

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

ENGINEERS GEOSCIENTISTS MANITOBA

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ENGINEERS GEOSCIENTISTS MANITOBA

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 Dates: February 27, 28, and March 1, 2023

REASONS FOR DECISION

The Charge:

The Charge dated October 7, 2021, provides as follows:

TAKE NOTICE that the Investigation Committee of the Association of Professional Engineers and Geoscientists of the Province of Manitoba ("EGM") formulates the following charge pursuant to section 35(1)(b) of the *Act*.¹

Mohamed I. Matar, while registered as a professional engineer in the Province of Manitoba, displayed conduct which constitutes professional misconduct or unskilled practice in that:

In the course of providing engineering services for structural renovations at 18 Bowhill Lane, Winnipeg, MB., 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 *Act* and violated Canons 2 and 5 of EGM's *Code of Ethics* (adopted October 18, 2018).

Particulars

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:

¹ *The Engineering and Geoscientific Professions Act*, C.C.S.M. c. E120.

- 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.

The hearing for these charges was convened on January 14, 2022, at which time Dr. Matar entered a plea of not guilty. The hearing was adjourned and reconvened on February 27, 2023.

Summary of Evidence:

IC Witnesses

The IC called three witnesses at the hearing: the Complainant, Chantelle Linklater; Catharine Hucks, an Investigator with EGM; and Pablo Robalino, a structural forensic engineer practicing with 30 Forensic Engineering in Toronto.

The Complainant, Chantelle Linklater, is employed as a project manager and has no engineering background. She testified that she and her husband purchased a house at 18 Bowhill Lane in

Winnipeg (the "House") in May 2019. The House is located in the Charleswood neighbourhood and was constructed in 1969. It is a 1349 square foot, bi-level split, with a two-car garage (the "Garage"). From the exterior of the House, it appears as though the Garage is attached, but in fact there is no access to the Garage from the interior of the House. When entering the House, there is a landing, and sets of stairs leading to the lower level and the upper level.

Ms. Linklater testified that the Garage is neither finished nor insulated. There are exposed 2 x 4s on one side, and the roof trusses are exposed. The floor of the Garage is not level with main floor of the House, but is level with the ground.

At the time that Ms. Linklater and her husband purchased the House, the basement was drywalled but otherwise unfinished. They had plans to finish the basement, remove a set of interior stairs towards the rear of the House, and add a door to access the Garage from the interior of the House. Ms. Linklater and her husband hired a contractor, Craig Houle, to undertake the renovation work. Mr. Houle prepared a drawing of the lower level of the House, which was entered as an exhibit in this hearing. Ms. Linklater understood that they required an engineer's stamp for the removal of the stairs, to extend the upstairs landing, and install the interior access door to the Garage.

Ms. Linklater first contacted Dr. Matar by email on or about April 29, 2020 to request an appointment. In her email, Ms. Linklater described the issue as follows:

Stamp required for permit. We are putting a door through the exterior wall of our house to the attached garage. We have the drawing. No inspection required.

An appointment was scheduled for Dr. Matar to attend at the House on April 30, 2020. Ms. Linklater stated that she and Mr. Houle were present for the appointment. When Dr. Matar arrived, she first brought him to the lower level of the House and showed him the set of stairs that was to

be removed. Dr. Matar took some measurements. Ms. Linklater then brought Dr. Matar upstairs and showed him where she wanted the landing to be located as well as the approximate location for the access door to the Garage. She described that the wall where the door was to be installed was approximately nine feet wide.

Ms. Linklater stated that she and Dr. Matar then exited the House and stood right beside the Garage, in the backyard. Dr. Matar did not ask her anything about the Garage nor did he ask to enter the Garage, although she would have granted him access had he asked.

Ms. Linklater stated that Dr. Matar did not express any concerns to her about the installation of an access door, and did not mention any issues regarding roof trusses or the elevation differences between the House and the Garage. Dr. Matar did not mention the need for an architect at this time.

Ms. Linklater's recollection was that the site visit lasted approximately one half-hour. Later that day, she received an email from Dr. Matar's office setting out the fees for the inspection, \$200.00, and for the drawing, \$650.00. After further email correspondence, Ms. Linklater and Dr. Matar negotiated a total price for the inspection and drawings of \$700.00, including taxes. Ms. Linklater made payment of the \$200.00 inspection fee on May 8, 2020. The building permit was issued by the City of Winnipeg on the same day.

Following his inspection of the House, Dr. Matar provided Ms. Linklater with a drawing for the planned renovations, depicting a basement plan and a main floor plan. The seal on the drawings was dated May 19, 2020, and Ms. Linklater recalled receiving the drawing around that time, via email. Ms. Linklater paid the balance of \$500.00 for the drawings after receipt, and she provided them to Mr. Houle.

Sometime thereafter, Ms. Linklater learned from Mr. Houle that it was not feasible to install the access door where it had been placed on Dr. Matar's drawing, as the door would open into the trusses in the Garage. Ms. Linklater contacted Dr. Matar in or around July 2020 by telephone. Her evidence in the hearing was that she contacted him seeking a solution to the problem. She recalled Dr. Matar asking about moving the door 15 inches in one direction. Ms. Linklater inquired of Mr. Houle in that regard and learned that the trusses would still be in the way. Her recollection was that during her conversation with Dr. Matar, he did not accept responsibility, nor would he admit that he had made a mistake.

Ms. Linklater's next contact with Dr. Matar was by email on July 23, 2020. She attached a photograph of the trusses, and asked Dr. Matar to return to the House to assess the structure of the Garage and how it could be supported with the removal of the trusses and provide the appropriate drawing and stamp.

Dr. Matar replied by email on July 24, 2020 and wrote that his services were retained to re-frame the main floor and provide framing for an anticipated door to the Garage, that the location of the door was not yet determined. Dr. Matar wrote to Ms. Linklater that she should have done her due diligence and checked that the door would open without obstructions. If she wanted Dr. Matar to reinforce the Garage accounting for the roof, there would be an additional fee.

Ms. Linklater's evidence was that she expected that Dr. Matar would have provided her with a plan for a door that was feasible and functional. She said that she did not show Dr. Matar exactly where she wanted the door to be placed, just that it would be somewhere along the nine-foot wall. She did not raise any concerns with Dr. Matar about the Garage trusses because she was relying on Dr. Matar to advise her about the feasibility of installing the door.

To date, Ms. Linklater and her husband have not installed an access door to the Garage.

Ms. Linklater did not retain any other engineer after Dr. Matar.

In cross-examination by Dr. Matar, Ms. Linklater stated that she did not believe that she needed to understand Dr. Matar's drawings, and even if she taken note of the title of the drawings, which was "Reframing", she would not have understood what that meant. Ms. Linklater did confirm that in her initial email to Dr. Matar's office she wrote that they did not need to do an inspection. But, she said, she was relying on Dr. Matar to advise whether the installation of the door would be feasible.

The IC also called Ms. Catharine Hucks as a witness. Ms. Hucks has been employed an investigator for EGM since November 2018. She worked with the IC subcommittee on this file, and made a visit to the House with the IC subcommittee Chair, Mr. Vic Tanner, and the Director of Professional Standards, Mr. Michael Gregoire, on September 17, 2020. At this visit, they met with Ms. Linklater, and Mr. Tanner and Mr. Gregoire took a series of photographs of interior and exterior of the House and Garage, which photos were entered as exhibits in the hearing.

Lastly, the IC called Mr. Pablo Robalino as an expert witness. He is a professional engineer with a Bachelor of Science degree and a Master of Science degree in civil engineering. He has been practicing primarily as a structural engineer since 2006.

Mr. Robalino is currently employed with 30 Forensic Engineering in Toronto and has held that position since 2015. He estimates that he has been involved in the preparation of structural drawings more than 1,000 times and has been involved in more than 350 forensic projects as part of those 1,000 drawings. About one-third of his work has been in residential projects.

Counsel for the IC asked that Mr. Robalino be qualified as a professional engineer with a specialty in structural engineering, duly qualified to give opinion evidence on matters relating to preparation of structural engineering drawings including: the content of drawings; the conduct of site

inspections in advance of drawing preparation; and responding to drawing deficiencies after their preparation. Dr. Matar did not oppose Mr. Robalino's expertise.

Mr. Robalino prepared a report, entitled "Assessment of Engineering Work, 18 Bowhill Lane, Winnipeg, Manitoba" which was entered as an exhibit in the hearing. He was asked to provide an opinion on the standard practice of engineering design and the standard of care expected of a professional engineer for the renovation project at the House.

The three main topics that Mr. Robalino reviewed were:

- 1) The adequacy of the site visit conducted by Dr. Matar;
- 2) The adequacy of the drawings prepared by Dr. Matar; and
- 3) The adequacy of Dr. Matar's response to Ms. Linklater's concerns.

Mr. Robalino's report set out the following findings, opinions and conclusions:

- *Dr. Matar failed to field verify the site conditions properly before sealing the design and issuing for permit and construction. For instance, Dr. Matar failed to verify the differences in elevation and the relative location of structural elements and areas within the building, such as the garage roof, the new door opening and frame, and the specified dropped floor.*
- *The engineering design by Dr. Matar was the only document that specified the new access door to the attached garage, its location, and the structural elements to frame the door opening. As the design engineer and engineer of record, Dr. Matar was responsible for the content included in the sealed drawing. The insufficient level of detail in the design resulted in a design that was not feasible. For instance, the new door opening interfered with the garage roof structure, and there was no adequate access to the garage (e.g., no landing, stairs, and guardrail).*

- *The design did not comply with the 2011 MBC/2010 NBCC. Dr. Matar's design failed to identify design constraints and requirements, and it was incomplete for the level of detail required for permit and construction.*
- *Even if the design concept to add an access door to the garage was proposed by others (e.g., the owners), or if others drafted the design drawing (e.g., drafted at Dr. Matar's office), Dr. Matar assumed full responsibility for the design content by sealing the design. As the professional engineer of record, Dr. Matar should have ensured that the design was accurate, complete, and compliant.*
- *Once the discrepancy of the as-built condition and the design was reported to the design engineer and engineer of record, Dr. Matar should have addressed the matter by rectifying the error(s) in the design by providing a feasible and compliant solution.*
- *Based on Dr. Matar's design drawing and communications with the owners, Dr. Matar failed to identify and communicate all the critical design assumptions or limitations of his engineering scope of work, which directly impacted the project's feasibility. In addition to the design deliverables, Dr. Matar should have communicated all relevant assumptions and limitations to his scope of work during the planning phase, as part of his proposal, or as soon as identified.*

Mr. Robalino elaborated on these conclusions in his testimony. With respect to site visits, where there is an existing structure, renovation is constrained by that structure. Therefore, a site visit is important in order to gather all of the information that will be used as part of the design. Dr. Robalino would have expected Dr. Matar to measure different elevations in order to know the relative location of the main floor of the House to the level of the Garage, to determine the underside elevation of the roof structure, and to perform a feasibility analysis. He also would have

expected Dr. Matar to have entered the Garage and taken measurements, and if so, determined whether the door was feasible, and if not, to bring that information forward to the homeowner.

He would have expected an engineer to confirm site elevations when inspecting the House and the Garage because to execute on the construction, it needs to be safe, adequate, and building code compliant. The engineer would need to know how many steps down, up, any vertical clearances, and there are Code elements that require minimum sizes for the door. He would have expected an engineer to confirm the elevations, even if the exact location of the door was not yet finalized. The doorway as identified on Dr. Matar's drawing would have interfered with the roof trusses and would not have been feasible, regardless of where it was placed along the wall. Accordingly, the drawing provided by Dr. Matar did not provide for a feasible entrance into the Garage. He would expect that an engineer would provide a feasible design, even if not specifically asked.

In Mr. Robalino's opinion, once an engineered drawing is sealed, the engineer assumes responsibility for that deliverable. If, during construction, there is a concern, the engineer should make every effort to address those concerns. In this case, Dr. Matar did not adequately address the issue because he should have proposed a solution when faced with the information that the door as designed was not feasible.

In addition, an engineer should specify limitations in their scope of work or in the design documents. That gives the customer an opportunity to address the matter with the engineer, or to obtain another professional to complete a missing piece of the project. It is never acceptable for an engineer to provide a non-feasible design. Accordingly, Dr. Matar did not perform his duties to the standard required for an engineer in these circumstances.

Dr. Matar's Witnesses

Dr. Matar called three witnesses, each of whom provided evidence about their personal experiences working with Dr. Matar. He also testified on his own behalf.

The first witness, Keith MacPherson, was a customer of Dr. Matar's for his residence in Winnipeg. The house had structural issues. Mr. MacPherson's evidence was that Dr. Matar performed a thorough analysis, recommended that three walls be underpinned, and prepared blueprints. Mr. MacPherson's evidence was that Dr. Matar's work was "spot on" and he had no issues with the house afterwards. He also had Dr. Matar assist him with another house he moved into in the Charleswood neighbourhood of Winnipeg. In that instance, the weeping tile had collapsed before the house was built, something that was diagnosed by Dr. Matar. In Mr. MacPherson's recollection, Dr. Matar was once again accurate about what needed to be fixed and he found that Dr. Matar was a trustworthy engineer. In cross-examination, Mr. MacPherson confirmed that he was not involved in the House project in any way and had no firsthand knowledge about the work that Dr. Matar did or did not do on that project, or about the interactions between Dr. Matar and the owners of the House.

Dr. Matar also called Peter Bernert as a witness. Mr. Bernert became acquainted with Dr. Matar when Mr. Bernert worked at Versatile Agricultural. Dr. Matar worked on major projects for Versatile. He provided some examples of projects that Dr. Matar worked on and described the work as innovative and cost-effective. Mr. Bernert also described Dr. Matar as the most effective engineer they had at Versatile. Mr. Bernert acknowledged in cross-examination that he had no firsthand knowledge about the work that Dr. Matar did or did not do on the House project, or about the interactions between Dr. Matar and the owners of the House.

Dr. Matar's final witness was Sorin Pop. Mr. Pop is the principal at SPR Design Build, focusing on alterations and additions to properties. Mr. Pop's evidence was that he started working with

Dr. Matar approximately five years earlier. Dr. Matar has provided his business with details on how to remedy structural components of projects. Dr. Matar attends on-site inspections and gives an oral report afterwards, or a written report if the client requires it. In Mr. Pop's experience, he has never had an issue regarding a structural problem that he could not resolve with Dr. Matar's assistance. Mr. Pop confirmed that he had no knowledge or information about the work and services performed by Dr. Matar at the House, and no firsthand knowledge of the interactions between Dr. Matar and the owners of the House.

Dr. Matar's evidence was that he was retained by the homeowners to do inspections for renovation work. He pointed out that in Ms. Linklater's initial email, she had indicated to him that no inspection was required, and yet he still performed an inspection. He recalled that he went into the basement, the area of the House where Ms. Linklater wanted to extend the landing, took measurements, and went outside. He recalled that when he looked at the wall where the door was to be placed, he asked Ms. Linklater where she wanted it. She said that she did not know the exact location so he marked the presumed location, assumed the maximum size was 36 inches, and told Ms. Linklater if there were any changes, to let him know. He told Ms. Linklater that they would provide the engineering services for reframing.

Dr. Matar also recalled that Ms. Linklater would not pay the \$200.00 inspection fee until she received a quote for his services and negotiated with him that she had received a quote from another engineer for less. Dr. Matar stated that he had checked with the company that Ms. Linklater said she had contacted, and they had no record of providing her with a quote.

Dr. Matar recalled being contacted by Ms. Linklater approximately two months after he had provided her with the drawing, and being advised that the door placement was not working. He recalled that she sent him a photo to indicate that the trusses of the Garage roof were in the way. Dr. Matar said that his response was that there is no problem he cannot not solve, but he could

not give advice based on photographs, would need to do another site visit, and that there was a fee associated with that. He also recalled telling her that she should have had an architect, or an architectural technician do the design for the door.

Dr. Matar recalled there being a “back and forth” with Ms. Linklater until she advised that she and her husband were going to file a complaint. Dr. Matar took issue with the complaints process. He expressed that he had tried to communicate with the IC, but he had no contact with any of them, they simply assembled documents and asked him for a response.

Dr. Matar noted that he has years of experience, a Master's degree from Germany and a Ph.D. from the United States. He has experience working in Egypt, Germany, and the United States. He provided examples of work that he had done. He also stated that he performed his services in respect of the House in accordance with Part 9 of the National Building Code of Canada (NBCC), and filed excerpts from the NBCC with the panel. He noted that Section 9.4 has no relevance to clearances, fire rating, door types, or hand rails.

In cross-examination, Dr. Matar acknowledged that Ms. Linklater did not provide him with the drawing of the proposed renovation, nor did he ask her for one. He recalled that Ms. Linklater told him that she wanted a door on a particular wall and did not specify the exact location. He did not know if the door was opening into the Garage, but acknowledged that he was aware that the Garage was on the other side of the wall. He disputed Ms. Linklater's evidence that he did not enter the Garage. He said that he went into the Garage to look at the framing of the roof, and whether it was supported by the wall.

He did notice the trusses but did not measure the height difference between the main level of the House and the underside of the structure. He acknowledged that he did not raise with Ms. Linklater that the Garage door could interfere with the trusses.

With respect to the drawings he sealed, Dr. Matar stressed that he was only taking responsibility for the structural scope of the door. His drawing did not contain any elevations or sections because in his view, within his scope, he did not need to do so. He did not raise with Ms. Linklater or with Mr. Houle that placing the door anywhere along the wall specified by Ms. Linklater would have resulted in the door opening into the roof trusses because it was not within the scope of his work to consider this.

Dr. Matar introduced five documents into evidence in the hearing. Counsel for the IC did not oppose the admission of the documents but reserved the right to contest their relevance. The documents were:

1. A letter from Dr. Dinesh Katti, a professor at North Dakota State University, advising that Dr. Matar had been his Ph.D. student and praising his academic abilities and personal attributes.
2. A series of drawings he prepared for four other projects in Winnipeg.
3. An email string between himself and Beach Rocke Engineering from June 30, 2022 to July 6, 2022, in which Beach Rocke noted that it had not found a quote for work on the House.
4. Excerpts from the NBCC, including the table of contents for Section 9.1 to 9.8, and Division C, 2.2.4., Structural and Foundation Drawings and Calculations.
5. Two questions from a questionnaire on House Inspections from Professional Engineers Ontario.

Submissions of Counsel for the IC:

The position advanced on behalf of the IC was that Dr. Matar's actions fell short in several respects, as set out in the Charge.

As to the merits of the Charge, counsel for the IC noted that the focus in this proceeding is on subsections 46(1)(d) and (e) of the *Act*, which provide that conduct of an investigated person that in the opinion of the panel contravenes the *Act*, the EGM By-Laws, or the Code², or displays a lack of knowledge or lack of skill or judgment in the practice of professional engineering³, constitutes either unskilled practice of professional engineering or professional misconduct, or both.

Counsel for the IC submitted that Dr. Matar also violated Canons 2 and 5 of the Code, which require that the member shall:

2. Offer services, advise on or undertake engineering or geoscientific assignments only in areas of their competence, and practice in a careful and diligent manner and in compliance with applicable legislation.

5. Conduct themselves with integrity, treat clients, colleagues, and others with equity, fairness, courtesy, and good faith, give credit where it is due, and accept, as well as give, honest and fair professional criticism.

Counsel for the IC argued that there were four things that Dr. Matar did, or failed to do, that amounted to unskilled practice and/or professional misconduct:

² ss. 46(1)(d)

³ ss. 46(1)(e)

1. He failed to perform a proper investigation, bearing in mind that he was told what the homeowners wanted to accomplish. It was up to Dr. Matar to take all necessary inspections to provide feasible design. Dr. Matar's own evidence was that he went into the Garage, but did not consider the elevation differences.
2. He provided a plan that was not feasible, and could not be carried out to meet the homeowners' needs. By sealing the drawing, Dr. Matar was taking responsibility that it was prepared to the standard, knowledge and skill required.
3. Dr. Matar failed to identify limitations with the work or with his scope of work, or what additional work would be required to make the design feasible before imposing fees for his work. He said the trusses never crossed his mind until Ms. Linklater brought the issue to his attention in July 2020. He told Ms. Linklater that he could come back and that they would have to reinforce the door, but not until he'd been paid, and would return only if he was paid an additional fee.
4. Dr. Matar failed to work with his clients to come up with a solution and failed to accept responsibility for coming up with an unfeasible design. Instead, he placed the onus on the homeowner and told her that she should have done her due diligence. Ms. Linklater had written to Dr. Matar that the drawing was useless, and neither she nor her husband were experts and they relied on him. Dr. Matar's response to Ms. Linklater was neither reasonable nor fair. It was cavalier and did not meet the standard required.

With respect to Dr. Matar's position that feasibility was not part of his scope of work, counsel for the IC referenced the evidence of Mr. Robalino, which was that an engineer should assess overall feasibility from the outset, that the design needs to be feasible, or if engineer finds that the design is not feasible, the engineer owes a duty to inform the client. It is also common sense that, when a client indicates that they want a doorway installed, feasibility would be part of the consideration.

It is neither reasonable nor in the public interest for engineers be so limited in their scope. In addition, Ms. Linklater was a lay person, and when she typed the "Issue" in her initial email to Dr. Matar, she did not know what she needed for the project. Her evidence was that she and her husband were relying on Dr. Matar.

Counsel for the IC also noted that Mr. Robalino was the only expert in this hearing regarding the standards expected of an engineer. Dr. Matar did not call his own expert, and none of the witnesses that he did call were relevant or material, because their evidence was about Dr. Matar's work on other jobs. None of those witnesses had any knowledge or involvement in this project.

With respect to the documents entered on the record at the hearing, counsel for the IC argued that none of them were relevant to the issues to be decided by this Panel. Further, the author of the letter, Dr. Katti, did not testify, nor did John Rocke of Beach Rocke Engineering. Dr. Matar's emails with Beach Rocke, in which he inquired about whether Ms. Linklater had requested a quote from that firm, do not establish anything about the credibility of Ms. Linklater's evidence because she stated that she was given a quote from Beach Rocke over the telephone.

Counsel for the IC referred to the following authorities, in addition to others provided to the Panel:

1. J. T. Casey, *Regulation of Professions in Canada* (Toronto: Thomson Reuters, 2019), for the statement of the test for professional misconduct:

If it is shown that a professional, in pursuit of his profession, has done something with respect to it which would be reasonably regarded as improper by his professional brethren, of good repute and competency, then it is open to the professional regulator to decide that he has been guilty of 'improper conduct in professional respect'.

2. *Re: Alireza Bahrami, P.Eng.* (EGBG Discipline Decision, May 2, 2022), also for its articulation of the test for professional misconduct:

[...] where there is a marked departure from the standard to be expected of a competent professional. [...] Incompetence is established, inter alia, where a person habitually fails to perform his or her work with the degree of skill or accuracy usually displayed by other persons regularly employed in such work.

3. *Physiotherapy Alberta-College + Association v. Respondent 540504*, 2018 ABPACA 1 (CanLII), provided to the Panel for the tribunal's use of the term "unskilled practice". In that decision, the tribunal found that the member had failed to maintain adequate chart notes and that this amounted to unskilled practice.
4. *R. v. Williams Engineering Canada Inc.*, 2014 ABPC 241, which counsel for the IC submitted was significant for its statement on the obligations of professional engineers.
5. *Re: Mark Weber, P. Eng.* - Association of Professional Engineers and Geoscientists of Alberta Disciplinary Decision, May 25, 2020. In that decision, the member had prepared a report regarding the condition of the complainant's home, in which he made a number of incorrect conclusions regarding the load bearing capacities of certain walls. Consequently, the member had wrongfully concluded that extensive structural modifications were necessary to replace a wall. The member refused to entertain the concerns of the complainant and her contractor and the complainant eventually retained another engineer, whose report contradicted findings made by the member. The panel found that the member's conduct amounted to unprofessional conduct, and commented, among other things, that: a member of the public should be able to trust that a report prepared by a professional engineer should be suitable for a client's needs; and that private homeowners are generally lay people who require more explanation, time, and effort from the professional engineer so that they can understand the recommendations made. In this case, the member should have taken more time to deal with the complainant's concerns.

6. *Re. Romano Viglione, P. Eng.* - Association of Professional Engineers and Geoscientists of Alberta Disciplinary Decision, June 30, 2020. In that case, the member was guilty of unprofessional conduct as a result of conducting an inadequate field review, having failed to identify several deficiencies in the framing of a house and failed to bring the deficiencies to the constructor of the house.

Counsel for the IC submitted that, taking all of the evidence and the authorities into account, the Panel should find that the Charge has been proven.

Submissions of Dr. Matar:

Dr. Matar argued that the Charge has not been established.

With respect to the evidence of his three witnesses, Dr. Matar submitted that it was relevant to his level of experience, and to demonstrate that he is capable of performing inspections and providing cost-effective solutions.

Dr. Matar was critical of Mr. Robalino's report and testimony, and argued that it was based on assumptions and that he was not approached to provide any information. Further, he stated that most of Mr. Robalino's report had to do with elevations and failed to identify that Dr. Matar was performing the work under Part 4 of the NBCC, instead assuming he was working with Part 9. Dr. Matar submitted that he has never been involved with clearances or windows, as those are outside of his expertise. Mr. Robalino failed to identify that only out of the norm connections needed to be identified on the drawing. Dr. Matar's drawing made clear that he was only responsible for reframing.

Dr. Matar also argued that he did not need to explain the drawing to Ms. Linklater; just because she is a lay person does not mean that she could not understand what he provided. She could look at the drawing and see for herself that it was for reframing. He also argued that the site

inspection was sufficient, and that he is not required to point out every possible issue to the client, nor did he fail to identify any limitations. His scope of work was as a structural engineer, the City wanted to ensure that the framing was acceptable, that is what he did.

Dr. Matar stated that he prides himself in finding solutions in the most cost-effective way. He noted that Ms. Linklater would not pay the inspection fee until he provided a quote despite the fact that the payment was due on the date of the inspection. He argued that he was deceived and speculated that perhaps Ms. Linklater deliberately withheld information from him.

Dr. Matar disputed that he committed unskilled practice or professional misconduct.

Analysis and Conclusion:

We agree with the submissions of counsel for the IC and find that all particulars of the charge were established.

Dr. Matar was clearly retained as a professional engineer to provide engineering services for structural renovations at the House. We accept the testimony of Ms. Linklater that Dr. Matar was made aware of the entire renovation project being undertaken. Dr. Matar's testimony that his scope of services was restricted, and he was only responsible for the structural scope of an opening between the House and the Garage, was not supported by the evidence presented. There was no written scope of work presented that clearly defined any limitations in his expertise or the services to be provided to Ms. Linklater.

Dr. Matar was adamant that he entered the Garage on the property and the panel accepts his testimony on this. In so doing, we believe that the differences in elevation between the House and the Garage and the relative location of the structural elements (proposed opening and Garage roof trusses), as well as their conflict, should have been clearly visible to Dr. Matar during the site

visit. The panel finds that his failure to consider and comment on them to Ms. Linklater constitutes unskilled practice.

We accept the expert qualifications of Mr. Robalino as proposed by the IC. We also accept Mr. Robalino's evidence, with the exception of his comment regarding the missing support post referenced in his report (page 7 of 17 3.3.2 Basement Plan View first paragraph last sentence). Although the post was not directly noted on the plan or clearly shown, its construction was called up on a general note pertaining to the new infill floor framing. The comment contained in the report has no bearing on the aforementioned problems with Dr. Matar's work.

We agree that the engineering design by Dr. Matar was the only document that specified the new access door to the attached Garage, its location, and the structural elements to frame the door opening. The insufficient level of detail in the drawing resulted in a design that was not feasible. In sealing the design drawing, Dr. Matar was responsible for the content included in that sealed drawing, which, as noted, was not feasible. The panel does not accept Dr. Matar's arguments regarding the applicable parts of the National Building Code (i.e., Part 9 v. Part 4). Both parts of the Code applied to the work for which Dr. Matar was retained. The panel acknowledges that Dr. Matar was not retained to specifically design and specify the door type, size, or hardware; however, he was responsible for designing the structural framing for the rough opening of the door including the appropriate positioning of the opening within the existing structure and in consideration to surrounding structures (including the roof trusses on the opposite side of that wall). Dr. Matar was aware that his drawing had been requested to support a permit for the renovation project. The panel concurs with Dr. Robalino that as a professional engineer, Dr. Matar should have ensured that the design was accurate, complete, and compliant. The panel also finds that the design should have been feasible, as no reasonable person would request otherwise.

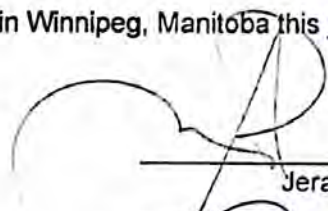
Dr. Matar's design failed to identify design constraints and requirements and was accordingly incomplete for the level of detail required for permit and construction, yet Dr. Matar assumed full responsibility for the design content by sealing the drawing.

Based on the evidence presented overall, the panel finds that Dr. Matar did not, in his work relating to 18 Bowhill Lane, Winnipeg, Manitoba, display conduct expected by the profession or the public.

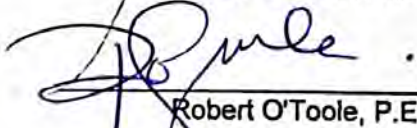
Decision:

We find that Dr. Matar is guilty of unskilled practice and professional misconduct as set out in the Charge.

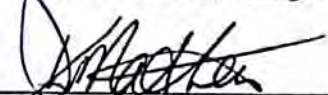
Dated in Winnipeg, Manitoba this 8 day of June, 2023



Jerald Peters, MAA, Chair



Robert O'Toole, P.Eng. FEC



Karen Mathers, P.Geo. FGC