

IN THE MATTER OF
THE *ENGINEERS AND GEOSCIENTISTS ACT*,
R.S.B.C. 1996, c. 116 as amended

and

IN THE MATTER OF HANS HERINGA, P. Eng.
DECISION OF THE DISCIPLINE COMMITTEE

Hearing: By written submissions

Discipline Committee Panel: Peter Bobrowsky, P.Geo, Chair
Paul Adams, P. Eng
Ed Bird, P.Eng

Counsel for Engineers and Geoscientists BC: Lindsay Waddell

For the Respondent Charles Fenton, as agent
Hans Heringa, on his own behalf

Decision Date: May 19, 2022

Decision and Order on Penalty and Costs

A. Introduction

1. This panel of the Discipline Committee (the "Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC conducted an inquiry to determine whether Hans Heringa demonstrated unprofessional conduct, incompetence, or negligence; breached the Bylaws of the Association; or acted contrary to the Association's Code of Ethics.
2. On April 7, 2021, the Panel released its decision and found that the Respondent had demonstrated unprofessional conduct contrary to the *Engineers and Geoscientist Act*,

RSBC 1996 c. 116 (the “EGA”) with respect to filings for a sewerage system (the “Project”) for a property located in Qualicum Beach, British Columbia (the “Conduct Decision”).

3. The Conduct Decision set a schedule for the parties to deliver written submissions on penalty and costs. Those submissions closed on August 10, 2021, however, before rendering its decision on Penalty and Costs rescheduling occurred so that the Panel could hear and determine the Respondent’s application to re-open the Conduct Decision. The Panel’s decision on that application was issued with separate reasons on May 19, 2022.
4. In July 2020, Mr. Heringa allowed his registration with Engineers and Geoscientists BC to lapse.
5. Engineers and Geoscientists BC seeks the following order:
 - a. The Respondent pay to Engineers and Geoscientists BC costs of \$82,760.34 (an amount equivalent to 80% of its investigation and legal costs) within three months from the date of the Panel’s decision on penalty.
 - b. Before the Respondent’s membership can be reinstated, he must:
 - i. Successfully complete the Professional Engineering and Geoscience Practice in BC Online Seminar;
 - ii. Complete and pass the Professional Practice Exam; and
 - iii. Have paid to Engineers and Geoscientists BC the costs set out in paragraph (a) above.
 - c. Should Mr. Heringa’s membership be reinstated in the future:
 - i. Mr. Heringa’s membership will be suspended for a period of 4 months from the date of reinstatement (the “Suspension Period”);
 - ii. Following the Suspension Period, Mr. Heringa will be prohibited from performing any work on or relating to sewerage systems, including but not limited to designing sewerage systems and acting as an “authorized person” under the SSR (the “Restricted Discipline”), and, while prohibited, must not use his seal in connection with any sewerage system;
 - iii. Following the Suspension Period, Mr. Heringa may appear before the Engineers and Geoscientists BC Credential Committee to satisfy the Credentials Committee that he is competent to practice in the Restricted Discipline. Competency will be assessed through the Credentials

Committee's Competency-Based Assessment System, and the specific process to be followed will be determined by the Credentials Committee. Following the Competency-Based Assessment, the Credentials Committee may lift the prohibition on the Restricted Discipline.

6. The Respondent's July 15, 2021 email suggests that he opposes all of the above requested orders and takes the position that he is owed an apology and costs.

B. Application of the *Professional Governance Act*

7. On February 5, 2021, the *Professional Governance Act* S.B.C. 2018 c.47 (the "PGA") came into effect. The PGA repealed the *Engineers and Geoscientists Act* R.S.B.C. 1996, c. 116 (the "EGA") which is the act pursuant to which this proceeding was initiated. The fines available under the PGA are higher than those under the EGA.
8. Engineers and Geoscientists BC takes the position that there is a presumption against retroactivity, which is not rebutted in the PGA with respect to the assessment of penalty, therefore penalty must be assessed pursuant to the EGA. However, Engineers and Geoscientists BC takes the position that the PGA applies with respect to the assessment of costs, as those are procedural matters which are expressly permitted under the PGA's transitional provisions.
9. The Respondent's email of July 15, 2021 references the application of the EGA and PGA as follows:

Since the EGBC Act has been repealed, and is no longer a force and effect, and as you now say, wouldn't it have been improper for the Panel to have made any kind of a Finding when there is no Act in place, or any authority to support the Finding?

If there is no equivalence in the Professional Governance Act to S39(9) of the EGBC Act, and there is now no right of Appeal in the Professional Governance Act (a punitive clause) then my view is again, that the recent Panel Decision needs to be rescinded forthwith with both written and published apology, a full reinstatement as a Professional Engineer, and full and proper compensation for the entire four year ordeal.

The main point we wish to make is that the recent Panel was "categorically wrong" to make the Decision that they did. The allegations and findings of the Panel are simply not true. Mr. Heringa completely resolved the issues that arose with Mr. Glenn Gibson of VIHA. The original Filings (and not an Engineered design) were in fact, later accepted by VIHA as Final. Mr. Heringa did nothing wrong. The Panel has overlooked the obvious, and were wrongly guided by both their own Expert, and their Solicitors, instead of the facts. (This recent event too could be alleged to be Professional Misconduct, as there is a marked departure from the Standard to be expected of all of the many (8+) EGBC Professionals involved in the recent Hearings).

Both Charles Fenton and I support your own position as you lay out, that the new Professional Governance Act of February 5, 2021 must apply to the recent Decision of the Panel. And since the recent Panel's "make-up" does not meet the standards required by the new Act, the findings of this (now unlawful, or irrelevant) Panel must be rejected, and be set aside. Perhaps with an apology? And perhaps with Party-to-Party costs of \$105,000.00 awarded in favour of Hans Heringa?

10. The Panel agrees with Engineers and Geoscientists BC's position that the EGA applies with respect to the assessment of penalty and the PGA applies with respect to the assessment of costs.

11. The *Interpretation Act*, R.S.B.C. 1996 c. 238 provides:

Repeal

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

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

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

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

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

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

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

Repeal and replacement

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

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

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

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

Transition — powers and duties in progress

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

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

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

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

15. Section 127(1) and 127(2) of the PGA provide for the Discipline Committee to continue a disciplinary proceeding initiated under the EGA in accordance with the procedures set out in the PGA. Section 35(1) of the *Interpretation Act* makes clear this does not apply in the case of penalties. However, costs are generally considered to be procedural in nature. In *Assn. of Professional Engineers and Geoscientists of The Province of British Columbia v. Mah*, 1995 CanLII 824 (BCCA), the Court of Appeal held that the assessment of costs is procedural in nature and to be assessed in accordance with the provisions in place at the time of the assessment of costs. This is the approach that has been adopted by the

Discipline Committee in the recent cases of *Re Peter Schober, P.Eng.* (April 7, 2021) and *Re Mohamed Mussa Swalehe, P.Eng.* (December 1, 2021). The Discipline Committee declined to decide the issue in *Re Laura Fidel, P.Eng.* (February 9, 2022). The Panel has been provided with no caselaw or submissions from either party that would justify departing from the interpretation set out in these decisions.

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

C. Framework for the Assessment of Penalty

17. Having made a determination under section 33(1) of the EGA that the Respondent demonstrated unprofessional conduct, the following penalties were available under that Act:

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

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

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

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

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

18. No issue was raised as to jurisdiction, but for clarity, while the Respondent is no longer a registrant of the Engineers and Geoscientists BC, both the EGA and PGA contain provisions which define “member” or “registrant” (as the case may be) to include “former member” and “former registrant” for the purposes of the disciplinary sections of those statutes (section 28 of the EGA and section 56 of the PGA).

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

- a. the nature and gravity of the conduct proven;
- b. the age and experience of the respondent;

- c. the previous character of the respondent, including details of prior discipline;
- d. the impact upon the victim;
- e. the advantage gained, or to be gained, by the respondent;
- f. the number of times the offending conduct occurred;
- g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstance;
- h. the possibility of remediating or rehabilitating the respondent;
- i. the impact on the respondent of criminal or other sanctions or penalties;
- j. the impact of the proposed penalty on the respondent;
- k. the need for specific and general deterrence;
- l. the need to ensure the public's confidence in the integrity of the profession; and
- m. the range of penalties imposed in similar cases.

[the “*Ogilvie* factors”]

20. The decision of *Law Society of BC v. Dent*, 2016 LSBC 05, held that it is not necessary to consider each *Ogilvie* factor in every case, and that the factors can be consolidated. In *Dent*, the following consolidated list was suggested:
 - a. Nature, gravity and consequences of conduct;
 - b. Character and professional conduct record of the respondent;
 - c. Acknowledgement of the misconduct and remedial action; and
 - d. Public confidence in the legal profession including public confidence in the disciplinary process.
21. Engineers and Geoscientists BC submits that the *Ogilvie/Dent* factors are appropriate to decide penalty in this case. Engineers and Geoscientists BC notes that this approach has been followed by other discipline panels of Engineers and Geoscientists BC including in *Re Halarewicz* (January 18, 2018).
22. The Respondent did not make any submissions on approach to be used for assessment of penalty.
23. The Panel agrees that the *Ogilvie / Dent* factors are the appropriate approach in the assessment of penalty.

Nature, Gravity and Consequences of Conduct

24. Engineers and Geoscientists BC submits that the nature of the Respondent's conduct was to ignore or disregard the standards and legal requirements set out in the Sewerage System Regulations ("SSR") and the Sewerage System Standard Practice Manual ("SPM") for the design, construction, alteration and repair of sewerage system. Engineers and Geoscientists BC notes that the Panel found the Respondent's design failed to adhere to relevant standards and that he permitted or facilitated work on the sewerage system to be undertaken before filing the requisite ROSS forms with the relevant health authority. The effect of this conduct was to prevent the health authority from reviewing and assessing the system design before deficient work could be undertaken. Moreover, Engineers and Geoscientists BC points to the Panel's finding that the Respondent's conduct created a risk to public health. Engineers and Geoscientists BC submits that the gravity of the Respondent's conduct is significant and militates in favour of a significant penalty.
25. The Respondent made extensive submissions, though many of those were directed to his disagreement with the substance and outcome of the conduct decision, and which are not relevant to the Panel's determination on penalty and costs. The Respondent did also make submissions with respect to relevant considerations for penalty which the Panel addresses in this decision. In relation to the nature, gravity and consequences of his conduct, the Respondent submits that the errors he made were minor. The Respondent's July 15, 2021 submission states:
- There was clearly only minor, and an inadvertent failure to comply with professional standards. Perhaps a hundred Filings have previously been submitted to VIHA, and elsewhere, by Mr. Heringa without complaint. Mr. Heringa was semi-retired at the time, without a full time office to provide proper support. This was known to EGBC.
26. The Respondent also submits that no actual health risk was created by the Project. The Panel understands the Respondent to be submitting that there were no significant consequences to this conduct.
27. The Panel does not consider the Respondent's conduct to have been minor. Rather, the Panel finds that the nature and gravity of the Respondent's conduct is significant. In the Conduct Decision, the Panel found that the Respondent created a public health risk, the most serious of which was the location of the sewerage system in relation to a nearby potable water source:

116. The Panel finds that Mr. Heringa created a risk to public health by failing to abide by the SPM and SSR in regard to the engineering work on the Property. The Panel agrees with the Association that section 2.1(1)(d) of the SSR has been established due to Mr. Anderson's October 6, 2017 Order and that this creates a risk to public health.

117. The Panel preferred the evidence of Mr. Brizan over Mr. Thorburn on the risk to public health. The Panel accepts Mr. Brizan's opinion that the location of the potable water well as being less than 30 metres from the sewerage system and the inadequacies of the vertical separation from the water table present a potential risk to public health. Mr. Thorburn's evidence focussed on the operational status of the septic fields at the time he made a single site visit and not whether Mr. Heringa's failure to abide by the SSR and SPM created a risk to public health.

28. In addition, the Respondent failed to remedy the inadequacies of his engineering work after these were brought to his attention by VIHA.
29. The Panel accepts the Respondent's submissions that there was no evidence of actual public health consequences. Nevertheless, the nature and gravity of the Respondent's conduct is still significant even though the health risk he created may not have materialized. The SSR and the SPM are written to, among other things, prevent negative public health consequences and failure to follow these regulations creates the potential for negative health effects.
30. The Panel finds that this factor militates in favour of a significant penalty.

Character and Professional Conduct of the Respondent

31. Engineers and Geoscientists BC submits that the Respondent has over 40 years of engineering experience and the impugned conduct occurred toward the end of the Respondent's career. Engineers and Geoscientists BC submits that the Respondent's considerable experience is an aggravating factor militating in favour of a significant penalty as the Respondent ought to have known the requisite standards to apply to the Project and that his work fell well short of what was required.
32. Engineers and Geoscientists BC acknowledges that the Respondent has only been subject to one prior disciplinary action which was in connection with the investigation in this matter. Accordingly, it submits the Respondent's disciplinary history is largely neutral with respect to penalty.
33. The Respondent submitted that he is an expert and the circumstances of this case have only occurred once in his entire career:

Mr. Heringa spent his entire career involved with sewer and water, and subdivision approvals and is fully familiar with Septic Fields, and how they work and how they should be installed, even in Mexico. And this Professional Expert now gets a \$105,000.00 Penalty from other Professionals whose own practical knowledge about Septic Fields, and Filings for them, is much more limited than that of Mr. Heringa?"

...

This unusual situation here has only happened once in Mr. Heringa's career.

34. The Panel agrees that the Respondent's absence of a disciplinary record, with the exception of his discipline relating to the investigation of this matter, is a mitigating factor in his favour.
35. The Panel has considered the Respondent's 40 years of engineering experience and finds this to be an aggravating factor. The Respondent knew or should have known that his conduct fell below the applicable standards. With 40 years experience, his designs and his knowledge of the guidelines and regulations should not have fallen well short of what is expected of a professional engineer. Overall, the Panel considers this factor to be aggravating and militates in favour of a more significant penalty.

Acknowledgement of the Misconduct and Remedial Action

36. Engineers and Geoscientists BC submits that despite being made aware of the deficiencies in his work a number of times, the Respondent failed to remedy the deficiencies or take responsibility for them. Instead, the Panel found that the Respondent "attempted to blame VIHA and others for not informing him what the standards were and how they could be met." Engineers and Geoscientists BC submits that the Respondent failed to take responsibility for his actions, and instead shifted blame to the health authority and others. Engineers and Geoscientists BC submits that the Respondent's actions demonstrated his unwillingness to admit to and take remedial steps to address his misconduct which militates in favour of a more substantial penalty.
37. The Respondent did not make any submissions about his acknowledgement of responsibility and did not provide any evidence as to any remedial steps he has taken.
38. The Panel agrees that the Respondent did not acknowledge any misconduct on his part and instead shifted blame to others. However, the Panel finds that the absence of an admission or demonstrated remorse is not an aggravating factor but is the absence of a mitigating factor.

Public Confidence in the Profession and Deterrence

39. Engineers and Geoscientists submits this factor comprises an analysis of specific deterrence, general deterrence and public confidence in the profession. With respect to specific deterrence, Engineers and Geoscientists BC submits the Respondent has not suffered any consequences of his misconduct "other than the need to sit through this hearing." It submits he does not appear to have learned anything from the investigation or disciplinary inquiry. Accordingly, the need for specific deterrence calls for a more substantial penalty.
40. With respect to general deterrence and public confidence, Engineers and Geoscientists BC submits that it is essential to maintaining public confidence in the integrity of the engineering and geoscience professions that members are held to account for breaches of the Code of Ethics and failures to adhere to accepted professional and legislated

standards. Some measure of general deterrence is required. Engineers and Geoscientists BC submits that this need militates in favour of a more substantial penalty in the present case.

41. Engineers and Geoscientists refers to other similar cases:
 - a. *Re Tanya Levin, P. Eng.* (August 17, 2019)
 - b. *Re Elwyn Burch, P.Eng.* (May 27, 2015)
 - c. *Re Richard Bartel, P.Eng.* (November 16, 2012)
 - d. *Re Alfred Webster Trask, P.Eng.* (May 22, 2012)
 - e. *Re Philip Read, P.Eng.* (March 23, 2012)
42. The Panel considers that there is some need for specific deterrence. While the Respondent is presently not registered, it is possible for him to apply to return to the profession. The Panel agrees with Engineers and Geoscientists BC's submission that there is nothing in the evidence to suggest that the Respondent would not conduct himself in the same manner if he were to have his registration reinstated. While the specific deterrence factor may be less significant due the fact that the Respondent is no longer a registrant, it is a factor, nonetheless.
43. The Panel considers that there is a strong need for general deterrence in this case. Engineers and Geoscientists BC has referred to five similar cases in which engineers have failed to follow sewerage system regulations and guidelines, demonstrating that this is not an isolated case for the profession. It is important that other members of the profession understand that they may not ignore the applicable sewerage systems standards.
44. It is equally important that public confidence in the integrity of the engineering profession is always maintained and that the public is aware that members are held to account for failing to uphold the applicable standards and failing to conduct themselves professionally, especially in relation to standards that exist to prevent risk to public health.
45. The Panel has carefully reviewed the cases provided and notes that the penalties range from reprimands to a two-month suspension of membership. Engineers and Geoscientists BC submits that all of the cases resolved by consent which led to a lesser penalty due to their admission of the allegations and agreement of a penalty. Engineers and Geoscientists BC submits this case differs as the Respondent has continued to maintain that he has done nothing wrong. Engineers and Geoscientists BC submits that decisions rendered after a hearing hold greater precedential value that consent orders.
46. In this case, Engineers and Geoscientists BC is asking for double the highest suspension of the cases it has provided to the Panel. The Panel does not consider the circumstances and factors in this case to be so markedly different from those cases as to require a

penalty with double the length of the suspension. The Panel appreciates that there are unique features to consent orders and that they contain less details given the absence of reasons. However, consent orders of the Discipline Committee have the same effect as orders made after a disciplinary hearing, but they are the result of a negotiated settlement. In this instance, the only cases that have been put before this Panel with respect to penalty were the consent orders noted above.

47. In weighing all of the *Ogilvie/ Dent* factors, the Panel considers that a significant penalty is warranted in this case and that the appropriate length of suspension is two months.

D. Costs

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

Costs

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

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

(2) Costs assessed under subsection (1)

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

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

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

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

49. Engineers and Geoscientists BC has enacted bylaws pursuant to the PGA. Section 10.9 of the Bylaws govern orders and assessment of costs in relation the costs against the Respondent. Section 10.9(1) provides that:
- 10.9 (1) If an adverse determination is made against a Respondent after a discipline hearing held pursuant to section 75 of the PGA [Discipline hearings] the Discipline Hearing Panel must require, through an order in writing, that the Respondent pay EGBC's costs, which may be up to the actual costs incurred by EGBC as a result of an investigation and a discipline hearing, provided that those actual costs are within the limits set out in section 81(2)(a) of the PGA [Costs].
50. Section 10.9(5) of the PGA provides that the Panel must consider whether all of the allegations against the Respondent were proven and may consider whether the Respondent previously rejected an undertaking or consent requested by the Investigation Committee or Discipline Committee.
51. In terms of which allegations were proven by Engineers and Geoscientists BC, the Panel found that the allegations in paragraphs 1(a)(i),(iii),(iv),(vi),(vii),(viii), (c), (d), 3, 4 and 5 of the Notice of Inquiry were proven to the requisite standard. Engineers and Geoscientists BC abandoned the allegation at paragraph 1 (a)(ii) of the Notice of Inquiry. The allegations at paragraphs 1(a)(v), (b) and 2 of the Notice of Inquiry were dismissed.
52. Engineers and Geoscientists BC did not make any submissions with respect to whether the Respondent rejected an undertaking or consent requested by either the Investigation or Discipline Committee.
53. In his submissions, the Respondent references that he rejected proposed consent orders. However, no consent orders were placed before the Panel, and the Respondent made no submissions as to how his own rejections of proposed consent orders could assist his position on costs. As noted in paragraph 9, the Respondent suggests that "*Party-to-Party costs of \$105,000.00 awarded in favour of Hans Heringa?*" As also noted above, the Respondent has provided no legal basis to award such costs, or any information to demonstrate those amounts were incurred or ought to be otherwise awarded. The Panel has determined that there is no basis to award costs to the Respondent. The Respondent has made no other submissions with respect to the actual costs claimed by the Engineers and Geoscientists BC.
54. Engineers and Geoscientists BC submitted a detailed monthly breakdown of the actual costs incurred. The Panel accepts the documented actual costs submitted by Engineers and Geoscientists BC and considers them to be reasonable given the numerous allegations contained in the Notice of Inquiry, the requirement for multiple pre-hearing conferences, the Discipline Hearing required multiple days, and the fact that the allegations were largely substantiated. As noted above, while the transitional provisions of the PGA apply with respect to costs, Engineers and Geoscientists BC is only seeking costs in conformity with what was available under the EGA.

55. Engineers and Geoscientists BC submits that in previous cases, the Discipline Committee panels have awarded reasonable costs between 70 to 90% of actual costs incurred by Engineers and Geoscientists BC. The following cases were referred to: *Re Syed, P.Eng* (August 18, 2020), the member was required to pay \$32,582 representing approximately 90% of reasonable costs; *Re James Halarewicz, P.Eng.* (January 15, 2019) where the member was required to pay \$46,455 representing 90% of the actual costs; *Re Eric Chrysanthous, P.Eng* (August 16, 2018) where the member was required to pay 90% of actual costs; *Re Dr. Stromotich, P.Eng.* (August 28, 2007) where the member was required to pay \$41,935 representing approximately 80% of actual costs; and *Re Foreman, P.Eng.* where the member was required to pay \$80,000 representing approximately 70% of actual costs. The Panel also notes that in *Re Schober* (September 20, 2021), the member was required to pay \$60,699.93 representing 75% of actual costs of \$84,266.11. Unlike in this case, the *Schober* matter proceeded by way of agreed facts and admissions.
56. Engineers and Geoscientists BC submits that while it was not successful in making out all of the charges against the Respondent, it was overwhelmingly successful. The most significant allegations were proven, which took up the majority of the hearing time and necessitated all of Engineers and Geoscientists BC's witnesses to be called.
57. Engineers and Geoscientists BC submits that the Respondent's conduct leading up to and during the hearing contributed to a longer and far more costly process than would be usually expected. Among other things, Engineers and Geoscientists BC notes that he sought an adjournment of the initial dates for hearing, sought late leave to introduce expert evidence, repeatedly sought extensions of time and made submissions regarding conduct long after submissions on conduct closed.
58. Engineers and Geoscientists has calculated its costs as follows:
- | | |
|--|-------------|
| a. Legal fees and disbursements (Moore Edgar Lyster LLP) | \$98,051.81 |
| b. Investigation and hearing costs of EGBC | \$5,398.62 |
| Total: \$103,450.43 | |
59. Engineers and Geoscientists BC seeks reasonable costs at 80% of actual costs, in the amount of \$82,760.34.
60. The Panel largely agrees with Engineers and Geoscientists BC's submissions. The Respondent's conduct leading up to and during the hearing contributed to a longer and far more costly process than would be expected. For example, multiple pre-hearing conferences were necessary in this matter, and the Respondent's late leave application to tender expert evidence required submissions and hearing time despite the issue having been raised in pre-hearing conferences. In addition, the Respondent's conduct and communications at various points was unfounded, irrelevant, improper and abusive and,

as a result, required additional time and costs to be expended in these proceedings. The Panel does not agree that some of the specific examples of extensions sought by the Respondent warrant costs at a higher level as both parties requested extensions for submissions at various times which the Panel granted those requests on principled bases.

61. For the reasons set out above, the Panel considers an award of 80% of actual costs to be warranted in favor of Engineers and Geoscientists BC. The Panel however is mindful that Engineers and Geoscientists BC was not successful in proving all of the allegations in the Notice of Inquiry. The Panel does agree that it was overwhelmingly successful in proving not only the majority of the allegations but also the most serious ones and the ones which occupied the majority of the disciplinary hearing. Accordingly, the Panel reduces the costs to 75% of actual costs, which is \$77,587.82.
62. Engineers and Geoscientists has asked that the costs order is payable within three months, however, that does not align with the provisions of the new Bylaws which provide for payment of costs orders within 30 days, with the option to seek a further extension of 30 days. While the Respondent has not provided any information relating to his financial circumstances as a consideration in any costs order against him, the Panel recognizes this is a significant costs order and has contemplated the possibility that Engineers and Geoscientists BC and the Respondent could agree in writing to a different date for repayment in the circumstances. The Panel considers this to be a fair approach given that this matter has straddled the EGA and the PGA, and the Engineers and Geoscientists BC took the position that while the PGA and new Bylaws apply to the assessment of costs, it was not seeking a more stringent award that it could have obtained under the EGA.

Conclusion

63. In summary, the Panel orders that:
 - a. The Respondent's registration is suspended for two (2) months;
 - b. The suspension shall commence from the date of reinstatement, should the Respondent be reinstated in future; or on a date as agreed between the Respondent and Engineers and Geoscientists BC (the "Suspension Period);
 - c. The Respondent shall pay to Engineers and Geoscientists BC costs of \$77,587.82 (an amount equivalent to 75% of its investigation and legal costs) payable in accordance with sections 10.1 and 10.10.1 of the Bylaws, or such other date as agreed to by the Respondent and Engineers and Geoscientists BC in writing.
 - d. Before the Respondent's membership can be reinstated, he must:
 - i. Successfully complete the Professional Engineering and Geoscience Practice in BC Online Seminar;
 - ii. Complete and pass the Professional Practice Exam; and

- iii. Have paid to Engineers and Geoscientists BC the costs set out in paragraph c above.

- e. Should the Respondent's membership be reinstated in the future:
 - i. Following the Suspension Period, the Respondent will be prohibited from performing any work on or relating to sewerage systems, including but not limited to designing sewerage systems and acting as an "authorized person" under the SSR (the "Restricted Discipline"), and, while prohibited, must not use his seal in connection with any sewerage system;

 - ii. Following the Suspension Period, the Respondent may appear before the Engineers and Geoscientists BC Credential Committee to satisfy the Credentials Committee that he is competent to practice in the Restricted Discipline. Competency will be assessed through the Credentials Committee's Competency-Based Assessment System, and the specific process to be followed will be determined by the Credentials Committee. Following the Competency-Based Assessment, the Credentials Committee may lift the prohibition on the Restricted Discipline.

<original signed by>

Peter Bobrowsky, P.Geo, Chair

<original signed by>

Paul Adams, P.Eng.

<original signed by>

Ed Bird, P.Eng.