

ENGINEERS GEOSCIENTISTS MANITOBA

IN THE MATTER OF: *The Engineers and Geoscientific Professions Act, C.C.S.M. c. E120*

AND IN THE MATTER OF: Mohamed I. Matar, P. Eng., a member of the Association of Professional Engineers and Geoscientists of the Province of Manitoba

NOTICE OF DECISION AND REASONS (PENALTY)

ENGINEERS GEOSCIENTISTS MANITOBA

870 Pembina Hwy
Winnipeg, Manitoba
R3M 2M7

Phone No. (204) 474-2736
Fax No. (204) 474-5960

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Panel of the Discipline Committee:

Jerald Peters, MAA, Chair
Karen Mathers, P.Geo. FGC
Robert O'Toole, P.Eng. FEC

IN THE MATTER OF: Mohamed I. Matar, P. Eng., a member of the Association of Professional Engineers and Geoscientists of the Province of Manitoba

AND IN THE MATTER OF: *The Engineering and Geoscientific Professions Act*

Member, Dr. M. I. Matar, P. Eng., appearing on his own behalf

Legal Counsel for the Investigation Committee:

Brent C. Ross
Robert J. E. Prokopanko

Legal Counsel for This Panel of the Discipline Committee:

Kathleen McCandless

Hearing Date: September 27, 2023

REASONS FOR DECISION (PENALTY)

Background:

On June 8, 2023, this panel found that Dr. Mohamad I. Matar, P. Eng. ("Dr. Matar") had committed professional misconduct and unskilled practice of professional engineering in relation to services he provided to Chantelle and Kevin Linklater in April and May 2020 at 18 Bowhill Lane, in

Winnipeg. This panel found that all particulars of the Charges laid against Dr. Matar had been established.

In particular, this panel found that, in the course of providing engineering services for structural renovations at 18 Bowhill Lane, Dr. Matar displayed a lack of knowledge of, or lack of skill or judgment, in the practice of professional engineering in violation of s. 46(1)(d) and (e) of *The Engineering and Geoscientific Professions Act*, C.C.S.M. c. E120 (the "Act") and violated Canons 2 and 5 of EGM's *Code of Ethics* (adopted October 18, 2018), as follows:

1. On or about May 19, 2020, Dr. Matar sealed a plan for structural renovations to the residence at 18 Bowhill Lane in Winnipeg (the "Plan").
2. The Plan provided for the extension and reframing of the house floor to replace a secondary set of stairs to the basement, and framing to create an access door (the "Door") between the reframed house floor and garage.
3. Given the relative differences in elevation between the house floor and garage, the Door could not be functionally created as contemplated by the Plan, either at all or not without significant additional structural work within the Garage (the "Additional Work");
4. In the course of providing structural engineering services and developing the Plan, Dr. Matar:
 - i. failed to field verify the site conditions before sealing the Plan, including elevation differences between the main level, garage level and underside of the garage roof structure;

- ii. provided a Plan with an insufficient level of detail that failed to include the relevant considerations, including as it relates to elevations, such that the Plan was not feasible and could not be effectively carried out to meet the requests of the client;
- iii. failed to identify any limitations associated with the work requested by the client and the Additional Work required to overcome the limitations, prior to proposing fees for the work; and
- iv. failed to accept responsibility for issuing a Plan that would not support a functional design and failed to provide a feasible solution to rectify the problems with the Plan.

This hearing, with respect to the penalty to be assessed against Dr. Matar, was held on September 27, 2023.

On September 13, 2023, the IC filed with this panel the Affidavit of Service of Anne Snyder, affirmed Aug 23, 2023. Ms. Snyder is a legal assistant with the law firm retained by the IC. Ms. Snyder's affidavit states that:

- On July 5, 2023, Ms. Snyder sent a letter to Dr. Matar by registered mail, enclosing this Panel's Reasons for Decision, and providing him with available dates to schedule a hearing on penalty.
- On July 24, 2023, Ms. Snyder sent a letter to Dr. Matar, stating that she had not received a reply to the letter of July 5, 2023, or to an email dated July 5, 2023, or voicemails left on July 4, 7, or 17, 2023, and serving a Notice of Hearing for September 27, 2023.

The IC also filed the Affidavit of Service of Riley Creighton, affirmed August 9, 2023, which stated that after four unsuccessful attempts to personally serve Dr. Matar with a copy of Ms. Snyder's letter of July 24, 2023 enclosing the Reasons for Decision and Notice of Hearing, he served Dr. Matar with the letter and Notice of Hearing by leaving in the mailbox at his address of record.

On September 12, 2023, the IC filed the Affidavit of Ian Wiebe, affirmed September 6, 2023 with this panel. Mr. Wiebe is the Manager of Finance and IT with EGM. The Wiebe Affidavit states that, as at August 31, 2023, EGM had expended \$109,361.00 in costs in respect of the disciplinary matter involving Dr. Matar. Mr. Wiebe's affidavit appended a spreadsheet generated from the EGM's accounting system, setting out the costs on a month-by-month basis, setting out the following expenses incurred by EGM:

- Fees paid for court reporter services in the amount of \$3,799.00;
- Fees paid to Pitblado LLP, counsel for this panel in the amount of \$15,551.00;
- Fees paid to MLT Aikins LLP, counsel for the IC in the amount of \$71,129.00; and
- Fees paid to the IC engineering expert in the amount of \$18,880.00.

Positions of the Parties:

IC

The IC submits that the following is an appropriate penalty:

- a) Dr. Matar be reprimanded;
- b) Dr. Matar's licence to practice professional engineering be suspended for a period of 30 days, or such other period as this panel deems fit;

- c) Dr. Matar repay the Linklaters the sum of \$700.00, representing the money paid to him by the Linklaters, within 30 days;
- d) Dr. Matar's name, the circumstances relevant to this panel's findings of professional misconduct and the imposed penalty be published in accordance with the EGM's policies regarding publication; and
- e) Dr. Matar make a contribution to the EGM's costs in the amount of \$46,905.00, payable within 90 days.

The IC set out the relevant legal principles with respect to penalty, and, referring to J. Casey, *Regulation of Professions in Canada* (Toronto: Thomson Reuters, 2023), submitted that the primary purpose of the legislation governing professionals is the protection of the public. The fundamental purpose of sentencing for professional misconduct is to ensure that that the public is protected from acts of professional misconduct.

The IC also set out a number of factors that are considered in determining how the public might best be protected:

- a) Specific deterrence of the member from engaging in further misconduct;
- b) General deterrence of other members of the profession;
- c) Rehabilitation of the offender;
- d) Punishment of the offender;
- e) Isolation of the offender;
- f) The denunciation by society of the conduct;

- g) The need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members; and
- h) Ensuring that the penalty imposed is not disparate with penalties imposed in other cases.¹

The IC also pointed out that section 47(1) of the Act gives this panel a wide range of possible orders where it has found that an investigated person has committed professional misconduct or their conduct constitutes unskilled practice of professional engineering. Those orders include a reprimand, suspension of the member's certificate of registration, and requiring the member to repay money.

Further, section 48(1) gives this panel the authority to order the member to pay all or part of the EGM's costs, and section 50 allows for publication after expiry of the appeal period.

The IC argued that a 30-day suspension addresses Dr. Matar's unwillingness to accept responsibility for his actions, and therefore is focused on his behaviour rather than his competence to practice engineering. The evidence established that Dr. Matar essentially tried to blame the Linklaters for the problem, and accused them of deliberately withholding information to try to get work for free, which was not established by the evidence. A suspension would meet the goals of specific and general deterrence, punishment, and to maintain the public confidence. It would send a strong message to the profession and the public that EGM does not take this conduct lightly. The IC referred to discipline decisions from Professional Engineers Ontario in which the member was convicted on charges related to the deficient provision of engineering services including site visits, reports, and drawings, and in which suspensions formed part of the penalty imposed by the discipline committee.²

¹ Casey, James T., *Regulation of Professions in Canada*, (Toronto: Thomson Reuters, 2023) at 14.3.

² *Re: Alexander Colas, P. Eng.* (PEO Decision, December 10, 2018); *Re: Henry Jansen, P. Eng.* (PEO Decision, September 20, 2017).

With respect to return of the \$700.00 paid to the Linklaters, this is contemplated by section 47(1)(i) of the Act. The IC submitted that the Linklaters did not receive the benefit of the bargain they made with Dr. Matar, and it would be unjust in the circumstances to allow him to retain that money.

The IC also submitted that there would be no reason for this panel to depart from the standard practice of publication, and that the public and other EGM members should be made aware that Dr. Matar's actions are not taken lightly.

Lastly, with respect to costs, the IC explained that the \$46,905.00 it has asked Dr. Matar be required to pay would represent 50% of the EGM's costs as set out in the Wiebe affidavit, excluding the fees paid to Pitblado LLP. In considering the costs to be paid by Dr. Matar, the IC pointed out the following:

- a) The hearing of this matter, excluding submission on penalty, was three days;
- b) The IC called three witnesses, one of whom was an expert at a significant cost to EGM;
- c) Dr. Matar also called three witnesses, none of whom provided relevant evidence;
- d) The IC was entirely successful in its prosecution of the Charge;
- e) Dr. Matar made unsubstantiated allegations that Ms. Linklater had deceived him in order to have work done for free;
- f) It would be unfair for the EGM membership to bear all of the costs in these circumstances;
- g) Although the IC would be entitled to seek payment for Pitblado LLP's costs, it has not done so; and
- h) The amount requested is not so large as to be punitive.

The IC also noted that, in a recent decision of a panel of the Appeal Committee of EGM,³ the panel ordered the member to pay \$32,500.00, equivalent to approximately half of the EGM's costs of the appeal hearing. In its reasons, the panel considered a recent decision from the Alberta Court of Appeal, *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336 ("*Jinnah*"), in which the court held that there should be a presumption of no costs being payable in professional discipline matters except in certain limited circumstances. The panel declined to follow *Jinnah* and followed recent decisions from the Manitoba Court of Appeal. The IC submitted that this panel should follow the reasoning of the EGM appeal panel and order Dr. Matar to pay costs of \$46,905.00.

Dr. Matar

Dr. Matar opposed the position of the IC on penalty. He largely reiterated submissions he had made at the substantive hearing, pointing out that he has many satisfied clients, and disputing many of the findings made by this panel. He also argued that EGM does not appreciate the differences between a structural engineer or architect and that it is incorrect to say that he had done a deficient inspection.

Dr. Matar disagreed that he had shown indifference to the Linklaters. He also argued that a reprimand was not appropriate because it had not been established that he had done anything wrong. He explained that the reason that he called witnesses at the hearing was to explain how he has conducted himself on other projects, which was necessary because he had done the work for the Linklaters on his own.

Dr. Matar also opposed publication of the circumstances relevant to this panel's findings of professional misconduct and the imposed penalty.

³ *Re: Victor Jakob Thielmann* (Appeal Decision June 6, 2023).

Overall, he argued that the penalty requested is not in the public interest.

Decision:

At the outset, we are satisfied that Dr. Matar was given sufficient opportunity by IC to set a date for this hearing by agreement, to which he did not respond, and he was properly served with the Notice of Hearing by IC, in accordance with EGM By-Law 19.1.4, which provides for the deemed receipt of documents. We also note that Dr. Matar did not raise any issues regarding notice before this panel.

Section 47(1) of the Act grants this panel the jurisdiction to make any one or more of the following orders, where we have found (as here) that the conduct of an investigated person constitutes unskilled practice of professional engineering or professional misconduct:

- (a) reprimand the investigated person;
- (b) suspend the certificate of registration, certificate of authorization, temporary licence, specified scope of practice licence or enrolment as an engineering intern or geoscience intern of the investigated person for a stated period;
- (c) suspend the certificate of registration, certificate of authorization, temporary licence, specified scope of practice licence or enrolment as an engineering intern or geoscience intern of an investigated person until
 - (i) the investigated person has completed a specified course of studies or obtained supervised practical experience, or
 - (ii) the discipline committee is satisfied as to the competence of the investigated person to practice professional engineering or professional geoscience;
- (d) accept in place of a suspension the investigated person's undertaking to limit his, her or its practice;
- (e) impose conditions on the investigated person's entitlement to engage in the practice of professional engineering or professional geoscience, including the conditions that he, she, or it
 - (i) practice under supervision,
 - (ii) not engage in sole practice,

- (iii) not function as a holder of a certificate of authorization for a specified period,
- (iv) permit periodic inspections by a person authorized by the discipline committee to carry out inspections,
- (v) permit periodic audits of records, or
- (vi) report to the discipline committee or the council on specific matters;
- (f) direct the investigated person to pass a particular course of study or satisfy the discipline committee or the council as to the person's competence;
- (g) direct the investigated person to satisfy the discipline committee that a disability or addiction can be or has been overcome, and suspend the certificate of registration, certificate of authorization, temporary licence, specified scope of practice licence or enrolment as an engineering intern or geoscience intern of the investigated person until the discipline committee is so satisfied;
- (h) require the investigated person to take counselling that in the opinion of the panel is appropriate;
- (i) direct the investigated person to waive, reduce or repay money paid to the investigated person that, in the opinion of the panel was unjustified for any reason;
- (j) cancel the certificate of registration, certificate of authorization, temporary licence, specified scope of practice licence or enrolment as an engineering intern or geoscience intern of the investigated person.

After review and careful consideration of the outcome of the hearing in relation to his misconduct and unskilled practice of professional engineering related to services he provided to Chantelle and Kevin Linklater in April and May 2020 at 18 Bowhill Lane in Winnipeg, we impose the following penalty:

1. Dr. Matar be reprimanded.
2. Dr. Matar reimburse the Linklaters \$700.00, the full amount of the fee he charged for his services, within no later than 30 days of the issuance of this Decision.
3. Dr. Matar's licence to practice professional engineering shall be suspended for a period of 30 days.

4. Dr. Matar's name and circumstances relevant to this panel's findings of professional misconduct and the imposed penalty shall be published in accordance with the EGM's policies regarding publication.
5. Dr. Matar shall make a contribution to EGM's costs for the investigation and hearing of this matter in the amount of \$24,401.75, equivalent to the total of: 50% of the fees paid to the court reporter service; 25% of legal fees paid to MLT Aikins LLP; and 25% of the fees paid to the IC engineering expert. Payment is to be made within no later than 6 months of the issuance of this Decision.

In deciding on the amount of the contribution to EGM's costs, the panel reviewed both the costs as submitted in the affidavit of Mr. Ian Wiebe during the hearing and the recommendations on this issue submitted by the IC. In making its determination, this panel considered the overall scope of Dr. Matar's services and the fact that the circumstances did not create a dangerous health and safety issue. The panel finds that the legal fees incurred for this prosecution were disproportionate to the breadth and scope of the issue, and therefore, Dr. Matar should not incur as significant a cost as requested by the IC.

This panel took into consideration as a mitigating factor that Dr. Matar has no previous disciplinary history, but notes that the amount of time spent by the IC communicating and following up with Dr. Matar, due to his non-responsiveness during these discipline proceedings, is an aggravating factor.

Order:

Therefore, this panel orders that, pursuant to sections 47 and 48 of *The Engineering and Geoscientific Professions Act*, C.C.S.M. c. E120:

1. Dr. Matar is hereby reprimanded.
2. Dr. Matar shall reimburse Chantelle and Kevin Linklater the amount of \$700.00 no later than 30 days of the date of this Order made by the panel.
3. Dr. Matar's licence to practice professional engineering shall be suspended for a period of 30 days from the date of this Order made by the panel.
4. Dr. Matar shall make a contribution to EGM's costs for the investigation and hearing of this matter in the amount of \$24,401.75 no later than 6 months from the date of this Order made by the Panel.
5. Dr. Matar's name and circumstances relevant to this panel's findings of professional misconduct and the imposed penalty shall be published in accordance with the EGM's policies regarding publication.

Dated in Winnipeg, Manitoba this 3 day of January, 2024

Jerald Peters, MAA, Chair

Robert O'Toole, P.Eng. FEC

Karen Mathers, P.Geo. FGC