that they are to be framed using 2x4 studs. That is in conflict with the other pages in the structural drawing set, which calls for 2x6 studs in the exterior walls.

Project B

- j)** Mr. Lytton noted that end supports for girder trusses were not detailed in the plans for Project B. With respect to Mr. Syed's placement of holdown straps, Mr. Lytton explained that the problem was that holdowns and straps were placed in shearwalls containing windows or doors, with no detail provided to indicate how the shear force would be transferred through window or door headers. Mr. Lytton explained that, for the shearwalls to function properly with shear force transferred through a continuous, solid shear wall, holdowns should be placed on either side of

each window or door so that on either side of a door or window the walls would still function as shear walls.

- k)** Mr. Lytton pointed out the absence of beam size or end-support details in the covered patio, verandah, and foyer areas on the main floor plan.
- l)** In one cross-section that was part of Mr. Syed's sealed structural drawings, Mr. Lytton noted a discrepancy between the type of flooring called for and the specified dead load that appeared on a separate Design Criteria sheet sealed by Mr. Syed. Specifically, the section calls for 5/8" plywood only, with no concrete topping indicated, for the upper floor, above the main floor. Mr. Lytton explained that the reference to plywood and no concrete topping is not consistent with the specified floor dead load of 30 psf on the Design Criteria sheet. Mr. Lytton added where there is no concrete topping, the specified dead load should be only be 15 psf. He explained that it was unclear from Mr. Syed's documentation whether he had designed the home based on the specified floor dead load of 30 psf or the indicated floor dead load of 15 psf.

#### Project A

- m)** On the basement plan for Project A, Mr. Lytton noted that a large 7x11 7/8 parallam beam had no end supports detailed. Further, at the interior end of the beam where there would be a significant point load, a large footing was roughly indicated but not detailed. Mr. Lytton also noted a "See Detail" reference; this detail was not explained anywhere in the drawing set. Finally, Mr. Lytton noted that the placement of a holdown between two exterior doors did not work and that the long shearwall containing those doors, in addition to large windows, would not be able to effectively transfer the shear force.
- n)** On the main floor plan, in the two locations where TJI 360s were called for Mr. Lytton pointed out a significant discrepancy as the specified TJI 360s were not called for on the Dick's Lumber shop drawings containing the TJI layouts. Instead, the Dick's Lumber shop drawings called for TJI 230s in the same area, which have lower strength. Mr. Lytton commented further that it was odd for Mr. Syed to have signed and sealed the Dick's Lumber shop drawings, since those drawings were clearly not prepared by him. Mr. Lytton noted, an engineer should not place their seal on a shop

drawing they have not prepared. Rather, he explained, it was appropriate to use a shop drawing review stamp which would simply indicate that the engineer had reviewed the shop drawings for general conformance with the structural drawings.

- o) Also on the main floor plan for Project A, Mr. Lytton noted that at the garage entrance, Mr. Syed had detailed two different beams in the same location, creating confusion as to what exactly the builder would be required to install.

#### Project D

- p) For Project D, Mr. Lytton stated he did not have a full set of structural drawings at the time he prepared his report and he was only able to comment using the extracts from Mr. Syed's structural drawings submitted by Mr. Poh as part of his complaint. On the extracts for Project D, Mr. Lytton noted that there was a discrepancy in the structural drawings in the family/bedroom areas, as both TJIs (undetailed with respect to size or spacing) and 2x10 joists at 16" on centre were called for. Also, Mr. Lytton noted that there was typically no end-supports shown for large beams indicated on the drawings.

18. The Panel then asked Mr. Lytton several questions of clarification on different matters that were covered. These were answered to the satisfaction of the Panel.

19. Mr. Volk stated that the Association had completed presenting its evidence.

20. Mr. Syed not being present, there was no cross-examination of the three witnesses called by the Association, nor did the Panel hear testimony and any cross-examination of Mr. Syed.

#### **Closing Submissions**

21. Given the absence of Mr. Syed, the Panel ruled that it would be more appropriate to receive Closing Submissions in writing such that Mr. Syed would have the benefit of knowing the Association's position based on the testimony and exhibits. This also would give Mr. Syed an opportunity to provide Closing Submissions in response.

22. The Panel ruled that Closing Submissions for the Association should be received by December 12, 2018 and provided to Mr. Syed, and that Closing Submission from Mr.



Syed should be received by December 19, 2018 and provided to the Association. At this point the face-to-face hearing adjourned.

23. On December 12, at the request of Mr. Volk, counsel for the Association, the Panel agreed to an extension of time to December 14, 2018 for the Association to submit its Closing Submissions. A reciprocal extension to December 21, 2018 was provided for Mr. Syed to provide his Closing Submissions.

24. On December 14, Closing Submissions from the Association together with Books of Authority were provided to the Panel. These were forwarded to Mr. Syed that day.

25. On December 19, Mr. McFee, counsel to the Panel, received a request from Mr. Syed for an extension of time until the first week in January. The Panel granted a further extension until January 4, 2019 to receive Mr. Syed's Closing Submission.

26. On January 9, 2019 the Panel met to deliberate, as no Closing Submissions had been received from Mr. Syed.

27. The only information that the Panel has, concerning Mr. Syed's position on the matters before it, are the items of correspondence received by the Association from Mr. Syed in response to the original complaints against him and the limited Project documents provided the Association at the beginning of Mr. Syed's July 20, 2017 hearing. These are contained in the Exhibit 5 and 7 binders respectively. Despite not hearing testimony of Mr. Syed under oath, the Panel took this information into consideration in its deliberations.

### **Analysis**

28. The Panel is tasked with considering five overall allegations set out completely in the Notice of Inquiry and specified above. The allegations against Mr. Syed can be summarized as follows:

- a) Allegation 1a - For all the Projects, he demonstrated unprofessional conduct or incompetence by issuing field review reports which he knew or ought to have known to be incorrect;
- b) Allegation 1b - He demonstrated unprofessional conduct or incompetence as he failed to adequately document changes to the structural engineering design made during construction and to submit a record of those changes to the City of Abbotsford;

- c) Allegation 2a-c - He demonstrated negligence or incompetence in that his structural engineering design for the Projects was deficient, with missing, incorrect, and inadequate drawing details;
- d) Allegation 3 - He demonstrated negligence or incompetence as his structural engineering design for Project A and Project D including joists with insufficient dead load capacity to meet the deadload capacity required by his design criteria;
- e) Allegation 4a-b - He breached Bylaw 14(b) of the Bylaws of the Association as he failed to retain adequate records relating to the Projects, including design and field review documentation;
- f) Allegation 5a-b - He demonstrated unprofessional conduct or incompetence by sealing two drawings he did not create and he was not professionally responsible for – one pertaining to Project C and one to Project A.

29. In assessing Mr. Syed's conduct in these matters, the Panel considered the following standards, rules and guidelines:

- a) Principle 3 of the Code of Ethics;
- b) The Association's Quality Management Guidelines regarding the Use of the Seal;
- c) The Association's Guidelines for Professional Structural Engineering Services for Part 9 Buildings in British Columbia and the Canadian Wood Council's "Engineering Guide for Wood Frame Construction";
- d) The Association's Professional Practice Guidelines for Shop Drawings; and
- e) The Association's Quality Management Guideline for Documented Field Reviews during Implementation or Construction.

30. As stated above in paragraph 13, the standard to be met is proof on the "balance of probabilities", meaning the Panel must find that it is "more likely true than not" that the alleged facts occurred.

31. Parts of the allegations in the Notice of Inquiry refer to the separate concepts of unprofessional conduct, negligence, and incompetence. Each of those concepts is referenced in section 33(1)(c) of the Act. Each concept has a distinct legal meaning. The

Panel is guided by the 2015 discipline decision in *Re Foreman* that considered and explored in some detail the meaning of all three of these terms. The Discipline Panel in *Re Foreman* (25 August 2015) held that professional misconduct is established when there is a marked departure from the standard to be expected of a competent professional, and that minor and inadvertent failure to comply with professional standards does not constitute unprofessional conduct. Further, in *Re Foreman*, for the purposes of considering whether a member's conduct is negligent within the meaning of s. 33(1)(c) of the Act, reference was made to *Davidson v. British Columbia* [1995] B.C.J. No. 1806 in which negligence was defined as

“... the standard of skill and care which a professional man is required to exercise may be defined as follows: that degree of skill and care which is ordinarily exercised by reasonably competent members of the profession, who have the same rank and profess the same specialization (if any) as the defendant. If the standard is formulated in this way, it is fair to both parties. The professional man will not be held liable in the absence of personal fault on his part. The client is adequately protected, because it is normally actionable negligence if a professional man undertakes work beyond his competence.”

The Panel in *Re Foreman* also accepted the following definition of incompetence referred to in *Reddy v. Association of Professional Engineers and Geoscientists of British Columbia*, 2000 BCSC 88

“We believe it is fair to say that a person who habitually fails to perform his work with a degree of skill or accuracy usually displayed by other persons regularly employed in such work is incompetent. And the same is true of one who usually performs substantially less than others regularly so employed, ... The true significance of the term “incompetency” should not be overlooked. It embraces habitual carelessness.”

The Panel relied upon the Act and was guided by the definitions set out above in *Re Foreman* in its deliberations.

32. Some of the evidence given by Mr. Poh as to what the Building Inspectors encountered at the four Projects sites, prima facie, constitutes hearsay evidence, because the evidence was introduced by Mr. Poh - who did not prepare the Inspection Reports or take the photographs, as opposed to the Inspectors, who did. The Association in its Closing Submission argues that section 42 of the Evidence Act, RSBC 1996, c. 124 should be relied upon and that in this instance the evidence of Mr. Poh is admissible. The

Panel accepts this position and considers all of Mr. Poh's testimony as admissible evidence.

33. The Association in its Closing Submissions sets out in some detail as to how and why it believes those standards, rules and guidelines listed in paragraph 29, should apply in assessing Mr. Syed's conduct. The Panel agrees that these are the appropriate measures against which conduct should be assessed in the circumstances and it has applied them in considering the conduct of Mr. Syed.

34. The 2002 discipline decision of the Association in *Re Familamiri* provided the Panel with an example of assessing whether an allegation of unprofessional conduct might be made out where the allegations are that structural drawings are deficient with missing, incorrect, and inadequate drawing details. The *Re Familamiri* decision also needed to determine whether a structural engineer had demonstrated unprofessional conduct by sealing structural drawings where it was alleged that those drawings did not conform with the then-applicable edition of the Building Code. That discipline panel concluded that six of the seven allegations were proven and found Mr. Familamiri guilty of unprofessional conduct. The *Re Familamiri* decision was appealed to the BC Supreme Court where it was upheld (*Familamiri v. Assn. of Professional Engineers and Geoscientists of British Columbia, [2004] B.C.J. No. 995*). This Panel has been guided by *Re Familamiri* and the appeal decision.

#### Allegations 1a and 1b

35. With respect to Allegation 1a, concerning field review reports which Mr. Syed knew or ought to have known to be incorrect, and Allegation 1b, concerning failing to adequately document changes to the structural engineering design made during construction and failing to submit a record of those changes to the City, the Panel accepts the testimony of Mr. Poh, supported by the pertinent documentation entered as Exhibits.

36. This evidence establishes Mr. Syed signed and sealed field reviews stating that the building was constructed in accordance with all structural requirements, when the buildings were not constructed in accordance with the sealed structural drawings. Mr. Syed was approving (but not documenting) changes in the field or changes were being made by the contractor, and Mr. Syed was not identifying the changes during field reviews.

37. In response to these allegations, Mr. Syed at the complaint stage, made the following points in his defence: i) that the inspections in question were performed before the field reviews were performed; ii) that there was a lack of communication with the City; iii) that in respect of the shear wall blocking specifically, it depends on different factors - Mr. Syed noted here changes can be made in consultation with him “keeping in view site situation and framing work done”; and iv) that the structural engineer is entitled to make changes to the structural design.

38. With respect to point of defence i) - Mr. Poh was clear in his evidence that for both framing and sheathing inspections, a Building Inspector will only perform an inspection, if the contractor provides the Inspector with a sealed field review upon arrival.

39. With respect to point of defence ii) - to the extent there was a lack of communication, it is the opinion of the Panel this was due to Mr. Syed not communicating to the City that changes to the structural design had been made.

40. With respect to point of defence iii) - Mr. Syed’s reference to shearwall blocking being dependent on different factors ignores the fact that Mr. Syed’s own structural drawings contained details calling for shearwall blocking for all shearwalls. If blocking was not always required, his detail should contemplate that.

41. With respect to point of defense iv) - while there is no question that an engineer is entitled to make changes to the structural design during construction, such changes should be documented.

42. In its written submissions, the Association asserts that the City of Abbotsford Bylaw No 2597 – 2016 section 6.6 requires a structural engineer, at a minimum, to inform the City when design changes are made. The Panel does not agree with this interpretation of the bylaw. The bylaw reads as follows:

6.6 No person may do or permit any other person to do any work that is substantially at variance with the accepted design, plans, or specifications of a Building, Structure or other works for which a permit has been issued, including the approved lot grading plan, unless that variance has been accepted in writing by a Building Official.

The Panel interprets the City of Abbotsford Bylaw No. 2597 – 2016 section 6.6 as prohibiting the structural engineer from permitting any other person, including the contractors, to do any work, that is “substantially at variance with the accepted design

plans and specifications of a Building, Structure or other works for which a permit has been issued ... unless that variance has been accepted in writing by a Building Official.” The evidence establishes that Mr. Syed permitted work to be done that was substantially at variance with the accepted design and plans for specifications of the Projects in circumstances where the variance had not been accepted in writing by a City of Abbotsford Building Official.

43. The Association also relies upon Section 2.2.7.3(2) of the Building Code which requires a registered professional of record ... who is responsible for a field review to keep a record of the field review and of any corrective action taken as a result of the field review and make the record available to the authority having jurisdiction on the request of that authority. In this matter, when the discrepancies between Mr. Syed’s design and the constructed buildings were identified by inspectors, Mr. Syed did not address the City’s concerns by providing existing documentation evidencing the changes. Instead, he created new documentation to satisfy the City or else directed the contractor to install the missing structural components.

44. Bylaw 14(b)(3) of the Association requires field reviews to be documented and the Association’s Guideline for Field Reviews states that any changes to a structural engineer’s design must be documented and such records must be retained. Mr. Syed either did not document changes to his designs or, if he did, he did not retain his records.

45. The absence of Project documentation produced by Mr. Syed in this matter suggests that he retained essentially no documentation for the Projects. Such conduct is contrary to Bylaw 14(b)(3) and is inconsistent with the Guideline for Field Reviews.

46. The evidence establishes that after field reviews were performed, Mr. Syed sealed field reviews stating that all construction was performed correctly. However the evidence of Mr. Poh establishes that the field reviews were not correct, specifically:

- a) For Project A , the field review neglected to note that the TJI spacing over the garage had changed from 16” to 19.2” on centre. When this was pointed out by the inspector, Mr. Syed obtained and sealed new shop drawings showing the TJIs laid out at 19.2”.
- b) For Project B, the inspection revealed that strap tie downs between the main and upper floors simply were not installed and that multiple shearwalls were not blocked in accordance with Mr. Syed’s structural drawings. The absence of strap tie downs, a key part of the lateral system, is significant as Mr. Syed’s field review specifically stated that “Seismic

and lateral restraints [had] been installed to meet the structural requirements”. That was an incorrect statement at the time it was made in the sealed field review.

- c) For Project C, the inspection revealed that shearwalls were not properly installed and that a significant point load was not transferred to the foundation. The point load is particularly troubling as the photo evidence makes clear that the floor was sagging significantly. Mr. Syed’s sealed field review stated, however, that “all point loads ... are adequately supported and transferred to the foundation.” Following the discovery of this deficiency, Mr. Syed acknowledged the issue when he issued his January 16, 2016 field review which stated that the “missing point load” had been transferred to the foundation.
- d) For Project D, the inspection revealed missing blocking at shearwalls and holdowns which were not nailed adequately. There is no justification for the inadequately nailed holdowns. Indeed, the fact that they were not nailed raises a legitimate concern about the scope and detail of Mr. Syed’s field reviews. However, as there are no notes or other documentation about the field reviews, such details cannot be verified or examined.

47. It is the opinion of the Panel that Mr. Syed’s conduct with respect to his field reviews and his failure to record design changes represent a marked departure from the standard expected of a competent professional practicing in the circumstances of Mr. Syed.

48. The evidence of Mr. Poh proves Mr. Syed demonstrated unprofessional conduct by issuing field reviews reports that were incorrect and which he knew or ought to have known to be incorrect. The fact that Mr. Syed allowed this to occur at four different projects over time demonstrates incompetence (Allegation 1a).

49. The evidence of Mr. Poh also proves Mr. Syed demonstrated unprofessional conduct by failing to adequately document changes to the structural engineering designs made during construction and failing to submit a record of those changes to the City. The fact that Mr. Syed allowed this to occur at four different projects over time demonstrates incompetence (Allegation 1b).

### Allegations 2a-c

50. Allegations 2a-c concern demonstrating negligence or incompetence in issuing and sealing problematic structural engineering design drawings for the Projects. The three components are: 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 holddown capacity; and c) Issuing sealed drawings with holddowns which were incorrectly located.

51. For Allegation 2a, the evidence of Mr. Lytton establishes that Mr. Syed's structural drawings for each of the Projects were missing details or contained incorrect and inadequate drawing details. Many of the examples noted by Mr. Lytton are re-occurring problems across multiple Projects. The failure to adequately detail primary structural elements such as beams, posts, retaining walls, and footings is contrary to the minimum standard created by the Canadian Wood Council Guide and Association's Guidelines for Professional Structural Engineering Services Part 9, which is evidence of negligence. Furthermore, the Court noted in the judicial review decision concerning *Re Familamiri*, drawings must be properly designed and complete at the stage where a member signs, seals and submits the drawings for a building permit. Mr. Syed did not meet that standard when he sealed the structural drawings for the four Projects.

52. For Allegation 2b, Mr. Lytton did not find that the footings had capacities which were inadequate for the holddown capacity. On the contrary, he found that holddown anchor capacities were not shown on sealed drawings. This was not a concern in his opinion, however, as he noted this is not uncommon as typically only anchor type & manufacturer are shown. In its written submissions, the Association acknowledged, and the Panel has determined, that the evidence does not establish this second allegation.

53. For Allegation 2c, the evidence of Mr. Lytton was that Mr. Syed's placement of holddowns and strap ties was incorrect. Mr. Lytton explained that the problem was that holddowns and straps were placed in shearwalls containing windows or doors, with no detail provided to indicate how the shear force would be transferred through window or door headers. Mr. Lytton explained that, for the shearwalls to function properly with shear force transferred through a continuous, solid shear wall, holddowns should be placed on either side of each window or door so that on either side of a door or window the walls would still function as shear walls.



54. In assessing the evidence pertaining to the first and third Allegations, the Panel considered whether the allegations of negligence or incompetence have been proven. The Association' in its submission argues, the evidence is demonstrative of negligence by Mr. Syed because:

- a) Each of the identified problems in the structural drawings could have been easily addressed by Mr. Syed at the design stage and they were not. As such, Mr. Syed is personally responsible for the identified problems and this is not a case where he may have legitimately been unaware of the problems.
- b) The structural design in question is quite common and is not particularly complicated. This suggests that the reasonable standard of practice ordinarily exercised by reasonably competent members of the profession is not overly rigorous. Accordingly, Mr. Syed's failure to properly and completely design and detail the structural design is significant.

The Panel accepts these points concerning negligence. It also considered the allegation of incompetence. The Panel determines that both negligence and incompetence occurred.

#### Allegation 3

55. With respect to Allegation 3, concerning demonstrating negligence or incompetence in structural engineering design for Project A and D, included joists with insufficient dead load capacity to meet the dead load capacity required by Mr. Syed's design criteria, while there is evidence indicating that Mr. Syed may have mistakenly specified a dead load of 30 psf for the two noted Projects despite there being no concrete topping indicated at those Projects, there is no evidence before the Panel to establish that the joists called for in Mr. Syed's designs are insufficient to support the specified 30 psf dead load. In its written submissions, the Association acknowledged and the Panel determines that this allegation has not been proven.

#### Allegations 4a-b

56. With respect to Allegation 4a-b, concerning breaching Bylaw 14(b) of the Bylaws of the Association by failing to retain adequate records relating to the Projects, including design and field review documentation. There is ample evidence to prove all 4 components of this allegation. As documented in paragraphs 35 to 49 concerning field reviews, Mr. Syed failed to retain, or at least demonstrate that he had retained retrievable

custody of, almost all documentation pertaining to his field reviews. Exhibit 7 contains all of the documentation produced by Mr. Syed in response to a direction from the Investigation Committee. It contains only one field review dated from the time when the review in question was performed. The rest of the documentation produced by Mr. Syed, save for one Schedule, was sealed and dated on the day of the July 20, 2017 hearing to address his failure to respond to the Investigation Committee. Again, this demonstrates that he failed to retain or create adequate project documentation.

57. Also the evidence given by Mr. Syed at the July 20, 2017 hearing and cited in that determination is instructive on this point. According to Mr. Syed, he was unable to provide further documentation because it was all electronic and his computer person was having trouble retrieving the files, partly because the files were not all on the same computer and because he had experienced staff turnover. He admitted, however, that he himself had not looked for any documents on his computers. Furthermore, since the July 2017 hearing, Mr. Syed has not produced any further documentation to the Association despite being asked to do so.

58. All of this evidence demonstrates, Mr. Syed failed to retain adequate records of his work, in breach of Association Bylaw 14 (6).

#### Allegations 5 a-b

59. With respect to Allegations 5a-b, of negligence or incompetence by Mr. Syed for sealing two drawings he did not create and which he was not professionally responsible for, Allegation 5a pertains to a Section Drawing for Project C and Allegation 5b pertains to TJI Framing Plans for Project A.

60. For the Section Drawings, the evidence establishes that the building design drawings prepared by IDesign, save for the added yellow "Cross Section" details at the bottom left, is identical to the Section Drawing sealed by Mr. Syed. The Section Drawing sealed by Mr. Syed is expressly noted to be from IDesign, with the General Notes stating "Plans by IDesign" and a copyright notice stating that the design and drawings are the property of IDesign. Mr. Lytton in his expert testimony gave evidence that Mr. Syed should not have placed his seal on these drawings. The Panel agrees.

61. For the TJI framing plans, both of those drawing sets are from Dick's Lumber and state that they were drawn by someone with the initials MC. As drawings merely illustrating details of a portion of the work which were provided to Mr. Syed as the registered professional of record, the Dick's Lumber drawings constitute shop drawings.

As such, in accordance with the Association's Guidelines for Shop Drawings, as the registered professional of record, Mr. Syed's role was to review the shop drawings for general conformance only. Indeed, the Dick's Lumber drawings each contain a large note stating that the "TJI Layout to be reviewed by Project Engineer prior to construction."

62. As stated by Mr. Lytton in expert testimony, these drawing should not have been sealed by Mr. Syed. Rather, he explained, it would have been appropriate to use a shop drawing review stamp which would simply indicate that the engineer had reviewed the shop drawings for general conformance with the structural drawings. The Panel agrees and feels by sealing them , Mr. Syed wrongly conveyed to those reviewing those drawings that he was responsible for their content and directly supervised the work involved.

63. It is the finding of the Panel that Allegations 5a-b are proven with respect to unprofessional conduct. However, incompetence in this instance is not proven and is dismissed.

### **Findings**

64. Upon consideration of the evidence presented, the Panel is satisfied that Mr. Syed was properly notified and informed about the Allegations against him, he was notified of the time and place of the hearing and his right to attend and he was aware of his right to obtain counsel.

65. It is evident on the balance of probabilities based on all the testimony given and the documentation provided, that Mr. Syed acted contrary to the Act, and the following Allegations against Mr. Syed are proven:

- (1) 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.

- (2) 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;
  - (c) Issuing sealed drawings with holdowns which were incorrectly located.
- (4) 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.
- (5) Mr. Syed demonstrated unprofessional conduct by sealing drawings he did not create and were 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.

66. With respect to Allegation 2b and Allegation 3, neither of these charges are proven and they are dismissed. The charge of incompetence as part of Allegation 5a-b is also not proven and is dismissed.

#### **Penalty and Costs Submissions**

67. 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.

68. The Panel requests written submissions on appropriate sanctions and whether costs should be imposed. The Panel sets the following schedule for submissions.

- i. Submissions must be delivered by counsel for the Association to Mr. Syed and to the Panel no later than March 4, 2019;
- ii. Submissions must be delivered by Mr. Syed to counsel for the Association and to the Panel no later than March 18, 2019.

