

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.

DECISION AND ORDER OF THE DISCIPLINE COMMITTEE ON PENALTY AND COSTS

Date and Place of Hearing: By written submissions,
concluding January 29, 2026

Discipline Committee Panel: Peter Bobrowsky, P.Geo. (Chair)
Jaswinder Bansal, P.Eng.
John Wilson

Counsel for the Engineers and Geoscientists BC: Donaree Nygard
Dahlia Shuhaibar

Counsel for the Respondent: Roy Donghee Kim

Counsel for the Panel: Greg Cavouras

Decision Date: June 12, 2026

A. Introduction and overview

1. In a decision issued September 20, 2025 (the “Conduct Decision”), 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”) determined that Chungmo Chung, P.Eng. (the “Respondent”) committed unprofessional conduct contrary to section 32 of the *Engineers and Geoscientists Act*, R.S.B.C. 1996 c. 116 (the “EGA”).

2. The Panel made six findings of unprofessional conduct with respect to the Respondent's work as the structural and geotechnical Engineer of Record with respect to a residential property located in Maple Ridge (the "Property"). The findings of unprofessional conduct flowed from the allegations set out in the citation issued to the Respondent on February 29, 2024 (the "Citation").
3. Specifically, the Panel found that the Respondent:
 - a. failed to conduct a geotechnical assessment for the Property and in particular, failed 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. deviated from the recommendations set out in the September 21, 2011 Geotechnical Report prepared by Valley Geotechnical Engineering Services Ltd. without explanation and failed to change the standard wording on the structural engineering design drawings for the Property sealed by the Respondent to note these deviations, namely, using a different site class and peak ground acceleration;
 - c. failed to prepare a landslide assessment or report according to the legislated guidelines, even though the Respondent completed the Appendix D: Landslide Assessment Statement for this Property as if he had prepared such an assessment or report;
 - d. failed 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. failed to conduct an on-site inspection prior to construction of the slab to assess the condition of the fill; and
 - f. failed to conduct field reviews, or adequately supervise his employee or delegate who conducted the on-site inspections and prepared the field review reports for the Property.
4. The Panel dismissed one additional allegation, finding that the evidence and submissions presented by EGBC did not fit within the wording of the allegation set out in the Citation.
5. Having made these findings, the Panel requested and received written submissions from the parties regarding the appropriate penalty order and the appropriate order of costs.
6. After carefully considering the parties' submissions, the Panel makes the following orders:

- a. The Respondent's registration with EGBC is suspended for a period of two months.
 - b. Prior to the conclusion of the suspension period, the Respondent must, at his own expense, complete and pass the Professional Engineering and Geoscience Online Seminar and provide written notice of the same to EGBC.
 - c. The Respondent is prohibited from performing any geotechnical engineering work. If the Respondent wishes to lift or modify this restriction, he must apply to the EGBC Credentials Committee.
 - d. The Respondent must, at his own expense, complete and pass the EGBC Professional Practice Examination on or before January 1, 2027, and provide written notice of the same to EGBC.
 - e. Six months after the conclusion of the suspension, the Respondent will undergo a practice review conducted by the EGBC Audit and Practice Review Committee, at his own expense.
7. With respect to costs, the Panel orders that the Respondent pay EGBC costs in the amount of \$94,595.66.

8. The Panel's reasons for these orders are set out below.

B. Procedural Background

9. Given the positions taken by the parties with respect to costs, it is necessary to set out the background of this proceeding in some detail.
10. The Citation was issued on February 29, 2024. On June 28, 2024, following the agreement of the parties and their counsel, the hearing of the Citation was set for December 5-6, 2024.
11. In October 2024, counsel for the Panel communicated with the parties about whether they wished to have a pre-hearing conference. The Respondent indicated that he would bring an application for an adjournment of the hearing. A pre-hearing conference was scheduled by agreement for October 31, 2024.
12. The Respondent provided his adjournment application materials late on the night of October 30, 2024, the day before the scheduled pre-hearing conference.
13. At the pre-hearing conference the next day, EGBC took the position that there were no special circumstances justifying the Respondent's last-minute delivery of his materials (contrary to the timelines set out in the EGBC Bylaws). The Panel accepted that position. Due to the pending hearing date, and the availability of

counsel, the pre-hearing conference was re-set for the following day to allow EGBC to formulate a substantive response.

14. The Panel heard the Respondent's application on November 1, 2024. The Respondent's primary submission in support of the adjournment was that he had not been able to obtain an expert report, a situation he characterized as "non-compensable prejudice" should the hearing proceed as scheduled. At the time of the application, the deadline established in the EGBC Bylaws for disclosing an expert report had passed.
15. The Panel issued written reasons on the adjournment application on November 8, 2024. The Panel, with some reluctance, granted the adjournment sought by the Respondent.
16. A pre-hearing conference was held on December 5, 2024. The hearing was then scheduled for March 3-5, 2025.
17. Another pre-hearing conference was held on February 27, 2025.
18. The hearing of the Citation proceeded on March 3-5, 2025. The parties reached agreement on some material facts and presented an agreed statement of facts (the "ASF") which was marked as an exhibit. The hearing concluded within the scheduled dates, but the first two days of the hearing extended well beyond the usual end time.
19. The Panel sought and received written submissions from the parties with respect to the allegations in the Citation, concluding on May 2, 2025.
20. The Panel issued the Conduct Decision on September 22, 2025. As set out above, the Panel made six determinations of unprofessional conduct against the Respondent.
21. A schedule was set for the parties to provide written submissions with respect to the appropriate penalty and order of costs.
22. EGBC provided its submissions on October 10, 2025. EGBC provided an additional affidavit on October 27, 2025.
23. The Respondent provided his submissions, along with a supporting affidavit, on November 10, 2025.
24. Following delivery of the Respondent's materials, counsel for EGBC immediately flagged a concern that some of the documents and references in the Respondent's materials may be subject to settlement privilege. Very briefly stated, the concern

related to resolution proposals exchanged between the parties, and which, if any, were disclosable in conjunction with the parties' submissions on penalty and costs.

25. The parties did not agree with respect to the permissible scope of the materials submitted by the Respondent. This prompted a motion from EGBC to exclude some of the Respondent's materials. The parties provided written submissions and made oral submissions on the motion on December 12, 2024.
26. The Panel issued a written decision on EGBC's motion on January 5, 2026 (the "Disclosure Decision"). EGBC's motion was granted in part. The Panel directed the Respondent to re-submit his materials without including or referring to certain "without prejudice" communications.
27. The Respondent re-submitted his materials and EGBC provided its reply, along with one additional affidavit clarifying the amount of costs being sought. The submissions from the parties concluded on January 29, 2026.
28. The Panel must now decide the appropriate penalty and costs orders in this case.

C. Issue 1: What is the appropriate penalty?

29. The applicable legal framework, a summary of the parties' positions, and the Panel's analysis and conclusion are set out below.

a. Legal framework

30. On February 5, 2021, the *Professional Governance Act* (the "PGA") came into effect and repealed the EGA. The events underlying the Citation took place when the EGA was still in effect.
31. Therefore, as set out in the Conduct Decision, in accordance with sections 35 and 36 of the *Interpretation Act*, the substantive provisions of the EGA apply to the allegations in the Citation.
32. Having determined that the Respondent committed unprofessional conduct pursuant to section 33(1) of the EGA, the Panel may make one or more of the orders set out in section 33(2) of the EGA, reproduced below:

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

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

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

(c) suspend or revoke the membership, license or certificate of authorization of the member, licensee or certificate holder;

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

33. The Panel will determine the appropriate order to make in this case by reference to the factors set out in the decision of *Law Society of British Columbia v. Dent*, 2016 LSBC 5 (“*Dent*”).

34. *Dent* identifies the following factors for consideration:

Nature, gravity and consequences of conduct

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

Character and professional conduct record of the respondent

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

Acknowledgement of the misconduct and remedial action

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

Public confidence in the legal profession including public confidence in the disciplinary process

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

35. The factors from *Dent* have been consistently applied by other panels in previous EGBC decisions, including *Bahrami (Re)*, 20022 BCEGBC 16 and *Gernon (Re)*, 2023 BCEGBC 14.

b. Positions of the parties

36. EGBC submits that the appropriate penalty order is as follows:

(a) Mr. Chung's registration with EGBC is suspended for a period of three (3) months commencing on the date of the Panel's decision on penalty and costs (the "Suspension Period").

(b) Prior to the conclusion of the Suspension Period, Mr. Chung must provide written notice to EGBC that he has, at his own expense, completed and passed the Professional Engineering and Geoscience Online Seminar.

(c) Within four months of the Panel's decision on penalty and costs, or at the earliest possible offering following the issuance of the Panel's decision on penalty and costs, Mr. Chung must provide written notice to EGBC that he has, at his own expense, completed and passed the EGBC Professional Practice Examination.

(d) Mr. Chung is prohibited from performing any geotechnical engineering work (the "Practice Restriction"), and, if Mr. Chung wishes to lift or modify the Practice Restriction, he must apply to the EGBC Credentials Committee to request the lifting of the Practice Restriction.

(e) Six months after the conclusion of the Suspension Period, Mr. Chung will undergo a practice review conducted by the EGBC Audit and Practice Review Committee, at his own expense. The precise timing and process of the practice review will be determined by the Audit and Practice Review Committee.

37. The Respondent submits that the appropriate penalty order is as follows:

(a) Mr. Chung shall be prohibited from performing any engineering work related to geotechnical engineering (**the "Practice Restriction"**), and if Mr. Chung wishes to lift or modify the Practice Restriction, he must provide written notice to EGBC that he has completed, at his own expense, the educational course entitled, the Professional Engineering and Geoscience Practice in BC Online Seminar, and that he has read and is familiar with the following Engineers and Geoscientists BC Guidelines:

i. *Guide to the Standard for Documented Field Reviews During Implementation or Construction*, Version 3.0, published on June 15, 2023;

ii. *Quality Management Guides: Guide to the Standard for Direct Supervision*, Version 3.0, published on June 15, 2023; and

iii. *Landslide Assessments in British Columbia*, Version 4.1, published on March 1, 2023; and

iv. *Geotechnical Engineering Services for Building Projects*, Version 2.1, published on September 22, 2021.

(b) Six months after the Panel's decision on penalty and costs, Mr. Chung shall undergo a Practice Review conducted by the EGBC Audit and Practice Review Committee (the "Practice Review"), at his own expense. The precise timing and process of the Practice Review will be determined by the EGBC Audit and Practice Review Committee.

c. Analysis of the *Dent* factors

38. The parties agreed that the appropriate framework to be applied is as set out in *Dent*. The parties made detailed submissions on each of the *Dent* factors. The Panel summarizes the parties' submissions and sets out its analysis and conclusions below.
39. The Panel has carefully considered all of the evidence and submissions tendered by the parties, including evidence and submissions not expressly referred to in this decision.

i. Nature, gravity and consequences of conduct

EGBC's position

40. EGBC submits that the Respondent's "mishandling of this project appears to stem in large part from a lack of expertise and experience in geotechnical engineering", and it is therefore clear that he acted outside of "his proper scope of practice". EGBC points to a number of statements made by the Respondent which EGBC says reveal a lack of adequate knowledge in geotechnical engineering.
41. EGBC also submits that the problematic conduct in this case was not an isolated incident given the number of issues that arose on the project. EGBC submits that the Respondent's evidence makes it apparent "that the manner in which he carried out this project was not unusual for him and was based on his standard practices".
42. EGBC emphasizes that the Panel found that the Respondent exhibited unprofessional conduct in six ways on what might have been a straightforward residential construction project. The Respondent's conduct led to significant damage to the Property, and expense and inconvenience for the owners. EGBC also submits that the Respondent's conduct could have caused much more serious structural integrity issues.

Respondent's position

43. The Respondent submits that the nature, gravity, and consequences of his unprofessional conduct are “not relatively serious”. This was not a case where the Respondent willfully and blatantly ignored or disregarded his obligations – instead he did what he “firmly believed was sufficient geotechnical engineering work and in accordance with the industry practice”.
44. With respect to the consequences to the owners of the Property, the Respondent submits that no causal link between his misconduct and the damages to the Property was proven. In addition, there was no risk to personal safety because the concrete slab that failed was not a structural component.
45. In response to EGBC's submissions, the Respondent emphasized, repeatedly, that there was no finding in the Conduct Decision that he breached the Code of Ethics. The Respondent also points out that there was no finding that his misconduct caused the damage to the Property, or that it could easily have resulted in more serious consequences as EGBC suggests. The Respondent denies that he was unqualified to practise geotechnical engineering.

Panel's analysis

46. The Panel's findings of unprofessional conduct are set out in detail in the Conduct Decision and summarized above. Very briefly stated, the Respondent's conduct in this case included inadequate engineering services, undocumented deviations from a covenant on the title of the Property, and the use of his seal on documents that were inaccurate on their face.
47. Taken together, the Panel concludes that this is serious misconduct that engages important and fundamental aspects of engineering practice. The Panel's assessment is that the Respondent's management of the project and use of his seal were clearly problematic.
48. While the Panel was not required to precisely determine the cause of the damage to the Property in order to rule on the allegations in the Citation, the Panel cannot ignore the fact that the Respondent's failure to ensure that the engineered fill met the compaction specification would be likely to produce the very type of damage sustained by the Property.
49. This is a meaningful consideration. The failure of the Property's slab caused considerable stress and inconvenience to the owners of the Property over a period of several months. While the Panel agrees with the Respondent that the damage to the slab of the Property likely did not present an immediate life safety issue, it is a component of the foundation of an occupied structure, and its failure should not be minimized.

50. The Panel must also address the Respondent's submission that his conduct in this case is inherently less serious because the Panel did not specifically determine that he breached the Code of Ethics.
51. The Panel rejects that submission. The Panel made findings of unprofessional conduct because that is the finding that was sought by EGBC and because that finding was substantiated by the evidence. The Panel declined to make multiple findings because the Panel accepted that the appropriate approach is to make a single finding with respect to each factual allegation.
52. In this case, like many others, there were allegations which could have reasonably led to multiple findings. Some of the findings available under the EGA overlap or potentially overlap.
53. The Panel refers to and restates its analysis set out at paragraph 17 of the Conduct Decision. The Panel made only one finding with respect to each factual allegation based on the submissions before it.
54. This should not be interpreted as any sort of positive finding by the Panel that the conduct at issue in this case was compliant with the Code of Ethics, and that therefore the conduct is inherently less serious. Unprofessional conduct is a serious finding, and it was driven by serious misconduct in this case.

ii. Character and professional conduct record of the respondent

EGBC's position

55. EGBC submits that the Respondent's position and experience in the profession point toward a more substantial penalty.
56. The Respondent has been an EGBC registrant since 1993, and has worked on a substantial number of projects that are similar to the Property. Given his experience, there can be no doubt that he should have been aware of his professional and ethical obligations.
57. EGBC acknowledges that the Respondent does not have a prior disciplinary record, but submits that this is a neutral factor in assessing the appropriate penalty.

Respondent's position

58. The Respondent submits that during his registration with EGBC he has only been subject to "two extremely short suspensions", meaning that these proceedings are his first substantive disciplinary action in more than 30 years of practice. The Respondent submits that the length of his practice and the absence of a disciplinary record offer mitigation in his favour.

59. The Respondent submits that he takes his professional ethics very seriously and that other than the findings of misconduct made by the Panel there is “no evidence whatsoever to suggest that [the Respondent’s] character or reputation is flawed in any way”.
60. The Respondent explained that his own convictions, including his obligation to be truthful and ethical, meant that he could not enter into a consent order. The Respondent recognized that he was incurring significant risk by proceeding with a hearing before the Panel, but he felt that agreeing to the full extent of the allegations of the Citation “would have been untruthful and contrary to his moral and professional ethics”.
61. The Respondent submits that his scrupulous character was supported by the evidence at the hearing, in particular, the Respondent’s willingness to enter into an agreed statement of facts even when some of the facts were inculpatory. The Respondent also points to the fact that he apologized to the owners of the Property and paid them out-of-pocket to repair the concrete slab.
62. The Respondent also tendered six reference letters provided by three family members, a developer who works with him, and two professional engineers.
63. Overall, the Respondent submits that this factor substantially favours a lesser penalty.

Panel’s analysis

64. In considering the Respondent’s professional conduct record, the Panel had no evidence before it of what the Respondent described as “two extremely short suspensions”. The Panel considers that previous suspensions, even if short, could potentially be an aggravating factor.
65. However, in the absence of evidence with respect to the dates and circumstances of these previous suspensions, the Panel does not have adequate information to consider what the impact of such past action would be on its decision in this case, if any. The Panel has therefore proceeded on the basis that there is no evidence of a prior disciplinary record before it.
66. While there is no evidence of relevant previous disciplinary action, the Panel agrees with EGBC that this is a neutral factor.
67. It is, however, relevant that the Respondent is a very experienced engineer who testified to having extensive experience in similar projects. The Panel’s assessment is that the problems in this case should have been readily apparent to an engineer of the Respondent’s seniority and experience. The Panel agrees with EGBC that there is no doubt that the Respondent is aware of his professional obligations after more than 30 years of practice.

68. The Panel considers that the analysis from *Kovacik (Re)*, 2024 BCEGBC 17 is apt on this point. In that case the panel stated:

Overall, the Panel considers the lack of a discipline record as a neutral factor but finds the Respondent's position and experience at the time of the impugned conduct militates in favour of a more substantial penalty.

69. The Respondent submitted that his good character, as attested to by the reference letters that he delivered with his submissions, should lead to a substantially lesser penalty.
70. The Panel has reviewed and considered the reference letters put forward by the Respondent, but is not persuaded that they materially impact the appropriate penalty in this case.
71. At a general level, it is not the Panel's task to make an assessment of the Respondent's character as seen through the eyes of his family and friends. Beyond that, the reference letters put forward by the Respondent have significant limitations in their application to this proceeding. Some of these limitations are set out below:
- a. Without meaning any disrespect, the reference letters from family members are of very little use to the Panel in this professional regulatory matter. They generally attest to a positive, loving relationship with the Respondent as a person the authors hold in high regard, but they have no material connection to this proceeding.
 - b. The letter from the developer speaks to the author's satisfaction with the Respondent's services on other projects. However, the author is not a professional engineer and, most significantly, the letter gives no indication that the author has been made aware of the Respondent's misconduct as found in the Conduct Decision.
 - c. The letters from the two professional engineers are from people who describe themselves as friends of the Respondent, and neither letter gives any indication that the author has been made aware of the Respondent's misconduct as found in the Conduct Decision.
72. The Panel has also considered the analysis of the impact of reference letters set out in the case of *Gregory (Re)*, 2022 LSBC 17 where a hearing panel of the Law Society of British Columbia wrote as follows:

[44] The Respondent's position is that his character and reputation are mitigating factors. The character reference letters demonstrate a remarkable amount of support from an array of people who represent diverse sources of insight over many years. Further, the Respondent

submits that the character reference letters attest to an extensive history of exceptional service and generosity to colleagues and members of the public.

[45] The Panel may consider good character evidence in determining an appropriate sanction, but such evidence has limited weight in disciplinary matters. We agree with the perspective that “[v]irtually all lawyers are responsible for some good deeds, and virtually all are held in high esteem by some other lawyers and clients. The discipline hearing panel must ensure that the process is not transformed from a deliberative process into a referendum among members of the profession” (Gavin Mackenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, loose-leaf (consulted on June 2, 2022), Thomson, Reuters, at para. 26:18, p. 26-59).

[46] As explained by the review panel in *Law Society of BC v. Johnson*, 2016 LSBC 20, at paras. 45 to 46, “... to put too much weight on character letters would, in effect, put the friends and colleagues of the Respondent in the place of the members of the hearing panel and would detract from the Law Society’s duty to protect the public interest.”

[47] In *Law Society of BC v. Guo*, 2022 LSBC 3 (CanLII), 2022 LSBC 03, at para. 40, the panel explained that “... our task is not to gauge the Respondent’s popularity, but rather to impose a disciplinary action that appropriately furthers the objectives of protecting the public and its confidence in the justice system and the legal profession.”

[48] In *Law Society of BC v. Hordal*, 2004 LSBC 36, at paras. 68 to 69, the respondent’s character references mirror, in many respects, the Respondent’s character references in this case:

[68] We note that this Respondent produced at the Hearing an unprecedented array of letters of support from his colleagues at the Bar in the community in which he practices [sic]. The support was characterized as coming from virtually every lawyer of significance in the community in which this member conducted his practice. It is also true that these letters of support were generated from members of the Bar who were fully apprised of the circumstances of the Respondent’s misconduct. It is clear that this significant outpouring of support for the Respondent had a bearing upon the Hearing Panel as well it should have done.

[69] It is however improper to confuse popularity with probity. Most letters of support noted that this conduct was out of character for this Respondent. The apparent inconsistency of that observation appeared to be lost on many of the members providing letters of support. They were faced with two essentially identical and concurrent events of misconduct within twelve months of each

other, and in those circumstances it must be difficult to suggest that this conduct is out of character. It is clear that this is a very popular member of the community Bar in which he practices [sic]. It is however also true that he has significantly impaired the reputation of the legal profession in that community by this conduct. That misconduct must be identified, criticized and penalized in an appropriate manner.

[49] The Panel has taken into account that the Respondent is well-respected by his colleagues. We accept that the Respondent's misconduct is out of character for him. However, we note as the panel did in *Law Society of BC v. Yen*, 2021 LSBC 30, at para. 30, that character reference letters are not determinative and amount to only one factor to be considered when determining the appropriate sanction. As character reference letters are to be given limited weight, they provide limited consideration to mitigating penalty.

73. The Panel agrees with that analysis. Given the general limitations outlined in the *Gregory* case set out above, and given the specific limitations of the reference letters submitted by the Respondent in this case, the Panel has given them limited weight in assessing the appropriate penalty.
74. Overall, the Panel considers that the Respondent's character and professional conduct record are neutral factors, and the Respondent's experience in the profession is an aggravating factor.

iii. Acknowledgement and remedial action

EGBC's position

75. EGBC submits that the Respondent failed to acknowledge his misconduct. EGBC submits that instead of acknowledging the problems with respect to his work on the Property, the Respondent testified that he effectively did "nothing wrong other than needing to improve his documentation", and this can be seen in the transcript from the hearing.
76. The Respondent took the position that the issues in the Citation were essentially around documentation, when it was (or should have been) clear that they allege serious issues with his conduct.
77. EGBC acknowledges that the Respondent paid for repairs to the property, but EGBC submits that this is more appropriately taken into account with respect to the appropriate order of costs

Respondent's position

78. The Respondent submits that he "candidly and unconditionally admitted his misconduct" before the hearing by entering into the agreed statement of facts. His

position is that the dispute with EGBC was a solely a “legal dispute” – that is, whether any of the misconduct he admitted constituted unprofessional misconduct, negligence, a breach of the EGBC Bylaws, or a breach of the Code of Ethics. On that point, the Respondent submits that his position was that his misconduct only amounted to unprofessional conduct.

79. The Respondent also points to the fact that he completed some remedial education in geotechnical engineering and that he paid for the repair of the Property. The Respondent submits that remediation to the Property in particular is a significant mitigating factor.
80. The Respondent denies that he testified or took the position that the issues raised in the Citation were essentially around documentation. The Respondent reiterates his position that the dispute in this case was about how to characterize the misconduct that he admitted in the ASF.

Panel’s analysis

81. The Panel agrees with EGBC that the Respondent failed to acknowledge his misconduct in his evidence before the Panel.
82. The Panel’s assessment is that the Respondent fiercely contested the allegations in the Citation (as was his right) and generally minimized his misconduct. An example of this can be found in the Respondent’s final statement in direct examination, excerpted below:

Now, if my documentation, if some of the technicality was wrong, I'm willing to accede that and acknowledge that, but to the full extent of the citation that was placed before me, I couldn't agree to that. That is why I am here and that is the last thing that I really wanted to say.

83. In a similar vein, the Panel rejects the Respondent’s submission that he “candidly and unconditionally admitted his misconduct” by entering into the ASF.
84. In assessing that submission, the Panel notes that the ASF does not include any admissions of misconduct, only admissions of fact. While the Respondent did admit the facts set out in the ASF, some of which could be seen as inculpatory, the Respondent continued to contest EGBC’s position that these facts constituted any sort of actionable misconduct.
85. In his written submissions regarding the findings available to the Panel, the Respondent forcefully argued that no misconduct had been proven, even allowing for the facts that he admitted.
86. The Respondent’s concluding paragraphs in his written submissions stated that “[the Respondent] complied both with the City’s requirements and the requisite

standards expected of members of the profession” and that “EGBC failed to prove that [the Respondent’s] alleged conduct constituted unprofessional conduct or negligence”.

87. The Respondent’s testimony at the hearing and his statements in his written submissions do not demonstrate any meaningful acknowledgement of misconduct.
88. In saying that, the Panel wishes to be very clear that the Respondent had an unequivocal right to deny and contest the allegations in the Citation. However, having done so, he cannot now argue that he made complete and candid admissions of misconduct. While this is not an aggravating factor, the Respondent’s decision not to acknowledge his substantive misconduct deprives him of a potentially powerful mitigating factor.
89. With respect to remedial action, the Panel agrees with the Respondent that his conduct in reimbursing the owner of the Property for remediation of the failed slab is a significant mitigating factor.
90. On that point, the Panel does not accept EGBC’s submission that the reimbursement the Respondent made to the owners of the Property is only relevant to the question of costs. The Panel considers that it is relevant to the assessment of penalty, as contemplated by the *Dent* framework.
91. The Panel also acknowledges that the Respondent has taken some remedial education in geotechnical engineering. This weighs in his favour.
92. Overall, the Panel finds that the remedial action taken by the Respondent in reimbursing the owners of the Property and completing an online course in geotechnical engineering is a mitigating factor. The Panel does not accept that the Respondent acknowledged his misconduct in these proceedings, but that is a neutral factor rather than an aggravating one.

iv. Public confidence in the profession including public confidence in the disciplinary process

EGBC’s position

93. With respect to specific deterrence, EGBC submits that there is nothing in the Respondent’s evidence that suggests that he would conduct himself differently in the future in the absence of a penalty providing a measure of specific deterrence. EGBC points to the Respondent’s refusal to acknowledge that he acted inappropriately.
94. With respect to general deterrence, EGBC submits that it is important that other registrants understand the standards expected of a professional engineer. Citing the panel’s decision in *Kovacik (Re)*, 2024 BCEGBC 17, EGBC submits that it is

“equally important that public confidence in the integrity of the engineering profession is always maintained and that the public is aware that members are held to account for failing to conduct themselves professionally”.

95. EGBC referred to and summarized the following previous decisions:

a. *Kovacik (Re), 2024 BCEGBC 4*

In this case, the engineer was found to have engaged in unprofessional conduct when he signed and sealed an inspection report recommending crane anchor stools for service when they were not serviceable and when required weld repairs had not been completed.

The engineer relied on a description of the weld quality and assurance of suitability, rather than personally inspecting the anchor stools. The panel in that case ordered a two-month suspension and a practice review.

EGBC submits that *Kovacik* has some similarity to the Respondent’s case, however the Respondent’s unprofessional conduct extends beyond one inspection report, and may be more serious on that basis.

b. *Lay (Re), 2023 BCEGBC 10*

In this case, the engineer admitted that he demonstrated unprofessional conduct in relation to geotechnical engineering services he provided for terraced rock walls at a single-family residence. The engineer failed to undertake an adequate design process for the walls, improperly delegated his professional responsibilities to the contractor, and failed to carry out adequate field reviews during construction or to document these reviews.

The engineer agreed to a consent order. His registration was suspended for two months and he was required to take certain courses and review certain EGBC guidelines. Following the suspension, his work on retaining walls was subject to peer review.

c. *Johnson (Re), 2020 BCEGBC 8*

In this case, the engineer admitted to signing and sealing various inspection reports when he did not conduct the inspections personally and they were not conducted under his direct supervision.

The engineer agreed to a consent order. His registration was suspended for two months and was required to attend two training sessions and undergo a practice review.

d. Guan (Re), 2023 BCEGBC 5

In this case, the engineer admitted that he demonstrated unprofessional conduct by failing to design and install a retaining wall to the standard expected of a professional engineer. He failed to adequately check the initial design drawings and identify serious errors in the wall's initial design, or to keep adequate records related to the wall.

The engineer agreed to a consent order. His registration was suspended for three months, and he was subject to direct supervision for 12 months and a practice review.

96. EGBC submits that the cases involving consent orders are useful for the Panel's consideration, but may not be directly applicable because a consent order involves an acknowledgement of misconduct which is a mitigating factor not present in the Respondent's case.

Respondent's position

97. The Respondent submits that there is no high need for specific deterrence based largely on his admissions to misconduct, his "preventive and remedial actions", his involvement in the disciplinary process, and the penalties and costs involved.
98. The Respondent further submits that there is no need for a suspension as a matter of general deterrence in this case when considered alongside the previous decisions. The Respondent emphasizes that there was no finding that he breached the Code of Ethics, and that there was no evidence that his misconduct posed a risk to public safety.
99. The Respondent summarized and referred to the following previous decisions:

a. Bahrami (Re), 2022 BCEGBC 16

In this case, the engineer was found to have engaged in unprofessional conduct with respect to the design of a fire suppression system. The engineer also failed to provide his complete file during the investigation.

The panel in that case ordered a fine of \$2,500 and prohibited the engineer from performing any engineering work related to fire suppression systems.

The Respondent likens his case to this case and submits that many of the same considerations apply in assessing the penalty.

b. Hutchinson (Re), 2022 BCEGBC 11

In this case, the engineer admitted that he demonstrated unprofessional conduct by acting outside his area of expertise in the design and construction of a sewerage system, by failing to design the sewerage system appropriately,

resulting in its premature failure, and by authenticating and filing a letter of certification that he ought to have known was not accurate.

The engineer agreed to a consent order. His practice was restricted with respect to wastewater sewerage systems. He was ordered to pay a fine of \$2,500.

The Respondent submits that the nature and consequences of his unprofessional conduct is significantly less serious than Mr. Hutchinson's, justifying a lesser penalty.

c. Christie (Re), 2022 BCEGBC 14

In this case, the engineer admitted that he demonstrated unprofessional conduct by failing to undertake an adequate testing process and signing and affixing his seal to drawings which did not contain adequate information. The engineer admitted that his unprofessional conduct demonstrated incompetence and that he failed to maintain complete project documentation contrary to the EGBC Bylaws.

The engineer agreed to a consent order. He was prohibited from using his seal pending a peer review followed by a practice review, and he was required to complete an online seminar.

The Respondent submits that the severity of his unprofessional conduct is significantly less than Mr. Christie's, justifying a lesser penalty.

100. The Respondent also took the position that all of the authorities cited by EGBC were readily distinguishable from the facts of this case.

Panel's analysis

101. The Panel finds that the circumstances of this case call for a penalty that has elements of both specific and general deterrence.
102. The Respondent's characterization of his misconduct is relevant on this point. The Respondent's insistence that the misconduct is not serious and the suggestion that he was somehow absolved because EGBC did not seek, and the Panel did not make, a finding that he breached the Code of Ethics causes the Panel some concern about his level of insight.
103. There is a need for specific deterrence as well as remediation. The Respondent must understand that the misconduct in this case is serious and must not be repeated.
104. The Panel must address the Respondent's submission that his involvement in the disciplinary process itself somehow obviates the need for specific deterrence. The Panel does not accept that submission. These proceedings were driven by the Respondent's misconduct. The orders in this case must denounce and deter this misconduct and include a remedial aspect to prevent its recurrence.

105. The Panel also finds that the misconduct in this case is of broader concern such that an element of general deterrence is required.
106. EGBC registrants must understand that meaningful consequences will flow from unprofessional conduct – particularly in a case like this, where there are multiple instances of unprofessional conduct which relate to fundamental professional responsibilities.
107. The Panel has concerns that an order without a sufficient component of general deterrence in this case would harm public confidence in the engineering profession and in EGBC’s ability to regulate it in the public interest.
108. The Panel has considered the previous decisions cited by the parties. At the outset, the Panel notes that it is not bound by previous decisions, but they can be helpful in crafting an appropriate penalty in accordance with the framework in *Dent*.
109. The Panel also notes that there are limitations in the utility of previous consent orders. As EGBC points out, consent orders are inherently different from orders made after a contested hearing because a consent order reflects a registrant’s admissions and acknowledgement of misconduct.
110. In those circumstances, where a registrant admits to misconduct, and the time and expense of a contested hearing are avoided, it is reasonable to expect that the sanction may be less severe, or more remedial, than it might be after a contested hearing. Apart from that, a consent order will typically have much less detailed information than the decision of a hearing panel, making it challenging to draw meaningful comparisons.
111. Those issues aside, the Panel’s assessment is that this case aligns more closely with the previous decisions cited by EGBC than those cited by the Respondent.
112. The Panel considers that the penalty proposed by EGBC is relatively consistent with the outcomes in *Kovacik, Lay, Johnson, and Guan*. In some regards, *Lay, Johnson, and Guan* have indications that they are more serious, but this is offset to some degree by the fact that each of those cases was resolved by consent.
113. *Kovacik*, in the Panel’s estimation, is roughly comparable to the Respondent’s case – while the Respondent was found to have committed more instances of unprofessional conduct, the misconduct in *Kovacik* had potentially higher consequences.
114. Conversely, the Panel did not find the previous decisions cited by the Respondent to be of particular assistance. The consent order in *Christie* addressed a project that was only at the design stage, not one that had been constructed and for which

significant remediation was required. The consent order in *Hutchinson* also seemed to concern materially less serious misconduct. Both consent orders lacked sufficient detail to properly be equated with the misconduct in this case.

115. With respect to the decision in *Bahrami*, the Panel notes one important distinction: the respondent in that case was a very junior engineer who was working with a senior engineer on the project who signed and sealed the drawings at issue. This degree of responsibility and culpability is simply not comparable to the Respondent's role in this case.
116. Comparing previous decisions, especially those set out very briefly in consent orders, is challenging. It is inevitable that there will be some distinctions. It is also important to emphasize that previous decisions are only one of the factors the Panel has considered in accordance with the *Dent* framework.
117. In all of the circumstances, the Panel's assessment is that the penalty proposed by EGBC fits comfortably within the range of decisions that the Panel considers to be sufficiently similar.

d. Panel's conclusion on penalty

118. After carefully considering the parties' submissions, the Panel has determined to make the orders sought by EGBC, with one exception: the period of suspension will be two months rather than the three months sought by EGBC.
119. The Panel's decision with respect to the appropriate penalty is driven by its analysis of the *Dent* factors, set out above. In reaching its conclusions, the Panel emphasizes the following:
 - a. The misconduct here is serious and is not limited to one discrete error or misjudgment. The misconduct involves the inappropriate sealing of documents and engineering practice that represents a marked departure from what is acceptable from an EGBC registrant. The Panel does not accept the Respondent's position that a suspension is not required.
 - b. The Respondent's decision to compensate the owners of the Property is a significant mitigating factor. The Panel does not agree with EGBC that the compensation to the owners is a matter that only impacts the assessment of costs. Instead, it is squarely contemplated by the *Dent* framework in the assessment of penalty. It has had a direct impact on the penalty that the Panel might otherwise have ordered. The Panel may have been inclined to order a lengthier suspension in the absence of the Respondent's decision to compensate the owners of the Property. The Respondent's conduct in that regard is commendable and merits recognition in the Panel's decision.

- c. The previous cases cited by the parties that involve consent orders are of limited utility to the Panel for the reasons set out above. Even the adjudicated decisions only go so far in terms of assessing the appropriate penalty, as there are (and frequently will be) important factual distinctions. Considering the previous cases in the context of the *Dent* framework, the Panel has determined that this case calls for a suspension, a practice restriction, and remediation.
120. The Panel notes that both parties proposed a practice restriction and a practice review. However, the terms of the proposed practice restriction were not the same as between the parties.
 121. EGBC's submission would require the Respondent to apply to the Credentials Committee to lift or vary the practice restriction. Though not explicitly stated, the Respondent's submission might be read as providing for the 'automatic' removal or relaxation of the practice restriction following completion of the Online Seminar and review of certain EGBC guidelines.
 122. While review of the guidelines cited by the Respondent would no doubt be beneficial, the Panel is of the view that the appropriate process for lifting or varying the practice restriction is an application to the Credentials Committee, as proposed by EGBC.
 123. With respect to the practice review, EGBC and the Respondent have proposed the same terms. The Panel makes this order on the terms proposed by the parties.
 124. To sum up, for the reasons set out above, the Panel orders as follows:
 - a. The Respondent's registration with EGBC is suspended for a period of two months. The suspension will be in effect from July 1, 2026 to September 1, 2026, unless the Registrar and the Respondent agree to alternative dates in writing.
 - b. Prior to the conclusion of the suspension period, the Respondent must, at his own expense, complete and pass the Professional Engineering and Geoscience Online Seminar and provide written notice of the same to EGBC.
 - c. The Respondent is prohibited from performing any geotechnical engineering work. If the Respondent wishes to lift or modify this restriction, he must apply to the EGBC Credentials Committee.
 - d. The Respondent must, at his own expense, complete and pass the EGBC Professional Practice Examination on or before January 1, 2027, and provide written notice of the same to EGBC.

- e. Six months after the conclusion of the suspension, the Respondent will undergo a practice review conducted by the EGBC Audit and Practice Review Committee, at his own expense. The precise timing and process of the practice review will be determined by the Audit and Practice Review Committee.

D. Issue 2: What is the appropriate order of costs?

125. The parties both made extensive submissions on the appropriate order of costs. The legal framework, a summary of the parties' positions, and the Panel's analysis are set out below.

a. Legal framework

126. While the penalty to be assessed in this case must be determined by reference to the EGA, previous decisions of the Discipline Committee indicate that the assessment of costs is a procedural matter that proceeds in accordance with the PGA.

127. In *Heringa (Re)*, 2022 BCEGBC 8, a panel of the Discipline Committee analysed this issue as follows:

15. Section 127(1) and 127(2) of the PGA provide for the Discipline Committee to continue a disciplinary proceeding initiated under the EGA in accordance with the procedures set out in the PGA. Section 35(1) of the *Interpretation Act* makes clear this does not apply in the case of penalties. However, costs are generally considered to be procedural in nature. In *Assn. of Professional Engineers and Geoscientists of The Province of British Columbia v. Mah*, 1995 CanLII 824 (BCCA), the Court of Appeal held that the assessment of costs is procedural in nature and to be assessed in accordance with the provisions in place at the time of the assessment of costs. This is the approach that has been adopted by the Discipline Committee in the recent cases of *Re Peter Schober, P.Eng.* (April 7, 2021) and *Re Mohamed Mussa Swalehe, P.Eng.* (December 1, 2021). The Discipline Committee declined to decide the issue in *Re Laura Fidel, P.Eng.* (February 9, 2022). The Panel has been provided with no caselaw or submissions from either party that would justify departing from the interpretation set out in these decisions.

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

Geoscientists BC is only seeking costs in conformity of what would have been available under the EGA.

128. This analysis was followed in *Bahrami (Re)*, 2022 BCEGBC 16 and *Kovacik (Re)*, 2024 BCEGBC 17.

129. The Panel agrees with and adopts this analysis. The costs order in this proceeding will be determined by reference to the PGA.

130. Section 81 of the PGA deals with the assessment of costs and states as follows:

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

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

(2) Costs assessed under subsection (1)

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

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

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

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

131. As contemplated by section 81(3) of the PGA, EGBC has made bylaws governing the assessment of costs following a hearing. In particular, EGBC Bylaw 10.9 provides as follows:

10.9 Assessment of Costs After a Discipline Hearing

(1) If an adverse determination is made against a Respondent after a discipline hearing held pursuant to section 75 of the PGA [Discipline hearings] the Discipline Hearing Panel must require, through an order in writing, that the Respondent pay EGBC's costs, which may be up to the actual costs incurred by EGBC as a result of an investigation and a discipline hearing, provided that those actual costs are within the limits set out in section 81(2)(a) of the PGA [Costs].

(2) For the purpose of calculating costs with respect to an investigation, recoverable costs are all costs incurred from the time the investigation is authorized pursuant to section 66(1)(a) of the PGA [Investigations] until the time that a citation is issued pursuant to section 66(1)(d) of the PGA [Investigations] or section 72(3) of the PGA [Reprimand or remedial action by consent].

(3) For the purpose of calculating costs with respect to a discipline hearing, recoverable costs are all costs incurred from the time that the citation is issued pursuant to section 66(1)(d) of the PGA [Investigations] or 72(3) of the PGA [Reprimand or remedial action by consent] until the conclusion of a hearing regarding the amount of costs to be assessed pursuant to section 81 of the PGA [Costs].

(4) For the purposes of subsections (2) and (3), recoverable costs must include

(a) salary costs for employees or officers engaged in the investigation and the discipline hearing, and

(b) the actual costs incurred by EGBC during the course of the investigation and the discipline hearing, including any motions, applications or pre-hearing conferences, or any other applications associated with a discipline matter, which may include some or all of the following:

(i) costs incurred to retain contractors who are engaged in the investigation and the discipline hearing, including contractors who are appointed as officers;

(ii) expenses incurred by persons appointed as Investigators for EGBC pursuant to section 68 of the PGA [Investigators]; fees charged and expenses incurred by legal counsel retained by EGBC;

- (iii) fees charged and expenses incurred by expert witnesses retained by EGBC or EGBC's legal counsel;
- (v) expenses incurred by witnesses called to testify by EGBC;
- (vi) the cost of recording interviews, pre-hearing conferences, and hearings;
- (vii) the cost of a court reporter for interviews, pre-hearing conferences, and hearings;
- (viii) the cost of preparing a transcript of interviews, pre-hearing conferences, and hearings;
- (ix) the cost of a translator for interviews, pre-hearing conferences, and hearings;
- (x) costs incurred to rent facilities at which interviews, pre-hearing conferences, and hearings are held;
- (xi) costs incurred to conduct interviews, pre-hearing conferences, and hearings, whether conducted in person, by Electronic Means, in writing or by any combination thereof;
- (xii) any other reasonable costs, fees, or expenses paid or payable by EGBC as a result of the investigation or the hearing pursuant to section 75 of the PGA [Discipline hearings].

(5) In determining the costs to require the Respondent to pay, the Discipline Hearing Panel

- (a) must consider whether EGBC did not prove all the allegations made against the Respondent set out in the citation to the requisite standard, and if so, the seriousness of the allegations which were not proven relative to those which were proven, and
- (b) may consider evidence that the Respondent previously rejected
 - (i) an undertaking or a consent requested by the Investigation Committee or the Discipline Committee, as applicable, pursuant to section 72(1) of the PGA [Reprimand or remedial action by consent], or
 - (ii) a consent order proposed by the Investigation Committee or the Discipline Committee, as applicable, pursuant to section 73(1) of the PGA [Consent orders].

132. These provisions of the PGA and the EGBC Bylaws govern the Panel's assessment of costs in this case.

b. Preliminary issue: sufficiency of EGBC's materials

133. As will be discussed in detail later in this decision, EGBC seeks an order of costs against the Respondent for 70% of its actual costs. In support of its position, EGBC tendered an affidavit from Jesse Romano, the Acting Director of Legislation, Ethics, and Compliance with EGBC.
134. Mr. Romano's evidence was that EGBC had incurred \$119,886.05 in legal costs for this proceeding (excluding legal costs associated with EGBC's submissions regarding costs).
135. Mr. Romano's affidavit did not attach the original invoices from counsel to establish the amount incurred in legal costs, on the basis that those invoices are privileged. Instead, the affidavit set out a summary of the costs incurred which included a listing of tasks and the number of hours billed by the lawyers working on the file, along with the name, level of experience, and hourly rate for each lawyer.
136. The Respondent takes the position that the information set out in Mr. Romano's affidavit was not sufficient. The Respondent submits that he is left in an "impossible position to make any reasonable inference about how much each line item actually costed, and more importantly, whether the actual legal fees of each line item were fair, reasonable, and proportionate".
137. Despite having taken this position, the Respondent made extensive alternative submissions about how the Panel should assess costs based on the information available.
138. The Panel has carefully considered this issue. The Panel is not persuaded that the materials provided by EGBC are insufficient for the purpose of demonstrating the costs incurred by EGBC or for the purpose of allowing the Respondent to meaningfully respond to EGBC's claim for costs.
139. The Panel notes that the information provided by EGBC includes a description of the steps taken, the identity of the individual or individuals who took them, the amount of time billed, and the rate at which the time was billed. Other than the fact that there are no specific dates for the steps taken, the level of information provided approximates what might have been expected in the original invoices. Mr. Romano's affidavit confirms that he has knowledge of the original invoices and it is clear that those invoices informed his affidavit.
140. In any event, the Respondent has not clearly articulated how this information is inadequate or formalized an application for additional information. The Panel concludes that the information provided is sufficient for the Panel to assess

EGBC's claim for costs and sufficient for the Respondent to meaningfully respond to it.

c. Positions of the parties

141. The parties provided detailed and lengthy submissions about the appropriate costs order in this case. The Panel summarizes the parties' submissions and sets out its analysis and conclusions below.

142. The Panel has carefully considered all of the evidence and submissions tendered by the parties, including evidence and submissions not expressly referred to in this decision.

EGBC's position

143. EGBC relies on Bylaw 10.9(1) which requires that costs be ordered where an adverse determination is made against a respondent. Bylaw 10.9(1) permits a costs order "up to the actual costs incurred by EGBC as a result of an investigation and a discipline hearing", subject to the limits established in the PGA.

144. EGBC also points out that Bylaw 10.9(5) requires the Panel to consider whether EGBC proved all of the allegations set out in the Citation, and, if not, the Panel must consider the seriousness of the allegations that were not proven relative to those that were.

145. On that point, EGBC submits that it proved the "vast majority" of the allegations in the Citation. EGBC acknowledges that it did not prove one allegation, but points out that it was dismissed based on the wording of the Citation, and the Panel nonetheless noted its concerns about the Respondent's conduct. EGBC submits that no time or effort was lost due to the dismissed allegation.

146. EGBC submits that the Respondent's conduct delayed and unnecessarily lengthened the proceedings, by reference to three specific examples:

- a. The Respondent's conduct in bringing a last-minute adjournment application, in part to obtain an expert report, and then not obtaining an expert report, rendering the adjournment application and resulting delay unnecessary;
- b. The Respondent's unsuccessful objection to the introduction of EGBC guidelines as evidence; and
- c. The Respondent's unwillingness to agree to reasonable and realistic time estimates, leading to longer hearing days than were necessary with the resultant increase in costs.

147. EGBC submits that in previous cases other panels have ordered costs of between 70-90% of actual costs incurred by EGBC. EGBC refers to *Syed (Re)*, 2018

EGBC 2 (where the order was approximately 90% of reasonable costs), *Halarewicz (Re)*, 2019 BCEGBC 1, (where the order was 90% of the actual costs), and *Foreman (Re)*, 2015 BCEGBC 6 (where the order was approximately 70% of actual costs).

148. EGBC submits that it has incurred the following recoverable costs:

Investigative interview costs	\$1,781.54
Legal fees	\$119,886.05
Mr. Kristiansen's expert report and attendance at hearing	\$12,114.00
Charest Reporting hearing and transcript fees	\$7,868.29
TOTAL	\$141,649.88

149. EGBC subsequently corrected this amount because there was an error in its calculation of the transcript fees (though it is worth noting that the affidavit EGBC submitted had the correct figures). The revision was to the Respondent's benefit, as it led to a reduction in the total amount claimed. The revised total is \$138,597.80.

150. EGBC acknowledges that the Panel decided several allegations in the Citation without the need for Mr. Kristiansen's evidence, but points out that the Panel did rely on his evidence for some allegations. On that basis, EGBC submits that his report was necessary and the expense was reasonable.

151. EGBC notes that the total amount of costs does not include the salary costs of employees or officers of EGBC (which, EGBC points out, are recoverable under Bylaw 10.9(4)(a)).

152. EGBC submits that although the Respondent's conduct increased the time and expense of these proceedings, EGBC is only seeking 70% of its actual costs in recognition of the fact that the Respondent reimbursed the owners of the Property for their out-of-pocket expenses.

153. EGBC seeks 70% of the costs set out above, for a total claim of \$97,018.46.

Respondent's position

154. The Respondent submits that since EGBC is “claiming costs on a full indemnity basis”, the jurisprudence of the BC Supreme Court is instructive. Legal fees must be fair and proportionate and cannot be a “blank cheque”. The Respondent also likens the assessment of costs to a taxation of legal fees under the *Legal Profession Act*, SBC 1998, c. 9.
155. The Respondent submits that the overarching question is whether, upon examination of the lawyer’s bill, the charges are reasonable in the circumstances. The successful party is not simply entitled to whatever costs they incurred.
156. With respect to the question of substantiated allegations under Bylaw 10.9(5)(a), the Respondent submits that since the Citation alleged the Respondent had committed unprofessional conduct, committed negligence, breached two sections of the EGA, and breached two provisions of the Code of Ethics, there are effectively six allegations. Since the Panel only made determinations of unprofessional conduct, EGBC effectively only proved one of those six allegations. The Respondent submits that the unproven allegations of negligence and breaches of the Code of Ethics are significantly more serious than the Panel’s determination of unprofessional conduct.
157. Therefore, the Respondent submits that the costs should be awarded at 1/6 recovery. The Respondent further submits that 5/7 of the costs associated with Mr. Kristiansen should be deducted at the outset, because the Panel only relied on his evidence for two of the seven factual allegations. On this basis, the Respondent proposes a costs order of \$21,657.49.
158. The Respondent also made alternative submissions about how costs might be assessed by the Panel, briefly summarized as follows:
 - a. The Respondent relies on a resolution proposal that he made to EGBC in February 2025. The Respondent proposed to make certain admissions of unprofessional conduct and sought to resolve the matter without a suspension, or possibly with a two-week suspension. The Respondent submits that the admissions he proposed are “virtually identical” to the Panel’s findings in the Conduct Decision. On that basis, the Respondent submits that he should not be required to pay EGBC’s legal fees that relate to the hearing. In this scenario, the Respondent proposes a costs order of \$36,494.86.
 - b. Alternatively, the Respondent submits that the assessment of costs could be made on the basis of the final proposal that EGBC made to the Respondent. The Respondent submits that the outcome achieved by EGBC falls far short of meeting the findings proposed in EGBC’s final proposal. In this scenario, the Respondent proposes a costs order of \$25,988.99.

159. Separately, the Respondent questions whether EGBC's legal fees are reasonable. The Respondent calculated the claimed legal costs in previous cases on a "per hearing day" basis and submits that the legal costs claimed by EGBC in this case are higher and therefore unreasonable by comparison. The Respondent submits that the Panel should "reduce the quantum of costs aware to compensate for the disproportional and unreasonable EGBC's actual costs, and for the lack of records to support those costs".
160. The Respondent restated his position with respect to his settlement proposal, submitting that he was in a position equivalent to a litigant who was "successful in trial". In those circumstances, the Respondent submits that it would be absurd to compel him to pay for EGBC's costs with respect to the hearing.
161. The Respondent submits that setting a "recovery rate" (meaning a percentage of actual costs) is arbitrary and unfair. The Respondent points specifically to the decision in *Bahrami (Re)*, 2022 BCEGBC 16 where costs were fixed in the amount of \$25,000. The Respondent likens the circumstances in his case to those in *Bahrami*.
162. The Respondent makes the following specific responses to EGBC's submissions:
- a. The Respondent contests EGBC's characterization of the allegations in the Citation (e.g. that six of the seven allegations were proven). The Respondent submits that the Citation, properly construed, makes six allegations and only one (e.g. unprofessional conduct) was proven. It was open to EGBC to amend the Citation, and it chose not to.
 - b. The Respondent submits that allegation 1(g) of the Citation was dismissed on its merits, and any costs associated with that allegation are entirely attributable to EGBC.
 - c. The Respondent submits that the adjournment in this case was necessary to provide the Respondent with the opportunity to retain an expert witness, and he made diligent attempts to do so. The Respondent compares his adjournment request to the last-minute adjournment in *Bahrami*, and submits that his was far less prejudicial and egregious.
 - d. The Respondent submits that the issue around the EGBC guidelines and their admissibility was of "EGBC's own making" and the guidelines were not relied on by the Panel in any event.
 - e. The Respondent submits that he should not be penalized for the amount of time the hearing occupied to permit him to best defend himself. Similarly, the Respondent should not be penalized for his lengthy cross-examination of Mr. Kristiansen.

- f. The Respondent submits that he should not be responsible for the costs, including the legal fees, associated with Mr. Kristiansen's evidence because the Panel's reliance on it was minimal. Conversely, the Respondent relies on Mr. Kristiansen's laudatory comments regarding the Respondent's decision to reimburse the owners of the Property.
- g. The Respondent submits that an award of 70% of EGBC's actual costs is not fair, proportionate, or reasonable.

163. Finally, the Respondent submits that the Panel should make an order of costs in the amount of \$25,000.

Reply from EGBC

164. EGBC makes the following submissions in reply:

- a. The Respondent's argument about the number of allegations in the Citation is fundamentally flawed and was expressly rejected in *Bahrami*. The Panel appropriately refrained from making multiple findings in relation to the same conduct. EGBC proved six of the seven allegations.
- b. Although the Panel did not rely heavily on Mr. Kristiansen's evidence, it was not obvious prior to the hearing that expert evidence was not required – and the Respondent himself (unsuccessfully) sought to adduce expert evidence. EGBC should not be penalized for obtaining expert evidence unless it was clearly irrelevant, otherwise there would be a risk that future panels would not have the benefit of required expert evidence.
- c. With respect to the Respondent's submissions regarding the exchange of resolution proposals, EGBC submits:
 - i. There is no provision in the EGBC Bylaws providing for the Panel's consideration of a resolution proposal originating from a respondent. The necessary implication is that consent orders proposed by EGBC are the only ones that can be considered in assessing costs.
 - ii. The Respondent's submission that he "obtained the very results he was willing to accept" is a faulty premise – no decision has yet been made on penalty.
 - iii. The Respondent's proposed admissions were not, as he submits, "virtually identical" to what was proven after the hearing. The Respondent's proposed admissions were significantly narrower.

- iv. The Respondent's proposal itself demonstrates that the Respondent's position has been, throughout, that his failures were limited to documentation.
- d. The information provided with respect to legal costs strikes an appropriate balance between protecting solicitor-client privilege and ensuring the Respondent can make adequate submissions regarding costs.
- e. EGBC is not seeking "full indemnity" costs. It is seeking an order of 70% of the costs it incurred, in line with previous decisions and allowing for certain mitigating factors.
- f. The Respondent's comparison with costs incurred in other hearings is flawed because if normal hearing hours had been observed, the hearing in this case would have taken four days instead of three.
- g. The costs claimed by EGBC do not include the costs of preparing EGBC's submissions on costs and penalty and its reply. EGBC incurred further costs in addressing the without-prejudice materials that the Respondent attempted to put before the Panel.

d. Panel's analysis

165. The Panel provides its analysis of the material points of contention and sets out its decision on costs below.

i. Allegations in the Citation and the Conduct Decision

166. The Panel agrees with the parties that EGBC Bylaw 10.9(5)(a) is an important consideration in the assessment of costs. Effectively, the Panel is asked to consider EGBC's relative success in proving the allegations set out in the Citation.
167. The Panel's assessment is that, properly interpreted, EGBC proved six of the seven allegations in the Citation. The Panel does not accept the Respondent's submission that EGBC only proved one of the six allegations because the Panel only made findings of unprofessional conduct.
168. The Panel's analysis of this issue focuses on the factual allegations in the Citation. There were seven. Six were proven. The additional paragraphs in the Citation dealt with the question of which of the determinations available under the EGA should attach to those allegations. In the Panel's view, the alternative determinations articulated in the Citation (and driven by the wording of the EGA) are not properly seen as separate allegations on which EGBC failed – particularly when they were not pursued by EGBC either at the hearing or in written submissions.

169. The Panel finds support for this approach in the *Bahrani* decision, cited by EGBC. The panel in that case rejected a similar submission from Mr. Bahrami, stating as follows:

The Panel disagrees with the Respondent's characterization that eight of the twelve allegations were unproven. The Panel simply declined to make findings regarding some allegations because of the overlap with the Panel's findings that the Respondent committed unprofessional conduct.

170. The Panel did the same thing in this case. There were effectively seven contested allegations and the Panel found that six of them were proven.
171. The Panel must also consider the impact of the one allegation that was not proven. On that issue, the Panel agrees with the Respondent that this allegation was dismissed on its merits. Based on the evidence, it was not open to the Panel to make a finding against the Respondent based on the wording of the Citation. The allegation, as it was set out in the Citation, was dismissed.
172. In terms of the impact of that decision, the Panel does not agree with EGBC that no time or effort was spent on the dismissed allegation. The allegation was included in the Citation, both parties made submissions about it, and the Panel decided it. With that said, the dismissed allegation itself did not require any additional witnesses or hearing time. In accordance with Bylaw 10.9(5)(a), the Panel has taken this material, but minor, factor into account in determining the appropriate order of costs.

ii. The Respondent's resolution proposal

173. The Respondent's submissions rely heavily on his characterization of a proposal for resolution that was sent by counsel. EGBC submits that it is either not open to the Panel to consider the Respondent's proposal, or that the proposal is not relevant to the question of costs because it is materially different from what the Panel actually decided. In other words, it is not a situation where the Respondent's proposal, if it had been accepted, could have led to the same outcome without the need for a hearing.
174. Dealing first with the question of whether the Panel may consider the Respondent's proposal at all, the Panel finds that it can.
175. The Panel is not persuaded by EGBC's submission that EGBC Bylaw 10.09(5)(b), which expressly permits the Panel to consider a proposal rejected by a respondent, prohibits it from considering a respondent's proposal – either by necessary implication or otherwise. As the Panel noted in the Privilege Decision this asymmetry could result in unfairness to a respondent who wants to make a proposal for resolution but has no 'formal' right to do so under the PGA.

176. It is also worth noting that EGBC Bylaw 10.09(5)(b) is permissive but not exhaustive – it expressly permits the consideration of some factors, but it does not purport to list *all* of the factors that may be considered.
177. The question of privilege has already been decided in the Privilege Decision, and since the Panel has not been referred to any authority that would otherwise foreclose consideration of the Respondent’s proposal, the Panel will consider its impact on the order of costs in this case.
178. Having reviewed the Respondent’s proposal for resolution, the Panel finds that it does not materially impact the assessment of costs in this case.
179. The main reason for this conclusion is that, contrary to the Respondent’s submissions, the Respondent’s proposal does not approximate the outcome after the hearing.
180. The Panel agrees with EGBC’s submission that the admissions which were proposed by the Respondent are significantly narrower than what was alleged in the Citation and ultimately determined by the Panel.
181. There is also a significant disconnect between the orders proposed by the Respondent in the resolution proposal and what the Panel has ordered. In particular, the Respondent proposed a resolution with no suspension, or read generously, a maximum two-week suspension. As set out above, the Panel has ordered a two-month suspension.
182. The result is that the Respondent’s proposal was premised on admissions that are less than what the Panel found, and a penalty that was less than what the Panel ordered. That being the case, there is simply no support for the Respondent’s submissions that the proposed admissions are “virtually identical” to what the Panel determined and that the Respondent “obtained the very results he was willing to accept”.
183. Overall, the Panel’s assessment is that the Respondent’s proposal does not materially impact the appropriate order of costs in this case.

iii. Conduct during the proceedings

184. EGBC submitted that the Respondent’s conduct during the proceedings rendered them lengthier and more expensive. The Respondent disagrees, and submits that his conduct was reasonable and that it would not be fair to effectively penalize him for defending himself.
185. Having carefully considered the procedural history, the Panel agrees with EGBC that this proceeding took longer and cost more than it needed to.

186. The Panel notes in particular the Respondent's late-stage adjournment application (which was not brought in accordance with the timelines set out in the EGBC Bylaws) which the Panel granted in order to allow him additional time to retain an expert. No expert was ultimately retained. The Panel also notes the time and expense necessary to address the without-prejudice materials initially submitted by the Respondent, resulting in an application from EGBC and leading to the Privilege Decision.
187. However, these additional costs are to some extent already accounted for in the total amount of legal fees incurred by EGBC. Since EGBC is seeking recovery of its costs on a percentage basis, rather than by reference to a tariff or other fixed rate, the Respondent will necessarily share in the additional costs incurred.
188. The impact of the Respondent's conduct is that it responds to his concerns that EGBC's costs claim is unreasonable, or disproportionate to the number of days the hearing occupied.
189. With respect, the Respondent's conduct lengthened and complicated this proceeding. It would therefore be unsurprising if EGBC's costs were greater than in other proceedings. The Panel has considered this as a factor in assessing the reasonableness of the costs claimed by EGBC.

iv. The costs associated with Mr. Kristiansen's evidence

190. The Respondent submits he should not be responsible for any, or, alternatively, 2/7 of 1/6 of the costs associated with Mr. Kristiansen's report and evidence. EGBC submits that Mr. Kristiansen's evidence was relied on by the Panel and the cost of obtaining that report was reasonable.
191. The Panel agrees with EGBC that seeking expert evidence was not unreasonable in this case. Given the Respondent's position in seeking an adjournment on the basis that he needed to retain an expert, it is difficult for him to now say EGBC acted unreasonably in retaining Mr. Kristiansen.
192. However, it is also fair to say that the Panel did not place heavy reliance on Mr. Kristiansen's evidence. Mr. Kristiansen no doubt has expertise in the field he was qualified as an expert in ("geotechnical engineering, and, more particularly, in relation to seismic and soil assessment and settling of soils"), however he had limited experience with projects similar to the Property. Without meaning to minimize Mr. Kristiansen's ample qualifications, they were not a perfect match to this case.
193. Overall, given the unusual circumstances around the expert evidence in this case, the Panel considers it fair to order that the Respondent pay only 50% of the fees paid to Mr. Kristiansen.

v. Cost recovery

194. EGBC is seeking an order for 70% of its costs, amounting to \$97,018.46. The Respondent submits that the Panel should refuse to apply a “recovery” rate, and should order costs of either \$21,657.49, \$36,494.86, \$25,988.99, or \$25,000.
195. The Panel accepts EGBC’s submission that other panels have routinely made costs awards of between 70 and 90% of actual costs. Examples of this can be found in the decisions cited by EGBC: *Syed (Re)*, *Halarewicz (Re)*, and *Foreman (Re)*. Another example, among many, can be seen in the recent decision of *Yuen (Re)*, 2026 BCEGBC 4, where the panel ordered 80% of EGBC’s actual costs.
196. The Panel does not accept the Respondent’s submission that this method of assessing costs is inherently arbitrary and unfair. The Panel notes that section 81 of the PGA expressly contemplates complete recovery by a regulatory body of the actual costs incurred during the course of the investigation and hearing. As the panel pointed out in *Schober (Re)*, 2021 BCEGBC 13, the PGA contemplates a “summary assessment” of costs.
197. Assessing costs by reference to the amount actually incurred is consistent with the PGA and the past decisions of the Discipline Committee. The various alternative methods of assessment proposed by the Respondent are not accepted by the Panel.
198. EGBC has in this case sought an order for 70% of its costs, in part because the Respondent reimbursed the owners of the Property. The Panel does not necessarily agree that the reimbursement is relevant to the assessment of costs.
199. Costs are not intended to be a penalty. They are meant to provide a partial indemnity of expenses reasonably incurred. There is no obvious linkage between the expenses incurred by EGBC during the investigation and the hearing and the reimbursement of remediation costs incurred by the owners of the Property. Instead, the Panel sees that issue as relevant to penalty, in alignment with the framework from *Dent*, as set out in paragraph 34 above.
200. Therefore, the Panel is not inclined to adjust the order of costs payable on that basis.
201. That issue aside, the Panel nonetheless considers that 70% of EGBC’s costs is the appropriate order to make. EGBC succeeded in proving six of the seven allegations in the Citation, and 70% recovery fits comfortably within the range of costs ordered in previous decisions.
202. Having carefully considered the parties’ detailed submissions, and reflecting on the conduct of this proceeding as a whole, the Panel considers that it is appropriate

and necessary for the Respondent to be responsible for the majority of EGBC's costs.

203. In reaching that conclusion, the Panel notes that EGBC did not claim the costs of salaried staff or officers, or the costs associated with the submissions on penalty and the submissions regarding the privilege issue, all of which would be recoverable under the PGA. EGBC is therefore seeking an amount that is effectively less than 70% of its total actual costs.
204. As set out above, this proceeding was lengthy and hard-fought throughout. There were numerous appearances and many procedural and legal points were contested. While the costs are significant, at least some of them appear to flow from the positions and steps taken by the Respondent. The Panel's assessment is that the costs incurred by EGBC were reasonable and necessary.
205. The Panel therefore orders that the Respondent pay EGBC 70% of its claimed actual costs (other than those relating to Mr. Kristiansen, which are recoverable at 50% for the reasons set out above).
206. Lastly, the Panel notes that this order of costs does not exceed what would have been available under the EGA.

e. Decision of the Panel on costs

207. The Panel orders the Respondent to pay 70% of EGBC's costs as claimed by EGBC, with the exception of the costs associated with Mr. Kristiansen's evidence which are payable at 50% of actual costs.
208. EGBC's claimed costs (other than Mr. Kristiansen's) are \$126,483.80. Multiplying that by 70% produces a value of \$88,538.66. The costs associated with Mr. Kristiansen are \$12,114. Multiplying that by 50% produces a value of \$6,057. Adding those figures together results in a total of \$94,595.66.
209. The Panel orders costs payable by the Respondent to EGBC in the amount of \$94,595.66.

E. Panel's orders

210. The Panel makes the following orders in accordance with the EGA:
 - a. The Respondent's registration with EGBC is suspended for a period of two (2) months. The suspension will be in effect from July 1, 2026 to September 1, 2026, unless the Registrar and the Respondent agree to alternative dates in writing.

- b. Prior to the conclusion of the suspension period, the Respondent must, at his own expense, complete and pass the Professional Engineering and Geoscience Online Seminar and provide written notice of the same to EGBC.
- c. The Respondent is prohibited from performing any geotechnical engineering work. If the Respondent wishes to lift or modify this restriction, he must apply to the EGBC Credentials Committee.
- d. The Respondent must, at his own expense, complete and pass the EGBC Professional Practice Examination on or before January 1, 2027, and provide written notice of the same to EGBC.
- e. Six months after the conclusion of the suspension, the Respondent will undergo a practice review conducted by the EGBC Audit and Practice Review Committee, at his own expense. The precise timing and process of the practice review will be determined by the Audit and Practice Review Committee.

211. The Panel makes the following costs order in accordance with the PGA:

- a. The Respondent must pay EGBC the amount of \$94,595.66 within 30 days of this order, unless the Registrar and the Respondent agree to an alternative date in writing.

Dated June 12, 2026 and electronically signed in counterpart:

<original signed by>

Peter Bobrowsky, P.Geo., Chair

<original signed by>

Jaswinder Bansal, P.Eng.

<original signed by>

John Wilson