

**IN THE MATTER OF
A CITATION ISSUED UNDER
THE COLLEGE OF APPLIED BIOLOGY ACT,
S.B.C. 2002, chapter 68 (the “Act”)**

BETWEEN:

THE COLLEGE OF APPLIED BIOLOGY

(the “College”)

AND:

TED LEA, R.P.Bio. #85

(the “Respondent”)

Date and Place of Hearing:

Date: June 11, 12, 13, 14, 15 and July 23, 2018

Place: Charest Reporting Inc., 912 – 1175 Douglas Street, Victoria, B.C.

Members of the Hearing Panel of the Discipline Committee:

Brian Nyberg, R.P. Bio (Chair)
Doug Steventon, R.P. Bio
Bronwen Beedle (public member)

Counsel for the College:

Mark Underhill

Counsel for the Respondent:

C. Edward Hanman

Independent Legal Counsel for the Panel:

Lisa C. Fong and Will Pollitt (articled student)

Court Reporter

Lori D. Stocco, RCR

**REASONS FOR DECISION AND ORDER
OF THE DISCIPLINE COMMITTEE**

1. A discipline hearing panel established under s. 28 of the Act (the “Panel”) convened on June 11, 2018 to inquire into allegations that the Respondent breached provisions of the College’s Member Code of Ethics, which is Schedule 2 of the Rules of the College.

1. Pre-hearing matters

2. Prior to the hearing, the College and Mr. Lea exchanged statements of points, will says, and documents, pursuant to oral hearing procedures set out in the College's Discipline Panel Hearing Policy (the "Hearing Policy").
3. At the outset of the hearing, the College applied for a ruling that certain topics contained in the will says of Mr. Lea's witnesses were inadmissible. The College also applied for a ruling on the admissibility of Mr. Meidinger's report dated May 31, 2018.
4. Legal counsel for Mr. Lea, Mr. Hanman, clarified that he would not be calling Mr. Sector, Mr. Dovey or Mr. Hayes, making parts of the College's application unnecessary.
5. Legal counsel for the parties then advised of an agreement on the tendering of expert reports, such that the Panel need not decide on the admissibility of Mr. Meidinger's report dated May 31, 2018.
6. The Panel decided that it should address the issues of admissibility raised by the College and provided an oral decision to the parties on June 11, 2018, followed by written reasons dated June 12, 2018 (the "Admissibility Reasons"). As set out in the Admissibility Reasons, the Panel ruled that specific topics of evidence set in the will says of Ms. Anita Bull, Mr. Lea, Peter Lucey and Mayor Atwell were inadmissible.

2. The Amended Citation

7. The Amended Citation (the "Citation") (**Ex. 1**) sets out factual allegations in three paragraphs:
 - a. **Conflicts of interest:** the College alleges in Citation para. 1 that the Respondent breached Principle 4 of the Code of Ethics [conflicts of interest] "by virtue of the fact that you:
 - “(a) are an advisor, member, and/or have participated in the affairs of the Saanich Citizens for a Responsible EDPA Society (SCRES), a known opponent to the District of Saanich Environmental Development Permit Area Bylaw (EDPA Bylaw);”
 - “(b) own private property in the District of Saanich; and”
 - “(c) have authored reports for multiple land owners which have consistently recommended the exemption of properties from the EDPA Bylaw”;
 - b. **Incivility:** the College alleges in Citation para. 2 that the Respondent breached Principles 7 and 8 of the Code of Ethics [conduct reflecting adversely on the College or the profession / conduct wrongfully injuring the reputations of others] "by virtue of the fact that you made negative personal comments about a Saanich staff person and fellow R.P. Bio. at a: (a) SCRES meeting on April 15, 2015; and (b) Saanich council meeting on May 25, 2015”;
 - c. **Lack of due diligence:** the College alleges in Citation para. 3 that the Respondent breached Principles 1 and 3 of the Code of Ethics [objective, full and honest reports etc. / practice with due diligence] "by virtue of the fact that you:

~~“(a) [*this sub-paragraph was withdrawn by the College (see below)*] failed to undertake proper due diligence with respect to the identification of a blue listed species in a report prepared for 2893 Seaview Road;”~~

“(b) failed to undertake proper due diligence and ground work with respect to the preparation of reports for 2766 Seaview Road, 2810 Seaview Road, 2785 Tudor Ave., 2801 Tudor Ave., 2811 Tudor Ave., 2821 Tudor Ave., 2825 Tudor Ave., 2831 Tudor Ave.;;”

“(c) failed to properly apply applicable guidelines prepared by the District of Saanich in the aforementioned reports [*particularized by the College (see below) as referring to the Saanich Environmental Development Permit Area Property Removal Request Process Factsheet*]; and”

“(d) applied incorrect criteria (ecosystems at risk) for assessing sensitive ecosystems in the aforementioned reports”.

8. The Panel addresses the relevant Principles of the Code of Conduct in more detail below.
9. A dispute arose as to the scope of the claims in the Citation. By a letter dated June 5, 2018 (**Ex. 2**), College counsel wrote Respondent counsel to advise that the College was not pursuing sub-paragraph 3(a) of the Citation, and provided the following particulars respecting sub-paragraphs 3(c) and (d):

With respect to subpara. 3(c), it is the College’s position that Mr. Lea did not appropriately apply the Guidelines the District of Saanich prepared in their Saanich Environmental Development Permit Area Property Removal Request Process Factsheet, which is attached to Mr. Meidinger’s April 29, 2018 report. As for subpara. 3(d), the College’s position is that the assessment forms part of appropriate due diligence, and Mr. Page’s reports address how Mr. Lea inappropriately assessed sensitive ecosystems.

The College indicated in its June 5, 2018 letter that the original citation would be amended accordingly. The Citation (**Ex. 1**) is amended with a date of June 5, 2018 and strikes out subpara. 3(a). The College did not however amend subparas. 3(c) and (d). The College’s letter of June 5, 2018 provided particulars of the wrongs alleged generally in Citation subparas. 3(c) and (d).

10. In closing submissions, Respondent counsel advanced various procedural objections to this proceeding. First, Respondent counsel asserted that the Citation contained insufficient particulars. Respondent counsel had, during a pre-hearing conference on January 11, 2018, raised the possibility of bringing an application for further particulars, but did not do so prior to the hearing. In argument, the Respondent characterized the Citation as a “moveable feast.” Counsel referenced the following deficiencies:

- a. regarding Citation para. 1, that the specific conflict alleged was never particularized;

- b. regarding Citation para. 3(b), that the Citation was limited to “proper due diligence and ground work with respect to the preparation of reports” and did not specify reporting;
- c. regarding Citation para. 3(c), the expansion of “guidelines” to include the Environmental Development Permit Area (EDPA) Factsheet; and
- d. regarding Citation para. 3(d), the expansion of what “criteria” were implied.

11. The College, in response, argued that there were no substantial procedural discrepancies, the Respondent suffered no actual prejudice and any deficiency was cured by the lengthy hearing, during which hearing the Respondent was able to respond to the allegations against him.

12. In response to the Respondent’s concerns surrounding Citation para. 3(c), relating to the College relying on a “Factsheet”, addressed in more detail below, the College noted that the Respondent’s own expert report specifically referenced the Factsheet and, therefore, the Respondent suffered no prejudice to his ability to mount a defence.

13. At the outset, the Panel found that no procedural deficiencies were sufficiently serious as to warrant a remedy. The Respondent received a lengthy and thorough hearing, during which he was fully able to mount a defence. The Panel could not identify any actual prejudice experienced by the Respondent. For instance, on a plain reading of Citation para. 3(b), which alleges that the Respondent failed to undertake “proper due diligence and ground work with respect to the preparation of reports,” the requisite due diligence applies to the preparation of reports and, by extension, the content of the Reports themselves. Further, with respect to Citation 3(c), as identified by the College, the Respondent’s own evidence and expert frequently made reference to the EDPA Factsheet. As a result, the Panel does not find that the Respondent suffered any significant prejudice as a result of procedural deficiencies.

14. The Respondent notably asserted that an ambiguous charge in a citation does not provide adequate notice of a charge, as found in *Donegan v. Association of Professional Engineers*, 2001 BCSC 1448 at paras. 40-41. Upon review, the Panel notes that this decision was reversed on appeal by consent of its parties (at 2002 BCCA 638). In any event, the use of the term “applicable guidelines” in Citation 3(c) does not preclude the EDPA Factsheet. While the Respondent asserted in submissions that “3(c) could only relate to ‘Saanich Assessment Guidelines for Consultants...’ (Ex. 6, Tab 117, and also Ex. 3, Tab 3), the generic language in Citation 3(c) does not limit the College to referring only to District of Saanich (also referred to as the “District” or “Saanich”) documents containing the word “Guidelines” in their title.

15. The Respondent also referred to *Mondesir v. Manitoba Association of Optometrists*, 2001 MBCA 183 at paragraphs 19-31, where a citation was so vague as to how a professional was alleged to have wrongly altered medical records that “[24] ... the disputed May 5th appointment did not surface as a factor in the complaint until after the hearing of the discipline committee had commenced.” The Manitoba court found that, “[27] ... The citation and the particulars that were provided do not say what particular clinical records Dr. Mondesir had altered, in what manner he had altered the records, or for what purpose they were altered.” That situation does not, however, describe the situation before this Panel. Citation 3(b) gave notice of an issue concerning a lack of “proper due diligence and ground work with respect to the preparation of reports,” as detailed in Mr. Page’s materials. Citation 3(c) further alleges that the Respondent failed to properly apply “applicable guidelines... in the aforementioned reports....” Given that the College clarified on

June 5, 2018 that this referred to the Factsheet mentioned by Mr. Meidinger, and given common deficiencies engaged by both Citation paras. 3(b) and 3(c), the Panel is satisfied the Respondent had sufficient warning and opportunity to address the issue at the hearing. The Respondent also did not seek any adjournment due to an inability to address Citation para. 3(c) at the hearing.

16. Respondent counsel alleged that the College failed to properly investigate complaints and failed to provide sufficient opportunity for the Respondent to respond to complaints, before the College issued the citation. Without addressing what fairness requires in terms of procedure when the council is deciding about issuing a citation under s. 24(1)(d) of the Act – a decision that was not made by this Panel and which did not involve the council making findings of professional misconduct – how the College conducted its pre-citation investigation does not bear on the Respondent’s opportunity to respond to the College’s case at this discipline hearing before this Panel: “...a breach of the rules of procedural fairness at a pre-hearing or investigatory stage of proceedings could have been cured or corrected if the rules of natural justice were complied with at the hearing stage, unless the breach of procedural fairness at the investigatory stage has substantially prejudiced the member's right to a full and fair hearing into the complaints laid.” *Kuny v. College of Registered Nurses of Manitoba*, 2017 MBCA 111 at para. 67. Even if breaches of procedural fairness occurred at the investigative stage, the College cured any such breaches by disclosing the citation issues, documentary evidence, and witness statements before this hearing.

3. Sources of evidence

17. Both the College and Mr. Lea tendered witness and documentary evidence, subject to the Panel’s initial rulings on admissible evidence, as sought by the College.

18. The Panel notes that the Panel is not, as an administrative tribunal, strictly bound by the rules of evidence that courts apply to their own proceedings, although the Panel may be guided by the rationales that underlie those rules of evidence: “...a tribunal is entitled to consider any evidence it deems relevant, accepting portions of some and rejecting others as it sees fit.” *Hale v. B.C. (Superintendent of Motor Vehicles)*, 2004 BCSC 358 at para. 23; also *Hing (Re)*, [1926] 3 D.L.R. 692, [1926] B.C.J. No. 35 (C.A.) at para. 13, and *Kane v. The Board of Governors (University of British Columbia)*, [1980] 1 S.C.R. 1105.

3.1 Witnesses

19. The College called one witness, its expert, Mr. Nicholas Page, a registered professional biologist (“Mr. Page”).

20. The Respondent called two witnesses: Mr. Lea, and an expert, Mr. Del Meidinger, a registered professional biologist (“Mr. Meidinger”).

3.2 Exhibits

21. The Panel marked the following documents as Exhibits:

- a. EXHIBIT 1: Amended Citation dated June 5, 2018 (original citation dated October 24, 2017);
- b. EXHIBIT 2: Letter from College counsel dated June 5, 2018 to Respondent counsel;
- c. EXHIBIT 3: College Book of Documents, consisting of the following:

- i. TAB 1: Expert opinion letter of Mr. Page dated October 16, 2017;
- ii. TAB 2: Memorandum of Instructions (undated);
- iii. TAB 3: Saanich Planning Environmental Services, “Guidelines for Verifying and Defining Boundaries of Sensitive Ecosystem Inventory Polygons in the Environmental Development Permit Area (#29)”
- iv. TAB 4: Various reports authored by Mr. Lea, addressed to Adriane Pollard, Manager of Environmental Services for the District of Saanich:
 - 1. Report dated July 4, 2016 re: 2766 Seaview Road;
 - 2. Report dated July 4, 2016 re: 2810 Seaview Road;
 - 3. Report dated July 4, 2016 re: 2785 Tudor Avenue;
 - 4. Report dated July 4, 2016 re: 2801 Tudor Avenue;
 - 5. Report dated July 4, 2016 re: 2811 Tudor Avenue;
 - 6. Report dated July 4, 2016 re: 2821 Tudor Avenue;
 - 7. Report dated July 4, 2016 re: 2825 Tudor Avenue;
 - 8. Report dated July 4, 2016 re: 2831 Tudor Avenue
 (collectively the “Reports”);
- v. TAB 5: Title search dated February 1, 2018 re: PID 025-499-653;
- vi. TAB 6: Assessment roll search dated February 1, 2018 re: PID 025-499-653;
- vii. TAB 7: Link to an Internet-stored video of a SCRES meeting;
- viii. TAB 8: District of Saanich Minutes dated May 25, 2015; and
- ix. TAB 9: Supplemental expert opinion letter of Mr. Page dated May 26, 2018;
- d. EXHIBIT 4: CV of Mr. Page;
- e. EXHIBIT 5: Respondent Book of Expert Documents, consisting of the following:
 - i. TAB 1: Expert opinion letter of Mr. Meidinger dated April 29, 2018;
 - ii. TAB 2: Mr. Meidinger comments on the expert opinion letter of Mr. Page, dated April 14, 2018;
 - iii. TAB 3: Mr. Meidinger comments on the supplemental expert opinion letter of Mr. Page, dated May 31, 2018;
- f. EXHIBIT 6: Seven volumes of various documents, all tendered by the Respondent for the truth of their contents, including but not limited to the following:
 - i. Volume 1, Tab 2 (Response of Mr. Lea dated May 1, 2017);
 - ii. Volume 1, Tab 10 (Society report to Saanich Council dated November 6, 2015);

- iii. Volume 1, Tab 15 (Letter from Mr. Lea to Ms. Pollard dated September 16, 2013, indicating that, “Based on legal advice received, I have elected to write to you indicating that I am aware of this concern [of a conflict of interest] and hereby acknowledge that concern and have taken steps to review the matter with you....”);
- iv. Volume 1, Tab 18 (Environmental Development Permit Area Property Removal Request Process);
- v. Volume 3, Tab 64 (Memorandum of Ms. Pollard dated February 17, 2015);
- vi. Volume 3, Tab 73 (Email from Andy Laidlaw, CAO, to Mr. Lea dated May 27, 2015 (setting out Mr. Lea’s comments about Ms. Pollard, and indicating that they were “inappropriate and offensive” and that Ms. Pollard had “no ability to respond”) and a response from Mr. Lea);
- vii. Volume 5, Tab 115 (EDPA Bylaw);
- viii. Volume 7, Tab 138 (Comments by Mr. Lea to Saanich Council); and
- ix. Volume 7, Tab 143 (Response of Mr. Lea dated August 14, 2017);
- g. EXHIBIT 7: Memorandum setting out statements by Mr. Lea from a SCRES meeting on April 28, 2015, and from a meeting District of Saanich Council meeting on May 25, 2015; and
- h. EXHIBIT 8: The College’s Code of Ethics.

22. For clarity, the various opinions and responses of Mr. Page and Mr. Meidinger occur in the following order:

- a. Opinion of Mr. Page dated October 16, 2017 (Ex. 3, Tab 1);
- b. Opinion of Mr. Meidinger dated April 14, 2018 (Ex. 5, Tab 2);
- c. Opinion of Mr. Meidinger dated April 29, 2018 (Ex. 5, Tab 1);
- d. Supplemental opinion of Mr. Page dated May 26, 2018 (Ex. 3, Tab 9); and
- e. Supplemental opinion of Mr. Meidinger dated May 31, 2018 (Ex. 5, Tab 3).

4. Evidence and findings

23. The overall burden of proof for professional misconduct, conduct unbecoming a practicing member, or incompetence lies on the College, and the standard of proof is the civil standard of a balance of probabilities: *F.H. v. McDougall*, [2008] 3 S.C.R. 41.

24. In relation to specific facts, a party that asserts a fact bears the burden of proving that fact.

25. The central issues in this case have not required that the Panel make findings of credibility. The Panel notes, however, that the Panel developed concerns about Mr. Lea’s credibility. These concerns related to Mr. Lea’s testimony concerning the District of Saanich

raising a possible conflict of interest relating to his involvement in a matter. In response, the Respondent wrote to the District (Ex. 6, Tab 15), “Based on legal advice received, I have elected to write to you indicating that I am aware of this concern...” Mr. Lea agreed on cross-examination that he did not actually receive legal advice. (Cross-examination of Mr. Lea, June 14, 2018, Transcript pp. 32-33) The Panel became aware from the documentary evidence, however, that in an Aug. 14, 2017 response to complaints to the College, he confirmed to the College that he had received legal advice (Ex. 6, Tab 143). On the last day of the hearing, the Panel requested that the Respondent return to the stand to testify about his assertion to the College. The Respondent admitted to his giving “incorrect information” to the College, and during cross-examination about his alleged “lying” to the College, the Respondent stated that he “may have been confused when I wrote this”. (Cross-examination of Mr. Lea, June 15, 2018, Transcript pp. 60-62). The Panel has drawn negative conclusions about the Respondent’s credibility on the matter of his receipt of legal advice. Much of this case turns, however, on documentary or video-recorded evidence, and the central issues do not depend on the Respondent’s credibility.

26. Except where the Panel has identified a fact in dispute, and the assertions of the parties, the Panel finds facts as follows.

4.1 The Respondent

27. The Respondent, Mr. Lea, is a registered professional biologist in good standing with the College. The Respondent has practiced as a professional biologist for over 40 years and has substantial experience in mapping ecosystems at risk, Sensitive Ecosystems and wildlife habitat for species at risk.

28. At all material times, the Respondent lived and owned property in the District of Saanich (Ex. 3, Tab 5 and Tab 6). Further, the Respondent’s property was included in a ‘buffer’ under the EDPA.

29. The Panel heard indirect evidence that the EDPA bylaw, which is addressed below, did in some cases cause significant declines in property values. The Panel did not hear evidence that the Respondent’s property value, in particular, was negatively impacted by its designation as a buffer under the EDPA. The Respondent testified that, since his property was fully developed, it suffered “little to no impact” from its designation as a buffer under the EDPA bylaw. As the Panel addresses below, however, the designation of the property as a buffer resulted, on the face of the EDPA bylaw, in development restrictions. These facts are relevant to a perceived conflict of interest affecting the Respondent’s professional judgment relating to the EDPA bylaw.

4.2 Saanich & the EDPA Bylaw

30. In 2012, Saanich introduced an EDPA bylaw (the “Bylaw”) (Ex. 6, Tab 115). The Bylaw restricted development in identified Environmentally Significant Areas (“ESAs”), including areas protected as sensitive ecosystems, and also in ESA-related “buffer” areas. ESA- and buffer-mapping for the Bylaw was set out Saanich’s EPA Atlas (the “Atlas”) (Ex. 6, Tab 8). Notably, an EDPA is ultimately a legal matter, and not a scientific matter; an area is subject to the Bylaw because it is identified as an ESA (or as a buffer area) on the Atlas, and not because it is an ESA, or near an ESA, in fact.

31. Landowners with lands identified as ESAs (or as ESA buffers) had to apply for permits before conducting development. Developments requiring permits included the construction of

buildings, or building additions, that increase a building footprint by 10 square metres or more, and the construction of paths that are one metre wide or more, within both ESAs *and* ESA buffers. Landowners were, however, exempt from a development permit requirement, “14. Where field verification by a Registered Professional Biologist, or other appropriate professional approved by Saanich, reveals the boundaries can be refined and the proposed development is shown to be outside the ESA.” Exemption 14 related to the need for a development permit, but did not directly address revisions to ESAs. The Bylaws were silent as to the duties of Saanich Council, and what factors it could or should consider, apart from any opinion of a registered professional biologist that an area was not an ESA, when deciding about setting aside an EDPA designation in the Atlas.

32. In addition to the Bylaw itself, Saanich published several guidance documents. These included the following:

- a. Guidelines for Verifying and Defining Boundaries of Sensitive Ecosystem Inventory Polygons in the EDPA (the “Guidelines”); and
- b. EDPA Property Removal Request Process Factsheet (April 2016) (the “Factsheet”).

33. Saanich staff created the Guidelines document to provide guidance to professional biologists for completing reports recommending development permit exemptions to the EDPA, or to meet EDPA guidelines:

“In order to qualify for an exemptions [sic] 13, 14, and/or 15; or to assist in meeting the Environmental Development Permit Area (EDPA) guidelines, a report should be completed by a Registered Professional Biologist or other appropriate professional approved by Saanich. This document provides guidelines to assist in completing reports that meet expectations, as well as identifying key publications that should be used. Biologists are encouraged to contact Saanich Environmental Services before undertaking any work.”

The Guidelines refer to the EDPA Atlas, note that the EDPA Atlas includes a Sensitive Ecosystem Inventory (SEI), and addresses standards for changing SEI boundaries or potentially eliminating an SEI polygon:

“When SEI mapping was first introduced, standards and criteria were under development. However, the 2006 *Standard for Mapping Ecosystems at Risk in British Columbia* included applicable mapping and reporting standards used in Terrestrial and Predictive Ecosystem, and added many more Sensitive Ecosystems Classes and Subclasses. In order to recommend changing a SEI boundary or potentially eliminating/adding an SEI polygon, the same standards must be met.”

34. The Guidelines refer to the government document, “Standard for Mapping Ecosystems at Risk in British Columbia” (the “BC Standards”), and states that, “This document describes the following steps for the biologist: ... Reporting (as per 1-6 of section 2.11 of document #1)”. In turn, section 2.11 of the BC Standards (Ex. 6, Tab 119) states that, “The report accompanying the mapping provides the following information... in the study area: ... 4. Methods and Limitations – describe mapping methods, spatial data capture methods, field sampling (a table showing the number and types of field inspections for each class), and mapping limitations....”

35. The Guidelines state that, “A methodology and documentation is needed in order to validate recommended changes.” The Guidelines also specify that a report “should include completed forms, field notes, and a sketch map if changes are proposed.” The Guidelines further specify that “any proposed changes must be scientifically supportable *yet sensitive to the context of urban ecology and community values.*” (emphasis added)

36. Saanich staff created the Factsheet to guide property owners who wished to have their properties removed from the EDPA. The Factsheet states that, “a biologist report is not a requirement but, in most cases, may help you in making your case to Council.” The Factsheet goes on to “recommend” that various items be included in a biologist’s report:

- “Identification of the EDPA designation (ie list applicable ESAs and buffers); and it’s [sic] extent on the property;”
- “A description of both the entire polygon and the property in terms of condition, connectivity, and restoration potential of the ESA;”
- “An inventory and habitat assessment;”
- “Study methodology and limitations;”
- “Credentials of the author (biologist);”
- “A recommendation.”

While the Factsheet lists these items as “recommended”, many are specified as required under the Guidelines, such as “methodology and documentation” (including “completed forms, field notes, and a sketch map”) as “needed in order to validate recommended changes”.

37. At all material times, Ms. Adriane Pollard was the Manager of Environmental Services for the Planning Department of Saanich (“Ms. Pollard”). Ms. Pollard was significantly involved in the implementation of the EDPA and frequently interacted with landowners and persons seeking to remove their property from the EDPA. Property owners seeking removal from the EDPA would provide requests to Ms. Pollard. Staff could then provide the request to Saanich Council accompanied by a recommendation as to how to proceed with respect to the request.

38. Ms. Pollard is an R.P.Bio.

39. The Respondent first became involved with Saanich and the EDPA in 2013 when he provided professional services in relation to a property known as the “Alberg Property.” The Respondent’s own home was located in close proximity to the Alberg Property. The Respondent’s professional services were incorporated into a report to Saanich recommending removal of the Alberg Property from development permit requirements under the EDPA.

4.3 The Saanich Citizens for a Responsible EDPA Society

40. In addition to his being a landowner within the District of Saanich and within a buffer zone under the EDPA, the Respondent was a scientific advisor to the Saanich Citizens for a Responsible EDPA Society (“SCRES” or the “Society”).

41. The College asserts that the Society is a known opponent of the EDPA. The Respondent asserts that SCRES opposed the manner in which the EDPA was implemented, arguing that Saanich staff applied the EDPA in a non-scientific and arbitrary fashion. No dispute exists that the Society called for the removal of the EDPA Bylaw until a better bylaw could be passed. The

Society asserted that the EDPA Bylaw negatively affected property values and was ineffective at meeting conservation objectives. (Ex. 6, Tab 10, pp. 5, 7) The Society also petitioned Saanich Council (Ex. 6, Tab 11), and the Respondent agreed on cross-examination that the Society sought to have all properties, including the Respondent's property, removed from the EDPA (Tr. June 14, 2018, pp. 28-31 (cross-examination of Mr. Lea)).

42. The Respondent became involved in SCRES through his connection to Ms. Anita Bull, who would go on to establish the Society.

43. In 2014, the Respondent was asked by Ms. Bull to attend at properties her family owned in Saanich which were subject to the EDPA (the "Rainbow Road Properties"). Ms. Bull sought the removal of these properties from the EDPA. The Respondent prepared reports finding that these properties did not have sensitive ecosystems and submitted those reports to Saanich through Ms. Pollard. (Ex. 6, Tabs 47-48) These reports went before Saanich council in February 2015. The Respondent expressed frustration as to how Saanich staff, including Ms. Pollard, received these reports and applied the EDPA in relation to these properties.

44. Based on these experiences, the Respondent went on to contribute to various SCRES activities and to act as an advisor to the organization. The Respondent's involvement included

- a. authoring a November 6, 2015 SCRES Report to Council regarding the EDPA;
- b. contributing to a 2016 SCRES Petition to Saanich Council regarding the EDPA;
- c. writing on behalf of SCRES in correspondence to Saanich staff, as in a May 26, 2016 email to the Saanich CAO in which the Respondent advised that SCRES was "concerned that there will be lawsuits against Saanich... if Saanich does not act quickly"; and
- d. speaking in person at various events related to SCRES, as discussed below.

4.4 The Respondent's interaction with Saanich staff prior to Spring 2015

45. The Respondent frequently engaged with Saanich staff and, in particular, Adriane Pollard with respect to the EDPA prior to Spring of 2015. These interactions arose from the Respondent's work in connection with the Alberg and Rainbow Properties, described above.

46. On July 15, 2013, Ms. Pollard, on behalf of Saanich, responded to the report submitted to Saanich recommending removal of the Alberg Property from the EDPA. (Ex. 6, Tab 42) Although addressed to Mr. Roger Tinney, the Alberg family's planner, this letter also reached the Respondent. That letter recommended that the EDPA should remain in place in part due to considerations under the Environmental and Social Review process and the concentration of Garry Oak trees.

47. On December 3, 2014, Ms. Pollard, on behalf of Saanich, responded to the Respondent's report recommending removal of the Rainbow Properties from the EDPA. (Ex. 6, Tab 49) Ms. Pollard advised in her response that Saanich did not agree removal was appropriate as the exemption is designed to allow a refinement of the boundaries of the ESA where it is shown that the ESA incorrectly included land that contains none of the five ecological inventories shown in the EDPA Atlas. The response went on to cite the stand of mature Garry Oak trees, which were an element of one of the inventories in the Atlas.

48. In February 2015, Ms. Pollard, as Manager of Environmental Services, submitted a memo dated February 17, 2015 to Saanich's Environment and Natural Areas Advisory Committee addressing, in part, options of responding to requests for changes to the EDPA Atlas (**Exhibit 6**, Tab 64). The memo identifies that the EDPA in part relies on the SEI, which includes Garry Oak ecosystems as identified from aerial photography. The memo goes on to note that the SEI does not identify the condition or values of the mapped areas and, as a result, differences of opinion or methodology amongst biologists can "cause differences of opinion as to the definition, classification and conservation value of mapped areas." The memo goes on to note that Saanich staff interpreted Saanich Council as intending to preserve SEI polygons "regardless of their condition, unless the area was mis-mapped to begin with (such as pavement, fill, housing, non-native trees)." The memo references Saanich's historical approach to retaining Garry Oak tree ecosystems for a variety of community and ecological values and the SEI Conservation Manual's recommendation that local governments protect a network of ecosystems, restore ecosystems and recognize community values. Ms. Pollard set out one option for Saanich Council as being to "continue" protecting mapped EDPA areas "for values beyond SEI mapping standards such as restoration potential, landscape linkages, habitat, buffers, approved landscape plans, significant trees, and the condition of the entire mapped area (as opposed to properties in isolation)." These policy concerns may reflect "the context of urban ecology and community values" referenced in the Guidelines. Another option was for Saanich Council to allow biologists to recommend that mapped areas be re-mapped as buffers.

49. The Respondent has asserted that Ms. Pollard's position of preserving SEI polygons "regardless of their condition" was "untenable" due to inconsistency with the Guidelines. The Panel was not persuaded. While the Panel's task is not to assess the correctness or legality of Ms. Pollard's interpretation, the Panel was of the view Ms. Pollard could rationally interpret the Bylaws and the Guideline such that an opinion of a professional biologist, compliant with reporting requirements in the Guidelines, was necessary but not sufficient for Council to make a mapping change, given a discretion of Council to decide about mapping based on "values beyond SEI mapping standards...."

50. The February 17 memo also specifically addressed the Respondent's report recommending removal of the Rainbow Properties from the EDPA, advising Council that staff did not support removal of the properties. She noted that the removal request was based on the belief that the SEI mapping had captured Garry Oak canopy, but not a Garry Oak ecosystem. The memo noted that a biologist report for the adjacent property found that the SEI polygon on that property was significantly degraded, but still retained sufficient features to warrant continued protection and investing in restoration.

51. The Respondent received a copy of the February 17 memo through Ms. Bull, who received it from Legislative Services due to its potential impacts on her family properties:

A: "So this document is a memo from Adriane Pollard to the Environment and Natural Areas Advisory Committee, February 17th, 2015. **I obtained the document from Ms. Bull. She had got it from Legislative Services because** two of -- **the two properties that her family was involved with would be discussed at this meeting.** So it also -- the second part was as I mentioned earlier is that Ms. Pollard was recommending amendments to the Environmental Development Permit Area guidelines and atlas. So two activities in this." (emphasis added)

(June 13, Transcript, p. 25)

The Panel understands from the Respondent's testimony that Ms. Bull obtained the February 17 memorandum before the meeting at which the memorandum was to be discussed. Given Mr. Lea's advisory role, the Panel also infers that Ms. Bull provided the memorandum to Mr. Lea at or around the time she obtained it.

52. The Respondent was also aware that Saanich staff did visit properties in the municipality in response to requests from owners under the EDPA:

Q: [Mr. Nyberg] "If you go to point 2, it says,

'Set up an appointment for staff to visit your property. Staff can visit your property with you at a designated time.'

Goes on to say you can give them permission for access. It seems to be implying that it's quite possible that Saanich staff would go out and do some of this. Are you aware that they ever did any of these visits, if they ever did any of them?"

A: "They did not walk on these properties. Saanich staff did not."

Q: "Sorry, not the ones you were visiting. Do you know if they did any in the municipality for any property owners who made requests through this process?"

A: "**Oh, yes. They definitely did, yes.**"

(June 14, 2018, Transcript p. 130)

4.5 The Society meeting

53. The Respondent attended at a Society meeting on April 15, 2015. The meeting had approximately 200 attendees and was recorded on video. The Respondent was aware the meeting would be recorded and distributed to a larger audience. The Respondent, speaking as a registered professional biologist, criticized the efforts of Ms. Pollard and Saanich staff:

[Ex. 3, Tab 7, at 37:50] So as I said **the mapping errors, if the original mapper had checked these properties on the ground, they would have removed these map areas** from the inventory. **District of Saanich staff want property owners to protect these mapping errors.**

...

[Ex. 3, Tab 7, at 42:25] So as I said, thousands more properties can be added to the EDPA over time using the purposed staff definition. So, many areas of Maplewood, High Quadra, Marigold area, Royal Oak could all be added to the EDPA and called sensitive ecosystems if Saanich staff move in this direction. Rural areas, basically any area with forest, will be added to the EDPA. We got young forest, mature forest, old forest, that's everything. Is this what Council had planned? Are these all areas of highest biodiversity? What needs to be done? Nobody knows where the areas of highest biodiversity in Saanich are, except in the parks, Anita mentioned this. Saanich needs to inventory the present sensitive ecosystem inventory map units, by following the actual standards. And we need to find ways to protect, maintain and restore the special areas. Those are out there. We don't need to be focusing on gardens and lawns. Conclusions: **there's no scientific justification for what they**

are doing. There's many mapping errors. Long term result is not far out at all. What will happen over time? ^[REDACTED]_[SEP]

...

[Ex. 3, Tab 7, at 1:24:26] You can do that but **Saanich staff won't remove it necessarily, right?** If it's wrong, if it's a mapping error, I would be glad to, I would be willing to make that offer to everybody, but, get in touch with me later. So...just... someone from Saanich can come by and go out to the property and say this should stand, even if it's an error, right? **They are not following their own standards that they provide to ecologists and homeowners, they are not. In reality, checking the mapping errors is a really quick job to do. You can go on most properties that are lawn and garden and take 10 seconds** and go this is not a sensitive ecosystem, or maybe it is, or yes it is. **But most of them don't take much time to do... no, no is real quick...** there are hundreds that I have seen already that should not be mapped in the EDPA. They are not, they are lawn and garden or oak trees or something else. So, talk to me afterwards if you want and I'll gladly come by... **Saanich staff could do that, but they have to follow the standards that they have said are in the bylaw, and they are not going to do that.** Right? I don't know how else to answer that, **it's just the reality of it now,** but talk to me later if you want. (emphasis added)

54. The Respondent did not refer to Ms. Pollard by name. However, audience members and SCRES presenters at the meeting did refer to Ms. Pollard by name. These references included:
- a. At 1:08:00, an audience member referring to "Adriane" by name;
 - b. At 1:29:00, an audience member referring to their attempt to receive a deck permit for their property and their frustration at dealing with "Adriane Pollard and staff;" and
 - c. At 1:54:30, at the conclusion of the meeting, Ms. Bull advising the audience to contact senior Saanich staff including "Adriane Pollard" in relation to their concerns over the EDPA.
55. On cross-examination, Mr. Lea admitted as follows:
- a. with respect to the Respondent saying, "District of Saanich staff want property owners to protect these mapping errors", Saanich staff were intentionally refusing to correct mapping errors;

Q: "...If you had couched it as a different scientific interpretation or an honestly held difference of belief, that would be one thing, sir. But **you chose these words with the clear implication, sir,** I hope you will agree, **that these staff were intentionally** refusing to cover up mapping errors -- or, sorry, **refusing to correct mapping errors.** Those were the words you used before that crowd of 200 people?

A: "**Yes, Saanich staff were not willing to remove mapping errors** following the bylaw, following the standards." (emphasis added)

(Cross-Examination of Ted Lea, June 14, 2018 Transcript at p. 68)^[REDACTED]_[SEP]

- b. with respect to the Respondent saying, “there’s no scientific justification for what they are doing”, the absence of “scientific justification” was directed at Ms. Pollard (as well as at Ms. Sharon Hvozanski, a professional planner);

Q: “And there you say, "There is no scientific justification for what they are doing." Do you see that?”

A: “Yes.”

Q: “All right. Let's start with understanding who you were referring to as "they." My understanding of your evidence yesterday is that **you were referring to Saanich staff; is that right?**”

A: “**Yes**, that would be the case that the District of Saanich were not -- staff were not following science-based information to implement their bylaw. That's correct.”

Q: “Now, who are we talking about on the staff? **We know that includes Adriane Pollard; correct?**”

A: “**Yes**. That is correct.”

...

Q: “Is there anybody else you are capturing with the word, "they," at least here in this line that we are focusing on?”

A: “I think it would be generally, so there is other environmental services staff. I assumed at that time that they would have -- be doing the same sorts of things, but I wasn't totally aware of that. So, no, **it was mostly Ms. Pollard and Ms. Hvozanski.**”

Q: “And would it be fair to say, and I ask you this looking at all the evidence I have certainly seen, that **Ms. Pollard** would be front and centre? She **would be the primary person to which this comment is directed; is that fair?** Not the exclusive person, but the primary person?”

A: “**Yes**, she would be the primary person because she is the person that I had dealt with mostly in the projects that I had been involved in up to that date.” (emphasis added)

(Cross-Examination of Ted Lea, June 14, 2018 Transcript at pp. 38-40)^[1]_{SEP}

- c. with respect to the Respondent saying, “They are not following their own standards that they provide to ecologists and homeowners”, he was saying that Ms. Pollard acted unscientifically (and thus in breach of the College’s Code of Ethics”);

Q: “It is your view, is it not, that **Ms. Pollard did not formulate and present opinions, conclusions, and recommendations from an impartial, factual science base?** That is your view here today, sir, and it was your view in 2015; correct?”

A: “It is difficult to say this, but **I believe that that is correct.**”

Q: “Exactly. And I appreciate it's difficult, sir. And why we are here is because that is what you said effectively to 200 people at that meeting? Sir, do you understand that? That's why we are here because you said exactly that, in different words, to 200 people about a fellow applied biologist. You understand that?”

A: “I was not sure at that time where it was coming from. I did not know whether it was just Ms. Pollard or it was being directed by senior staff. But **I believed that, yes, she was not following her standards, was not following the wording of the bylaw.**”

Q: “She was acting pursuant to her personal views. That's what you wrote, that's what you told the College in May of 2017; right?”

A: “At that point, that is what I believed.” (emphasis added)

(Cross-Examination of Ted Lea, June 14, 2018 Transcript at pp. 48-50)

d. with respect to the Respondent saying,

- i. “If it’s wrong, if it’s a mapping error, I would be glad to, I would be willing to make that offer to everybody, but, get in touch with me later”,
- ii. “In reality, checking the mapping errors is a really quick job to do”,
- iii. “You can go on most properties that are lawn and garden and take 10 seconds and go this is not a sensitive ecosystem”, and
- iv. “Saanich staff could do that, but they have to follow the standards that they have said are in the bylaw, and they are not going to do that. Right? I don’t know how else to answer that, it’s just the reality of it now”,

the Respondent was prepared to do work for landowners (which on most properties would take 10 seconds) that Saanich staff, and in particular Ms. Pollard, should have been doing but were not going to do.

Q: “So what you are saying, sir, is, ‘Look, Saanich staff aren't going to do it because they have their own reasons not to do it, but I am prepared to do it.’ Right? That's what you were telling the audience?”

A: “I stated that. I don't think I was actually believing that and I certainly didn't go visit a whole bunch of properties afterwards. I wasn't asked to. So I did make that offer though.”

(Cross-Examination of Ted Lea, June 14, 2018 Transcript at pp. 69-70)

Q: “What you carried on to say in fact is that the assessments would take about ten seconds. Do you see that down lower?”

A: “Yes.”

Q: “And are you prepared to concede today now that that's an overstatement?”

A: “The statement is based on, and what I talked about in the last couple of days, is that if a highly experienced biologist goes onto a

site and sees a lawn and garden, it is a ten-second assessment; if one goes on and sees a correctly mapped sensitive ecosystem that is still in relatively unmodified condition, those ones are very quick responses, especially in most of these properties were people's back yards.”

“And as I said yesterday, when you are in the middle which is the maybes, the maybes take that short time to go that's a maybe. It needs more work to determine whether it is a sensitive ecosystem or not. But you get to the three categories. The one in the middle needs a lot more work.”

Q: “Sir, are you –”

A: “But a lawn and garden such as the Rainbow properties are very quick assessments. You go on to the property and you look and go there is no sensitive ecosystem here.”

Q: “So you are standing by your ten-second assessment comment, are you, here today?”

A: “This is not based at -- I'm not doing reports for somebody. It is to look at a property quickly and determine, yes, this is not in any way a sensitive ecosystem. [...]”

(Cross-Examination of Ted Lea, June 14, 2018 Transcript at pp. 70-71)^[11]_{SEP}

56. The circumstances are such that the Respondent’s references to Saanich staff were, in the circumstances, reflecting on conduct by Ms. Pollard.

4.6 The Saanich Council meeting

57. The Respondent attended at a public meeting of the Council of Saanich on May 25, 2015.

58. As indicated by an email from Saanich’s Chief Administrative Officer to Mr. Lea dated May 27, 2015 (Ex. 6, Vol. 3, Tab 73), the Respondent said at that meeting, “I really appreciate this movement forward but you have people really pissed off here ok with one particular staff member and it’s going to be trouble if you put her in that kind of situation ok just a warning ok so its I don’t know how you can deal with that but it is a big concern”.

59. In an email after the public meeting, from the Respondent to the Saanich CAO, the Respondent said that, “We are concerned that there will be lawsuits against Saanich and a need to get lawyers involved to solve many of these, if Saanich does not act quickly” (Ex. 6, Vol. 3, Tab 73).

60. The Saanich CAO who observed the Respondent’s remarks at the public meeting later remarked that he found the Respondent’s comments in relation to Ms. Pollard to be “inappropriate and offensive” and referred to the comments as a form of “personally targeted comments.” (Ex. 6, Tab 73) In a subsequent email, the Respondent wrote that he “[apologised] fully to [Ms. Pollard]” and that his intent was to indicate that he did not feel she should be exposed to upset landowners in an open house situation. (Ex. 6, Tab 173) During testimony, the Respondent added that his apology was primarily in relation to using offensive phrases and not the content of his statements.

61. The College and Respondent did not agree as to how this statement should be interpreted. The Respondent insisted that the statement was a genuine expression of concern for Ms. Pollard. The College, on the other hand, suggested that that a reasonable member of the public would view the statement as offensive and inappropriate. On cross-examination, the Respondent agreed that, “other individuals may have interpreted that way without the full understanding of my intent.” (Cross-Examination of Ted Lea, June 14, 2018 Transcript at p. 89)^[11]_{SEP}

4.7 The Reports

62. On July 4, 2016, the Respondent submitted the Reports to Saanich. The Reports were brief two- to three-page reports all recommending removal of the subject properties from the EDPA. The Reports, as submitted to Saanich, did not contain any supporting documentation such as field notes or photographs. Each of the Reports primarily consisted of a brief, qualitative description of the relevant property, a brief review of applicable sensitive ecosystem standards and a conclusion that the property being reviewed did not contain a sensitive ecosystem.

63. The Respondent collected supporting data, in the form of photographs and field notes. The photographs, while extensive, lacked any obvious survey methodology or reporting. For instance, the photographs did not include information such as the location and orientation from which the photograph was taken. The Respondent’s fieldnotes likewise lacked any clear methodology or structure and consisted of free-form observations of the surveyed properties.

64. Both the College, through Mr. Page, and the Respondent, through Mr. Meidinger, provided expert opinion evidence as to what the applicable standards of practice are for R.P. Bios and whether the Reports met the minimum professional standards for R.P. Bios. The Panel does not purport to set out every relevant aspect of their opinions in these reasons.

65. Mr. Page noted that provincial standards for assessing SEI polygons did not define typical practice, but stressed that there are still four essential criteria for the assessment of SEI polygons. These criteria were summarized as follows:

- a. Plot-based vegetation surveys using defined and repeatable methods at an appropriate time of year;
- b. Mapping of the Sensitive Ecosystem polygon(s) in the study site including the location of plots and other relevant features;
- c. Information (including the documentation of the absence of available information) from the BC Conservation Data Centre, previous assessments, consultant reports, and other sources to describe important features such as occurrences of rare species or ecological communities; and
- d. Data management and reporting that documents the assessment methods and results, and provides adequate data and supporting information to support the conclusions.

66. In relation to the last criteria, Mr. Page stressed the importance of proper reporting of study data and results. Mr. Page noted that proper reporting both strengthens the credibility of a study’s conclusions by allowing the reader to understand the evidence underlying any conclusion and improves the overall state of research by allowing for replication of studies.

67. Mr. Page gave opinion evidence that the Reports did not meet his criteria. Mr. Page cited the following deficiencies in the Reports:

- a. They lacked plot data, maps, sketches or data appendices and instead relied on general descriptions of the site;
- b. The supporting documentation did not alter the fundamental issues identified with the Reports themselves;
- c. The field notes were primarily vague observations of the properties surveyed and lacked any quantification of visual cover estimates; and
- d. The photographs collected contained no other methodological details, such as location of the photograph.

68. In relation to the quality of the Respondent's field notes, Mr. Page stressed the importance of plot-based surveys. Mr. Page opined that the downside of doing visual estimates is that there can still be native species living in area, and that is why using plots to quantify estimates is valuable.

69. Mr. Page opined that the field notes did not amount to a 'visual check' as they lacked basic methodological information such as dates. Mr. Page went further and expressed that such visual checks would only be appropriate, in any case, where there were more detailed data collection methods done elsewhere which a visual check could supplement.

70. Mr. Meidinger in contrast argued that while the criteria identified by Mr. Page were reasonable, he did not feel that those criteria were universal or required in every situation.

71. Mr. Meidinger acknowledged various limitations of the Reports, including the lack of study methodology and limitations, not including completed forms, both the lack of field notes and photos and the inferior quality of the notes and photos, and not assessing the ecological condition class, landscape context, and restoration potential class.

72. Despite these limitations, Mr. Meidinger opined that the Reports met the requisite standard of professional care.

73. In cross-examination, Mr. Meidinger acknowledged that his concerns as to the quality of the Reports were, at least in part, alleviated by his personal knowledge of the Respondent and the Respondent's considerable experience in ecosystem mapping. Mr. Meidinger agreed that he likely would have held more significant concerns regarding the Reports and would have sought to secure additional information from the Reports' author had the author been a less experienced or unknown biologist.

5. Findings of facts alleged in the Citation

74. With respect to the facts relating to the Respondent acting professionally while allegedly subject to a conflict of interest, the Panel is satisfied that the Respondent authored a number of specific reports recommending the exemption of properties from the Bylaw, as described above, while he was a member of, and advisor to, the Society, and while he owned land in Saanich. The Panel examines below whether such conduct, in the circumstances, contravened paragraph 4 of the Code of Ethics.

75. With respect to the facts relating to conduct allegedly reflecting adversely on the College or its members, or that injured the reputation of others through malice or negligence, the Panel is satisfied that the Respondent made a number of specific statements, as described above, that reasonable bystanders would have understood as referring to Ms. Pollard. The Panel examines

below whether such conduct, in the circumstances, contravened paragraphs 7 or 8 of the Code of Ethics.

76. With respect to the facts relating to the Respondent allegedly preparing reports without due diligence — the Panel will address any alleged lack of objectivity as part of the conflict of interest issue — the Panel is satisfied that the Respondent prepared a number of specific reports, as described above and as analyzed with respect to their professional adequacy by the parties' experts. The Panel will address below whether such conduct, in the circumstances, contravened paragraphs 1 or 3 of the Code of Ethics.

6. Professional requirements

6.1 Wrongful conduct under the Act

77. Under section 27(4) of the Act, the Discipline Committee may dismiss the Citation, or determine that the Respondent has committed one or more of the following:

- a. “professional misconduct”;
- b. “conduct unbecoming a practising member”; or
- c. “incompetent performance of duties undertaken while engaged in applied biology”.

78. The Act provides the following definitions under section 1:

Definitions

1. In this Act:

“**conduct unbecoming a practising member**” means conduct of a practising member that

- (a) brings the college or its members into disrepute,
- (b) undermines the scientific methods and principles that are the foundation of the applied biological sciences, or
- (c) undermines the principles of stewardship of aquatic and terrestrial ecosystems and biological resources;

...

“**professional misconduct**” means misconduct by a member of the college relating to the performance of duties undertaken while engaged in applied biology, and includes a breach of the rules....

79. The term “professional misconduct” includes breaches of “rules” – including standards of professional and ethical conduct – which the Council may make under section 20 of the Act:

Standards of conduct and competence

20. The council may make rules establishing the following:

- (a) standards of professional and ethical conduct, including a code of ethics, for members of the college, which standards may be different for different categories or subcategories of members....

80. The concepts of “professional misconduct” and “conduct unbecoming” are not mutually exclusive. Wrongful conduct may simultaneously breach a professional standard and bring the college or its members into disrepute. Indeed, a “rule” such as Principle 7 – which requires that each member maintain a standard of conduct “that does not reflect adversely on the College or its members” – clearly overlaps with “conduct unbecoming”, such that a breach of Principle 7 will be both “professional misconduct” and “conduct unbecoming a practising member”.

81. The Act does not define the term “incompetent performance” used in section 27(4) of the Act. However, since the College does not assert incompetent performance by Mr. Lea, the Panel does not have to address its meaning.

82. The Citation asserts breaches of specific provisions of the Code of Ethics, which are rules under section 20 of the Act. A member who contravenes the Code of Ethics engages in at least professional misconduct. The College clarified in its submissions that it asserts professional misconduct by Mr. Lea.

6.2 Wrongful conduct under the Code of Ethics

83. The Panel will address the citation matters in the following order:

- a. Incivility;
- b. Lack of due diligence; and
- c. Conflict of Interest.

84. The Citation alleges that the Respondent breached the following principles of the Code of Ethics:

- a. Principles 7 and 8 (relating to incivility);
- b. Principle 1 and 3 (relating to lack of due diligence); and
- c. Principle 4 (relating to conflicts of interest).

7. Analysis of professional misconduct

85. The College and the Respondent provided submissions, and case authorities. Where it deemed appropriate, the Panel has referred to cases concerning professional regulatory principles. A tribunal is not bound to rely solely on the law presented by the parties. The law must be correctly applied, and “a tribunal can rely on its own research”: *Int’l Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282 at para. 32 (per Sopinka J., dissenting in result). Mr. Justice Sopinka further noted further that, “[o]rdinarily there is no obligation to disclose to the parties the fruits of the tribunal’s research as to the law, although it is a salutary practice to obtain their views in respect of an authority which has come to the tribunal’s attention and which may have an important influence on the case.”

7.1 Incivility

86. Principle 7 requires that members avoid conduct that reflect adversely on the College or on the profession. Principle 8 requires that members avoid carelessly or maliciously injuring the reputations of others, including professionals. Principles 7 and 8 specifically provide as follows:

“7. Maintain a standard of personal and professional conduct that does not reflect adversely on the College or its members.

“To meet this principle members must:

- behave in a manner that recognizes a member’s conduct, both in private and professional life, shapes the perception the public and others have of the individual and, by association, the College and other members of the College; and
- be mindful that they are accountable to the College for both personal and professional conduct.”

“8. **Avoid injuring the reputation of others through malice or negligence.**

“To meet this principle members must:

- display due regard, fairness and courtesy to all individuals with whom they interact;
- **exercise due care to avoid unintentionally damaging a person’s reputation** when making a comment on a person’s ability or work, **and not knowingly or intentionally damage a person’s reputation by making misleading or malicious statements** about another person’s conduct or work;
- respect that members of legally established professions have been assessed by their peers as being capable of practicing in a competent manner and, as such, are due the respect and deference normally accorded a professional; and
- **comment with restraint and demonstrate full consideration of the facts** when expressing opinions that differ from those of other professionals.” (emphasis added)

87. With respect to Principle 8 of the Code of Ethics, many professions limit how members or registrants may criticize their colleagues:

- a. For example, section 48 of the Canadian Medical Association Code of Ethics, which governs physicians in BC, requires that physicians, “48. Avoid impugning the reputation of colleagues for personal motives; however, report to the appropriate authority any unprofessional conduct by colleagues.”
- b. Similarly, section 7.2-1 of the Code of Professional Conduct for British Columbia, which governs lawyers in BC, requires that, “A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.” Commentary 3 for the provision states that, “A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.”

88. While Principle 8 speaks in terms of injury to reputation, Principle 8 does not refer to the common law of defamation, which defines when a member of the general public may or may not publish a statement injuring the reputation of another. Regardless of when a person other than a member might speak about others, Principle 8 requires that members be careful, when addressing

issues, to avoid attacking colleagues and other professionals. Members may not make misleading comments about another member's conduct or work, may not make statements for the purpose of damaging another member's reputation, and even when making a statement for a legitimate purpose, must exercise due care.

89. During a public meeting attended by Saanich landowners, the Respondent essentially accused Ms. Pollard of intentionally refusing to correct sensitive ecosystem mapping errors, without "scientific justification", despite removal requests complying with assessment standards set by the Guidelines. He also accused her, and Saanich staff generally, of failing to check mapping errors, where in most cases identifying a property as something other than a sensitive ecosystem was a "really quick job to do". Yet the Respondent knew that Ms. Pollard had set out policy rationales for protecting mapped areas based on values "beyond SEI mapping standards" in her memorandum of February 17, 2015 (Ex. 6, Vol. 3, Tab 64). Such values included "restoration potential", "significant trees" and "the condition of the entire mapped area (as opposed to properties in isolation)". The Respondent also knew that Saanich staff was attending at properties in response to requests from owners.

90. The Panel is satisfied that the Respondent contravened Principle 8 by making statements injurious to Ms. Pollard's reputation, as set out above, and without exercising due care, at a meeting of about 200 property owners. As set out in commentary concerning Principle 8, the Respondent had an obligation to "comment with restraint and demonstrate full consideration of the facts when expressing opinions that differ from those of other professionals." While the Respondent could disagree with Ms. Pollard's interpretation, he failed to exercise due care by publicly accusing Ms. Pollard of intentionally refusing to correct errors without basis, and of failing to check mapping errors, when he knew she had rationales for her approach – albeit rationales that he disagreed with – and also that her staff did conduct site visits. His comments injured Ms. Pollard's reputation and were at least carelessly overbroad.

91. The Panel is also satisfied that the Respondent's conduct, which contravened Principle 8, also contravened Principle 7, as conduct reflecting adversely on members.

92. The Panel is also satisfied that, during the Saanich Council meeting, the Respondent made a public statement about a "particular staff member" that was clearly a reference to Ms. Pollard, implying that Ms. Pollard had engaged in conduct that "pissed off" people and was sufficiently improper that there was a "big concern" about "trouble" if she were exposed to the public. The negative implication of the Respondent's statement about Ms. Pollard is illustrated by how his statement was understood by Ms. Pollard's superior, Andy Laidlaw, Chief Administrative Officer for Saanich, as set out in his email to the Respondent dated May 27, 2015 (Ex. 6, Tab 73):

"...The comments made by yourself about our staff member Adriane Pollard in open council on Monday I found inappropriate and offensive, and certainly not in the spirit of our discussions. I have reviewed the text of your comments made at this open meeting of Council on a staff member, who has no ability to respond. Also, I consider this a comment on myself, as her manager. This type of personal targeted [sic] comments is not conducive to problem resolution, nor does it belong in a council chamber.. [sic] I would be prepared to continue to meet with Ms. Bull, but until such time there is a [sic] apology to Ms. Pollard and commitment to refrain from this. I will not meet with you further."

The Panel is satisfied that the Respondent contravened Principle 8 by making a statement injurious to Ms. Pollard's reputation, as set out above, at least without exercising due care. The Respondent clearly and carelessly implied poor practice or conduct by Ms. Pollard.

93. As with the Panel's previous determination, the Panel is satisfied that the Respondent's conduct, which contravened Principle 8, also contravened Principle 7, as conduct reflecting adversely on members.

94. Respondent counsel argued that the Respondent speaking publicly about the actions of government is political speech protected by freedom of expression under the *Charter*. Respondent counsel did not, however, assert that Principle 8 of the Code unjustifiably infringes the Respondent's freedom of expression under the *Charter*. The Respondent is a member of a profession which requires that its members, at least when speaking in a professional capacity, exercise restraint and care when commenting about the competence and ethics of other professionals. Principle 8 does not prevent "political" speech, provided that members refrain from malicious and carelessly injurious commentary about the competence and ethics of other professionals.

95. The Respondent did not simply speak about why he disagreed with Ms. Pollard's interpretation of what staff or Council should consider when addressing requests for remapping. He attacked the integrity of Ms. Pollard through misleading assertions about her motives and activities at both a public meeting attended by landowners, and in more general terms at a Saanich Council meeting. The Panel is satisfied that the Respondent spoke in part as a biologist, in a manner that contravened Principle 8, regardless of the "political" context of his statements.

7.2 Lack of due diligence

96. Principle 1 requires that members provide opinions, advice and reports that are objective, full and honest. Principle 3 requires that members practice with prudence and due diligence. Principles 1 and 3 specifically provide as follows:

"1. Provide **objective, science-based, unfettered, forthright and intellectually-honest** opinion, advice and reports in applied biology."

"To meet this principle, members must:

- formulate and present opinions, conclusions and recommendations from an impartial and factual science base;
- ensure that facts and opinions used to support advice; conclusions or recommendations are accurate and are represented accurately;
- identify relevant underlying data assumptions, methodologies, considerations, implications, and the sources for any information or background data/information in all reporting;
- identify limitations of data, concepts, conclusions, understanding, and recommendations in all reporting;
- disclose the professional relationship (employment/contract/volunteer) when the member acts or presents on behalf of a client or employer or other entity; and

- recognize that all work, whether or not signed and/or sealed must meet this principle.”

...

“3. Ensure they **meet a professional standard of care by practicing** applied biology **with** attention, caution, prudence, and **due diligence**.

“To meet this principle members must:

...

- identify and meet the professional standard of care that will avoid reasonably foreseeable undesirable outcomes;
- undertake their work in a manner that demonstrates due diligence;
 - to ensure due diligence, members must make certain that at a minimum:
 - the level of effort expended is appropriate to the task as defined by the activities undertaken and the potential risks;
 - experts have been consulted or retained where necessary;
 - background information is collected and incorporated;
 - data have been collected to ensure proper assessment of risks and outcomes;
 - the use of any new or unusual methods are justified, referenced and explained;
 - conclusions, uncertainties and recommendations are stated in a clear, understandable manner;
 - implications of recommendations and alternatives are identified in a clear, understandable manner;
 - all applicable legal requirements are met; and
 - appropriate documents, files and filing systems are maintained;
- exercise sound judgement, document uncertainties and provide a clear rationale for all decisions;
- provide advice that is carefully and conscientiously developed;
- ensure that the employer/client is aware of potentially adverse consequences if the member’s professional recommendations are not followed; and
- recognize that all work, whether or not signed and/or sealed, must meet the professional standard of care.” (emphasis added)

97. Principle 3 thus sets out a requirement for due diligence for all aspects of practice, including reports. Due diligence means, amongst other things, an appropriate level of effort,

collecting data, collecting and incorporating background information, explaining unusual methods, and stating uncertainties in a clear manner.

98. Additionally, minimum professional standards may arise from the professional culture itself, as well as from the College’s rule-making authority, which rules may confirm, vary, add to or take away from the minimum standards developed by the profession itself. Custom and industry practice may inform a professional standard of care, as indicated in *Krawchuk v. Scherbak*, 2011 ONCA 352 at para. 125, a case on professional negligence provided by the College: “External indicators of reasonable conduct, such as custom, industry practice and statutory or regulatory standard, may inform the standard.” Actual practice as a basis for professional standards is also confirmed by professional regulatory cases like *Council for Licensed Practical Nurses v. Walsh*, 2010 NLCA 11 (“Walsh”):

[43] ... Professional standards by their nature are designed to influence behavior to ensure professional competence and consistency. Adherence to established standards is the essence of a profession. To achieve that purpose the standards must be known or ascertainable, or at least capable of being deduced, in advance. That can be accomplished either **by the professional body exercising its rule-making authority** to establish written standards of practice, **or by reference to the “professional culture” itself.** (emphasis added)

This means that even if the College has not expressly created a specific “standard” for a situation, the Panel may discipline a member for “professional misconduct” where the member contravenes a minimum professional standard, in the sense of a standard prevailing within the profession: *Walsh*, at para. 43. A minimum professional standard was evidenced by the opinion of Mr. Page and generally accepted by the Panel, although the Panel viewed that criteria #2 could be met in a manner other than using plots.

99. Respondent counsel suggested in argument that “due diligence” had nothing to do with reporting. The Panel does not accept this view. First, Citation 3(b) includes the words, “with respect to the preparation of reports...” Second, the College has provided, through Mr. Page, evidence of minimum standards of the profession in British Columbia relating to the assessment of SEI polygons, and more specifically, four essential elements. Based on these essential elements, Mr. Page provided his opinion that the Reports were deficient, for reasons including lack of plot data, maps, sketches or data appendices (not remedied by the supporting documentation), inadequate field notes, and insufficient methodological data relating to photographs.

100. The evidence of Mr. Meidinger, who conceded that the Reports lacked a number of elements, initially favoured a lower minimum standard of professional conduct. In cross-examination, however, he acknowledged that he was assessing the Reports based on his knowledge of the Respondent’s considerable experience, whom he thought was careful and cautious (June 15, 2018, Transcript pp. 21-22), and that his opinion about the adequacy of the Reports relied in part on his knowledge about the Respondent: “...the strength of the person doing the assessment does come into play I would say in the confidence in the information.” Mr. Meidinger also agreed that, had the Reports been authorized by a less experienced biologist, such as a hypothetical ‘first-year R.P. Bio’, “I would likely want some follow-up. That doesn’t mean that I don’t believe the information isn’t correct. But I might ask for further information

like the field notes and/or photos and/or whatever information they had to better understand this.” (June 15, 2018, Transcript pp. 33).

101. The Panel has determined that a minimum acceptable content of reports and supporting documentation in the circumstances applies to every R.P.Bio, and does not vary on the basis of the experience or reputation of any given author. Respondent counsel also suggested that the appropriate assessment methodology could depend on whether a property was “obviously” a sensitive ecosystem class or not, and the Panel agrees provided documentation is provided in the reports.

102. Principle 1 required that the Respondent provide unfettered and forthright reports, which included an obligation to “identify relevant underlying data, assumptions, methodologies, considerations, implications and the sources for any information or background data/information in all reporting,” and also to “identify limitations of data, concepts, conclusions, understanding, and recommendations in all reporting”. At the very least, the Respondent should have documented any deviation from minimum professional standards, or from the requirements or recommendations of the Guidelines or the Factsheet, by setting out the information he was choosing to exclude and justifying his providing Saanich with incomplete Reports.

103. The Panel is satisfied that the Respondent contravened Principle 3 by failing to practice with due diligence when he prepared the Reports (as alleged in Citation para. 3(b)), and by his failing to prepare the Reports pursuant to the Guidelines, and the Factsheet (as alleged in Citation para. 3(c)).

104. Specifically, the Reports lacked any explanation of method or limitations, and they did not attach field notes or photographs, which are necessary given a visual inspection and the absence of plots. Those materials should have been attached.

105. Additionally, the Respondent’s field notes were insufficient. For example, the field notes lacked dates, and did not indicate where the Respondent walked. The photographs lacked information about time and place, including orientation.

106. Due diligence required that the Respondent provide the Reports in a complete form at first instance, meeting both requirements of professional standards, and the requirements and recommendations of the Guidelines and the Factsheet. Even with respect to “recommendations” that Saanich indicated as non-mandatory but desirable, due diligence required the Respondent follow the recommendations, or explain why he would not. Completeness in accordance with minimum professional standards, and recommendations of Saanich, would have best supported and justified his conclusions in the Reports. A lack of due diligence would not be excused by an undocumented presumption that completeness was unnecessary because Saanich staff would reject the Reports, regardless of their merits, and that the Respondent could wait to provide a complete report at a later stage of the process, before Council. The Respondent’s approach deprived his clients and Saanich of the benefits of complete Reports.

107. As set out above, the Panel is not persuaded that the minimum professional standards governing what a registered professional biologist must address in a report in a particular situation varies with the experience level or reputation of the professional. The Reports were missing elements required by minimum standards of acceptable professional practice, and those deficiencies were not relieved by the experience level or reputation of the Respondent.

108. In conclusion, the Panel is satisfied that the Respondent prepared reports in a manner that contravened Principles 1 and 3 (as alleged in Citation paras. 3(b) and (c)).

109. The Panel does not determine, however, that the Respondent applied incorrect criteria for assessing sensitive ecosystems (as alleged in Citation para. 3(d)). The College asserts that the Respondent applied incorrect criteria on the basis that “it is impossible to objectively determine what, if any, criteria Mr. Lea actually used....” The Panel is not satisfied that the Respondent applied incorrect criteria.

7.3 Conflicts of interest

110. Principle 4 requires that members avoid conflicts of interest, even when providing professional services as a volunteer. Principle 4 specifically provides as follows:

“4. Provide a professional standard of service to clients and employers by conducting business practices fairly, **avoiding conflict of interest** and respecting client/employer confidentiality.

“To meet this principle members must:

- “recognize that **the requirement** to provide a professional standard of service **applies whether the member provides services** in the private or public sector, **as a** contracting professional, **volunteer**, sole proprietor or an associate in a corporation, or working at the staff or management level
- ...
- “**avoid situations and circumstances where there is a conflict of interest;**
 - there is a real **or perceived conflict** of interest where a member’s interests conflict **or appear to conflict** with the member’s professional responsibilities;
 - in determining whether a conflict exists **or appears to exist**, members should consider **whether a reasonably well-informed individual in possession of the facts would believe a conflict exists;**
 - members must take measures necessary to ensure a conflicting interest does not bias decisions or recommendations that the member may be called upon to make; in extreme situations this might require the member to withdraw from a project.”

(emphasis added)

111. **The positions of the parties:** The College emphasized that the College had the power to define conflicts of interest for the profession; that Principle 4 addresses both actual conflicts and *perceived* conflicts; and that Principle 4 looks to whether a “reasonably well-informed individual in possession of the facts would believe a conflict exists” between a member’s interests and the member’s professional responsibilities. Accordingly, a perceived conflict exists where a situation is liable to create conflicting pressures on judgment, due to factors that a reasonable person would perceive as affecting judgment. The College emphasized that a personal interest may be non-pecuniary. The Panel acknowledges that the same conflict of interest principles will apply,

regardless of whether a conflicting interest is pecuniary or non-pecuniary in nature, as long as the interest is sufficiently significant to bias the Respondent's professional judgment or conduct.

112. The College submitted that, on the totality of the evidence, a reasonable person would view the Respondent as an advocate for the Society. The totality of the evidence would include the Respondent owning property in the EDPA area subject to development restrictions applying to buffers; his resulting involvement with the Society against the Bylaw, including his participating in drafting the Society's petition; his misrepresenting the fact of his having received legal advice, to address Saanich's concern about his having a conflict of interest when providing an opinion about a property in his neighbourhood; his making statements harmful to the reputation of another professional, Ms. Pollard, relating to the Bylaw; and his alluding to "lawsuits" against District of Saanich if it did not act quickly.

113. The Respondent submitted, to the contrary, that any benefit to the Respondent from a repeal of the Bylaw was too speculative to support any pecuniary interest of the Respondent that could conflict with his professional duties. On this point, the Respondent referred to *Fairbrass v. Hansma*, 2010 BCCA 319. In *Fairbrass*, a mayor, owning land zoned "A2", voted in favour of a proposed amendment to an Official Community Plan that would allow A2 parcels under 75 acres in size to be rezoned into "Small Holdings" that could, in turn, be subdivided into lots, as long as they were not less than 2.5 acres. The mayor's land was 4 acres, and thus could not be subdivided, despite the OCP amendment. The amendment was defeated, but petitioners still commenced a petition to address the mayor having participated in the vote.

114. The first court hearing the petition in *Fairbrass* declined to find any conflict of interest, due to a lack of pecuniary interest. The Court of Appeal confirmed that the petitioners had adduced "no evidence to the effect that the bylaw, were it to pass, would make the respondent's four acre but still un-subdividable property more valuable" (at para. 22); that the possibility of the mayor acquiring land in order to subdivide the property was speculative (at para. 22); and that the possibility of a future bylaw permitting lots smaller than 2.5 acres was speculative (at para. 23).

115. The Respondent has also suggested that a non-pecuniary interest must be a "substantial" interest, meaning an interest that is not remote or of little consequence; and that no material connection exists between the Respondent's personal interests as an owner, and his attending on properties in Saanich to consider their suitability for exclusion in the EDPA.

116. In reply, the College asserted that the Respondent has relied on cases involving municipal decision-makers, while the Respondent is a biologist who professionally recommended that properties be exempted from the EDPA, while also involved in an organization advocating for the exemption of properties from the EDPA. His involvement included his providing advice and assistance in drafting the Society's petition, and his signing the petition as an affected landowner.

117. The Panel members have reached distinct conclusions on the conflict of interest issue under Principle 4.

118. **A conflicting interest evidenced by conduct:** Mr. Steventon and Mr. Nyberg are satisfied that a "reasonably well-informed individual in possession of the facts" would view the Respondent's professional judgment as potentially impaired by his personal interests, as evidenced by his conduct.

119. The Respondent's ownership of property and background in ecology led to his becoming involved with the Society, which led to his becoming a fervent advocate for the Society. The facts show that the Respondent in fact became an advocate for the Society, to an extent that his relationship to the Society and its goals could have influenced his professional judgment.

120. A conflict of interest may arise from common types of relationships or situations where reasonable members of the public might infer or presume motives or pressures that could interfere with a member's professional judgment, e.g., due to pecuniary or non-pecuniary interests. A situation may also be such that, even if it is not of a type or kind where reasonable members of the public would ordinarily presume a conflicting interest, reasonable members of the public might still conclude that the member actually formed views or personal ties that could interfere with professional judgment.

121. Mr. Steventon and Mr. Nyberg are satisfied that a reasonable person would view all the circumstances here as disclosing a personal interest that could influence the Respondent's professional judgment about matters involving the Bylaw, including professional recommendations engaging Exemption 14. The nature of that interest is a personal, adversarial approach to the Bylaw, shown by Mr. Lea addressing concerns about a conflict of interest by misrepresenting his having received legal advice; by his delivering incomplete professional reports to the District on behalf of clients because he had formed a personal belief that Saanich staff would reject his recommendations anyway; and by his publicly attacking the ethical integrity of a colleague, Ms. Pollard at two meetings. Additionally (but for Mr. Steventon only, and not Mr. Nyberg) this personal interest was evidenced by the Respondent alluding to "lawsuits" against the District of Saanich if it did not act quickly.

122. While members may act professionally respecting matters about which they hold personal views, they must set aside personal interests and emotions when acting in a professional capacity. As expressed in the College's "Practice Guidance to Members" document (published March 8, 2014) respecting "C. Independence", "Members should also be sure to remain independent of special interest groups even if they are members of such groups, recognizing that holding office with or publicly advocating for such a group may impair the members' perceived or actual independence." In this case, a reasonable member of the public would view the Respondent as someone whose personal views could have interfered with his professional judgment.

123. The Respondent submitted that no conflict arose because he did not consistently recommend withdrawal of properties; in two instances, he collaborated on reports that recommended that a portion of the properties remain designated under the EDPA. The fact of the Respondent concluding that portions of some properties should remain designated under the EDPA did not, in the face of other evidence, prevent a perception that his professionalism could have been impaired by his personal interests.

124. A conflicting interest arising from property in a buffer zone: Ms. Beedle and Mr. Nyberg are satisfied that a "reasonably well-informed individual in possession of the facts" would view the Respondent's professional judgment as potentially impaired by his personal interests relating to his owning land covered by the EDPA.

125. The Respondent's land was partly designated as a buffer, which meant it was subject to special permit requirements relating to further development. The EDPA states on its face that properties under the EDPA, including buffer zones, are subject to development permit

requirements under the EDPA. A reasonable member of the public would view this circumstance as disclosing a situation that could influence the Respondent's professional judgment in relation to the Bylaw, given his opposition to the Bylaw. The nature of that interest is a personal, non-pecuniary interest in the entire Bylaw being repealed, and relieving his property of restrictions applying to buffer zones.

126. The Respondent's personal interest in the repeal of the entire Bylaw coincided with the interests of other landowners involved in the Society, and with the Society's general goal of removing all individual private properties from the scope of the EDPA. This case is not like the situation before the Court of Appeal in *Fairbrass*, which was whether a mayor had a (pecuniary) interest arising from a proposed change to a land use plan that, if implemented, would have no direct impact on his property. Here, removal of the property from the EDPA would remove development restrictions on the Respondent's property. The Respondent had a personal interest that could have contributed to his portraying the Bylaw and its implementation by Saanich staff as flawed, and that personal interest could have influenced his professional conduct in individual cases. A well-informed and reasonable individual could see the Respondent's interest as a landowner under the EDPA as potentially affecting his professional judgment.

127. The Respondent is not a member of a municipal council, where conflict of interest rules must be lenient enough to account for councillors elected to advance particular political positions, or the possibility that decisions by the council, such as decisions about land use plans, may broadly affect many people, including councillors owning land in affected areas. As stated by the court in *Cox v. College of Optometrists of Ontario* (1988), 65 O.R. (2d) 461 (Div.Ct.), "Conflict of interest takes many different forms and invites many different definitions and techniques of regulation. Its definition depends on the dynamics of the particular trade or calling in question." The Respondent is a professional biologist with an express duty, under Principle 1, to provide "objective" opinions, advice and reports in applied biology. Principle 4 exists to protect the professional objectivity and integrity of registered professional biologists.

128. The decision of the Panel as a whole: Mr. Steventon does not agree that the fact of the Respondent having land partly designated as a buffer zone, by itself, supports a conflict of interest. Ms. Beedle does not agree that the Respondent's conduct of providing incomplete reports, and publicly attacking the ethical integrity of a colleague – matters which the Panel has already addressed – support a perceived conflict of interest. The Panel as a whole is, however, satisfied that the Respondent contravened Principle 4: each panelist is satisfied of a contravention, although through different rationales, and the two rationales are each supported by a majority of the Panel.

7.4 Summary of conclusions

129. The Panel has determined that the Respondent contravened Principle 8 of the Code of Ethics, pursuant to Citation paragraph 2.

130. The Panel has determined that the Respondent contravened Principle 3 of the Code of Ethics, pursuant to Citation paragraphs 3(b) and (c).

131. The Panel has determined that the Respondent contravened Principle 4 of the Code of Ethics, pursuant to Citation paragraph 1.

8. Penalty and costs

132. Given this Panel's decision on verdict, a hearing will be scheduled to address penalty under s. 27(5) of the Act, and costs under s. 32 of the Act and s. 15.47 of the Rules.

133. Under Rule 15.44, Council may publish the decision of the Panel in such manner as it decides. Publication is not a decision for this Panel to make.

9. Notice

134. Section 33(1) of the Act provides that a respondent may, within 30 days of receiving notice of a determination under section 27, apply in writing to the council for a review on the record.

135. Section 33(3) of the Act provides that the discipline committee may, within 30 days of the date of a determination under section 27, refer the matter to the council for a review on the record.

136. As the hearing of the Panel is divided into two phases – a phase on verdict relating to section 27(4) of the Act, and a phase on penalty and costs relating to sections 27(5) and 32(1) of the Act – the Panel wishes to clarify that rights of the parties to seek review by the Council under sections 33(1) and (3) of the Act shall extend to when the Panel gives notice of a determination on penalty, so that the parties may decide to seek a council review based on the totality of the Panel's decision.

These are the Panel's Reasons for Decision and Order, dated November 30, 2018.

J. Brian Nyberg, R.P.P., R.P.F. Brentwood Bay, B.C. 5 December 2018

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Name	Place	Date
	SIMITHENS, BC	DECEMBER 5, 2018

Name	Place	Date

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Name	Place	Date
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Name	Place	Date
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<i>Barbara Beedle</i>	<i>Courtenay B.C.</i>	<i>05/12/2018</i>
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Name	Place	Date
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