

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

and

**IN THE MATTER OF AHMED RAZA SYED, P. Eng.
APEGBC File No. T16-038 and T16-080**

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

Hearing Date:	By Written Submissions
Discipline Committee Panel:	Oliver Bonham, P. Geo., Chair, Ed Bird, P. Eng., Christopher Arthur, P. Eng.
Counsel for the Association:	David Volk
Counsel for the Member:	Mr. Syed is not represented by legal counsel

1. This panel of the Discipline Committee (the “Panel”) of the Association of Professional Engineers and Geoscientists of British Columbia (the “Association”), doing business as Engineers and Geoscientists BC, determined that Mr. Syed failed to respond to requests by the Association in connection with its investigation of 2 matters concerning his practice and thereby acted in breach of s. 30(4) of the Act.

2. On 18 September 2017 the panel issued its determination where it found that the Mr. Syed failed, over a period of 6 months, to deliver up requested files to the Association concerning two separate complaints filed against him, notwithstanding numerous reminders and an extension of time provided to him by the Association. Mr. Syed produced some files at the commencement of the hearing. During the hearing, Mr. Syed stated the reason he did not submit the information to the Association as and when requested was because his computer person, who reported to him, had difficulties retrieving the files for him. The Panel found that Mr. Syed had not complied with his obligations as a member to respond to the requests of the Association and that he had breached the Code of Ethics.

3. The Panel received written submissions on penalty from Mr. Volk on behalf of the Association dated 2 October 2017, from Mr. Syed dated 23 October 2017 and a reply from Mr. Volk dated 26 October 2017.

4. At the Panel's request, its counsel wrote to the parties on 10 January 2018 and asked whether the documents produced by Mr. Syed at the outset of the hearing constituted a complete response to the requests that were the subject of these proceedings. In response, the parties confirmed, collectively, on 22 January 2018, in correspondence to the Panel's counsel, that (as Mr. Syed had indicated in the hearing on 20 July 2017) he was still attempting to have somebody in his office obtain additional files pertaining to the matter. The parties also confirmed that there had been correspondence between the Association and Mr. Syed on 22 November and 30 November pertaining to Mr. Syed providing additional files. They also confirmed that the investigations into both matters were still ongoing.

Framework for Assessing Penalty

5. Section 33(2) of the Act states that if the Panel finds a member has contravened the Act, the Panel may order 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.

6. The Association relied upon *Re Foreman*, a November 2015 decision of the Discipline Committee on Penalty and Costs, which approved of a framework for the consideration of penalty set out in a Law Society of British Columbia decision (*Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17). The factors to be considered are as follows:

- a) the nature and gravity of the conduct proven;
- b) the age and experience of the member;
- c) the previous character of the member, including details of prior discipline;
- d) the impact upon the victim;
- e) the advantage gained, or to be gained, by the member;
- f) the number of times the offending conduct occurred;
- g) whether the member has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstances;

- h) the possibility of remediating or rehabilitating the member;
 - i) the impact on the member of criminal or other sanctions or penalties;
 - j) the impact of the proposed penalty on the respondent;
 - k) the need for specific and general deterrence;
 - l) the need to ensure the public's confidence in the integrity of the profession;
and
 - m) the range of penalties imposed in similar cases.
7. The Association also referred to several past Association of Professional Engineers and Geoscientists of British Columbia cases concerning similar facts:
- In *Re Hartford*, Mr. Hartford failed to respond to requests to produce information and records until the morning of the Discipline Panel hearing into his breach of section 30(4) of the Act. Between the time of the initial Discipline Panel hearing and the hearing on penalty, Mr. Hartford provided the requested files, rendering discussion of any suspension pending Mr. Hartford's compliance with the original request moot. The Discipline Panel ordered that he pay a fine to the Association in the amount of \$5,000; and pay 90% of the legal costs to the Association.
 - In *Re Yeung*, a discipline panel found that Mr. Yeung breached s. 30(4) of the Act by failing to respond to a complaint. Mr. Yeung appeared in person at the inquiry, and admitted to the charge. He was required to provide a satisfactory response to the requests of the Investigation Committee, failing which, Mr. Yeung's membership would be suspended indefinitely, pay a fine to the Association in the amount of \$10,000; and pay legal costs to the Association of \$5,000.
 - In *Re Hage*, Mr. Hage failed to reply to letters of the Investigation Committee. Mr. Hage did not attend the discipline hearing. On penalty, the Discipline Panel ordered that his membership would be suspended until he provided a complete response to the Investigation Committee's original request for information and documents, that he pay costs of \$3,000; and write and pass the Association's Professional Practice Exam.

Application of Factors to Mr. Syed's Case

- 8. Both parties' submissions addressed the factors above.
- 9. In its submission the Association proposed the following penalty is appropriate for Mr. Syed's breach of section 30(4) of the Act:

- a) Mr. Syed must successfully complete the Association's Professional Engineering and Geoscience Practice in BC Online Seminar and complete and pass the Association's Professional Practice Examination; and
 - b) Mr. Syed shall, within 30 days, pay a fine to the Association, in the amount of \$7,500.
 - c) The Association further submitted that a cost award of \$7,500 is reasonable in the circumstances and appropriate. The Association further submits that this cost award should be payable within 30 days.
10. In his submission Mr. Syed proposed his penalty should include the following:
- a) That he be required to write the Association's Professional Practice Exam;
 - b) That he be required to undertake the Association's online Professional Engineering and Geoscience Practice Seminar; or
 - c) He submits that he be required to pay to the Association costs in the amount of \$3,000, payable to the Association within 90 days.
11. In its reply submission, the Association rejected Mr. Syed's proposed penalty arguing its initial proposal was appropriate in the circumstances and again referring to several past Association cases concerning similar facts and penalties.
12. Taking into account section 33 (2) of the Act concerning powers of the Panel to make an order and applying the factors used in the framework for the consideration of penalty set out above, the Panel's analysis is as follows:
- a) Not responding to the Association's request for information about a matter under investigation is a serious offense.
 - b) While the date of Mr. Syed's original registration was not before the Panel, it was apparent that he was employed and experienced as an engineer.
 - c) Information was being sought by the Association on two separate projects of Mr. Syed's in two different locations.
 - d) During the hearing, Mr. Syed did not demonstrate that he understood the requirements of the Association, nor did he acknowledge the gravity of not responding to the Association in the manner or within the time-frame required.

- e) It is the responsibility of all members to respond to requests for information about matters under investigation. For this reason the penalty must also serve as a general deterrence to other members.
 - f) The processes established under the Act for the investigation of members and the powers and actions of the Associations in its investigation of member in response to concerns about their practice are there to ensure the public's confidence in the integrity of the profession. A member not responding to the Association undermines public confidence in the integrity of the profession.
13. As the matter before the Panel did not extend to the subject matters of the underlying investigation, impact on the victim or advantages gained were not considered as factors in setting penalty. The possibility of remediation and rehabilitation of the member is recognized and is reflected in the penalty. The penalty set out below is within the range of penalties imposed in similar cases.
14. In summary, having considered the above factors, the Panel is satisfied that the appropriate penalty is:
- a) That Mr. Syed pay a fine the Association in the amount of \$5,000;
 - b) That Mr. Syed be required to complete and pass the Professional Practice Examination of the Association and provide written notice to the Association that he has done so;
 - c) That Mr. Syed be required to complete the Professional Engineering and Geoscience Practice in BC Online Seminar and provide written notice to the Association that he has done so;
 - d) If Mr. Syed does not fulfil the requirements of paragraphs a), b) and c) by 31 May 2018, his membership in the Association will be suspended until he has done so.

Costs

15. Section 35 of the Act permits the Panel to direct that “reasonable costs of and incidental to the investigation under section 30 and the inquiry under section 32, including reasonable fees payable to solicitors, counsel and witnesses, or any part of the costs, be paid”, and to fix the amount of costs.

16. In the Panel’s view it is reasonable that Mr. Syed bear the costs of these proceedings. Had he responded as required, and indeed as cautioned on several occasions, this hearing could have been avoided. It is not appropriate that the cost of these proceedings be borne by the membership.

17. Mr. Volk submitted that \$7,500 is approximately 90% of the costs incurred. In his Reply submissions he states that the total costs are \$8,300. The Panel notes that the percentage of costs paid in other discipline cases is up to 90%.

18. Mr. Syed submits the amount for costs should be \$3,000. In this Panel's view this is not sufficient a contribution to offset the costs incurred.

19. It is the Panel's decision that costs in the amount of \$7,500 is a reasonable sum and we so order.

20. It is the Panel's decision of that these costs are to be paid by not later than 31 May 2018.


Summary of Decision

21. For the reasons set out above the Panel orders as follows:

- a) That Mr. Syed pay a fine the Association in the amount of \$5,000.
- b) That Mr. Syed be required to complete and pass the Professional Practice Examination of the Association and provide written notice to the Association that he has done so;
- c) That Mr. Syed be required to complete the Professional Engineering and Geoscience Practice in BC Online Seminar and provide written notice to the Association that he has done so;
- d) That Mr. Syed pay costs to the Association in the amount of \$7,500.
- e) If Mr. Syed does not fulfil the requirements of paragraphs a), b), c) and d) by 31 May 2018, his membership in the Association will be suspended until he has done so.

DATED this 4th day of February, 2018.

Oliver Bonham, P. Geo., Chair


Ed Bird, P. Eng.

Christopher Arthur, P. Eng.

17. Mr. Volk submitted that \$7,500 is approximately 90% of the costs incurred. In his Reply submissions he states that the total costs are \$8,300. The Panel notes that the percentage of costs paid in other discipline cases is up to 90%.

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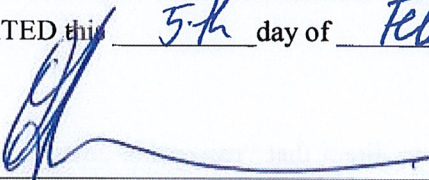
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- c) That Mr. Syed be required to complete the Professional Engineering and Geoscience Practice in BC Online Seminar and provide written notice to the Association that he has done so;
- d) That Mr. Syed pay costs to the Association in the amount of \$7,500.
- e) If Mr. Syed does not fulfil the requirements of paragraphs a), b), c) and d) by 31 May 2018, his membership in the Association will be suspended until he has done so.

DATED this 5th day of Febr., 2018.



Oliver Bonham, P. Geo., Chair

Ed Bird, P. Eng.



Christopher Arthur, P. Eng.