

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 date: October 16, 2019

Discipline Committee Panel: Chris Arthur, P.Eng., Chair
Thomas Leung, P.Eng.
Tom Morrison, P.Eng.

Counsel for the Association: Lindsay Waddell
Heather Hoiness

For the Member Charles Fenton, retired lawyer
Hans Heringa, P.Eng.

A. Introduction

1. This Panel of 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 (the "Association") finds that Hans Heringa, P.Eng. failed to provide the Investigation Committee of the Association with a copy of his complete file regarding a Record of Sewerage System that he submitted for subdivision purposes for the property located at [REDACTED], Qualicum Beach, British Columbia as requested by the Association on September 12, 2018, and as re-iterated on October 24, 2018, and November 6, 2018, and by the deadline of November 9, 2018 which was ultimately set by the Association.

2. The Panel determined pursuant to section 33 of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116 (the "Act") that Mr. Heringa breached section 30(4) of the Act.

B. Background

3. This Panel was appointed to conduct an inquiry to determine, pursuant to section 33 of the Act, whether Mr. Heringa acted contrary to section 30(4) of the Act, which provides:

30 (4) A member, licensee or certificate holder being investigated under subsection (3) must

(a) provide the committee or subcommittee conducting the investigation with any information or records in the possession or control of the member, licensee or certificate holder that the committee or subcommittee may require,

(b) answer, within a reasonable time and in the manner specified by the committee or subcommittee, any inquiries of the committee or subcommittee, and

(c) appear, on request, before the committee or subcommittee.

4. The particulars of the allegations against Mr. Heringa are set out in the Notice of Inquiry as follows:

1. You failed to provide the Investigation Committee of the Association with a copy of your complete file (including all reports, drawings, photos, memos, correspondence, notes, and invoices) regarding a Record of Sewerage System that you submitted for subdivision purposes for the property located at [REDACTED], Qualicum Beach, British Columbia, by November 9, 2018, or at all, as requested by the Association on September 12, 2018, and as re-iterated on October 24, 2018, and November 6, 2018.

2. The conduct set out above at paragraph 1 is contrary to section 30(4) of the Act.

5. The hearing took place at the Association's office at 4010 Regent Street, Burnaby, British Columbia on October 16, 2019. Mr. Heringa attended the hearing in person and with his representative, Charles Fenton, who is retired as a lawyer.
6. The parties both led evidence with respect to the allegations set out in the Notice of Inquiry and made closing submissions.
7. The Panel's determination takes into account the evidence adduced at the hearing and the parties' submissions.

C. Service

8. No issues were raised with respect to service of the Notice of Inquiry, which was marked as Exhibit 1. The Panel accepts that Mr. Heringa was properly served with the Notice of Inquiry dated April 17, 2019.

D. Burden and Standard of Proof

9. Mr. Fenton argued that the burden of proof in this case is a heightened standard. He relied on the following passage from the 1985 decision of *Dr. William Jory v. The College of Physicians and Surgeons of British Columbia*, and which was cited in two EGBC Discipline Committee decisions: *Re Hartford* (January 10, 2007) and *Re Stromotich* (July 3, 2007):

The standard of proof in cases such as this is high. It is not the criminal standard of proof beyond a reasonable doubt. But it is something more than a bare balance of probabilities. The authorities establish that the case against a professional person on a disciplinary hearing must be proved by a fair and reasonable preponderance of credible evidence...The evidence must be sufficiently cogent to make it safe to uphold the findings with all the consequences for the professional person's career and status in the community.

10. The Association relied upon the *Re Hartford* and *Re Stromotich* decisions in this matter, though not in relation to the burden and standard of proof.
11. The Association argued that the above line of cases has now been overtaken by the Supreme Court of Canada's determination that there is only one civil standard: balance of probabilities.
12. The Panel finds that the Association bears the burden of proof and must prove its case on a "balance of probabilities" according to the Supreme Court of Canada's decision of *F.H. v. McDougall*, 2008 SCC 53. The Panel notes the Supreme Court of Canada's comments that evidence must be clear, convincing and cogent to satisfy the balance of probabilities test.

E. Evidence

13. The Association called one witness, Joanne Wilson. Ms. Wilson is an investigator with the Association. Ms. Wilson testified that:
- a. Glenn Gibson from Island Health¹ filed a complaint against Mr. Heringa with the Association on June 1, 2017 in relation to sewerage system design for subdivision purposes for the property located at [REDACTED], Qualicum Beach, British Columbia (the "Complaint");

¹The Panel notes "VIHA" underwent a name change to "Island Health". Both "Island Health" and "VIHA" were mentioned by the witnesses and in the documents that were admitted. For clarity, the Panel will simply refer to "Island Health" in its decision, unless "VIHA" is used in a quote.

- b. Mr. Heringa was informed of the Complaint by letter dated June 14, 2017 from Kayla Vantriet, Compliance Officer at the Association. In that letter, Mr. Heringa was advised of the investigation process and provided with an opportunity to provide a response to the Complaint;
- c. By letter dated July 4, 2017, Mr. Heringa responded to the Complaint;
- d. By letter dated September 21, 2017, [REDACTED], a Land Use and Water Consultant at Island Health, advised the Association of further concerns relating to Mr. Heringa;
- e. On October 20, 2017 and November 10, 2017, [REDACTED] emailed Ms. Vantriet to provide her with additional information from Island Health in relation to the Complaint;
- f. The Association made a Freedom of Information ("FOI") request to Island Health for the permitting file for the property located at [REDACTED], Qualicum Beach, BC, including all reports, drawings, photos, memos correspondence, and notes. Island Health delivered a response to that FOI request;
- g. By letter dated December 7, 2017, Mr. Heringa wrote to Ms. Vantriet setting out a number of questions about the status of the Complaint and requesting certain information from Island Health. Mr. Heringa suggested if Island Health failed to provide that information, the Complaint ought to be withdrawn. Mr. Heringa also advised that he would be "leaving for Mexico shortly for three months - so would prefer to address anything else on [his] return in March 2018";
- h. On December 11, 2017, Ms. Vantriet responded to Mr. Heringa advising of the status and processing of the Complaint, including that the Complaint had been referred to a designated member pursuant to section 29(1)(a) of the Act who would review all the information on file and providing a report to the Association on whether the file should be closed or investigated further. Ms. Vantriet also responded to Mr. Heringa's requests for information and proof from Island Health, explaining the Association's jurisdiction;
- i. On December 18, 2017, the designated reviewer, [REDACTED], P.Eng completed his report, In his opinion, Mr. Heringa provided substandard engineering services. [REDACTED] recommended further investigation;
- j. The matter was referred to the Investigation Committee. On January 25, 2018, the Investigation Committee decided to investigate Mr. Heringa and refer the matter to a Subcommittee;

- k. Ms. Wilson became involved immediately following that Investigation Committee meeting;
- l. On February 2, 2018, Mr. Heringa sent an email to Jesse Romano, Investigation Manager at the Association, setting out several questions relating to septic field filings and requesting “advice on a solution”;
- m. On February 6, 2018, Mr. Romano responded to Mr. Heringa by email indicating that he was unable to provide specific practice advice but that that Mr. Heringa was free to speak with the Association’s practice advisors to obtain general practice advice;
- n. On April 13, 2018, Mr. Heringa emailed Mr. Romano seeking further information and advice in relation to Island Health’s Complaint and indicating that he thought it should be withdrawn;
- o. On April 18, 2018, Ms. Wilson responded by email to Mr. Heringa’s April 13th email to Mr. Romano. She advised Mr. Heringa that she is an investigator with the Association and is assisting the Subcommittee with Mr. Heringa’s file. Ms. Wilson advised Mr. Heringa that the review of the Complaint had been conducted by the designated reviewer, that he had recommended forwarding it to the Investigation Committee, that the Investigation Committee resolved to investigate the Complaint and appointed a Subcommittee to do so. Ms. Wilson set out the next steps in the investigative process;
- p. On April 30, 2018, Mr. Heringa emailed Ms. Wilson to advise that ██████████ was no longer working with Island Health. On May 2, 2018, Ms. Wilson replied that ██████████’s change in employment status has no effect on the investigation of the Complaint;
- q. On May 7, 2018, Mr. Heringa emailed Mr. Romano requesting design information in relation to a request Mr. Heringa made to Island Health about gray water. On May 16, 2018, Mr. Romano replied, reiterating that he is unable to provide Mr. Heringa with practice advice. He again referred Mr. Heringa to the Association’s practice advisors;
- r. By letter dated September 12, 2018, Ms. Wilson wrote to Mr. Heringa at the direction of the Subcommittee requesting his complete file for the subject of the Complaint. The request was stated as follows:
 - 1. A copy of your complete file for the Project, including all reports, drawings, photos, memos, correspondence, notes, invoices, etc.

The term “Project” was defined in the first paragraph of the letter as follows:

We write with respect to the professional conduct complaint against you, submitted by ██████████, Environmental Health Officer

at Vancouver Island Health Authority ("VIHA"), regarding the Record of Sewerage System (ROSS) documents you submitted for the subdivision purposes for the property located at [REDACTED], Qualicum Beach, (the "Project").

- s. Ms. Wilson testified that typically the Association provides approximately one week for a similar response. In this instance, the deadline given was September 26, 2018;
- t. On September 13, 2018, Ms. Wilson received an email from Mr. Fenton copying Mr. Heringa, in which Mr. Fenton requested an extension for Mr. Heringa to submit the requested file because "Mr. Heringa is currently out of the country, and will not be returning until late October 2018". No specific date on which the file could be provided was identified;
- u. On September 13, 2018, Ms. Wilson responded by email to Mr. Fenton with a copy to Mr. Heringa, granting an extension until November 9, 2018. Ms. Wilson testified that she provided a longer period than would ordinarily be the norm to allow Mr. Heringa some additional time after his return. Ms. Wilson also sought information confirming whether Mr. Fenton was acting as Mr. Heringa's lawyer;
- v. On October 23, 2018, Ms. Wilson received a response from Mr. Fenton in which he advised that there was a court date for this same matter on November 7, 2018. Mr. Fenton indicated that the file is very lengthy; "at least two feet high". Mr. Fenton sought a further extension on behalf of Mr. Heringa, as follows "Let's just postpone the matter, and the September 12, 2018 request, generally, or at least until the outcome of the Litigation is known." Mr. Fenton indicated that he is acting as the lawyer for Mr. Heringa, but he is retired and not a practicing lawyer;
- w. On October 24, 2018, Ms. Wilson responded to Mr. Fenton, copying Mr. Heringa. She indicated that the Association is entirely separate from any court proceedings and the outcome of those proceedings have no impact on the Association's investigation. Ms. Wilson reiterated the Subcommittee's request for Mr. Heringa's complete file and the November 9, 2018 deadline to provide that file. Ms. Wilson also reminded Mr. Heringa of his obligations under section 30(4) of the Act and that his failure to respond could result in disciplinary action;
- x. On October 31, 2018, Mr. Fenton responded by email advising that Mr. Heringa and Mr. Fenton are fully occupied until November 20, 2018 and that Mr. Heringa would not be able to review his file until that date. Mr. Fenton questioned the request and indicated his belief that the Association already has all relevant correspondence;
- y. On November 6, 2018, Ms. Wilson wrote to Mr. Fenton and Mr. Heringa reiterating the Subcommittee's request and deadline of November 9, 2018

and that no further extension would be provided. She again reminded Mr. Heringa of his obligation under section 30(4) of the Act and the risk of the matter being referred to the Investigation Committee for contravention of section 30(4) if Mr. Heringa does not comply with his obligation;

- z. On November 9, 2018, Mr. Fenton emailed Ms. Wilson “as Agent for Mr. Heringa” requesting a further extension until May 31, 2019 because the civil litigation trial had been postponed to May 1, 2019 or sometime later in 2019. Mr. Fenton indicated that it is now even more important to keep the original file documentations without disturbance and avoid costs and risks with photocopying the enormous files for no purpose;
- aa. Ms. Wilson testified that after receiving the November 9, 2018 email from Mr. Fenton, she placed a phone call to Mr. Heringa. She confirmed that he was aware of the correspondence with Mr. Fenton. Ms. Wilson wanted to ensure that Mr. Heringa knew his file was due on that date and that the civil litigation had no bearing on his obligation to provide his file. Ms. Wilson’s notes from that call indicate that Mr. Heringa explained that “he will be “heading south” for the winter and the file for the Project is “5 feet high” and is impossible to send over to the Association because the Project commenced years ago and there is a lot of paper work associated with the file.”;
- bb. By letter dated November 9, 2018, Ms. Wilson wrote to Mr. Fenton setting out the history of requests for Mr. Heringa’s file and advising that “this matter will be placed on the agenda for one of the Investigation Committee’s meetings by the end of the 2018 year for consideration of recommending disciplinary action for breach of section 30(4) of the Act;
- cc. The matter was referred to the Subcommittee who recommended that the matter be referred to the Discipline Committee for failure to adhere to section 30(4) of the Act;
- dd. On May 17, 2019, Mr. Heringa wrote to Ms. Wilson and the office of Lyndsay Waddell, who had by that time been appointed as external legal counsel for the Association. Mr. Heringa wrote: “I have only failed (to date) to provide a copy of my complete file, regarding a Record of Sewerage System Filing for a Project. My complete file on this small project is 3ft. Hopefully you don’t need it all, and just need what is relevant to the ROSS Filing. Please confirm”. Mr. Heringa went on to state that there are many valid reasons for his delay in providing the file and that his conduct was not deliberate;
- ee. On May 22, 2019, Mr. Heringa emailed Ms. Wilson asking that the Notice of Inquiry be cancelled as he was now in a position to provide the file materials that were requested. He also stated there was never any intent to be obstinate, “I was just mostly away and overwhelmed with other pressing matters”;

- ff. Mr. Heringa did provide the requested file to the Association on either May 30 or 31, 2019. The file was not the size Mr. Heringa had represented it to be. The file went to the Subcommittee who reviewed it and confirmed that it contains all the information relating to the subject of the Complaint;
 - gg. The impact of the delay in producing the requested file was that it delayed the investigation.
14. On cross-examination of Ms. Wilson by Mr. Fenton, she:
- a. Agreed that neither [REDACTED] nor [REDACTED] attended the inquiry to testify as witnesses and were therefore unavailable for cross-examination on their documents;
 - b. Agreed that she did not know whether the court proceedings were criminal or civil in nature;
 - c. Was asked about her knowledge of the underlying matters forming the subject of the Complaint;
 - d. Agreed that Mr. Fenton did not receive a copy of the November 21, 2018 Subcommittee report until it was disclosed in June as part of pre-hearing disclosure.
15. Mr. Heringa also conducted a cross-examination of Ms. Wilson. During her cross-examination, Ms. Wilson
- a. Did not agree that all her correspondence was to Mr. Fenton and not to Mr. Heringa. She responded that she copied Mr. Heringa on all her emails to Mr. Fenton;
 - b. Agreed that the quote in her email of November 6, 2019 regarding Mr. Heringa's obligation to provide documents pursuant to section 30(4) of the Act did not contain the words "within a reasonable time". Ms. Wilson indicated that she was not referring to section 30(4)(b), which is where that language can be found;
 - c. Did not agree that she sent her September 12, 2018 letter to the wrong email address for Mr. Heringa. While Ms. Wilson acknowledged that the email address listed at the top of the letter was incorrect, she brought Mr. Heringa to the covering email delivering the September 12, 2018 letter. Ms. Wilson testified that Mr. Heringa's correct email address was used for delivery of that letter;
16. Mr. Fenton conducted further cross-examination of Ms. Wilson in which she agreed with his proposition that at no time did Mr. Heringa or Mr. Fenton state that they were refusing to provide the requested documents. Ms. Wilson noted that it was a refusal to provide within the timeframe provided.

17. Mr. Heringa did not call any witnesses but did testify himself. Mr. Fenton conducted Mr. Heringa's direct examination. Mr. Heringa testified as follows:
 - a. This is the first time that he has ever been the subject of inquiry. He is semi-retired and almost 70 years old;
 - b. He spends approximately three months in Mexico every winter;
 - c. He identified the physical documents that were the subject of the requests. First, Mr. Heringa identified two boxes which were placed in the middle of the hearing room. Those contained the documents associated with the subdivision applications. Second, Mr. Heringa identified two envelopes which contained the material sent to the Association and which was specific to the filings and ultimately in response to the Association's requests;
 - d. After Mr. Heringa provided the requested file to the Association on May 30, 2019, he did not hear anything further in relation to any other requirements he was required to comply with;
 - e. In relation to Ms. Wilson's email dated November 6, 2018, Mr. Heringa testified that he knew that under section 30(4)(a) of the Act he had to provide documents as soon as he could, but under section 30(4)(b), the Act says to answer within a reasonable time. Mr. Heringa stated that he believed that he was complying with the requirements under the Act;
 - f. He does not understand why the Association had an "attitude change" over the course of his interactions in this matter, and that the Association knew that he was semi-retired, away in Mexico and experiencing health issues at the time the requests were made;
 - g. Mr. Heringa was involved a prior court case where he threw away originals of documents so he knew the importance of preserving his originals in this instance. He said his documents "can't be in two places at one time";
18. On cross-examination, Mr. Heringa:
 - a. Agreed that the request for his file was a request for a copy of the file and not original documents;
 - b. Agreed that the September 12, 2018 letter was sent to his correct email address. He added however, that he was away at that time;
 - c. Agreed that the September 13, 2018 email chain from Mr. Fenton to Ms. Wilson contains an email from "Lisa" to Mr. Fenton. Lisa is Mr. Heringa's administrative assistant and monitors his emails;
 - d. Agreed that Mr. Fenton was acting as his agent;

- e. Testified that he was aware of the November 9, 2018 deadline upon his return at the end of October but he still did not disclose his file. He testified that he did not have time to do so as he had to go for blood tests, his wife was ill and there was so much that he had to do that he was not able to meet the deadline. Mr. Heringa agreed he did not mention any of those difficulties to the Association at that time. Mr. Heringa testified that he was not clear about what the Association wanted;
 - f. Did not agree that the Subcommittee's request for his file, as set out in the September 12, 2018 letter and which defines the "Project", is clear;
 - g. Agreed the Association brought section 30(4) to his attention multiple times;
 - h. Testified that he sent the requested file after the November 9, 2018 deadline for valid reasons and admitted that he produced the documents when he "had the time" and "when it suited [him]". This included after he bought a new photocopier.
19. In a clarification question from the Panel following the hearing regarding his status with the Association, the parties confirmed that Mr. Heringa has maintained his status as a practicing member. He has been practicing at reduced fees. He practices without restriction.

Closing submissions

20. Both parties made closing submissions.
21. The Association submitted that if Mr. Heringa intended to produce the requested documents at all, it was on his own time and when it was convenient for him. He has provided many reasons, which were not articulated to the Association at the relevant times.
22. The Association does not dispute that Mr. Heringa did ultimately produce the requested documents, and the parties are largely in agreement on that timing (on or about May 30 or 31, 2019). However, the Association submits that Mr. Heringa only sent the documents after he received a Notice of Inquiry. It was at that time, the Association submits, that he began to take the request seriously. The Association submits that makes his conduct more egregious. The Association is a self-governing profession and its primary mandate is to protect the public and one of the most important tools in doing so is a robust investigation and compliance system to ensure that members are meeting the standard of the profession.
23. The Association relies on the first part of the following paragraph from *Re Hartford*:
- [50] Our findings have implications for members. As a self-governing profession, responsible, in the public interest, for regulating members, it is important that complaints from the public are addressed expeditiously in a fair and transparent manner. It is not in the public interest or in the interest of the Association, that the

complaints procedure be stifled because, for whatever reason, a member declines to respond to legitimate regulatory requests or maintains such scant records, that documents cannot be retrieved or examined. Whatever the origin of a complaint about a member's work, members have a professional obligation to ensure that the Association's complaint process is credible, transparent and accountable and that each member has proper administrative procedures in place. Failure to do so, has professional consequences for the member and credibility issues for the Association.

24. The Association argued that the fact that materials which were once requested are eventually produced does not mean there has been no breach of the Act. The Association also relies upon *Re Syed* (Decision dated September 18, 2017). In that case, the Association's Investigations Committee and Subcommittee sought Mr. Syed's files in relation to the projects under investigation. Some of the files were produced on the eve of the hearing. Nevertheless, Mr. Syed was still found to have been in breach of the Act.
25. The Association also relies upon *Re Stromotich*, for the proposition that later production of requested documents does not cure a breach of section 30(4) of the Act where the member did not comply with the Subcommittee's deadline.
26. The Association argued that the eventual production of materials requested might be relevant to penalty, but it is not determinative as to whether there has been a breach of the Act. The request includes the requested date for production of the file.
27. Mr. Fenton argued that Mr. Heringa's conduct in no way poses a danger to the public. He argues that ultimately, the time that Mr. Heringa took to clarify what the Association wanted and to produce the documents was reasonable. Mr. Fenton submitted that at no time did Mr. Heringa refuse to produce the documents. All of the communications, he submits, show a willingness to provide what was requested.
28. Mr. Fenton submitted that the Act does not contain a specific timeframe within which the member must comply. He submitted that there was probably a fixed time included in the draft legislation and the Province likely decided that it wanted to leave some flexibility as to what was reasonable. He submits what might be reasonable in one case is perhaps not reasonable in another case.
29. Ultimately, Mr. Fenton submitted that Mr. Heringa complied with section 30(4) of the Act.
30. In reply, the Association argued that there is no evidence before the Panel to support Mr. Fenton's submissions as to the drafting history and legislative intent to introduce flexibility as to a reasonable timeframe within which to comply with the Committee or Subcommittee's requests.

Analysis and Findings

31. Most of the key facts in this matter are not in dispute. The parties are generally in agreement as to the history of Subcommittee's request to Mr. Heringa for his file and the key communications which flowed between the parties. The parties agree that Mr. Heringa's file was not produced by November 9, 2018 and that it was produced on either May 30 or 31, 2019. The Panel found Ms. Wilson to be a credible and reliable witness. Her answers were clear and specific and she readily acknowledged the few instances where she did not recall a specific answer. She also made reasonable concessions on cross-examinations. The Panel accepts the testimony of Ms. Wilson regarding that history, and including the documents entered through Ms. Wilson. In particular, the Panel finds as facts, the testimony set out at paragraph 13 above.
32. The Panel finds that Mr. Heringa admitted in his May 17, 2019 correspondence to Ms. Wilson that he failed to provide a copy of his complete file, regarding a Record of Sewerage System Filing for the Project that was the subject of the Complaint, to the Association.
33. The Panel does not accept Mr. Heringa's evidence that the Subcommittee's request was unclear. The communications from Mr. Heringa and Mr. Fenton seeking adjournments reference being away on holiday, the size of the file, the status of the litigation proceedings. They do not convey a lack of understanding about the nature of the request.
34. The Panel does not accept Mr. Heringa's assertion that he did not have time to produce the file until May 30 or 31, 2019. The Panel finds that assertion is not supported by the content of the correspondence. The Panel finds that the requested documents did not turn out to be the significant size represented by both Mr. Fenton and Mr. Heringa.
35. At no time prior to the November 9, 2018 deadline did Mr. Heringa communicate to the Association any of the other difficulties which he subsequently raised as reasons for his delay in producing the requested file including his health or his wife's health.
36. Mr. Heringa admitted that he produced the file when he "had the time" and "when it suited [him]". The Panel finds that Mr. Heringa produced the file when it was convenient. The Panel finds that Mr. Heringa did not find it convenient to deal with the Association during his lengthy periods in Mexico. The Panel finds that the timing of Mr. Heringa's production of the file was largely prompted by the issuance of the Notice of Inquiry.
37. The Panel finds that while Mr. Heringa may not have stated in his communications to Ms. Wilson that he altogether refused to produce the requested documents; he did question the relevance and necessity of the Subcommittee's request.

38. The central issue in this case is whether Mr. Heringa complied with section 30(4) of the Act. Mr. Heringa submits that he did comply because he ultimately provided the requested file and he submits that he did so within what he deems to be a reasonable time. The Association says that Mr. Heringa failed to do so by the Subcommittee's deadline and whether Mr. Heringa did ultimately produce the file may be relevant to penalty but is not determinative of whether there was a breach of section 30(4) the Act.

39. The Panel finds that it is section 30(4)(a) of the Act that is at issue in this case. That section provides:

30 (4)A member, licensee or certificate holder being investigated under subsection (3) must

(a)provide the committee or subcommittee conducting the investigation with any information or records in the possession or control of the member, licensee or certificate holder that the committee or subcommittee may require,

[emphasis added]

40. Section 30(4)(a) does not prescribe a time within which the member must provide the requested records. Section 30(4)(a) does not contain the language that does exist in section 30(4)(b) which states that the member "must answer, within a reasonable time." The Panel finds that the absence of any express timing language in section 30(4)(a) does not mean that the period within which the member must respond is indefinite. It also does not mean that the member may disregard a deadline imposed by the Investigation Committee or Subcommittee and instead produce the requested records when that member feels it is convenient and reasonable for him or her to do so. The Panel finds the most reasonable interpretation of section 30(4)(a), having regard to both the ordinary meaning of the provision, and the context and purpose of the Act, is that the requested records must be produced by the date the Investigation Committee or Subcommittee provide as the deadline. The absence of a specific deadline in section 30(4)(a) of the Act allows the Committee or Subcommittee to exercise its discretion to set different deadlines depending upon the circumstances of each case. A simple matter may require a shorter deadline than a highly complex matter with extensive records.

41. The Panel finds that Mr. Heringa being out of the country or on holiday does not obviate his requirement to comply with section 30(4) of the Act. In any event, the records demonstrate that Mr. Heringa was aware of the Subcommittee's request by the time of his return at the end of October or beginning of November 2018 and he only produced the documents approximately six months later because that was when it was convenient for him to do so.

42. Immediately following closing submissions, the Panel explained the anticipated timelines for deliberation and release of this decision. Mr. Heringa stated:

THE CHAIRPERSON: No, no, the panel will now adjourn and make a decision on conduct and make a written submission on that basis.

MR. FENTON: Yes. Okay.

MR. HERINGA: Within the next week or month, or something like that? By November 9th?

43. The Panel considers the above reference to the “November 9th” deadline to be further reflective that Mr. Heringa does not take seriously his obligations as a member pursuant to section 30(4) of the Act.
44. The Panel finds that Mr. Heringa, failed to provide the Investigation Committee of the Association with a copy of his complete file regarding a Record of Sewerage System that he submitted for subdivision purposes for the property located at [REDACTED], Qualicum Beach, British Columbia as requested by the Association on September 12, 2018, and as re-iterated on October 24, 2018, and November 6, 2018. The Panel finds that the allegations have been proven by the Association to the requisite standard.
45. Under section 33 of the Act, after conducting an inquiry, the Discipline Committee may make the following determinations:
 - Disciplinary actions
 - 33 (1)After an inquiry under section 32, the discipline committee may determine that the member, licensee or certificate holder
 - (a) has been convicted in Canada or elsewhere of an offence that, if committed in British Columbia, would be an offence under an enactment of the Province or of Canada, and that the nature or circumstances of the offence render the person unsuitable for registration or licensing,
 - (b) has contravened this Act or the bylaws or the code of ethics of the association, or
 - (c) has demonstrated incompetence, negligence or unprofessional conduct.
46. The Panel has determined pursuant to section 33(1)(b) of the Act that Mr. Heringa breached section 30(4) of the Act.
47. The Panel agrees with the Association’s submissions that compliance with section 30(4) of the Act is important not just to ensure that this particular investigation proceeded with dispatch, but also because the Association is a self-governing profession and its primary mandate is to protect the public. The Association relies upon the cooperation and compliance of its members during the investigation process in order to effectively regulation the profession.

48. The Panel will determine whether sanctions should be imposed upon Mr. Heringa pursuant to s. 33(2) of the Act and whether to impose costs pursuant to s 35 of the Act. The Panel requests that the parties provide written submissions in accordance with the following schedule:
- a. Submissions must be delivered by counsel for the Association ("Association Submissions") to Mr. Heringa and to the Panel within 45 days of the date of this decision.
 - b. Submissions must be delivered by Mr. Heringa to counsel for the Association and to the Panel within 45 days of the receipt of the Association Submissions.
 - c. Reply submissions may be delivered by counsel for the Association to Mr Heringa and to the Panel within 15 days of receipt of Mr. Heringa's submissions.

Submissions for the Panel shall be delivered to Susan Precious, counsel for the Panel and may be delivered electronically.

<original signed by> December 18, 2019

Chris Arthur, P.Eng., Chair Date

<original signed by> December 19, 2019

Thomas Leung, P.Eng. Date

<original signed by> January 3, 2020

Tom Morrison, P.Eng. Date