

**IN THE MATTER OF
THE PROFESSIONAL GOVERNANCE ACT, S.B.C. 2018, c. 47**

and

IN THE MATTER OF PETER GORDON KOVACIK, P. Eng

**REASONS FOR DECISION OF THE DISCIPLINE COMMITTEE
ON PENALTY AND COSTS**

Date and Place of Hearing:	By written submissions
Panel of the Discipline Committee	Frank Denton, P. Eng., Chair Pierre Gallant
Counsel for Engineers and Geoscientists BC:	Lindsay Waddell
Counsel for the Respondent:	Jagmeet Virk
Independent Legal Counsel for the Panel:	Fritz Gaerdes

Background

1. A 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 was convened to conduct a hearing concerning Peter Gordon Kovacik, P.Eng. (the "Respondent") pursuant to section 75 of the *Professional Governance Act*, S.B.C. 2018 c. 47 (the "PGA").
2. The citation dated May 27, 2021 (the "Citation") sets out the particulars of the allegations against the Respondent as follows:

AND TAKE NOTICE that the allegations against you are that:

1. You have demonstrated unprofessional conduct, incompetence, or negligence by:
 - a. Failing to comply with *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 ss. 14.2 and 14.77 (the

"Regulations"), when you did not ensure the welding on a set of Pecco S35/S212 crane anchor stools (the "Anchor Stools") at [REDACTED] (the "Project"), was carried out in accordance with CSA W59 and CSA 47.1 or equivalent standards as required by CSA 2248- 2004 pursuant to the *Regulations*;

- b. Failing to comply with CSA W47.1 standards as required by CSA 2248-2004 pursuant to the *Regulations* when you failed to test the welding consumable used for the Project, as is required for material not certified by the Canadian Welding Bureau; and
 - c. Signing and sealing an inspection report dated August 8, 2017 recommending the Anchor Stools for service:
 - i. when the Anchor Stools were not serviceable;
 - ii. when the weld repairs had not been completed;
 - iii. without referencing a recognized standard or a documented equivalent; and
 - iv. when you knew or ought to have known that the fabricator was not certified by CWB and you took no steps to mitigate this issue.
2. The conduct set out above at paragraphs 1(a) - (c) was contrary to section 14(b) of the Engineers and Geoscientists BC Bylaws, as it stood at the time, which required that members and licensees shall establish and maintain documented quality management processes for their practices, which shall include, as a minimum:
- (2) regular, documented checks of engineering and geoscience work using a written quality control process appropriate to the risk associated with the work.
3. The conduct set out above at paragraphs 1(a) - (c) was contrary to Principle 1 of the Engineers and Geoscientists BC Code of Ethics, as it stood at the time, 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.
4. The conduct set out above at paragraphs 1(a) - (c) was contrary to Principle 3 of the Engineers and Geoscientists BC Code of Ethics, as it stood at the time, which required that members and licensees provide an opinion on a professional subject only when it is founded upon adequate knowledge and honest conviction.
5. The conduct set out above at paragraphs 1(a) - (c) was contrary to Principle 6 of the Engineers and Geoscientists BC Code of Ethics,

as it stood at the time, which required that members and licensees keep themselves informed in order to maintain their competence, strive to advance the body of knowledge within which they practice and provide opportunities for the professional development of their associates.

3. On June 12, 2024, the Panel released its decision on the misconduct allegations in the Citation (the "Conduct Decision"). The Panel found that Engineers and Geoscientists BC had proven the allegations in paragraphs 1(c)(i), 1(c) (ii), 3 and 4 of the Citation to the requisite standard. The Panel determined that with respect to the proven allegations contained in paragraphs 1(c)(i), 1(c) (ii), 3 and 4 of the Citation the appropriate finding was that the Respondent committed unprofessional conduct. The Panel further found that the remainder of the allegations set out in the Citation had not been proven on a balance of probabilities and dismissed those allegations.
4. The Conduct Decision set a schedule for the parties to deliver written submissions on penalty and costs. Both parties made written submissions, and the Panel has considered those submissions in reaching this decision.
5. Engineers and Geoscientists BC seeks the following penalty and costs orders:
 - a. That the Respondent's registration in Engineers and Geoscientists BC be suspended for a period of two (2) months commencing on the date of the Panel's decision on penalty and costs (the "Suspension Period").
 - b. That six (6) months after the conclusion of the Suspension Period, the Respondent will undergo a practice review conducted by Engineers and Geoscientists BC, at his own expense. The precise timing and process of the practice review will be determined by the Audit and Practice Review Committee.
 - c. That the Respondent, within 30 days of the date of the Panel's decision on penalty and costs, pays Engineers and Geoscientists BC costs in the amount of \$175,000, which amount is equivalent to approximately 65% of its reasonable actual costs incurred.

6. The Respondent opposes the penalty and costs orders sought. He submits that:
 - a. the appropriate penalty in the circumstances of this case should be a formal reprimand; and
 - b. that Engineers and Geoscientists BC should only be awarded \$40,607.25, which is 15% of the actual costs of \$270,714.99 it incurred in pursuing the allegation in the Citation against him.
7. For the reasons that follows, the Panel orders that:
 - a. The Respondent's registration in Engineers and Geoscientists BC will be suspended for a period of two (2) months commencing seven (7) days after the date that this order is served by email to the Respondent's counsel (the "Suspension Period").
 - b. Six (6) months after the conclusion of the Suspension Period, the Respondent will undergo a practice review conducted by Engineers and Geoscientists BC (the "Practice Review"), at his own expense, and the precise timing and process of the Practice Review will be determined by the Audit and Practice Review Committee.
 - c. The Respondent shall, within 30 days after this order is served by email to his counsel, pay to Engineers and Geoscientists BC costs in the amount of \$108,286, which is equivalent to 40% of Engineers and Geoscientists BC's reasonable actual costs incurred in pursuing the allegations in the Citation against the Respondent.

Applicable Legislation

8. The discipline proceedings against the Respondent were initiated by the Citation that was issued pursuant to the *PGA*, while the conduct at issue in the Citation occurred while the Engineers and Geoscientists Act, R.S.B.C. 1996, C116 (the "*EGA*") was still in force.
9. On February 5, 2021, the *PGA* came into effect and repealed the *EGA*.

10. Engineers and Geoscientists BC submits that the penalty should be determined through application of the EGA, and costs should be assessed pursuant to the PGA. Engineers and Geoscientists BC further notes that it only seeks the reasonable investigative and legal costs that it would have been entitled to under the EGA.
11. The *Interpretation Act*, R.S.B.C. 1996 c. 238 provides:

Repeal

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

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

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

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

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

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

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

Repeal and replacement

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

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

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

(c) the procedure established by the new enactment must be followed as far as it can be adapted in the recovery or enforcement of penalties and forfeitures incurred under the former enactment, in the enforcement of rights existing or accruing under the former enactment, and in a proceeding relating to matters that happened before the repeal,

(d) when a penalty, forfeiture or punishment is reduced or mitigated by the

new enactment, the penalty, forfeiture or punishment if imposed or adjusted after the repeal must be reduced or mitigated accordingly, and

- (e) all regulations made under the former enactment remain in force and are deemed to have been made under the new enactment, insofar as they are not inconsistent with the new enactment, until they are repealed or others are made in their place.

[...]

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

Transition — powers and duties in progress

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

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

- (b) could have exercised with respect to a discipline matter referred

to in Division 3 [Audits, Practice Reviews and Discipline] of Part 6 [Protection of the Public Interest With Respect to Professional Governance and Conduct] that is alleged to have existed or occurred, but was not investigated, before the reference date.

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

15. Other panels of the Discipline Committee of Engineers and Geoscientists BC have recently considered these provisions in the context of the assessment of costs in two cases: *Re Peter Schober, P.Eng.* (April 7, 2021) and *Re Hans Heringa, P.Eng.* (May 19, 2022) [*Re Heringa*"]. As noted, like in *Re Heringa*, in this case Engineers and Geoscientists BC is also only seeking costs in conformity with what would have been available to it under the *EGA*.

16. In *Re Heringa*, a panel of the Discipline Committee held:

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*.

17. A panel of the Discipline Committee in *Alireza (Danyal) Bahrami, PEng.* (September 29, 2022) ("*Re Bahrami*") agreed with and adopted the above

reasoning in *Re Heringa*. This Panel similarly agrees with and adopts that reasoning.

Framework for the Assessment of Penalty

18. The following penalties were available under the EGA:

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

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

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

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

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

19. The following factors for consideration in determining an appropriate penalty in a professional discipline proceeding were outlined in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17:

a. the nature and gravity of the conduct proven;

b. the age and experience of the respondent;

c. the previous character of the respondent, including details of prior discipline;

d. the impact upon the victim;

e. the advantage gained, or to be gained, by the respondent;

f. the number of times the offending conduct occurred;

g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstance;

h. the possibility of remediating or rehabilitating the respondent;

i. the impact on the respondent of criminal or other sanctions or penalties;

- j. the impact of the proposed penalty on the respondent;
- k. the need for specific and general deterrence;
- l. the need to ensure the public's confidence in the integrity of the profession;
and
- m. the range of penalties imposed in similar cases.

[the “Ogilvie factors”]

20. In *Law Society of BC v. Dent*, 2016 LSBC 05 a discipline panel of the Law Society of British Columbia held that it is not necessary to consider each *Ogilvie* factor in every case and that the factors can be consolidated. In *Dent*, the following consolidated list of factors was suggested:

- a. The nature, gravity and consequences of the conduct;
- b. The character and professional conduct record of the respondent;
- c. Acknowledgement of the misconduct and remedial action; and
- d. The public confidence in the legal profession including public confidence in the disciplinary process.

(the “Ogilvie / Dent Factors”)

21. The Ogilvie / Dent Factors have been adopted in many decisions of the Engineers and Geoscientists BC’s Discipline Committee, including the *Re Schober* and *Re Heringa* decisions noted above, and *Re James WE. Halarewicz, P.Eng.* (January 18, 2019) (“*Re Halarewicz*”), *Re Bruce Joseph Gernon, P.Eng.* (December 5, 2023) (“*Re Gernon*”) at para. 15 and *Re Bahrami* at paras. 17-18.
22. The parties agree, and the Panel finds, that applying the Ogilvie / Dent Factors to the facts of this case is also the appropriate approach in determining an appropriate penalty.
23. Accordingly, the Panel will next consider the Ogilvie/Dent Factors in turn as they pertain to the facts of this matter.

Nature, Gravity and Consequences of the Conduct

Engineers and Geoscientists BC

24. Engineers and Geoscientists BC submits that the nature and gravity of the Respondent's proven conduct is at the serious end of the spectrum and militates in favour of imposing a significant penalty against him: the Panel found that the Respondent signed and sealed an inspection report, dated August 8, 2017, recommending the Anchor Stools for service when in fact they were not serviceable and when the weld repairs had not been satisfactorily completed (Conduct Decision at paragraph 238). It says the Panel also held at paragraph 260 of the Conduct Decision, that it would have been clear to the Respondent that there were potentially significant shortcomings with the weld quality on the Anchor Stools and their suitability for service. Nevertheless, he neither inspected the Anchor Stools himself, nor personally ensured that the weld repairs were completed before certifying them as serviceable when in fact they were not.
25. Engineers and Geoscientists BC further submits that while failure of the Anchor Stools was not alleged in this proceeding, the critically important role of the Anchor Stools and the potentially catastrophic consequences of a failure make it plain and obvious that the Respondent's conduct created a significant risk to public safety. It says the gravity of his conduct remains significant even though the risk created may not have materialized (*Re Heringa* at paragraph 29). In this regard, Engineers and Geoscientists BC points to the fact that Dr. Smith's uncontested evidence about the potentially catastrophic consequences in event of a failure aligns with the Panel's finding the Respondent failed to hold public safety paramount, as required by Principle 1 of the Code of Ethics, and that his conduct represented a marked departure from the standard to be expected of a competent professional engineer.
26. For these reasons, Engineers and Geoscientists BC submits that the nature, gravity and potential consequences of the Respondent's conduct militates strongly in favour of a significant penalty.

Response

27. The Respondent submits that he did not execute the inspection report accepting the Anchor Stools with prior knowledge that they were not in fact serviceable. He says he relied on two certified inspectors, Mr. Ryan Tinkley and Mr. Paul Walchuk, to perform visual and magnetic analysis of the welds prior to providing his acceptance of the Anchor Stools.
28. The Respondent says the Engineer, in the practice of inspection and accepting the Anchor Stools or other components in the crane for service, rely on certified inspectors for making the determination whether the welds are compliant with appropriate standards. The Respondent argues that this practice is acceptable because the Engineer accepting such components for service are not required to be certified inspectors to the level of W59 themselves. He says Mr. Ryan Stewart had hired two such inspectors to conduct inspection only, and Mr. Smith himself is not a certified inspector while he does approve welded components for service, thereby relying on other inspectors to conduct the necessary inspections.
29. The Respondent submits that both Mr. Tinkley and Mr. Walchuk are certified inspectors with the appropriate training, skill and knowledge, who have decades of experience between them. The Respondent further submits that when he relied on Mr. Tinkley and Mr. Walchuk, he followed standard practice in the field. Further, he argues that the Anchor Stools were inspected regularly over the next two years of their service, and no defect was detected at any of those inspections. He also submits that after the Anchor Stools had completed their service, the crane on top of the Anchor Stools was dismantled and moved. The Anchor Stools were again inspected and found to contain no defect.
30. The Respondent also argues that the Panel must consider the nature of the conduct. He says the nature of the conduct here is not that he without any inspection whatsoever accepted the Anchor Stools for service. He accepted the Anchor Stools for service only after both Mr. Tinkley and Mr. Walchuk inspected them and reported to him that the welds were sufficient.

31. The Respondent submits the Panel found that he should have personally inspected the Anchor Stools in the circumstances. He says rather than construing the facts with the knowledge of hindsight, the Panel must consider the information available to him at the time that he accepted the Anchor Stools for service. He submits that by the time he accepted them for service, he had no contact with Mr. Ryan Stewart. When he became aware that Mr. Ryan Stewart was involved with these Anchor Stools previously, he ensured that he reviewed the relevant documents again.
32. The Respondent submits that as far as he was concerned:
 - a. The Anchor Stools were found to require repairs after first inspection by Mr. Tinkely.
 - b. The Anchor Stools were repaired, and Mr. Tinkley accepted that the repaired Anchor Stools were structurally sound and may require cosmetic repairs to improve appearance as confirmed by Mr. Walchuk.
 - c. Mr. Walchuk and Mr. Tinkley re-inspected the Anchor Stools after the Anchor Stools were cosmetically repaired and were eventually accepted for service.
33. The Respondent further submits that the nature of the conduct he engaged in was industry standard, at minimum, and perhaps better than industry standard in that he took advice from two experienced and skilled inspectors rather than one. Accordingly, he submits that the nature of his impugned conduct is not serious since it was still based on advice from certified inspectors.
34. The Respondent says that he also did not engage in deceptive or fraudulent behavior. He further argues that while Dr. Smith theorized about the potential consequences of the Anchor Stool failing, a catastrophic event, none of that risk materialized, and Dr. Smith's statements in this regard were general speculation without any analysis or inspections.
35. The Respondent submits that the actual consequences of his conduct were significantly minor. In this regard he argues that repeated inspections of the Anchor

Stools under service and after service showed that they were not defective and did not manifest any signs of failure whatsoever.

Reply

36. In reply, Engineers and Geoscientists BC submits that none of the Respondent's assertions act to support his position on penalty. Instead, they appear to be directed at challenging the Panel's findings in the Conduct Decision. Engineers and Geoscientists BC says that instead of addressing his misconduct and making submissions on the appropriate penalty, the Respondent has simply attempted to re-frame and challenge the Panel's ultimate determination that he engaged in unprofessional conduct when he certified the Anchor Stools as safe for use.
37. With respect to the Respondent's submission that he did not execute the inspection report accepting the Anchor Stools with prior knowledge that the Anchor Stools were not serviceable Engineers and Geoscientists BC submits that this is the very misconduct that lies at the heart of the Panel's findings: the Respondent certified the Anchor Stools as being safe for service without adequate knowledge that the Anchor Stools were, in fact, not serviceable (at paragraph 260 of the Conduct Decision).
38. Engineers and Geoscientists submits that the Respondent's assertion that his conduct was acceptable because he relied on the services of two certified inspectors, flies in the face of the Panel's finding of unprofessional conduct, which it says denotes a marked departure from the standard expected of a reasonably competent engineer. Engineers and Geoscientists BC further says that the Respondent's submission that his conduct was perhaps better than industry standard defies belief. It submits the Panel's finding of misconduct cannot be reconciled with the Respondent's submission that he met, and perhaps exceeded, the industry's standard.
39. With respect to the Respondent's submission that there were no "defects" subsequently found in the Anchor Stools, Engineers and Geoscientists BC submits that this assertion is of little consequence to the Panel's determination of an appropriate penalty: it is clear from the evidence provided during the discipline hearing that the Anchor Stools, once installed, were almost entirely embedded in concrete.

Accordingly, Engineers and Geoscientists BC submits that a post-installation inspection would have been unable to reliably determine whether there were any defects in the portions embedded in concrete. It further says the Panel's determination on the appropriate penalty should be guided by the clear finding that the Respondent certified the Anchor Stools as being serviceable when they were not, which created a risk to public safety, regardless of whether that risk materialized.

40. Engineers and Geoscientists BC says the Respondent's own evidence was that he "believed he was informed of [the fact that Mr. Stewart had not accepted the Anchor Stools] maybe - not- just before the FaceTime that I had with Paul Walchuk". Accordingly, the information available to him at the time included that the Anchor Stools had previously been rejected by another Engineer.
41. Engineers and Geoscientists BC says that the information available to him at the time is in any event irrelevant to penalty since the Respondent is simply attempting to reargue the Conduct Decision in which the Panel found at paragraph 260 that the Respondent ought to have been aware, from what he knew at the time, "that there were potentially significant shortcomings with the weld quality [of the Anchor Stools] and their suitability for service."

Findings

42. The Panel agrees with Engineers and Geoscientists BC submissions and finds that the nature and gravity of the Respondent's conduct is at the serious end of the spectrum and militates in favour of imposing a more serious penalty. While failure of the Anchor Stools was not alleged in the discipline proceeding, the Panel agrees with Engineers and Geoscientists BC that the critically important role of the Anchor Stools and the potentially catastrophic consequences of a failure make it plain and obvious that the Respondent's conduct created a significant risk to public safety. The Panel also agrees that the gravity of his conduct remains significant even though the risk created may not have materialized. As Engineers and Geoscientists points out, Dr. Smith's uncontested evidence about the potentially catastrophic consequences in event of a failure aligns with the Panel's finding in the Conduct

Decision that the Respondent failed to hold public safety paramount, as required by Principle 1 of the Code of Ethics, and that his conduct represented a marked departure from the standard to be expected of a competent professional engineer.

Character and Professional Conduct Record of the Respondent

Engineers and Geoscientists BC

43. Engineers and Geoscientists BC submits that this Ogilvie/Dent Factor takes into consideration the age, experience and disciplinary record of the Respondent. It submits that the Respondent's position and experience at the time of the impugned conduct militates in favour of a more substantial penalty. In this regard, Engineers and Geoscientists BC points out that the Respondent qualified as a professional engineer in 1987. Also, that by his own admission, he has worked solely with cranes and lift equipment since commencing his first engineering job. His evidence was that he was one of the founders of Kova Engineering which now operates across most of the country and is one of the leading crane certification companies in the Lower Mainland.
44. Engineers and Geoscientists BC says that considering the Respondent's position and experience there can be no question that he should have been aware of his professional and ethical obligations.

Response

45. The Respondent argues that he has shown exceptional knowledge of his professional and ethical obligations. He submits the impugned conduct, a failure to conduct a personal inspection of the Anchor Stools, is neither a clearly established regulation or practice directive, nor it is an industry standard. He further argues that his reliance on not one but two experienced inspectors before accepting the Anchor Stools for service is industry standard, or perhaps exceeded industry standard at the time.
46. The Respondent submits there is no question that the Conduct Decision will inform his future conduct with respect to accepting Anchor Stools for service and will be incorporated into his practice. The Respondent further submits that his character

and the fact that he has no previous disciplinary record militates in favour of a lesser penalty.

Reply

47. Engineers and Geoscientists BC agrees that the Respondent's lack of prior disciplinary record is a relevant factor in assessing an appropriate penalty but submits in this case this factor is neutral.
48. With respect to the Respondent's submissions that his misconduct was simply a failure to conduct personal inspection of the Anchor Stools and that personal inspection was not an industry standard, Engineers and Geoscientists BC's reply is twofold. First, it says the Respondent's submission misconstrues the Panel's findings at paragraph 260 of the Conduct Decision. The Panel did not conclude that personal inspection was always required, but rather found that in the circumstances of this case the Respondent should have realized that he needed to establish with more certainty whether the weld repairs were indeed completed and the Anchor Stools in fact suitable for service before he certified that they were. Second, the Respondent's assertion that he did not contradict industry standard amounts to an attack on the Conduct Decision which is premised on his failure to meet the standard expected of a reasonably competent engineer.

Findings

49. The Respondent did not adduce evidence in relation to his character for consideration in relation to this factor of the test.
50. Further, the Panel recognizes that the Respondent does not have a prior disciplinary record, which is typically a mitigating consideration. However, the Respondent's significant years of experience in his area of practice are such that he ought to have known the requisite standards to apply and his work fell far short of what was required in the particular circumstances. As the Panel found in the Conduct Decision, the evidence adduced during the discipline hearing established that the Respondent certified the Anchor Stools for service solely by relying on the description of the weld quality and assurance of their suitability for service provided

to him by Mr. Tinkley and Mr. Walchuk through means of a Facetime call on August 14, 2017 and a subsequent report. Also, on his own admission the welds on the Anchor Stools subsequently photographed by Mr. Stewart were not sufficient or suitable for service. As the Panel also held in the Conduct Decision, it would have been clear to the Respondent from the fact that the Anchor Stools had to undergo several repairs and that they also had to be inspected multiple times by several different inspectors, and rejected by one, that there were potentially significant shortcomings with the weld quality and their suitability for service. In these circumstances, the Panel found that it was incumbent on the Respondent to establish with more certainty whether the weld repairs were indeed completed and the Anchor Stools in fact suitable for service before he certified that they were. The Panel found that by failing to do so the Respondent breached Principle 3 of the Code of Ethics, in particular, the Panel found that the Respondent failed to obtain adequate knowledge on the weld repairs and suitability for service of the Anchor Stools before issuing the relevant certificate certifying that they were suitable for service.

51. 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.

Acknowledgement of the Misconduct and Remedial Action

Engineers and Geoscientists BC

52. With respect to this Ogilvie/Dent Factor, Engineers and Geoscientists BC submits that the Respondent has failed to acknowledge any of the misconduct which led to the Panel's findings that he demonstrated unprofessional conduct and breached Principles 1 and 3 of the *Code of Ethics*. Instead, he repeatedly testified that he only accepted the Anchor Stools for service after all repairs, including the weld repairs, were completed, despite not having personally inspected them.
53. Engineers and Geoscientists BC further submits that although the Respondent refused to acknowledge error or deficiency in his acceptance of the Anchor Stools, he nevertheless appears to seek to justify his acceptance of them on the

basis that he was protecting the environment, explaining that: "if he had failed to apply his engineering judgment to save 1000 lbs. of steel from [the] landfill, he would have been in dereliction of his duty to protect the environment".

54. Engineers and Geoscientists BC says that the Respondent admitted during the hearing that from what he could see as presented the way the photographs were taken, he would not have certified the photographed stools as safe for use. It argues that despite this clear admission, he refused to acknowledge the logical conclusion that, if the Anchor Stools in the photographs were those that he certified for service, then he ought not to have certified them as safe for use.
55. Engineers and Geoscientists BC submits that the Respondent has demonstrated no remorse, acknowledgement of misconduct or remedial action taken during his testimony. It says that while the absence of remorse or denial of conduct is not generally considered an aggravating factor for purposes of assessing penalty, demonstration of remorse or acknowledgement of wrongdoing can be mitigating factors weighing in favour of a lighter penalty: *Re Gernon* at para. 38. Accordingly, Engineers and Geoscientists BC says this Ogilvie/Dent Factor does not assist the Respondent in mitigation of penalty.

Response

56. The Respondent argues that he was steadfast in his testimony that:
 - a. he does not know on what date the photographs were taken;
 - b. he would not accept the Anchor Stools for service, or reject them, based solely on the photographs; and
 - c. he does not know whether the photographs represent the Anchor Stools that are the subject of the Citation or another set of stools.
57. He submits that his key statement in answering Engineers and Geoscientists BC's questions during his cross examination with respect to the photographs can be summed up as: "I would not accept any of those photographs as evidence for certification".

58. The Respondent further submits that the Panel found that all the other allegations made against him were not proven. He argues that he followed a sound method and process in terms of approaching the question of accepting the Anchor Stools for service and followed the requisite rules and regulations which were in force at that time. He further argues that Engineers and Geoscientists BC alleged he did not follow the required process and requisite regulations in accepting the Anchor Stools for service. He says he strenuously denied those allegations during the discipline hearing and the Panel agreed with him regarding the process and regulations as it stood at that time.
59. The Respondent also argues that his impugned conduct, the failure to conduct a personal inspection of the Anchor Stools, is not a clearly established regulation or practice directive, nor it is an industry standard. He says his reliance on not one, but two experienced inspectors prior to accepting the Anchor Stools for service is industry standard, or perhaps exceeds industry standard at that time.
60. He submits there is no question that the Panel's Conduct Decision will inform his future conduct with respect to accepting Anchor Stools for service and will be incorporated into his practice.

Reply

61. With respect to the Respondent's submission that the Panel agreed that he followed the required process in certifying the Anchor Stools, Engineers and Geoscientists BC submits that the Panel's determination of misconduct is, *ipso facto*, a finding that he did not follow the appropriate process when he certified the Anchor Stools as being suitable for service.
62. Engineers and Geoscientists BC says that none of the Respondent's submissions in his Response can reasonably be read as an acknowledgement of misconduct nor an indication that he has taken remedial action considering the Panel's findings in the Conduct Decision. In his Response the Respondent challenges the validity and application of the Anchor Stools' photographs on which the Panel relied, he emphasizes his fervent denial of wrongdoing, and he stresses his use of two experienced inspectors prior to accepting Anchor Stools for service, which he says

meets or exceeds the industry standard. Engineers and Geoscientists BC says that far from reflecting an acknowledgement of misconduct (or an embracing of remedial action), these submissions simply seek to justify and or deny any wrongdoing.

63. Engineers and Geoscientists BC argues that such justification and denial are similarly reflected in the Respondent's description of his conduct as "a minor lapse in judgement" (paragraph 46), a "one off engineering judgment" (paragraph 48), or a discrete omission or careless act (paragraph 49). Engineers and Geoscientists BC acknowledges that registrants are entitled to defend themselves against allegations, including by making submissions at the penalty stage; however, it says the Respondent's continued refusal to accept or acknowledge that he engaged in any form of wrongdoing speaks to the need for specific deterrence in the circumstances of this case.

Findings

64. There was no evidence presented to the Panel of any remediation steps or work undertaken by the Respondent.
65. As has been held by other panels, the absence of an admission or demonstrated remorse is not an aggravating factor but is the absence of a mitigating factor.
66. The Panel finds that the Respondent did not acknowledge his misconduct and there is no evidence of him having undertaken any remedial action. Accordingly, the Panel finds for the purposes of this Ogilvy / Dent Factor there is an absence of mitigating circumstances.

Public Confidence in the Profession including Public Confidence in the Disciplinary Process

Engineers and Geoscientists BC

67. Engineers and Geoscientists BC submits that under this Ogilvie / Dent Factor the Panel must consider the need for general and specific deterrence as well as penalties in similar cases. It says a lack of accountability may be relevant to the need for general and specific deterrence: *Houghton v. Association of Ontario Land Surveyors*, 2020 ONSC 863 at paras 81-85.

68. Engineers and Geoscientists BC says the need for both specific and general deterrence is significant in this case.

Specific Deterrence

69. With respect to the need for specific deterrence, Engineers and Geoscientists BC says there is nothing in the Respondent's evidence that suggests a likelihood that he would conduct himself any differently in the future, absent a significant penalty providing a measure of specific deterrence. In this regard, Engineers and Geoscientists BC points to the fact that the Respondent has consistently refused to acknowledge the possibility that he ought not to have approved the Anchor Stools in the circumstances. Instead, he asserted that he used the same process here that he and his company have used for the past 30 years and that he applied his 30 years of experience, training, and knowledge to decide to accept the Anchor Stools for service in the honest belief that they were fit for service. Engineers and Geoscientists BC further submits that overall, the Respondent seemed to place little value on many of the relevant standards, an approach he justifies based on his extensive experience.
70. Engineers and Geoscientists BC further points to the fact that during his direct testimony the Respondent stated that his "job is to try to get that thing [referring to the Anchor Stools] to work", rather than to inspect for compliance with certain standards. He further testified that "W59 is really of no ... it's of limited help to me". Instead, he asserted that he "looked at the situation and based on [his] experience, 30 years of experience on welding and inspecting and engineering things exactly like this" and determined "that there was significantly no risk in repairing this structure.
71. Engineers and Geoscientists BC submits that the Respondent's evidence consistently reflected the view that his 30 years of experience was more important than the relevant Occupational Health and Safety Regulations and or applicable CSA standards. It argues that the Respondent's lack of concern for accepted inspection processes and standards gives rise to the need for a significant penalty to act as a firm specific deterrent.

General Deterrence

72. With respect to general deterrence, Engineers and Geoscientists BC submits that it has a statutory duty to protect the public, and a central purpose of a disciplinary proceeding is to protect the public and ensure public confidence in the profession. It says that it is essential that public confidence in the integrity of the engineering profession is maintained and that members such as the Respondent are held to account for failing to uphold the applicable standards and to conduct themselves professionally. Engineers and Geoscientists BC says this is even more so considering the significant number of crane accidents in recent years in British Columbia. It says that in the first half of 2024 alone, BC has already seen four crane collapse incidents (two in January at construction sites in Burnaby and Surrey respectively, one resulting in a fatality in Vancouver in February, and a further one in March in East Vancouver). These incidents have all occurred in the wake of a 2021 crane collapse in Kelowna resulting in 5 fatalities and several further incidents involving the collapse of concrete pumper trucks, which are subject to similar inspection requirements.
73. Engineers and Geoscientists BC argues that while the causes of these various failures are no doubt varied (and failure to adhere to inspection standards may not (or may) have been a contributing factor) the significant number of recent crane collapse incidents and the potentially catastrophic consequences of such a collapse make general deterrence critically important to protect the public by reducing the risk created by poorly conducted inspections and to ensure public confidence in the profession.
74. Accordingly, Engineers and Geoscientists BC says the need for general deterrence is another factor militating in favour of a significant penalty in the present case.

Similar Cases

75. Further, Engineers and Geoscientists BC submits the following cases involved similar misconduct and provide the Panel with the appropriate range of penalties to also consider in this case:

- a. *Re Edward C.C. Yip* (March 23, 2023) ("*Re Yip*"): Mr. Yip admitted to unprofessional conduct in relation to the preparation of a geotechnical inspection report and certifying written instructions for the excavation of a trench. Mr. Yip admitted that he had prepared the inspection report despite failing to physically attend and make observations of the whole of the area in which the trench could reasonable expected to have been excavated over the period for which his report's certification applied. Mr. Yip's registration in Engineers and Geoscientists BC was cancelled, and he agreed not to re-apply for registration with Engineers and Geoscientists BC at any time in the future. Further, Mr. Yip agreed to pay a fine in the amount of \$10,000 and agreed to pay \$5,000 as a contribution towards the legal and investigative costs incurred by Engineers and Geoscientists BC.
- b. *Re Lynn Johnson, P.Eng.* (July 24, 2020) ("*Re Johnson*"): Mr. Johnson admitted to demonstrating unprofessional conduct, incompetence, or negligence in relation to certain inspections of a concrete pumper truck and a related inspection report that he had signed and sealed. Among other things, Mr. Johnson admitted to signing and sealing various inspection reports when he did not conduct the inspections personally nor conduct them under his direct supervision. Mr. Johnson agreed to the suspension of his membership in Engineers and Geoscientists BC for a period of two months; to undergo a practice review at his own cost; to attend two related webinar training sessions; and to pay \$5,000 towards the investigative and legal costs that had been incurred by Engineers and Geoscientists BC.
- c. *Re Stephen Petrovich, P.Eng.* (April 6, 2020) ("*Re Petrovich*"): Mr. Petrovich admitted that he demonstrated incompetence, negligence or unprofessional conduct by failing to design screw piles to the reasonable standard expected of a professional engineer and by signing and affixing his seal to a letter stating that a detailed inspection had been completed, when he knew that neither he nor another engineer under his

supervision had conducted such an inspection. Mr. Petrovich agreed to a three-month suspension of his membership in Engineers and Geoscientists BC; to undergo a practice review at his own cost; and to pay \$2,000 towards Engineers and Geoscientists BC's legal and investigation costs

- d. *Re Merlin A. Lyseng, P.Eng.* (October 28, 1999) ("*Re Lyseng*"): Mr. Lyseng admitted to demonstrating incompetence, negligence, or unprofessional conduct by sealing drawings for two steel buildings when he had not supervised the design; and, by signing and sealing letters for those same buildings which stated that he had conducted inspections during their fabrication when he had not done so. Mr. Lyseng agreed to a three-month suspension of his membership with Engineers and Geoscientists BC, and to write and pass the Engineers and Geoscientists BC's Professional Practice Examination.
76. Engineers and Geoscientists BC argues that *Re Yip*, *Re Petrovich*, and *Re Lyseng* - which provide for penalties ranging from a two-month suspension to the cancellation of membership - are the most applicable precedents and that the Panel should be guided by them in determining the appropriate penalty.
 77. Engineers and Geoscientists BC further points out that unlike this case, *Re Yip*, *Re Petrovich*, and *Re Lyseng* were all resolved through a consent order. Accordingly, each registrant in those cases acknowledged and took responsibility for their misconduct, a factor which mitigates in favour of a lesser penalty and which sets those cases apart from this one. Engineers and Geoscientists BC further submits that the Respondent's express denial that there could be anything wrong with the inspection process that he and Kova Engineering have been using for the past 30 years necessitated that the matter proceed to a hearing instead of resolution by consent order. Engineers and Geoscientists BC further argues that although consent orders are proper precedents for the Panel to consider when examining this Ogilvie/Dent Factor, the consent orders in *Re Yip*, *Re Petrovich*, and *Re Lyseng* also reflect a more modest approach to penalty partly because they were

the result of admissions of responsibility, which is a mitigating factor where penalty is concerned.

Response

78. The Respondent submits that public confidence in the profession is well served when a penalty is proportional to the impugned conduct considering all the circumstances. He submits that an overreaction to a minor lapse in judgment by way of a harsh penalty cannot serve public confidence in the disciplinary process. He says that a breach of clearly established regulations, practice directives, or standard industry practice would warrant a harsh penalty to ensure public confidence. However, a once off engineering judgment like in this case, where he did not inspect the Anchor Stools personally, does not fall within this category of conduct that requires significant rebuke.
79. The Respondent further argues that the public can understand that there will be cases involving discrete omissions or careless acts: *Re: Bruce Joseph Gernon P. Eng.*, (December 5, 2023) at paragraph 42. He says this is such a case. He submits this was a one-off omission by him where he did not inspect the Anchor Stools personally and relied on two certified inspectors to conduct the inspection and report on the condition of the welds.
80. The Respondent also argues that his impugned conduct does not require general deterrence. He submits the fact that the Panel decided he should have personally inspected the Anchor Stools was not clearly established prior to this decision and changes the requirements for all engineers who practice in this area. He submits that a repeated dereliction of duty, or failure to comply with regulations may require general deterrence to ensure that engineers in general are aware of the consequences of failure to meet such requirements. However, in this case, where there was a once-off omission, a high level of general or specific deterrence is not required.
81. The Respondent submits that he relied on two certified inspectors to inspect the weld quality. He did not rely on any photographs. He did not know that the photographs were of the specified Anchor Stools at the time he accepted them for

service. Therefore, his consistent refusal to acknowledge that he ought not to have approved the Anchor Stools, stems from his belief that the certified inspectors would not have accepted the Anchor Stools in that state, and that when he viewed the Anchor Stools, on Facetime, they were acceptable for service.

82. The Respondent says that the Panel should not see his denial of the allegations during the hearing as warranting higher penalty. He submits public confidence will not be served by penalizing respondents who do not accept allegations by Engineers and Geoscientists BC and deciding not to enter into a consent order. He submits the Panel's determination in dismissing most of the allegations to show he was correct to defend himself against those allegations made by Engineers and Geoscientists BC. He argues that the refusal to accept allegations during the hearing and defending oneself should never be penalized. It would be contrary to maintaining public confidence in disciplinary hearings.
83. The Respondent further submits that he did not assert that his 30 years of experience is more important than the relevant Occupational Health and Safety Regulations and or applicable CSA standards as Engineers and Geoscientists BC alleges. He says he stated that he worked in accordance with the stated regulations and the Panel found that to be the case.
84. The Respondent also takes issue with Engineers and Geoscientists BC's submission that a failure to properly inspect may or may not have been a contributing factor to the unfortunate and horrible accidents involving cranes in British Columbia. He says this statement is not only profusely vague but also has no connection to this instant hearing. The Respondent submits the Panel must avoid taking into considerations events that are neither related to the hearing nor that were put into evidence during the discipline hearing. The Panel should weigh the impugned conduct in determining whether specific or general deterrence is necessary. Its decision should remain independent of current events which are not proven to be remotely connected to the present hearing. He argues that increasing potential penalties against him because there have been previous unrelated

accidents in the crane industry would not service public confidence in a stable and robust disciplinary process.

85. The Respondent submits that the cases *Re Yip*, *Re Petrovich*, *Re Johnson* and *Re Lyseng*, on which Engineers and Geoscientists BC rely, are all distinguishable from this case. He says these cases are all cases where the respondents showed significantly more blameworthy conduct than him. He argues that each of the respondents in *Re Yip*, *Re Petrovich* and *Re Lyseng* made false claims in their certifications. Each of those respondents knew that what they were certifying was clearly incorrect, false and a clear misstatement. The Respondent says that the conduct of the respondents in *Re Yip*, *Re Petrovich* and *Re Lyseng* required significant rebuke and deterrence.
86. The Respondent argues that unlike the circumstances in *Re Yip*, *Re Petrovich* and *Re Lyseng* he relied on two certified inspectors prior to certifying the Anchor Stools. He also did not state that he personally inspected the Anchor Stools in his certification. The Respondent says that his conduct is accordingly significantly less blameworthy than those of the respondents in these cases.
87. The Respondent submits that he was under the impression that he had followed all the requisite rules, regulations and practice standards. In particular, he relied on certified, skilled, experienced and trustworthy inspectors to accept the Anchor Stools for service. He says that considering his impugned conduct, he should only be given a formal reprimand as a penalty. The Respondent submits that a formal reprimand will serve as a necessary notice, and a deterrence, to the engineers in his field, including himself, to perform personal inspection and not just to rely on certified inspectors when dealing with welds that have not previously been accepted.
88. In support of his submission that he should only receive a formal reprimand, the Respondent points the Panel's attention to the following two cases:
 - a. *Re Bruce Grayson, P. Eng.*, (June 30, 2022) ("*Re Grayson*"), 2022 BCEGBC 12): In this case, Mr. Grayson agreed, among other things, to signing and sealing plans for the Sewerage System Standard Practice Manual for Ministry of Health ("SPM") when he knew that components of

the plans were not completed in accordance with the SPM. The Respondent submits that although Mr. Grayson's conduct was still more blameworthy than his, because Mr. Grayson knowingly misstated his certification, Mr. Grayson was given a formal reprimand as a penalty and undertook not to repeat the conduct.

- b. *Evans v. Association of Professional Engineers and Geoscientists of Province of British Columbia* 2002 BCSC 1029 ("Evans"): Mr. Evans was a geotechnical engineer who produced a report for the City of Courtenay stating that according to his tests and analysis, the subsoil beneath an old theater building was not up to seismic considerations resulting in the building closed for 2 years. Another geotechnical assessment by a different engineer suggested that Mr. Evans had not conducted the investigation and analysis to the extent required by current standards of practice. Mr. Evans was given a formal reprimand as penalty.

Reply

89. In reply, Engineers and Geoscientists BC submits that generally the Respondent misconstrues the case law that he both attempts to distinguish and to rely on. It notes that with respect to *Re Yip* nothing indicated that "a regulation and a certification required that [Mr. Yip] personally attend" the excavation as the Respondent submits. Further, Mr. Yip admitted that he demonstrated unprofessional conduct in the preparation of a geotechnical inspection report, "certifying written instructions for the excavation of a trench [...] despite failing to physically attend and make observations of the whole of the area in which the trench could reasonably be expected to have been excavated": paragraph 7(a) of *Re Yip*, emphasis added. Accordingly, Mr. Yip's failure was not that he failed to attend at all, but that he failed to "make observations of the whole of the area".
90. Engineers and Geoscientists BC further submits that contrary to the Respondent's submissions, there is no suggestion in *Re Yip*, *Re Lyseng* or *Re Johnson*, that the registrants there were expressly penalized for lying or dishonesty. Rather, the penalties all related to the registrants' failure to conduct inspections appropriately

and, by extension, to conduct those inspections to the standard expected of a reasonably competent engineer.

91. Engineers and Geoscientists BC says that the *Re Grayson* and *Evans* decisions on which the Respondent rely are distinguishable from this case, and the impugned conduct in both was also significantly less blameworthy than the Respondent's.
92. It says the penalty in *Re Grayson* was a "reprimand or remedial action by consent", meaning that the Resolution Subcommittee agreed that Mr. Grayson's conduct was worthy only of a reprimand. Crucially, it says the parties agreed that Mr. Grayson's conduct was only contrary to those sections of the Bylaws that required "members and licensees [to] establish and maintain documented quality management processes". This, Engineers and Geoscientists BC submits, is far less blameworthy than a finding that a registrant, such as the Respondent, has failed to hold public safety paramount. Further, Engineers and Geoscientists BC says that although Mr. Grayson agreed that he had failed to provide adequate supervision, and that he knew or ought to have known that components of the plans and specifications were not completed in accordance with the SPM, there is nothing in the consent order to suggest that Mr. Grayson certified something as serviceable and safe for use when it was, in fact, not, unlike the Respondent.
93. Similarly, Engineers and Geoscientists BC submits that the key facts in *Evans* are distinguishable from the misconduct the Respondent was determined to have committed and that it does not support the Respondent's assertion that a reprimand is an appropriate penalty in the circumstances before this Panel. It says in *Evans*, the registrant was disciplined for producing three reports asserting that "the subsoil on which [a] building stood showed no degree of competency for foundation bearing capacity" (para. 2). The methodology that Mr. Evans used to produce the reports was incomplete, and as a result - ostensibly to *protect* public safety - Mr. Evans favoured demolishing the building. The building remained closed for two years because of Mr. Evans' opinion. Ultimately, although Mr. Evans' misconduct resulted in economic losses, it did not pose a potential risk to public safety like the Respondent's actions.

Findings

94. The Panel agrees with Engineers and Geoscientists BC and finds there is a need for specific deterrence in this case. There is currently no evidence before the Panel to suggest that the Respondent would not again conduct himself in the same manner. Throughout his penalty and costs submissions he has tried to justify or validate the conduct which the Panel already found to constitute unprofessional conduct.
95. The Panel also considers that there is a need for general deterrence in this case. It is important that other registrants of the profession understand the standards expected of a professional engineer, particularly of those who engage in anchor stool safety inspections and certification.
96. The Panel finds it is also 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, especially in areas such as anchor stool safety inspections and certification which pose a potential risk to public safety.
97. Further, the Panel has carefully reviewed the case law to which it was referred by the parties. Although the Panel is not bound by these cases, they are of assistance in determining an appropriate penalty in this case. Consideration of penalties assessed in other cases of unprofessional conduct is helpful to establish a range of sanctions by which to judge the current case. The Panel notes that the penalties imposed in these cases range from a reprimand to cancellation of registration and some also included additional conditions such as a practice review.
98. As noted, the Respondent's unprofessional conduct in certifying the Anchor Stools as safe for practice when they were not, posed a risk to public safety.
99. The Panel agrees with Engineers and Geoscientists BC's submission that the facts leading to the penalties imposed in *Re Grayson and Evans*, on which the Respondent relies, are distinguishable from the facts of his case, principally because

in those cases the registrants' misconduct did not pose a risk to public safety as in this case.

100. The Panel further agrees with Engineers and Geoscientists BC's submission that the misconduct found in *Re Yip*, *Re Lyseng* and *Re Johnson* are more comparable to the unprofessional conduct found to have occurred in this case because it also, like in his case, related to the failure to conduct inspections appropriately and, by extension, to conduct those inspections to the standard expected of a reasonably competent engineer.
101. In weighing all the submissions and evidence pertaining to the Ogilvie/Dent factors, and the case law to which it was referred, the Panel considers a more significant penalty than a reprimand is warranted in this case. The Panel considers a suspension from practice, as opposed to a reprimand, to be the appropriate penalty. The Panel further considers two (2) months the appropriate length for such suspension, because a two (2) month suspension will serve to emphasize the Panel's disapproval and condemnation of the Respondent's unprofessional conduct while at the same time also being proportional to the penalty imposed in the comparable case of *Re Johnson*.
102. Additionally, the Panel agrees with Engineers and Geoscientists BC's submission that the Respondent appears not to have learnt from his past mistakes. Throughout his penalty and costs submissions he still sought to justify his conduct that the Panel already determined constituted unprofessional misconduct. There is no evidence before the Panel that the Respondent engaged in any remedial action to address his proven misconduct. In the circumstances, the Panel is satisfied that it is also reasonable and appropriate in this case to conduct a practice review of the Respondent as proposed by Engineers and Geoscientists BC and similarly imposed in *Re Johnson*.
103. In summary, the Panel finds that considering the serious nature of the Respondent's conduct, his significant experience and seniority, the risk to public safety created by his conduct and the need for specific and general deterrence, the public interest will

be best served and protected through a two-month suspension and the requirement to complete a practice review.

Costs

104. Section 81 of the PGA provides the Panel with the authority to require that a respondent pay the costs of a discipline hearing:

Costs

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

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

(2) Costs assessed under subsection (1)

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

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

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

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

105. Engineers and Geoscientists BC has enacted bylaws pursuant to the authority set out in section 81(3) of the PGA. Section 10.9 of the Bylaws govern orders and assessment of costs in relation the costs against the Respondent. Section 10.9(1) provides that:

- 10.9 (1) If an adverse determination is made against a Respondent after a discipline hearing held pursuant to section 75 of the PGA [Discipline hearings] the Discipline Hearing Panel must require, through an order in writing, that the Respondent pay EGBC's costs, which may be up to the actual costs incurred by EGBC as a result of an investigation and a discipline hearing, provided that those actual costs are within the limits set out in section 81(2)(a) of the PGA [Costs].
106. Sections 10.9(2), (3) and (4) set out the calculation of recoverable costs with respect to an investigation and a discipline hearing.
107. Section 10.9(5)(a) of the Bylaws requires the Panel to consider whether Engineers and Geoscientists BC proved all the allegations against the Respondent in the Citation.
108. Section 10.10 of the Bylaws requires that a respondent pay the full amount of any costs imposed pursuant to section 10.9 within 30 days of the date of the order for costs, unless an extension for payment of costs is obtained pursuant to section 10.10.1(1) of the Bylaws.
109. Engineers and Geoscientists BC advises that it is only seeking a percentage of its reasonable costs in conformity with what was available under the EGA.
110. Section 35(1) of the *EGA* provided that if a panel determined that a registrant had demonstrated incompetence, negligence or unprofessional conduct, or had contravened the *Code of Ethics*, the panel could direct that reasonable costs of and incidental to the investigation under section 30 and the inquiry under section 32, including reasonable fees payable to solicitors, counsel and witnesses, or any part of the costs, be paid by the registrant, and that costs could be determined by the Panel.
111. Engineers and Geoscientists BC submits that in previous cases, discipline panels have awarded reasonable costs of between 70 and 90% of the actual costs it incurred. In this regard it relies on *Re Syed, P Eng.* (February 5, 2018) where the registrant was required to pay \$32,582, representing approximately 90% of the costs; *Re Halarewicz* where the registrant was required to pay \$46,455 representing 90% of the actual costs; *Re Frank Louis Stromotich, PEng.* (August 28, 2007) where the registrant was required to pay \$41,935 representing

approximately 80% of actual costs; and *Re Ian James Foreman, PEng.* (November 23, 2015) where the registrant was required to pay \$80,000 representing approximately 70% of actual costs.

112. Engineers and Geoscientists BC acknowledges that it was not successful in proving all the charges raised against the Respondent in the Citation. However, it submits that it was successful on the most serious of the charges. It says the Respondent's failure to personally inspect the Anchor Stools before certifying them as safe for use put the public at risk of catastrophic consequences, regardless of whether that risk materialized and apart from how unlikely those consequences might have been.
113. Engineers and Geoscientists BC further argues that any order for costs must also consider the Respondent's conduct leading up to and during the hearing which lead to a longer-and far more costly process than would usually be expected. In this regard it says the Respondent's conduct has delayed and unnecessarily lengthened the course of the discipline hearing in the following ways:
 - i. by filing excessive, unnecessary, late and/or withdrawn expert evidence;
 - ii. by making late document disclosure; and
 - iii. by conducting unnecessary cross-examination.
114. With respect to the first point, Engineers and Geoscientists BC says that the Respondent delivered four expert reports on the due date of March 4, 2022. Two of the authors of those reports were employed by Kova Engineering at the time and one, Mr. Richards, was in the process of negotiating with the Respondent for the purchase of his engineering firm. On March 22, 2022, two days before a scheduled pre-hearing conference and less than two weeks before the dates set for hearing, the Respondent delivered an additional late-filed expert report from Dr. Ball. Dr. Ball's report was aimed entirely at attacking or responding to the expert report of Dr. Matthew Smith, which had been in the Respondent's possession since October 15, 2021.

115. Engineers and Geoscientists BC submits that on its own, the filing of five expert reports was both excessive and unnecessary, greatly increasing the time, complexity and cost of the discipline proceedings. It further submits that its counsel was required to prepare to cross examine all five of these experts, three of whom were ultimately abandoned by the Respondent the day before their anticipated testimony. Engineers and Geoscientists BC argues that the last-minute withdrawal of four of the Respondent's five expert witnesses rendered redundant the time its counsel spent preparing for their cross examination.
116. It also says that the late filing of Dr. Ball's expert report should be particularly significant in the Panel's assessment of costs. Dr. Ball's report in response to that of Dr. Smith was delivered to Engineers and Geoscientists BC some five months after the Respondent received Dr. Smith's report. It argues that it is still unclear why the Respondent could not produce an expert report from Dr. Ball in time, given Dr. Ball's own testimony during the hearing that he told the Respondent in the Fall of 2021 that he was prepared to provide an expert report with respect to this proceeding.
117. Engineers and Geoscientists BC also says that the report of Mr. Richards, which the Panel found was inadmissible and "not necessary", was so obviously flawed that it too should be a factor weighing in favour of increased costs. It submits that not only did the evidence of Mr. Richards duplicate that of Dr. Ball, but it was made and disclosed despite a clear conflict of interest that should have been apparent to the Respondent and his counsel.
118. Engineers and Geoscientists BC further submits that of the five expert reports the Respondent initially tendered, three were withdrawn at the very end of the hearing, one was inexplicably late filed, and another was tendered despite an incontrovertible and obvious conflict of interest. It argues that the effect of this conduct was to greatly increase the length and cost of the hearing, forced its counsel to prepare for cross examinations that ultimately were unnecessary and prejudiced its ability to respond to Dr. Ball's report. Accordingly, it says a more substantial award of costs is warranted.

119. Additionally, Engineers and Geoscientists BC submits the Respondent also repeatedly disclosed relevant documents late into the process, often only because of persistent demand or an application. For example, Engineers and Geoscientists BC says it repeatedly had to demand the complete files of the Respondent's five expert witnesses, and after all the file documents were not disclosed, also had to apply to the Panel for a disclosure order. It says it subsequently had to write to the Respondent again to demand disclosure and only after it had threatened to bring an application for an order compelling his compliance with the Panel's disclosure order, did the Respondent deliver the file of one of his experts, and advised in respect of the other expert files that disclosure was complete.

120. Engineers and Geoscientists BC further submits that the Respondent insisted on the unnecessary and unproductive cross-examination of a legal assistant of employed by its counsel, whose affidavit was tendered for the sole purpose of entering documents into reply evidence.

121. Engineers and Geoscientists BC says its actual and reasonably incurred costs in pursuing the discipline proceeding are:

Legal fees and disbursements (Moore Edgar Lyster LLP)	\$245,282.34
Hearing costs	\$25,432.65
Total	\$270,714.99

122. It submits that the Respondent's conduct outlined above resulted in unnecessary delay, necessitated multiple pre-hearing conferences, applications, responses, and replies, and substantially and gratuitously increased both the complexity and costs of the discipline proceedings. Therefore, the Panel ought to award it a higher proportion of its reasonable actual costs than might otherwise be appropriate considering Engineers and Geoscientists BC's partial success. It submits that given the length of the hearing, which spanned over 11 days, the number of pre-hearing conferences, applications, and replies, and the amount of hearing preparation in general that was necessitated by the Respondent's conduct, costs of no less than 65% of those actually and reasonably incurred by

it are appropriate in the circumstances. Accordingly, it seeks costs in the amount of \$175,000.

Response

123. The Respondent submits that Engineers and Geoscientists BC was not successful in making out most of its allegations against the Respondent. It refers the Panel to sections 10.9(1) and 10.9(5) of the Bylaws that provide:

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

...

10.9 (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].

124. The Respondent argues that Engineers and Geoscientists BC's case, including its expert witness reports, were targeted at proving allegations that the Respondent did not follow specific regulations in the process of accepting the Anchor Stools for service. It called Dr. Smith to provide an expert report and evidence. However, the Panel determined that Dr. Smith does not have the necessary expertise to opine on the application of Z248.

125. The Respondent further argues that all the expert opinions proffered in this case were tendered for the purpose of proving or disproving the allegations made in paragraphs 1 (a), 1 (b), 1 (c)iii and 1 (c)iv. The Panel determined that none of those allegations were proven. The Respondent says the Panel found him in breach of conduct which did not require expert evidence at all. The only evidence the Panel relied on to make the misconduct determinations against him was his own evidence and that of Mr. Ryan Stewart.
126. The Respondent says Mr. Stewart and his testimony required only 2 to 3 days out of the 11 hearing days. He says all other time spent on the discipline hearing and preparing written submissions was with respect to those allegations that were eventually not accepted by the Panel. The award of costs should therefore reflect the time spent during the hearing and on preparing written on the proven allegations. The Respondent submits that requiring him to pay the costs of the time and effort that Engineers and Geoscientists BC spent on the allegations on which they were unsuccessful would be highly prejudicial to him and would reward Engineers and Geoscientists BC for making unproven allegations. Accordingly, Engineers and Geoscientists BC should only be awarded \$40,607.25, which is 15% of the actual costs of \$270,714.99 it incurred in pursuing the allegation in the Citation against the Respondent.
127. Further, the Respondent disputes Engineers and Geoscientists BC's submission that he delayed and unnecessarily lengthened the course of the discipline hearing by filing excessive, unnecessary, late and/or withdrawn expert evidence, by making late document disclosure or by conducting unnecessary cross-examination.
128. The Respondent says he was served with the Citation on July 21, 2021; however, he was only able to retain counsel for the hearing after the pre-hearing conference, and his retained counsel was unavailable for the original hearing dates in December 2021. He points out that Engineers and Geoscientists BC itself was late in producing its expert report and requested an extension of time at the pre-hearing conference. The Respondent further submits that Engineers and Geoscientists BC opposed his

application to admit the late filed expert report of Dr. Ball, which application the Panel then granted. The Respondent further points out that the Panel also found Dr. Ball's expert report very useful in rendering its decisions. He says Engineers and Geoscientists BC fails to explain why the late filing of Dr. Ball's expert report should be particularly significant in the Panel's assessment of costs. He also submits that the Panel was advised that Dr. Ball left for his wintertime in Arizona, and he was unreachable for a significant period.

129. The Respondent says the Panel did not, as alleged, decide that Mr. Richards' opinion "was so obviously flawed". Neither did the Panel find the report to be duplicative of Dr. Ball's report. The Panel decided that Mr. Richards opinion was unnecessary since Dr. Ball provided all the assistance needed in determining the Citation.
130. The Respondent acknowledges that he provided three additional expert reports; however, after he had considered the evidence adduced to that day he, in the interest of having a more efficient hearing, decided not to tender those reports. He points out that it was Engineers and Geoscientists BC who then applied to the Panel to have those expert reports, and the supporting files, tendered as reply evidence by way of an affidavit. After the Panel granted the application, Engineers and Geoscientists BC also then tendered the affidavit of its counsel's assistant attaching the expert reports and supporting files. The Respondent argues that these actions by Engineers and Geoscientists BC added several months, and several hours of preparation of written submissions to the discipline proceedings, and the Panel also did not end up relying on any of the reply evidence in making its findings.
131. With respect to Engineers and Geoscientists BC's submission that he added costs to the discipline proceeding by making late document disclosure, the Respondent says it was actually Engineers and Geoscientists BC that continually demanded more and more documents just prior to the start and during the hearing. He says Engineers and Geoscientists BC had been in possession of all his experts' reports for at least 2 months but then only 5 business days before the start of the hearing decided to demand that he compile and produce the complete expert files. He

argues that while his counsel was preparing for the discipline hearing he was also required to collect and produce these documents by an arbitrary deadline imposed by Engineers and Geoscientists BC. He submits all this could have been handled prior to the hearing, had a demand been made in a timely manner.

132. The Respondent further submits that Engineers and Geoscientists BC also during the hearing demanded additional document disclosure, which was not in response to anything new that came up in the hearing. He consented to a production order and provided the documents requested; however, none of the additional documents requested by and disclosed to Engineers and Geoscientists BC were useful to the Panel in reaching its determinations.
133. Further, the Respondent submits that by tendering its reply evidence by way of an affidavit of a legal assistant, Engineers and Geoscientists BC also effectively obstructed the Respondent's right to cross-examination on that evidence, because the affiant who did not know the case, did not know procedural history of the case, did not know answers to any of the questions posed by the Respondent's counsel, and effectively did not know why she was chosen to be affiant when there were other more suitable candidates who could have better served as witnesses. He submits the Panel also did not use any of the reply evidence that Engineers and Geoscientists BC tendered to reach its decision.
134. The Respondent accordingly submits that the appropriate penalty in the circumstances of this case should be a formal reprimand, and costs of 15% of the actual cost incurred by, considering the time and effort that was spent on proving the allegations Engineers and Geoscientists BC was successful at, and the time and effort used to prove (or disprove) the allegations on which it was not.

Reply

135. In reply, Engineers and Geoscientists BC submits that the Respondent misstated its case. It says although part of its case was targeted at proving the Respondent did not follow specific regulations, the most significant issues concerned whether the Respondent had certified the Anchor Stools as being serviceable when they were not, and those allegations were proven.

136. Engineers and Geoscientists BC submits that the Respondent also misstated the Panel's findings. It says the Panel did not determine that "Dr. Smith does not have the necessary expertise to opine on the application of Z248" as the Respondent alleges. Rather, the Panel found that Dr. Smith did not "have the necessary expertise to definitively opine on or determine whether section 4 or section 5 of Z248 applies to a tower crane's anchor stool's design, manufacture and installation": Conduct Decision at para. 196.
137. In reply to the Respondent's submission that all "the expert opinions proffered in this case were tendered for the purpose of proving or disproving the allegations made in paragraphs 1(a), 1(b), 1(c)iii, and 1(c)iv", Engineers and Geoscientists BC notes that of the five expert reports he initially "proffered", only one (Dr. Ball's late tendered report) provided evidence helpful to the Panel. It says of the remaining four, one was found to be improper and the other three were abandoned by the Respondent without notice on the last two days of the two-week discipline hearing.
138. Engineers and Geoscientists BC further submits that much of the hearing time was taken up addressing issues related to and stemming from the expert reports proffered by the Respondent and that ultimately served little to no purpose. It says the "2-3 days out of the 11 days of hearing and other written submissions" emphasized by the Respondent in his response, fails to account for this time in any way.
139. Engineers and Geoscientists BC argues that considering these facts, awarding it only 15% of actual costs it incurred would unfairly penalize it for conducting an ultimately successful allegation of misconduct and effectively reward the Respondent's late delivery of expert evidence; inappropriate effort to tender evidence from another expert; and decision to withdraw reliance on three other "experts" on the penultimate day of a 10-day hearing, and after significant resources had been expended on disclosure of those experts' files and preparation for cross examination. In Engineers and Geoscientists BC's submission, such an award of costs would incentivize the inefficient, unnecessary and inappropriate use of multiple "experts" in such proceedings.

140. Engineers and Geoscientists BC says there was nothing "similar" between its request for a brief extension to deliver a single expert report from Dr. Smith, and the late filing of Dr. Ball's report by the Respondent.
141. First, Engineers and Geoscientists BC sought and received a small extension of time, of eight days, for delivery of its report. Its delivery was only "late" if measured against the initial hearing dates, which were almost immediately adjourned to accommodate the Respondent's search for new counsel. By the time this matter ultimately proceeded to a hearing, the Respondent had been in possession of Engineers and Geoscientists BC's expert report for months earlier than the disclosure timeline would have called for, if it had been set pursuant to the later hearing dates.
142. Secondly, Engineers and Geoscientists BC consulted with the Respondent's counsel, seeking advanced consent for the brief extension of time which consent was not provided on the sole basis that counsel did not know if he would be counsel for the hearing itself. The Respondent, in contrast, sought no such consent - nor did he indicate at any point before delivery of Dr. Ball's report that Engineers and Geoscientists BC could expect a fifth expert report. Engineers and Geoscientists BC submits that, importantly, the extension it received to file Dr. Smith's expert report had absolutely no impact on the length of this proceeding or on the resources required to prepare for the hearing. The late filing of Dr. Ball's report, in contrast, did.
143. Engineers and Geoscientists BC further says that it did not submit that the Panel found Mr. Richard's report to be "so obviously flawed", but that the report was, in fact, so obviously flawed that the Respondent or his counsel ought to have known that it was not appropriate to rely on it. Engineers and Geoscientists BC says it should not be penalized for the time and expense that it spent responding to and addressing that report.
144. Engineers and Geoscientists BC also argues that its actions in filing reply evidence by way of affidavit were only required due to the Respondent's decision not to tender three of his five expert reports into evidence. That decision followed the Respondent's initial and express intention to rely on those five expert reports, and it

was made well after Engineers and Geoscientists BC had closed its case and at the end of the hearing.

145. Engineers and Geoscientists BC acknowledges that it had to make repeated demands from the Respondent for document disclosure, but submits those demands were necessitated by the Respondent's failure to produce clearly relevant and disclosable documents in accordance with basic principles of disclosure. It says it was incumbent on the Respondent to disclose his complete file during the investigation, and then all potentially relevant documents in advance of the hearing. Both of those collections of documents ultimately proved to be incomplete, and Engineers and Geoscientists BC was forced to make multiple requests to ensure that the Respondent met his disclosure obligations, including during the hearing.
146. Engineers and Geoscientists BC submits that document disclosure is not measured retroactively by whether a decisionmaker refers to those documents in its decision, nor is it measured by whether an opposing party specifically requests those documents; rather, the obligation to disclose relevant or potentially relevant documents lies on the party who is in possession and control of them. Accordingly, the Respondent's conduct, and his failure to disclose potentially relevant documents in accordance with basic and foundational principles of procedure, should not lie at the feet of Engineers and Geoscientists BC in the form of a reduced award of costs.
147. Engineers and Geoscientists BC further submits that the plain and obvious purpose of its counsel's legal assistant's affidavit was simply to put documents into evidence before the Panel. It says it had no obligation to produce an affiant who might "know the case", "know the procedural history of the case", or "know answers to any of the questions posed by the Respondent's counsel". Further, the Respondent's submission that its counsel's legal assistant was "obstructive" during testimony is inflammatory and entirely without merit.

Findings

148. The Panel is not persuaded that the Respondent delayed or unnecessarily lengthened the discipline hearing by filing excessive, unnecessary, late - and/or withdrawing expert evidence, or by conducting unnecessary cross-examination.

The Respondent explained the reasons for not being able to provide Dr. Ball's report earlier during his preliminary motion, and the Panel accepted those reasons in admitting the report into evidence. The report was helpful to the Panel in deciding the Citation allegations. The Respondent also explained the reason for not calling the additional experts during the hearing was primarily a litigation strategy decision. The Panel accepts that a respondent in a professional discipline proceeding is entitled to make strategic decisions, even last-minute decisions, about what evidence they wish to tender to best defend themselves against allegations of professional misconduct. The Panel does not find the Respondent's decisions to tender multiple expert reports and then not to call some of his experts unreasonable or deserving of increased cost implications.

149. The Panel is also not persuaded that the Respondent conducted an unnecessary cross-examination of Engineers and Geoscientists BC's affiant. The Panel's order permitting reply evidence to be filed by affidavit also permitted cross-examination of the affidavit's affiant. The Panel is not willing to impose increased costs on the Respondent simply for availing himself of that opportunity.
150. The Panel however agrees with Engineers and Geoscientists BC that it was under no obligation to tender its reply evidence, which primarily consisted of the Respondent's experts' files, through an affiant who knew the case and its procedural history or that knew answers to any of the questions posed by the Respondent's counsel. The Panel accordingly does not accept the Respondent's argument that costs awarded should be reduced due to this.
151. The Panel accepts that the actual costs incurred by Engineers and Geoscientists BC to conduct the discipline proceeding is the amount of \$270,714.99.
152. However, the Panel has decided that awarding 65% of \$270,714.99 would be an inordinately high award on the facts of this case, in part, because:
 - a. Engineers and Geoscientists BC did not prove all the allegations against the Respondent: it failed to prove more than half of the allegations set out in the Citation; and

b. the expert evidence tendered by Engineers and Geoscientists BC was of limited assistance to the Panel in deciding the allegations. While the Panel recognised that Dr. Smith is an expert in welding and welding procedure, he is not an expert with respect to the inspection of welding on tower cranes. As the panel found, although he could provide his expertise on welding in general, and his opinion on CWB 47.1 and W59, he does not have special expertise regarding what sections of Z248 apply to the tower crane stool foundation assembly, which were in issue in this proceeding.

153. The Panel appreciates that there were cost implications for the Respondent associated with defending the unproven allegations, and to obtain and tender expert evidence to do so and to respond to Dr. Smith's evidence. Accordingly, the Panel considers that a reduction of the costs awarded is warranted on these grounds.

154. The Panel is however not persuaded that the costs should be reduced to 15% of the actual costs incurred, as the Respondent proposes. Engineers and Geoscientists BC was successful on the most serious allegations in the Citation; that is that the Respondent signed and sealed an inspection report dated August 8, 2017, recommending the Anchor Stools for service when they were not serviceable, and when the weld repairs had not been completed. Further, the Panel agrees with Engineers and Geoscientists BC that the Respondent's failure to disclose in a timely manner and in accordance with basic and foundational principles of procedure, his entire file and potentially relevant documents during the investigation and hearing processes, increased the costs and should not benefit him.

155. The Panel finds that the comparable case of *Re Bahrami* provides it with guidance on the most appropriate award of costs to make in this case. In *Re Bahrami* a discipline panel of Engineers and Geoscientists BC found that the respondent engineer had demonstrated unprofessional conduct with respect to the design of a fire suppression system at a dental office. The panel also found that he failed to provide the Subcommittee of the Investigation Committee with a copy of his complete file for the project as requested and breached section 30(4)(a) of the EGA.

156. Like in this case, in *Re Bahrami*, all the allegations in the citation were also not proven. The discipline panel reduced the hearing costs claimed by Engineers and Geoscientists BC to approximately 27% of the actual costs that it incurred, amongst other things, because the panel found that those cases in which higher percentages of the total incurred costs were awarded:

- a. were cases in which all the allegations in the citation were proven; and
- b. they were also more serious matters, that involved lengthier hearings.

157. In his case, the Respondent's unprofessional conduct was more serious than that of Mr. Bahrami. In this case, the Respondent was the engineer who signed and sealed the certificate certifying the Anchor Stools were serviceable when they were not. In *Re Bahrami* it was not Mr. Bahrami who signed and sealed the design drawings at issue in that case. It was a more senior engineer with whom he was working who did that. The discipline panel held that the conduct of the senior engineer was more serious than that of Mr. *Bahrami*. Further, the discipline hearing in this case was also much lengthier than the hearing in *Re Bahrami*.

158. Based on these factors, the Panel finds that it is appropriate that the costs awarded in this case should be somewhat higher than the reduced cost awarded in *Re Bahrami*. The Panel considers the appropriate award of costs to be \$108,286, which is equivalent to 40% of the reasonable actual costs incurred by Engineers and Geoscientists BC in pursuing the allegations in the Citation against the Respondent.

Order

159. For the above reasons, the Panel orders that:

- a. The Respondent's registration in Engineers and Geoscientists BC will be suspended for a period of two (2) months commencing seven (7) days after the date that this order is served by email to the Respondent's counsel (the "Suspension Period").
- b. Six (6) months after the conclusion of the Suspension Period, the Respondent will undergo a practice review conducted by Engineers and Geoscientists BC (the "Practice Review"), at his own expense, and the

precise timing and process of the Practice Review will be determined by the Audit and Practice Review Committee.

- c. The Respondent shall, within 30 days after this order is served by email to his counsel, pay to Engineers and Geoscientists BC costs in the amount of \$108,286, which is equivalent to 40% of Engineers and Geoscientists BC's reasonable actual costs incurred in pursuing the allegations in the Citation against the Respondent.

Dated: November 7, 2024

Frank Denton, P. Eng., Chair

<original signed by>

Pierre Gallant, Lay Committee Member

<original signed by>