

IN THE MATTER OF  
THE *PROFESSIONAL GOVERNANCE ACT*, S.B.C. 2018, c. 47 as amended  
and  
IN THE MATTER OF CHUNGMO CHUNG, P.Eng.

**DETERMINATION OF THE DISCIPLINE COMMITTEE**

Date and Place of Hearing:	March 3-5, 2025 at Vancouver  Written Submissions concluding May 2, 2025
Discipline Committee Panel:	Peter Bobrowsky, P.Geo. (Chair) Jaswinder Bansal, P.Eng. John Wilson
Counsel for Engineers and Geoscientists BC:	Donnaree Nygard Dahlia Shuhaibar
Counsel for the Respondent:	Roy Donghee Kim
Counsel for the Panel:	Greg Cavouras
Date of Decision:	September 22, 2025

**A. Introduction and summary**

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 (“EGBC”) was convened to conduct a hearing concerning Chungmo Chung, P. Eng (the “Respondent”) pursuant to section 75 of the *Professional Governance Act*, S.B.C. 2018, c.47 (the “PGA”).

2. The hearing concerned a citation issued to the Respondent, dated February 29, 2024 (the "Citation"). The Citation arises out of the Respondent's work as the structural and geotechnical Engineer of Record with respect to a residential property located in Maple Ridge (the "Property").
3. The Respondent's involvement with the Property occurred under the former governing legislation, the *Engineers and Geoscientists Act*, R.S.B.C. 1996 c. 116 (the "EGA", now repealed and replaced by the PGA). The Citation sets out the allegations against the Respondent as follows:
  1. You demonstrated unprofessional conduct, or in the alternative negligence, by:
    - a. failing to conduct a geotechnical assessment for the Property and in particular, failing to conduct an adequate field investigation or prepare an adequate design to demonstrate that the soil bearing capacity for the Property was sufficient for the design footing loads;
    - b. deviating from the recommendations set out in the September 21, 2011 Geotechnical Report prepared by Valley Geotechnical Engineering Services Ltd. without explanation and failing to change the standard wording on the structural engineering design drawings for the Property sealed by you to note these deviations, namely, using a different site class and peak ground acceleration, and choosing not to reinforce the concrete slabs with rebar and incorporate adequate control joints;
    - c. failing to prepare a landslide assessment or report according to the legislated guidelines, even though you completed the Appendix D: Landslide Assessment Statement for this Property as if you had prepared such an assessment or report;
    - d. failing to conduct quality control testing of the fill material, or any soil tests in making the determination that placed soil under the concrete slabs would not excessively settle;
    - e. failing to conduct an on-site inspection prior to construction of the slab to assess the condition of the fill;
    - f. failing to conduct field reviews, or alternatively, adequately supervise your employee or delegate who conducted the on-site inspections and prepared the field review reports for the Property;
    - g. signing and sealing a Schedule B Letter of Assurance in circumstances where you did not conduct the requisite testing of the bearing capacity of the ground and soil.

2. The conduct described above in paragraph 1(f) is contrary to section 14(b) of the Engineers and Geoscientists BC Bylaws, as it stood at the time, which required all members and licensees to establish and maintain documented quality management processes for their practices, including field reviews either conducted by the member or licensee or under their direct supervision.

3. The conduct described in paragraphs 1(b), 1(c), and 1(g) is contrary to section 20(9) of the *EGA*, which required that a member or licensee only apply their seal to reports, documents, plans or things that were prepared and delivered by the member or licensee, or that were prepared and delivered under their direct supervision.

4. In the alternative, the conduct set out above in paragraph 1(a)-(g) is contrary to the Code of Ethics, as it stood at the time, which required that members and licensees uphold the values of truth, honesty, and trustworthiness and, in particular:

a. Principle 1, which required that members and licensees hold paramount the safety, health and welfare of the public, the protection of the environment, and promote health and safety within the workplace; and

b. Principle 3, which required that members and licensees provide an opinion on a professional subject when it is founded upon adequate knowledge and honest conviction.

4. Based on the evidence and submissions of the parties, the Panel has determined that the conduct set out in allegations 1(a), 1 (b), 1(c), 1(d), 1(e), and 1(f) is proven and constitutes unprofessional conduct. Allegation 1(g) is dismissed.
5. The Panel declines to make multiple determinations for the same underlying conduct, and therefore no finding is made with respect to allegations 2, 3, and 4.
6. The Panel's reasons for these determinations are set out below.

## **B. Legal framework**

7. As noted above, although the Citation was issued under the PGA, the events underlying the allegations in the Citation took place when the EGA was in force. The EGA was repealed and replaced by the PGA on February 5, 2021.
8. Therefore, in accordance with sections 35 and 36 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, and as set out in previous decisions of the Discipline Committee<sup>1</sup>, the substantive provisions of the EGA apply.

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<sup>1</sup> *Re Mahmoud*, 2024 BCEGBC 6 at paragraph 5; see also *Re: Bruce Joseph Gernon, P.Eng* (October 5, 2023); *Re: Alireza (Danyal) Bahrami, P.Eng.* (May 2, 2022), both cited in *Mahmoud*.

9. Section 33(1) of the EGA sets out the determinations available to the Panel:

33(1) After an inquiry under section 32, the discipline committee may determine that the member...

...

(b) has contravened the Act or the bylaws or the code of ethics of the association, or

(b) has demonstrated incompetence, negligence or unprofessional conduct.

10. EGBC bears the burden of proving the allegations in the Citation, on a balance of probabilities.

*Allegations in the Citation*

11. Paragraph 1 of the Citation alleges that the conduct described in subparagraphs (a) to (g) constitutes unprofessional conduct, or, in the alternative, negligence.

12. “Unprofessional conduct” is not defined in the EGA. The Panel adopts the following guidance from *Re Mahmoud*, 2024 BCEGBC 6 with respect to the determination of whether unprofessional conduct is established:

- a. Unprofessional conduct is conduct where there is a marked departure from the standard expected of a competent professional;
- b. A minor or inadvertent failure to comply with professional standards does not constitute unprofessional conduct;
- c. A panel must use its judgement and expertise, consider the Code of Ethics, and focus on what is expected of a professional engineer in the circumstances;
- d. Engineer standards should be considered but are not necessarily determinative. Guidelines can “help show the expected standard of conduct”, and lack of compliance may be “strong evidence of negligence or unprofessional conduct”; and
- e. Compliance or lack of compliance with the BC Building Code can inform a determination of unprofessional conduct.

13. “Negligence” does not have a statutory definition under the EGA. In *Re Bahrami*, 2022 BCEGBC 5, a panel characterized negligence as a “breach of the standard of skill and care which a professional engineer is required to exercise, as

compared to a reasonably competent and similarly situated member of the profession”.

14. Paragraph 2 of the Citation alleges that the conduct set out in paragraph 1(f) is contrary to section 14(b) of the Engineers and Geoscientists BC Bylaws, which at the time of these events, stated as follows:

14 (b) Members and licensees shall establish and maintain documented quality management processes for their practices, which shall include, as a minimum:

...

(3) documented field reviews by, or under the direct supervision of, members or licensees, of their domestic projects during implementation or construction;

15. Paragraph 3 of the Citation alleges that the conduct set out in paragraphs 1(b), 1(c), and 1(g) is contrary to section 20(9) of the EGA, which, at the time of these events, stated as follows:

(9) A member or licensee receiving a seal or stamp under this section must use it, with signature and date, to seal or stamp estimates, specifications, reports, documents, plans or things that have been prepared and delivered by the member or licensee in the member’s or licensee’s professional capacity or that have been prepared and delivered under the member’s or licensee’s direct supervision.

16. Paragraph 4 of the Citation alleges that, as an alternative to unprofessional conduct or negligence, the conduct set out in paragraphs 1(a)-1(g) constitutes a breach of the Code of Ethics, which at the time of these events, included the following statements:

Members and licensees shall act at all times with fairness, courtesy, and good faith to their associates, employers, employees and clients, and with fidelity to the public needs. They shall uphold the values of truth, honesty and trustworthiness and safeguard human life and welfare and the environment. In keeping with these basic tenets, members and licensees shall:

1) Hold paramount the safety, health and welfare of the public, the protection of the environment and promote health and safety within the workplace;

...

3) Provide an opinion on a professional subject only when it is founded upon adequate knowledge and professional conviction;

17. Although paragraphs 2 and 3, are not framed as alternative allegations, as set out in *Gernon (Re)*, 2023 BCEGBC 7 and *Fidel (Re)*, 2021 BCEGBC 11, it is appropriate for the Panel to make a single determination about each factual allegation, even if multiple determinations are potentially available under section 33 of the EGA.
18. In its written submissions, EGBC advanced the position that the appropriate findings were unprofessional conduct, or in the alternative, negligence. EGBC did not separately pursue findings under paragraphs 2, 3, or 4 of the Citation. The Panel has considered the allegations on that basis.

### **C. Evidence**

19. The evidence in this case consisted of an Agreed Statement of Facts signed by the parties (the “ASF”), the oral testimony of four witnesses<sup>2</sup> (including the Respondent), and 13 exhibits entered at the hearing.
20. The Panel heard oral testimony from the following witnesses:
  - a. E.D.: E.D. and her partner are the owners and residents of the Property. E.D. gave evidence about her experience investigating the problems she encountered with the Property, the complaint she submitted to EGBC, her dealings with the Respondent, and the ultimate remediation of the Property.
  - b. Patrick Chiu: Mr. Chiu is a professional engineer. Mr. Chiu was contacted by E.D. for an assessment of the Property once E.D. identified the problems with the Property, and was subsequently involved in the remediation of the Property.
  - c. Henrik Kristiansen: Mr. Kristiansen is a professional engineer. Mr. Kristiansen provided an expert report that was introduced by EGBC. The Respondent challenged the admissibility and the weight to be given to Mr. Kristiansen’s report on multiple bases. That issue is discussed in more detail below at paragraphs 23-47.
  - d. The Respondent: The Respondent gave evidence about his background and experience, his work on the Property (including the involvement of his employee, M.L.), and his dealings with E.D., including his involvement in the remediation of the Property.

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<sup>2</sup> In an oral ruling made at the hearing after hearing submissions from the parties, the Panel declined to hear from an additional witness that the Respondent proposed to call. Briefly stated, the Panel ruled that the proposed witness’s evidence would not be admissible or relevant to the allegations in the Citation.

21. The following documents were entered as exhibits at the hearing:
  - a. The Citation;
  - b. The ASF, including 8 attachments;
  - c. The design drawings for the Property;
  - d. The complaint submitted by E.D. to EGBC, including attachments;
  - e. The expert report of Mr. Kristiansen (the “Kristiansen Report”);
  - f. The working file of Mr. Kristiansen;
  - g. EGBC’s October 7, 2013 Quality Management Guideline titled “Documented Field Reviews During Implementation or Construction” (the “Field Review Guidelines”);
  - h. EGBC’s March 1998 document titled “Guidelines for Geotechnical Engineering Services for Building Projects” (the “Geotechnical Guidelines”);
  - i. A technical memo dated July 14, 2021 from Mr. Chiu to E.D. setting out his investigation and assessment of the problems with the Property;
  - j. A technical memo dated September 1, 2021 from Mr. Chiu to E.D., setting out the remedial work completed on the Property;
  - k. The Geological Survey of Canada’s Map 1484A titled “Surficial Geology New Westminster West of Sixth Meridian” (the “Survey Map”);
  - l. An article titled “Seismic Site Classification for Structural Engineers” from “Structure Magazine”, dated December 2006 (the “Magazine Article”); and
  - m. The City of Maple Ridge’s Bulletin 2012-02 titled “Sloping Sites – Geotechnical Requirements”, dated July 4, 2012 (the “Maple Ridge Bulletin”).
22. The Panel has considered all of the evidence and submissions provided by the parties even where not expressly set out in this decision.

**D. Expert evidence of Mr. Kristiansen**

23. The parties spent considerable time addressing Mr. Kristiansen’s qualifications and the substance of the Kristiansen Report, both at the hearing and in their written submissions.
24. Although the Panel ultimately did not place heavy reliance on the Kristiansen Report, as set out in more detail later in this decision, since the Respondent

sought the outright exclusion of Mr. Kristiansen's evidence and alternatively argued that he was either unqualified, biased, or not credible, the Panel must address these issues before moving to its findings of fact and analysis of the allegations in the Citation.

25. EGBC called Mr. Kristiansen as an expert witness at the hearing to introduce and speak to the Kristiansen Report. EGBC sought to have Mr. Kristiansen qualified as an expert in "geotechnical engineering, and, more particularly, in relation to seismic and soil assessment and settling of soils".
26. At the hearing, the Panel accepted that Mr. Kristiansen was qualified in those fields. His expertise and his impartiality were the subject of extensive cross-examination by counsel for the Respondent.
27. The parties' submissions and the Panel's analysis regarding the admissibility and weight of Mr. Kristiansen's evidence are summarized below.

#### *EGBC's position*

28. EGBC submits that an expert's opinion must be impartial, independent, and unbiased, and refers to the Supreme Court of Canada's decision in *White Burgess v. Abbott and Haliburton Co.*, 2015 SCC 23. This threshold is generally met through an expert's attestation recognizing their duty, and if that happens, the burden is on the opposing party to show a realistic concern that the expert is unable or unwilling to comply with that duty.
29. In this case, Mr. Kristiansen certified in his report that he was aware of his duty to assist the Panel in a fair, objective, and non-partisan way. Therefore, to the extent that the Respondent wants the Kristiansen Report excluded, the burden shifts to him to establish a basis to do so.

#### *The Respondent's position*

30. The Respondent's position is that the Kristiansen Report should not be admitted as evidence because Mr. Kristiansen is unable to provide the Panel with fair, objective, and non-partisan evidence. Alternatively, if the Kristiansen Report is admitted, the Respondent submits that the Panel should give it little or no weight.
31. The Respondent relies in particular on the decisions in *White Burgess* and *United City Properties Ltd. v. Tong*, 2010 BCSC 111. A substantial portion of the Respondent's written submissions was aimed at challenging Mr. Kristiansen's evidence. Briefly stated, the Respondent argues that Mr. Kristiansen's evidence should not be accepted, or given minimal weight, by the Panel for one or more of the following reasons:
  - a. Mr. Kristiansen is not an expert with respect to the specific requirements of the City of Maple Ridge, which are highly relevant in this case;

- b. Mr. Kristiansen’s expertise is in large infrastructure projects, with little or no experience in single-family home construction;
  - c. Mr. Kristiansen has in the past only acted as an expert for EGBC, not for “the defence” (e.g. as an expert providing an opinion on behalf of a respondent in an EGBC discipline matter).
  - d. Mr. Kristiansen has a long association with EGBC, and has provided expert reports on multiple files, including another file at the same time as the Respondent’s file;
  - e. Mr. Kristiansen stated that he participates in EGBC cases “because [he was] trying to give back”, suggesting he finds working for EGBC as “intrinsically motivating”;
  - f. Mr. Kristiansen’s remuneration from EGBC, expressed as an hourly rate, is proportionally higher in his work as an expert than his regular employment income as a professional engineer;
  - g. Mr. Kristiansen failed to disclose certain facts he considered from the investigation in his report;
  - h. Mr. Kristiansen accepted the retainer in this matter despite knowing that “single-family home construction is beyond the field of his expertise”;
  - i. Mr. Kristiansen “picked the facts and assumptions to help EGBC’s case”;
  - j. Mr. Kristiansen did no independent searches or research to support his opinion; and
  - k. Mr. Kristiansen and counsel for EGBC “worked together to finalize the instruction letter”, and Mr. Kristiansen “made edits to his report per counsel for EGBC’s request”.
32. The Respondent also argues that Mr. Kristiansen’s evidence was not credible, relying on the framework set out in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739. The Respondent submits that the Panel should give Mr. Kristiansen’s evidence little or no weight, mainly based on the following:
- a. Mr. Kristiansen was “found to have lied under oath” when he described another engineer as his “friend” when in fact the other engineer was the subject of a separate report Mr. Kristiansen was preparing;

- b. Mr. Kristiansen gave answers that “defy business logic or common sense” because he said that he did not have a personal email address, and that he did not know the specific basis on which he is remunerated in his employment; and
- c. Mr. Kristiansen was “evasive, long-winded, and argumentative” in answering questions in cross-examination.

*EGBC’s reply*

- 33. EGBC submits that Mr. Kristiansen was amply qualified to opine on the Respondent’s substantive work. Mr. Kristiansen was properly qualified as an expert in “geotechnical engineering in relation to seismic and soil assessment and the settling of soils”, and his experience and training support that.
- 34. With respect to Mr. Kristiansen’s independence, EGBC submits that the mere fact that he has worked for EGBC previously does not establish that he is unable or unwilling to provide the Panel with fair, objective, and non-partisan evidence. EGBC points to the decision of *Javasena Management Corp et al. v. Savannah Wells Holdings Inc. et al.*, 2023 ONSC 1008 in which the court stated that “there is nothing unusual about a lawyer or a law firm hiring the same expert in multiple briefs”.
- 35. EGBC submits that none of the arguments raised by the Respondent demonstrate a lack of independence or bias. In particular, EGBC points out that the regulatory process largely depends on volunteers who wish to give back to the profession, and that this mindset is not inappropriate or indicative of bias. EGBC also points out that Mr. Kristiansen does not derive a significant percentage of his income from his work for EGBC, and that his previous involvement with the investigation committee, years ago, is not relevant to the matter before the Panel.
- 36. To the extent that the Respondent asserts that Mr. Kristiansen “picked the facts and assumptions to help EGBC’s case”, EGBC submits that the Respondent has not pointed to any facts that Mr. Kristiansen overlooked or that would contradict his opinion, nor has he pointed to any assumptions that were made in error.
- 37. EGBC submits that it is perfectly acceptable and common for counsel and an expert to interact in the finalization of an expert report, relying on the Ontario Court of Appeal’s decision in *Moore v. Getahun*, 2015 ONCA 55.
- 38. Finally, EGBC submits there is no basis to question Mr. Kristiansen’s credibility, because there are no conflicts in his evidence, despite the fact that counsel for the Respondent suggests that he was untruthful about his email use and remuneration. The assertion that Mr. Kristiansen “lied” under oath is inaccurate.

*Panel's analysis*

39. The Panel summarizes the issues regarding Mr. Kristiansen as follows:
  - a. Should the Kristiansen Report be excluded?
  - b. Is Mr. Kristiansen's evidence credible?
  - c. What weight should be assigned to the Kristiansen Report by the Panel?
40. The Panel has determined there is no basis to exclude the Kristiansen Report. The Panel has taken guidance from the cases cited by the parties, and also notes that section 1.09(8) of Schedule B to the EGBC Bylaws states that the "rules of evidence must not be strictly applied, subject to the Decision Maker's obligation to ensure procedural fairness".
41. Simply stated, the Panel does not accept the Respondent's contention that Mr. Kristiansen showed himself unable or unwilling to provide the Panel with fair, objective, and non-partisan evidence.
42. The Panel found the Respondent's arguments unpersuasive in this regard. In response to several of the Respondent's arguments:
  - a. The Panel does not accept that the fact that Mr. Kristiansen has provided expert reports for EGBC in the past, but not for respondents, establishes any indication of partiality. This bare fact does not support the inference of bias that the Respondent is urging the Panel to make. The Panel notes that the Supreme Court of Canada in *White Burgess* held that *even an employment relationship with a party* may not disqualify a person from giving expert evidence (para. 49), and the connection between EGBC and Mr. Kristiansen is far short of that.
  - b. The Panel does not accept that Mr. Kristiansen's remuneration indicates partiality. Experts get paid. The comparison between Mr. Kristiansen's compensation at his regular employment and his compensation as an expert witness does not indicate bias.
  - c. The Panel does not accept that Mr. Kristiansen's statement that he "wants to give back" establishes any sort of agenda or pre-disposition.
  - d. The Panel does not accept that the correspondence between Mr. Kristiansen and counsel for EGBC shows a lack of independence. The Panel does not consider the correspondence to be material to Mr. Kristiansen's conclusions. The Panel agrees with EGBC that exchange of correspondence between counsel and expert is expected and normal, and notes that none of the correspondence demonstrates any attempt by counsel to influence or direct

Mr. Kristiansen's independent opinion. The Panel agrees with the statement of the Ontario Court of Appeal in *Moore*:

[64] Counsel play a crucial role by explaining the legal issues to the expert witness and then by presenting complex expert evidence to the court. It is difficult to see how counsel could perform this role without engaging in communication with the expert as the report is being prepared.

- e. The Panel does not accept that that Mr. Kristiansen "pick[ed] the facts and assumptions to support EGBC's case". Mr. Kristiansen made an assessment of the materials provided to him. It was open to counsel for the Respondent to cross-examine him on those issues, or to argue that the evidence did not establish a sufficient factual basis for Mr. Kristiansen's opinions. None of this establishes bias or that Mr. Kristiansen somehow pre-determined the issues that were the subject of his opinion.
43. With respect to Mr. Kristiansen's qualifications, Mr. Kristiansen has approximately 30 years' experience as a geotechnical engineer, on a range of project types. The Panel finds that Mr. Kristiansen has more than sufficient knowledge and experience to provide expert evidence in the field EGBC sought to qualify him in: *geotechnical engineering in relation to seismic and soil assessment and the settling of soils*.
44. While it was open to EGBC to select an expert witness with more targeted experience in single-family home construction, the Panel accepts EGBC's submission, and Mr. Kristiansen's evidence, that the general engineering principles as they relate to seismic and soil assessment do not change as between project types.
45. EGBC did not put Mr. Kristiansen forward as an expert around the specific requirements for a single-family home, or the specific permitting requirements of the City of Maple Ridge, therefore the Respondent's allegations that Mr. Kristiansen is not qualified as an expert in those areas is not determinative. In any event, as will be set out in more detail below, the Panel does not accept that the allegations in the Citation hinge on the particular requirements of the City of Maple Ridge.
46. With respect to Mr. Kristiansen's credibility, the Panel does not agree with the Respondent's characterization of Mr. Kristiansen's evidence. The Respondent's submission that Mr. Kristiansen "lied under oath" significantly overstates the content and impact of the contested portions of Mr. Kristiansen's testimony. In sum, counsel's extensive cross-examination of Mr. Kristiansen, which was at times on the boundaries of relevance, did not demonstrate a lack of credibility by Mr. Kristiansen with respect to the material points in this case.

47. The Panel therefore will not exclude the Kristiansen Report, and does not find that Mr. Kristiansen was not credible in his oral evidence. However, as will be seen, the Panel has determined that the issues in the Citation can be largely decided without reliance on Mr. Kristiansen’s evidence.

**E. Facts**

48. As a result of the ASF and its attachments, there is agreement between the parties with respect to many of the material facts in this case. Based on the evidence received by the Panel, including the ASF, the Panel has found the facts set out below.

*The Property*

49. The Property is a three-level home on a reverse-elevation lot, meaning that the land at the back of the lot is higher than at the front of the lot.
50. The Property is part of a subdivision in Maple Ridge. The lot and the subdivision were the subject of development consideration some years before the Property was built.
51. In 2011, Valley Geotechnical Engineer Services prepared a geotechnical report for the subdivision development as a whole (the “VGES Report”). The VGES Report was updated in 2013. The VGES Report included five appendixes, including test pit logs and a landslide assessment.
52. The VGES Report required, among other things, that the engineered fill under the slab for the Property be compacted to 100% Standard Proctor Maximum Dry Density (“SPMDD”) and that the following design parameters be used:

Ultimate Limit State (ULS)	108kPa (2250 psf)
Serviceability Limit State (SLS)	72kPa (1500 psf)
Site Classification	E
Peak ground acceleration (PGA)	0.480g

53. In 2013, the VGES Report (as updated) was filed as a covenant on title to the Property, pursuant to section 219 of the *Land Title Act*, R.S.B.C., c. 250. The covenant on the Property stated in part:

The Covenantor [at the time, an investment company] and Covenantee [District of Maple Ridge] are concerned with ensuring that construction is performed in accordance with recommendations identified in the [VGES Report] and the [2013 update to the VGES Report], a copy of which is attached hereto as Schedule “A”.

*The Respondent and M.L.*

54. The Respondent is a professional engineer who practises through his firm, SEL Engineering Ltd. (“SEL”).
55. The Respondent completed his engineering degree in Alberta, then, shortly after, came to British Columbia. The Respondent has been practising in British Columbia since approximately 1992. A large portion of the Respondent’s engineering work relates to single-family homes, in and around Maple Ridge.
56. The Respondent worked on the Property with his employee, M.L.
57. M.L. is not an engineer. M.L. has a background in construction and carpentry, but not in engineering.
58. M.L. was being trained by the Respondent at the time the Property was being built. The project involving the Property was one of the first projects that M.L. worked on for the Respondent.

*The Respondent’s involvement with the Property*

59. In 2015, a development company (the “Builder”) retained the Respondent to provide structural and geotechnical engineering services for the Property.
60. The Respondent signed and sealed the following documents, all dated June 24, 2015:
  - a. a Schedule B “Assurance of Professional Design and Commitment for Field Review (the “Schedule B”), in which the Respondent provided assurances with respect to the structural and geotechnical aspects of the Property. Of particular significance, the Respondent provided assurances with respect to the “bearing capacity of the soil” and the “compaction of engineered fill”.
  - b. an Appendix D “Landslide Assessment Assurance Statement” (“Appendix D”). Appendix D refers to an “attached landslide assessment report on the Property” and states that the signatory prepared “that report”, but no landslide assessment report was attached to Appendix D and the Respondent did not prepare a landslide assessment report.
  - c. an “Acknowledgement Registered 219 Covenant Geotechnical Investigation Report” (the “Covenant Acknowledgement”). The Covenant Acknowledgement references the covenant on the title for the Property (and the reference to the VGES Report) and includes the following statement:

“We hereby acknowledge that we are aware and have read and understood the requirements of the Geotechnical Investigation Report

Registered 2019 Covenant and have incorporated those requirements into the design and any construction on the above property.

61. The Respondent provided these documents to the Builder. They were used in obtaining the building permit for the Property from the City of Maple Ridge.
62. The Respondent prepared drawings relating to the Property, and made calculations in preparing the drawings.
63. The Respondent did not drill or excavate any test pits in order to analyse the soil or groundwater conditions of the Property.
64. The Respondent's design deviated from the parameters set out in the VGES Report as follows:
  - a. the site classification was D, instead of E;
  - b. the peak ground acceleration was 0.301g, instead of 0.480g; and
  - c. the required compaction was 90% SPMDD, instead of 100%.
65. The Respondent did not note the deviations from the VGES Report on the drawings he prepared.
66. A building permit was obtained and construction of the Property began in 2016. During construction, six field review reports were prepared by the Respondent's employee, M.L.
67. The Respondent attended with M.L. for the first and second field reviews of the Property (July 22, 2016 and August 4, 2016), for training purposes. The Respondent did not attend the Property for M.L.'s further four field reviews.
68. Neither the Respondent nor anyone under his supervision conducted an inspection of the fill used under the slab on grade on the Property prior to the slab being poured.
69. Neither the Respondent nor anyone under his supervision conducted a compaction test of the fill under the slab on grade on the Property, or confirmed that compaction had been carried out according to the Respondent's specifications.
70. Following construction, the Respondent signed and sealed a Schedule C-B: Assurance of Professional Field Review and Compliance, dated May 18, 2017 (the "Schedule C-B"). In the Schedule C-B, the Respondent provided his assurances that:

- a. The Respondent had “fulfilled [his] obligations for field review as outlined in Subsection 2.2.7, Division C of the British Columbia Building Code and in the previously submitted [Schedule B]”;
- b. “Those components of the project opposite [the Respondent’s] initials in Schedule B substantially comply in all material respects with:
  - i. The applicable requirements of the B.C. Building Code and other applicable enactments respecting safety, not including construction safety aspects, and
  - ii. The plans and supporting documents submitted in support of the application for the building permit.”

*E.D.’s concerns and complaint to EGBC*

71. E.D. and her partner bought the Property as a new build prior to the completion of construction in November 2015, and moved into the Property at the end of May 2017.
72. Sometime around April 2021, E.D. noticed horsetail weeds growing inside the Property on the first floor. The horsetail weeds were coming through the carpet. E.D. pulled up the carpet and laminate flooring and discovered that the slab had cracked along the wall on the first floor. The sight of the horsetail weeds inside her home and the cracked concrete caused E.D. to be concerned about the condition of the Property.
73. E.D. tried to resolve the issue. She contacted her home warranty insurance, but they declined to cover it because it was not a building envelope issue. She contacted the Builder, but learned that they were out of business. She contacted the City of Maple Ridge and obtained the permit documents related to the Property.
74. E.D. spoke with the Respondent by phone and explained the situation. The Respondent advised that the settlement was normal and there were no structural concerns. The Respondent suggested jacking the slab and leveling it by injection. E.D. wanted the Respondent to come inspect the Property, but that did not happen.
75. On June 29, 2021, E.D. contacted EGBC with her concerns.
76. In July 2021, E.D. retained Patrick Chiu, P.Eng., of VGES<sup>3</sup> to inspect the Property. Mr. Chiu produced a technical memo dated July 14, 2021, setting out his

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<sup>3</sup> Although Mr. Chiu is an engineer with VGES, the same firm that prepared the VGES Report, he was not involved in the preparation of the VGES Report.

observations and recommendations. Mr. Chiu observed loose sand under the slab, voids of 0.25" to 0.75", roots growing below the slab, and a torn vapor barrier.

77. Mr. Chiu's assessment was that uncompacted fill was placed below the slab during construction, resulting in settlement. Mr. Chiu recommended removing the slab and replacing the fill underneath the slab with engineered fill compacted to 95% SPMDD.
78. After receiving Mr. Chiu's report, E.D. tried to contact the Respondent by email. She did not receive a response. E.D. sent a copy of Mr. Chiu's technical memo and photographs to the Respondent at SEL by registered mail. E.D. also sent those documents to EGBC.

#### *The remediation of the Property*

79. E.D. did not receive a timely response from the Respondent. E.D. decided to proceed with the remediation recommended by Mr. Chiu. E.D. hired a concrete contractor to begin the remediation in August 2021.
80. Shortly before the remedial work began, the Respondent phoned E.D. and apologized for his delay in responding. The Respondent accepted responsibility for the remedial work.
81. The concrete slab and the loose sand were removed from underneath the Property in August 2021. On September 1, 2021, Mr. Chiu issued a second technical memo documenting testing on the replacement engineered fill, indicating that sufficient compaction was achieved.
82. The other aspects of the repair were completed by January 2022. As there was no general contractor assigned, E.D. and her partner had to assume oversight of the repairs and undertake some finishing work. The bottom floor of the Property, including the front door, were unusable from August 2021-January 2022 while the repairs were underway.
83. The Respondent reimbursed E.D. for the out-of-pocket expenses that were incurred in remediating the Property.
84. Following the completion of the EGBC investigation, the Citation was issued on February 29, 2024

#### **F. Analysis**

85. The Panel has summarized and paraphrased the submissions of the parties with respect to the allegations in the Citation. In making its analysis, the Panel has considered the entirety of the evidence and the parties' submissions.

- I. Allegation 1(a): failing to conduct a geotechnical assessment for the Property and in particular, failing to conduct an adequate field investigation or prepare an adequate design to demonstrate that the soil bearing capacity for the Property was sufficient for the design footing loads;

*EGBC's position*

86. EGBC submits that the essence of this allegation is that the Respondent did not do the necessary work to confirm that the actual bearing capacity at the site of the footings was the same as the bearing capacity that he had assumed in designing the footings.
87. The Respondent's file on this issue includes two field reviews reports, both authored by M.L. The Respondent was only in attendance for the first field review. EGBC's position is that the observations contained in the field review reports are insufficient to constitute an adequate assessment of the soil conditions. In particular, there are no photographs of the conditions and no identification of the soil type. EGBC also points out that the reports state that the footings were covered with  $\frac{3}{4}$ " crush, making it unclear how the excavated soil was observed and assessed. Overall, there is nothing but a conclusion in the field review reports, and it is a conclusion that M.L. was not qualified to draw.
88. EGBC submits that the Panel should not accept the Respondent's testimony that he "remembers" the soil condition at the Property. This is simply not credible given the passage of more than 8 years and thousands of projects.
89. EGBC references the Geotechnical Guidelines at paragraph 3.2.4.6, which state:

*The Geotechnical Engineer of Record (GER)'s responsibilities during construction usually include conducting Field Reviews of geotechnical aspects of construction ... [T]he Geotechnical Engineer of Record (GER) is primarily responsible for evaluating whether the geotechnical aspects of construction are performance in general accordance with the geotechnical aspects of project plans and specifications, and the geotechnical design recommendations prepared by the Geotechnical Engineer of Record (GER).*
90. EGBC references the Field Review Guidelines at paragraph 3.6.6, which state:

*...The APEGBC professional of record must be involved in any engineering or geoscience decisions made during or as a result of the field review.*
91. In summary, EGBC submits that there was no work beyond the field reviews, authored by M.L., which are themselves inadequate, to support the Respondent's conclusion that the soil bearing capacity was adequate. Despite this, the

Respondent sealed Schedule C-B, providing assurance to the City that appropriate assessment had taken place.

*Respondent's position*

92. The Respondent submits that the VGES Report identified the depth of the topsoil and assessed the bearing capacity. The Respondent determined that the bearing capacity was achieved based on the test pit data in the VGES Report, his experience in Maple Ridge, and the field reviews.
93. The VGES Report provided an adequate basis for this assessment. The VGES Report included 10 test pits, all very near to the Property. The Respondent appropriately considered the risk and determined there was no need for an additional test pit.
94. The Respondent properly trained M.L. to conduct field reviews. In any event, extensive training is not required to identify the removal of topsoil.
95. Mr. Kristiansen's evidence does not establish misconduct by the Respondent. Mr. Kristiansen agreed that field reviews are routinely done by individuals who are not professional engineers. Mr. Kristiansen agreed that if a geotechnical engineer sets conditions for bearing capacity, and those conditions have been achieved, the person conducting the field review can conclude that the desired bearing capacity has been provided.
96. With respect to the guidelines referenced by EGBC, the Respondent submits:
  - a. The Geotechnical Guidelines reference Part 4 of the BC Building Code. The Property falls within Part 9, and therefore the Geotechnical Guidelines do not apply.
  - b. The Field Review Guidelines allow for "direct supervision", a term that is defined in another document which is not in evidence, and therefore EGBC has not proven that the Respondent did not directly supervise M.L.

*Panel's analysis*

97. The Panel finds that the evidence indicates that the Respondent did not conduct an adequate geotechnical assessment of the Property.
98. The VGES Report required bearing capacity of 1500 psf. M.L.'s summary field review reports are not adequate to establish that bearing capacity was achieved – the field review reports lack any substantive content to support that conclusion. In particular, the soil is not identified in the field review, and there are no photographs or notes. The Panel considers M.L.'s summary conclusion about the bearing capacity to be inadequate.

99. The Panel has considered the questions of whether M.L. was qualified to conduct the field reviews himself, or, alternatively, whether M.L. was under the Respondent's "direct supervision".
100. Even assuming, without deciding, that M.L. was either qualified or under the Respondent's direct supervision, the field review reports are inadequate on their face to satisfy the Respondent's obligations with respect to a geotechnical assessment of the Property. In the Panel's view, even if the Respondent had authored the field review reports himself, this would not demonstrate an adequate geotechnical assessment of the bearing capacity at the Property.
101. The Panel has additional concerns about M.L.'s qualifications and the level of supervision provided, but since the field review reports are deficient in any event, it is not necessary to determine those matters. The unavoidable fact is that the field review reports conducted do not reveal sufficient investigation, either by the Respondent or by M.L., for the Respondent to determine that the appropriate bearing capacity had been achieved.
102. The Panel's assessment is that this represents a marked departure from the standard expected of a competent professional engineer. It therefore constitutes unprofessional conduct.
  - II. Allegation 1(b): deviating from the recommendations set out in the September 21, 2011 Geotechnical Report prepared by Valley Geotechnical Engineering Services Ltd. without explanation and failing to change the standard wording on the structural engineering design drawings for the Property sealed by you to note these deviations, namely, using a different site class and peak ground acceleration, and choosing not to reinforce the concrete slabs with rebar and incorporate adequate control joints;

*EGBC's position*

103. EGBC did not pursue the aspects of this allegation relating to the reinforcement of the concrete slabs and the control joints. EGBC submits that the facts alleged in the remainder of the allegation are agreed to, and the only matter left to decide is whether that constitutes misconduct.
104. EGBC relies on the evidence of Mr. Kristiansen and points out that the Respondent did not create a geotechnical report of his own, conducted inadequate field reviews, and does not have the requisite experience and knowledge to deviate from the VGES Report. EGBC notes also that there was no written notice of the Respondent's deviations in a memo or in his drawings.
105. With respect to the site class deviation, EGBC submits there was no proper explanation for this. The Respondent's reliance on the Magazine Article - an American magazine article from 2006 - is not sufficient, and the Respondent

himself acknowledged that he did not review the Magazine Article in advance of making the deviation. The deviation of the site class is not supported by the BC Building Code.

106. EGBC submits that the Respondent provided no real explanation for his deviation with respect to the peak ground acceleration, and gave a different rationale for that at the hearing than previously stated during the investigation.
107. The Respondent had committed to follow the VGES Report, but instead deviated from it without adequate documentation and where he lacked the knowledge/= and experience necessary to make the deviations. Doing so contravenes the Code of Ethics and constitutes a marked departure from what is expected of a professional engineer.

*Respondent's position*

108. The Respondent submits that he described all of the engineering work he did, and reviewed the VGES Report. He agreed with the design parameters set out in the VGES Report except for the site classification. Based on the data contained in the VGES Report, and his assessment of the Survey Map, the Respondent determined that the site classification should have been "D" rather than "E".
109. The Respondent reviewed and considered the government data for the area and found no indication of "soft clay". The Respondent reviewed the test pit data and the characterization of the site in the VGES Report.
110. The Respondent determined that all the data in the VGES Report, along with his own experience in Maple Ridge, supported a change to site class D. The Respondent also explained why the peak ground acceleration set out in the Building Code did not apply to the Property.
111. The Respondent also referred to the Magazine Article. The Respondent acknowledged that he did not specifically view the Magazine Article to inform his work on the Property, but felt that the information in that article aligned with his assessment.
112. The Respondent submits that he was not required to provide his own report to deviate from the VGES Report. He adequately communicated his deviations to the City of Maple Ridge on the permit application drawing, and the City's act of reviewing and approving that application establishes the City's acceptance of the deviations.
113. There is no evidence to establish that the City found this method of communicating the deviations inappropriate. Mr. Kristiansen is not qualified to opine on the City's requirements.

114. EGBC failed to establish insufficient or inadequate field reviews, and the Respondent had the requisite experience to deviate from the VGES Report. Overall, EGBC has not established that the deviations or the form of communication constitutes misconduct.

*Panel's analysis*

115. The Panel considers that the issue raised by the wording of the allegation is relatively narrow: were the deviations in site class and peak ground acceleration sufficiently explained and communicated?
116. The Panel concludes that they were not.
117. The Panel notes that the VGES Report was attached to the covenant which was incorporated by reference in the Letters of Assurance signed by the Respondent.
118. The covenant is an important document. It is the basis on which the City has approved the construction proposed by the Respondent's client. The City, and anybody reviewing the work, must be able to expect that the VGES Report was followed, unless there is a clear communication of any deviations and an explanation for them. The Respondent acknowledged the importance of the VGES Report in executing the Covenant Acknowledgement.
119. The Panel considers the Respondent's decision to vary the site class and the peak ground acceleration, without taking the step of communicating that clearly and expressly, along with supporting rationale, to have been inappropriate. The Panel agrees with and accepts Mr. Kristiansen's opinion that any deviations should be clearly communicated. The Panel considers that to be of particular importance in this case, given the Covenant Acknowledgement.
120. The Panel does not accept the Respondent's position that the City's issuance of a permit for the Property constitutes proof that the deviations were adequately communicated. In the Panel's view, the Respondent's professional responsibilities exist regardless of the outcome of the permit application, and are not vitiated by the City's approval.
121. While the Panel did not find the Respondent's explanation for the deviations that he provided at the hearing to have been entirely convincing, the Panel does not consider it necessary to decide whether the underlying deviations were reasonable. The evidence is clear that the Covenant Acknowledgment bound the Respondent to the provisions of the VGES Report. If he decided, for any reason, to deviate from that report, it was incumbent on him to justify and clearly document the deviations.

122. The Respondent did not do this. This allegation that he deviated from the VGES Report in material ways without adequate explanation or documentation is therefore proven.

123. The Panel's assessment is that this represents a marked departure from the standard expected of a competent professional engineer. It therefore constitutes unprofessional conduct.

III. Allegation 1(c): failing to prepare a landslide assessment or report according to the legislated guidelines, even though you completed the Appendix D: Landslide Assessment Statement for this Property as if you had prepared such an assessment or report;

*EGBC's position*

124. The underlying facts are agreed to in the ASF. Appendix D is clear on its face that it is to be filled out in conjunction with a landslide assessment. This is consistent with the evidence of Mr. Kristiansen.

125. Whether the City required a landslide assessment or not, and whether the City's requirements for Appendix D are reasonable are not, are irrelevant. The question is whether it was filled out accurately, and on its face, it was not. The Respondent filled out Appendix D as if he had completed a landslide assessment when in fact he had not.

*Respondent's position*

126. The Respondent points to the requirements of the City of Maple Ridge. The City issued the Maple Ridge Bulletin in 2012 which deals with the geotechnical requirements for sloping sites, and pursuant to that document no landslide assessment was required for the Property.

127. In providing Appendix D, the Respondent went beyond what the City required in order to be diligent.

128. The Respondent also states that in cross-examination, Mr. Kristiansen agreed that if the City authorized the submission of Appendix D without a landslide assessment, that doing so would be acceptable. This, the Respondent argues, is the effect of the Maple Ridge Bulletin.

129. In any event, it is not clear that Appendix D actually requires a landslide assessment to be attached. Appendix D references the EGBC Guidelines, which are not in evidence before the Panel. Appendix D is therefore ambiguous and does not clearly require a landslide assessment.

130. Given the ambiguity, it is reasonably possible that another competent engineer may submit Appendix D without an attached report in the circumstances. EGBC has failed to prove it was required, and this allegation should be dismissed.
131. EGBC states in reply that the Respondent has misstated Mr. Kristiansen's evidence – Mr. Kristiansen stated he could not answer a hypothetical without seeing the document from the City. His evidence therefore does not support the argument the Respondent is making. EGBC also states that there is no ambiguity whatsoever in Appendix D – the ordinary reading is that it is to be submitted with a landslide assessment.

*Panel's analysis*

132. Appendix D includes the following statements:

I [the undersigned Professional Engineer or Professional Geoscientist] have signed, sealed and dated, and thereby certified, **the attached landslide assessment report** on the Property in accordance with the APEGBC Guidelines. That report must be read in conjunction with this Statement. In preparing that report, I have:

...

I hereby give my assurance that, based on the conditions **contained in the attached landslide assessment report**,....

[Emphasis added]

133. The Respondent signed and sealed Appendix D.
134. The Panel considers that the wording in Appendix D is very clear. It is meant to be accompanied by a landslide assessment report.
135. In the Panel's view, there is no ambiguity. It is not possible for a professional engineer to attest that they have "signed, sealed and dated, and thereby certified, the attached landslide assessment report" when they have not created such a report. It is not possible for a professional engineer to give their "assurance...based on the conditions contained in the attached landslide assessment report" when there is no such report.
136. That being the case, it is not material whether the City required a landslide assessment report for the Property or not. It is not material whether a professional engineer would ordinarily conduct a landslide assessment for a project such as the Property in the absence of Appendix D.
137. The issue is the Respondent's attestations in the Appendix D that he completed, signed, and sealed. The fact that the City of Maple Ridge did not reject the

Appendix D without an attached landslide assessment does not change the Respondent's obligations. The importance of the proper use of a professional engineer's seal is underscored by section 20(9) of the EGA.

138. The Panel acknowledges the Respondent's submission that, according to the Maple Ridge Bulletin, the Property did not meet the criteria for requiring a landslide assessment. However, even assuming that the Respondent's interpretation is correct, the simple and unavoidable fact is that the Respondent signed and sealed Appendix D which attested to him having completed, attached, and relied on a document that does not exist. This is not acceptable. Allegation 1(c) is proven.
139. The Panel's assessment is that this represents a marked departure from the standard expected of a competent professional engineer. It therefore constitutes unprofessional conduct.
  - IV. Allegation 1(d): failing to conduct quality control testing of the fill material, or any soil tests in making the determination that placed soil under the concrete slabs would not excessively settle;

#### *EGBC's position*

140. The underlying facts are agreed to in the ASF.
141. Mr. Kristiansen's opinion was very clear that compaction testing needed to be done in these circumstances. The purpose is to avoid loose material that could induce settlement. Compaction testing is a standard practice for all projects, and is the only way to ensure adequate compaction.
142. Without conducting compaction testing, the Respondent could not provide an assurance that the fill complied in all material respects. The Respondent provided this assurance in Schedule C-B.
143. The Respondent does not seem to appreciate the purpose and importance of compaction testing. The Respondent's failure to undertake appropriate compaction testing had serious consequences for E.D.

#### *Respondent's position*

144. The Respondent's main position with respect to this allegation is that EGBC's reference to Schedule C-B is a "new charge". The Respondent relies primarily on the decision in *Sheddy v. Law Society (British Columbia)*, 2007 BCCA 95.
145. The Respondent states that he was never aware that the lack of compaction testing was in issue, or that Schedule C-B was in issue. The Respondent understood the allegation to have been that the Respondent specified 90% instead of 100% compaction, and states that he had no notice of what EGBC is now arguing.

146. Since EGBC did not amend the allegation in the Citation, the Respondent had no opportunity to respond, and it is therefore unfair for the Panel to consider it.
147. Apart from the lack of notice, the Respondent states that the difference between 100% and 90% compaction specification comes down to Mr. Kristiansen's "style". The Respondent submits there was no evidence about whether 100% compaction is possible in Maple Ridge for construction of a single-family home, and in the Respondent's opinion, it is not.
148. Finally, there is no evidence linking the settlement experienced at the Property with a lack of compaction. In any event, the Respondent voluntarily paid for E.D. to repair the concrete slab.

*Panel's analysis*

149. The Panel's analysis begins with the Respondent's position that the issue of whether or not compaction testing was done constitutes a "new charge".
150. The Panel rejects that position. The Panel considers that the question of compaction testing is clearly set out in allegation 1(d) of the Citation. The allegation clearly identifies that the matter at issue includes "failing to conduct quality control testing of the fill material". In the Panel's view, that allegation squarely raises the issue of compaction testing.
151. The cases cited by the Respondent are therefore not applicable.
152. The Panel accepts that compaction testing was required in these circumstances, as set out in the opinion of Mr. Kristiansen. The Panel would have reached that conclusion even without Mr. Kristiansen's evidence. This is reinforced by the following:
  - a. The Respondent himself specified 90% SPMDD. This number and specification would be meaningless if there was no intention to conduct compaction testing.
  - b. The Respondent himself undertook to be responsible for "compaction of engineered fill" in Schedule B, and then effectively provided assurances that this had been done in Schedule C-B. This strongly suggests that the Respondent knew that compaction testing was expected and required, and the Respondent of course knew that he had not done this. As will be seen below, *the Respondent himself* argues in response to allegation 1(e) of the Citation that the contractor was to "contact him [the Respondent] before they pour concrete and conduct the compaction test".
  - c. The remediation of the Property included a compaction specification, and testing figures indicating it had been achieved.

153. Overall, the Panel has no hesitation in concluding that compaction testing was required. In reaching this conclusion, there is no need for the Panel to address the Respondent's proposition that 100% SPMDD is "not possible". This does not change the fact that the Respondent did not conduct any testing to ensure that even the 90% SPMDD which he specified was achieved.
154. Finally, the Panel acknowledges that the Respondent compensated E.D. in the remediation of the Property. As EGBC points out, this may properly weigh in the Respondent's favour at the penalty stage of the proceeding. However, it does not change the fact that the Respondent's failure to conduct compaction testing of the fill was not appropriate conduct.
155. The Panel's assessment is that this represents a marked departure from the standard expected of a competent professional engineer. It therefore constitutes unprofessional conduct.
- V. Allegation 1(e): failing to conduct an on-site inspection prior to construction of the slab to assess the condition of the fill;

*EGBC's position*

156. EGBC points out that this fact is not in dispute – the only question is whether it constitutes misconduct. EGBC submits that the Respondent's failure to conduct any inspection or testing of the fill before the concrete was poured constitutes unprofessional conduct.

*Respondent's position*

157. The Respondent states that he advised the contractor to contact him before pouring the concrete so that he could conduct the compaction test. The contractor never called him. The Respondent also points out that the City of Maple Ridge did not require any certification with respect to the fill.
158. The Respondent notes also that he took responsibility, and reimbursed the owners of the Property for the foundation repair.
159. In reply, EGBC states:
- a. There was no evidence before the Panel of the City's requirements.
  - b. Even if the contractor did not call before pouring, the Respondent was aware of this. The Respondent continued to be involved with the project. Once he realized that the pour had happened in the absence of an inspection of the fill, it was incumbent on him to confirm that there were no issues.

- c. The fact that the Respondent compensated the owners is not relevant to the Panel's determination at this stage – it is a matter to be addressed at the penalty stage.

*Panel's analysis*

- 160. This allegation is related to allegation 1(d). The Panel considers it to have been the Respondent's responsibility to ensure the fill was inspected before the concrete was poured.
- 161. The fact that the contractor did not call the Respondent as instructed does not diminish the Respondent's responsibility. The Respondent had other opportunities to take corrective action once he was alerted to the situation. The Respondent remained responsible for the condition of the fill in accordance with his assurances in Schedule B.
- 162. Also of concern, as set out above, the Respondent signed and sealed Schedule C-B, which confirms that Schedule B was complied with. Schedule B in this case included the Respondent's assurances with respect to the "Compaction of engineered fill". Having conducted no inspection of the engineered fill at the Property, it was not open to the Respondent to sign and seal Schedule C-B, which provided that assurance, without qualification.
- 163. To be clear, while the Respondent should not have signed and sealed Schedule C-B in a circumstance where he could not make the assurance he was attesting to, the Panel is not making an adverse finding against him on that basis. While this is unquestionably conduct of concern, the Citation did not allege misconduct on that basis.
- 164. The relevance of the Respondent's confirmation in Schedule C-B is that it reinforces that the Respondent was at all times responsible for the compaction of the engineered fill underlying the Property, notwithstanding the conduct of the contractor.
- 165. In sum, the Respondent was responsible for ensuring that the fill was inspected and he failed to do so. This allegation is proven.
- 166. The Panel's assessment is that this represents a marked departure from the standard expected of a competent professional engineer. It therefore constitutes unprofessional conduct.
  - VI. Allegation 1(f): failing to conduct field reviews, or alternatively, adequately supervise your employee or delegate who conducted the on-site inspections and prepared the field review reports for the Property;

*EGBC's position*

167. EGBC submits that the evidence establishes that the Respondent did not conduct field reviews himself. The question then becomes whether the Respondent adequately supervised M.L. with respect to his inspections and field reviews for the Property.
168. EGBC's position is that the Respondent failed in his duty to adequately supervise M.L. M.L. was not a professional engineer, and while he was in the process of being "trained" by the Respondent, the field review reports prepared by M.L. were significant deficient in the following ways:
- a. There is no justification for the soil-bearing capacity stated, and M.L. was not qualified to reach a conclusion about bearing capacity in any event;
  - b. There are no photographs;
  - c. There is no analysis; and
  - d. There are no test results.
169. The field review reports were essentially just summary conclusions, unsupported by analysis and documentation. The Respondent was the geotechnical engineer of record, and had the ultimate responsibility for the field reviews of the Project. The Respondent has approved field reviews that were clearly deficient, and in so doing, he failed to adequately supervise M.L.
170. EGBC refers to Bylaw 14(b)(3) (set out at paragraph 14 above), and paragraph 2.2 from the Field Review Guidelines which states:
- 2.2 Proper and appropriate field reviews are fundamental to upholding the APEGBC Code of Ethics, which requires that all APEGBC professionals hold paramount the safety, health and welfare of the public, the protection of the environment and the promote health and safety in the workplace.
171. EGBC submits that the inadequate field reviews and the field review reports prepared under the Respondent's supervision and accepted by the Respondent constitutes a breach of the Code of Ethics and a marked departure of what is expected of a professional engineer. On that basis, misconduct is established.

*Respondent's position*

172. The Respondent submits that there is no evidence before the Panel of what "direct supervision", as that term is used in Bylaw 14(b)(3). Therefore, there is no "standard to measure against", and the allegation is therefore not proven.

173. In reply, EGBC states that the proper question is whether the Respondent adequately supervised his employee who produced the field review reports. The field review reports do not include sufficient information to demonstrate bearing capacity. Regardless of whether the field review reports had been prepared by the Respondent himself, or by M.L. under his supervision, the field review reports represent a marked departure of what was expected of a professional engineer.

*Panel's analysis*

174. In the Panel's assessment, the field review reports for the Project are clearly deficient. The Respondent's acceptance of field review reports of this quality evidences inadequate supervision.

175. The Panel's conclusion on this issue is not affected by whether the Respondent supervised M.L. "directly", or in some other way – regardless of if or how supervision of M.L. was provided, adequate supervision would not have resulted in field review reports of the quality produced by M.L. in this case.

176. The importance of adequate field reviews and reports in professional engineering is emphasized both in the Code of Ethics and in the Field Review Guidelines.

177. As the engineer responsible for the Project, the Respondent had a duty to carry out field reviews himself, or appropriately supervise the person to whom they were delegated such that the quality of the field review reports was acceptable.

178. This did not happen. Allegation 1(f) is proven.

179. The Panel's assessment is that this represents a marked departure from the standard expected of a competent professional engineer. It therefore constitutes unprofessional conduct.

VII. Allegation 1(g): signing and sealing a Schedule B Letter of Assurance in circumstances where you did not conduct the requisite testing of the bearing capacity of the ground and soil.

*EGBC's position*

180. EGBC says this allegation is related to allegation 1(a). If the Respondent did not do any geotechnical work to determine the soil-bearing capacity, his testing was not sufficient to sign and seal Schedule B.

181. EGBC further says that Schedule B and Schedule C-B should be considered together. EGBC relies on *Mahmoud* (citing *Ratsoy v. Architectural Institute of British Columbia*, 1980 CanLII 662 (BC SC) and submits that it is open to the Panel to consider the Respondent's related conduct in signing Schedule C-B even if that is not specifically mentioned in the Citation.

182. Despite the fact that the Respondent did not produce his own geotechnical report, and notwithstanding his deviations from the VGES Report, his lack of appropriate field reviews, and his insufficient geotechnical knowledge, he signed and sealed Schedule B and Schedule C-B, taking responsibility for substantial compliance.

*Respondent's position*

183. The Respondent reviewed the VGES Report and satisfied himself that the soil-bearing capacity was adequate. The Respondent trained his employee to confirm removal of the topsoil. The topsoil was removed, therefore 1500psf was provided.

184. As the Respondent had reviewed and verified the VGES Report and the field reviews, he was therefore in a position to assure the design and sign Schedule B.

185. The alleged misconduct in signing and sealing Schedule C-B is not set out in the Citation. Therefore, the Respondent submits that, like allegation 1(d), it is properly characterized as a new charge, and it is not open to the Panel to make a finding on that basis.

*Panel's analysis*

186. The Panel begins by considering Schedule B, as set out in the Citation. The Panel notes that Schedule B is submitted only to obtain the building permit, and does not itself require bearing capacity testing. Testing may have been required if there were no report – but in this case, the Respondent had (and was indeed bound to follow) the VGES Report.

187. That being the case, the Panel is not persuaded that the Respondent acted inappropriately in signing Schedule B, even in the absence of testing. He was entitled to rely on the VGES Report, but it was then incumbent on him to ensure that the requirements of the VGES Report, including the soil bearing capacity, were provided during construction.

188. The Panel therefore does not find that EGBC has proven misconduct with respect to Schedule B. The question then becomes whether the Panel can consider the Respondent's conduct in signing and sealing Schedule C-B, which occurred later, within the scope of allegation 1(g).

189. The Panel carefully considered the authorities provided by both parties with respect to its latitude to consider Schedule C-B as part of allegation 1(g). The Panel accepts EGBC's proposition that it is not required to prove an allegation precisely as worded, but there are limits to that. In this case, the Panel is concerned about whether the wording of the allegation is sufficient to alert the Respondent that his conduct with respect to Schedule C-B is in issue.

190. The Panel notes that Schedule C-B is a different document signed and sealed on a different date for a different purpose. Schedule C-B is not referenced in allegation 1(g), and it is materially different than the referenced Schedule B.
191. The Panel therefore concludes that EGBC has not proven misconduct with respect to the Respondent's act of signing and sealing Schedule B as alleged in the Citation, and since the Panel is not prepared to extend the wording of the Citation to capture Schedule C-B, this allegation is dismissed.
192. Although the Panel is dismissing this allegation, the Panel wishes to be clear that it is not endorsing or approving of the Respondent's conduct with respect to Schedule C-B.
193. The Panel is of the view that it was inappropriate for the Respondent to sign and seal Schedule C-B in the absence of the appropriate soil bearing testing. However, the Panel must consider the allegation substantially as it is set out in the Citation, and on that basis, allegation 1(g) is dismissed.

#### **G. Summary**

194. The Panel has determined that EGBC has proven the conduct alleged in allegations 1(a), (b), (c), (d), (e), and (f) in the Citation. As set out at paragraphs 17-18 above, the Panel will only make one determination with respect to each allegation.
195. The Panel has found that the conduct with respect to each of those allegations constitutes unprofessional conduct. In making those findings, the Panel notes that the allegations are related, and some might be seen as overlapping. The Panel asks the parties to address that issue in their submissions on penalty.
196. The Panel makes no finding with respect to allegation 1(g), and that aspect of the Citation is dismissed.

#### **H. Penalty and costs**

197. Having made a determination under section 33(1) of the EGA, the Panel must next consider the appropriate penalty and the appropriate award of costs.
198. The Panel requests written submissions on those issues from the parties in accordance with the following schedule:
  - a. EGBC must provide their submissions by October 10, 2025;
  - b. The Respondent must provide his submissions by October 31, 2025; and
  - c. EGBC may provide an optional reply by November 10, 2025.

199. All submissions should be delivered electronically to counsel for the Panel and the other party.

Dated September 22, 2025 and electronically signed in counterpart:

<original signed by>

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Peter Bobrowsky, P.Geo., Chair

<original signed by>

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Jaswinder Bansal, P.Eng.

<original signed by>

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John Wilson