

SUMMARY OF THE DECISION AND REASONS

In the matter of the Association of Professional Engineers of Ontario v. an Engineer and Engineering Company

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint against the conduct of Engineer A, a member of the Association of Professional Engineers of Ontario, and Company B, a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on October 20, 2011 at the Association of Professional Engineers of Ontario in Toronto.

BACKGROUND

The hearing arose as a result of the involvement of Engineer A and Company B in reviewing the design of a partially completed farm structure (i.e. hay barn), and signing and sealing an engineer's report (the report) sent to the local township, apparently justifying a deficient design previously submitted by another designer.

The panel received an Agreed Statement of Facts, which included facts to the effect that:

On or about January 28, 2009, Engineer A sent a signed and sealed report (the report) on Company B letterhead to the township in respect of six points of concern raised by the township regarding the design and structure of the farm building in question.

ADMISSIONS

Engineer A did not visit the property before signing his report.

The report contained numerous deficiencies, including the fact that without visiting the site and without calculation and verification of soil-bearing capacity, inconsistent with the standards set by the Ontario Building Code (OBC) and the *Construction Guide for Farm Buildings 2003*, Engineer A's report stated that footings were not required to support the structure.

Engineer A's report failed to provide calculations, assumptions or details of Engineer A's analysis regarding uplift force, inconsistent with sections 4.1.1.4(2)(a) and (b) and Appendix A of the OBC, which require the engineer to document and provide the measurements and assumptions used to the building authority.

In sum, the report reviewed an existing, deficient structure without Engineer A having ever visited the site and without making adequate com-

ments regarding the need for remedial work, or providing data and calculations to demonstrate whether Engineer A fully considered the sufficiency and safety of the structure.

PLEA OF THE MEMBER AND HOLDER

Engineer A and Company B admitted that their conduct in this matter constitutes professional misconduct as defined by the *Professional Engineers Act*, section 28(2)(b) and Regulation 941, section 72(2), and specifically as follows:

72(2)(a) negligence;

72(2)(d) a failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under the responsibility of the practitioner; and

72(2)(j) conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as unprofessional.

DECISION AND REASONS

The panel considered the Agreed Statement of Facts (voluntarily admitted) and found that the agreed facts supported a finding of professional misconduct contrary to section 28(2) of the *Professional Engineers Act* as defined in Regulation 941, sections 72(2)(a), 72(2)(d) and 72(2)(j).

PENALTY

The panel received a joint submission as to penalty from the association and the member and holder. The panel accepted the joint submission and accordingly ordered:

1. Pursuant to s. 28(4)(f) of the act, Engineer A and Company B shall be reprimanded and the fact of the reprimand will be recorded on the register for a period of one year;
2. Pursuant to s. 28(4)(d) of the act, it will be a term, limitation and condition on the licence of Engineer A that Engineer A will not perform any commercial or farm engineering services unless and until Engineer A successfully completes the following examination: Ministry of Municipal Affairs and Housing: *Building Code Examination: Building Structural-2006*, available through Ontario Building Officials Association—oboa.on.ca;
3. Pursuant to s. 28(4)(e)(iii) of the act, it will be a restriction on the licence of Engineer A and on the Certificate of Authorization of Company B requiring Engineer A and Company B to accept one or more periodic inspections by the delegate appointed by the deputy registrar, regulatory compliance, of documents and records in the possession or under the control of Engineer A or Company B in connection with their practice of professional engineering, until Engineer A has successfully completed the examination set out in paragraph 2. There will be a minimum of one such inspection within two years after the date of the hearing;
4. Pursuant to s. 28(4)(i) of the act, the finding and order of the Discipline Committee will be published in summary form, without names or identifying details; and
5. There shall be no order with respect to costs.

The panel, while deliberating on their decision as to penalty, took special note of legal advice to the effect that, based on court precedents, the panel should accept the Joint Submission as to Penalty unless there was very good cause to reject it.

While the panel viewed the allegations and the conduct of the member and holder very seriously, the panel also took into account the fact that both the member and the holder had co-operated with the association and,

by agreeing to the pertinent facts and proposed penalty, had accepted responsibility for their respective actions and avoided unnecessary further expense to the association.

The panel was of the opinion that the actions that gave rise to the hearing and as evidenced in the admitted facts indicate the need for professional rehabilitation prior to the member and holder continuing in unrestricted practice.

The panel concluded that, overall, the proposed penalty is reasonable when considered in total and achieves an equitable balance in recognizing both the protection of the public and fairness to the member (and holder) who co-operated with the association and admitted guilt, by giving the member and the member's company the opportunity to demonstrate an ability to be professionally rehabilitated.

SUMMARY OF THE DECISION AND REASONS

In the matter of the Association of Professional Engineers of Ontario v. an Engineer and Engineering Company

A matter came for a hearing before a panel of the Discipline Committee on October 11, 2011, at the offices of the Association of Professional Engineers of Ontario. The matter stemmed from a complaint against the actions of an engineer who is a member of the Association of Professional Engineers of Ontario, and against the actions on behalf of an engineering company that is a holder of a Certificate of Authorization.

BACKGROUND

A homeowner engaged a company to design a plan for some repairs to the ground floor and foundation of a dwelling house. The owner got a building permit from the local municipality but decided not to undertake this work.

In April 2007, the owner received a proposal from the engineer that was different from the original design, and which the owner accepted. The quote included providing “engineering drawings” in order for the owner to obtain a new building permit.

In May 2007, the work started using the engineer’s design, despite the fact that neither the homeowner nor the engineer had obtained a new building permit.

Later in May 2007, the local municipality’s chief building official inspected the site and noted that the work was different from what was shown on the plans for the building permit. The chief building official advised the homeowner to submit new engineering plans that were signed and sealed by a professional engineer for approval.

In July 2007, the chief building official inspected the site again and noted that the work was complete but that it was not in accordance with the plans for the building permit. The chief building official advised the homeowner and the engineer to provide an engineering review of the construction and confirm that it complied with the Ontario Building Code.

In August 2007, the engineer signed and sealed an engineering report. The report was submitted to the local municipality and included a statement that the work had been completed in a good and workman-like manner in accordance with the Ontario Building Code.

In December 2007, a new chief building official inspected the foundation repairs and reviewed the engineering report at the request of the property owner. The chief building official concluded that the work was not completed in a good and workman-like manner, and it did not comply with the requirements of the Ontario Building Code.

In January 2008, the municipality issued an order against the engineering company and the homeowner, citing violations of the Ontario Building Code regarding the repairs to the ground floor. The engineer subsequently corrected some, but not all, of the issues raised by the chief building official.

AGREED FACTS

Counsel for the association provided the panel with an Agreed Statement of Facts that included the following:

At all material times, the engineer was a licensed professional engineer and the engineering company held a Certificate of Authorization, allowing it to offer and provide to the public services that are within the practice of professional engineering.

The engineer and the engineering company admitted that:

- a. They did not notify the building department in writing that amendments were being made to the existing permit in place for the foundation repair, and they did not file details of those

amendments or obtain authorization from the chief building official to perform the work as amended;

- b. They overlooked that three of the 13 columns they installed were not fastened and/or centrally positioned on an appropriate footing in accordance with Ontario Building Code sections 9.15 or 9.17.2; and
- c. The engineering report contained an error—it stated that 17 columns were installed when, in fact, the actual number was 13 steel posts and columns.

The engineer admitted on his own behalf and on behalf of the engineering company that their actions constituted professional misconduct as defined by the *Professional Engineers Act*, section 28(2)(b) and Regulation 941, sections 72(2)(d) and 72(2)(j). The regulations are as follows:

72(2)(d) failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under the responsibility of the practitioner; and

72(2)(j) conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as unprofessional.

PLEA OF THE MEMBER AND/OR HOLDER

The panel conducted a plea inquiry and was satisfied that the engineer and the engineering company's admissions were voluntary, informed and unequivocal, and that they had the benefit of independent legal advice.

DECISION AND REASONS

The panel considered and accepted the Agreed Statement of Facts. The panel found that these facts clearly supported a finding of professional misconduct against the engineer and the engineering company as defined in the act and the regulations.

PENALTY DECISION

Counsel for the association provided the panel with a Joint Submission as to Penalty. The panel considered and accepted the submission and ordered the following:

1. Pursuant to section 28(4)(f) of the *Professional Engineers Act*, the engineer and the engineering company be reprimanded, and the fact of the reprimand not to be recorded on the register;
2. Pursuant to section 28(4)(d) of the *Professional Engineers Act*, it is a term, limitation and condition of the engineer's licence that the engineer successfully complete the Ontario Building Officials Association course, titled *Part 9—The House—Building Envelope—2006*, within 12 months of the date of the hearing;
3. If the engineer fails to complete this course within this timeframe, the engineer's licence shall be suspended for up to 24 months or until the engineer provides confirmation to the deputy registrar that the engineer has successfully completed the course set out above, whichever occurs first;
4. That the finding and order of the Discipline Committee be published in summary form in accordance with section 28(4)(i) of the *Professional Engineers Act*, without the publication of the engineer or the engineering company's names.

The panel is of the opinion that the actions that gave rise to the hearing, and as evidenced in the admitted facts, indicate the need for professional rehabilitation prior to the engineer continuing to practise without restrictions.

The panel is of the view that the penalty achieves an equitable balance in recognizing both the protection of the public and fairness to the engineer and the engineering company, recognizing that they co-operated with the association and admitted their guilt, thereby demonstrating the potential for them to be rehabilitated.