

DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding the conduct of NORMAN DONALD GARBUTT, P.ENG., a member of the Association of Professional Engineers of Ontario, and GARBUTT ENGINEERING LTD., a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on October 19 and 20, 2009, at a hearing room at the Association of Professional Engineers of Ontario (association) in Toronto.

THE ALLEGATIONS

The association's allegations against Norman Douglas Garbutt, P.Eng. (Garbutt), and Garbutt Engineering Ltd. (GEL) were that Garbutt is incompetent, as defined in section 28(3)(a) of the *Professional Engineers Act*, and that Garbutt and GEL are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

The association alleged that Garbutt and GEL:

- provided engineering services that failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
- failed to make reasonable provision for the safeguarding of life, health and property in relation to his work relevant to the foundation of the building;
- failed to make reasonable provision for complying with the Ontario Building Code regarding Part 4 structural requirements and construction general review requirements;
- undertook work that Garbutt was not competent to perform by virtue of his training and experience; and
- acted in a disgraceful, dishonourable and/or unprofessional manner.

PLEA OF THE MEMBER AND HOLDER

Garbutt did not appear, and Garbutt and GEL were not represented by legal counsel before the panel.

Josie D'Aluisio of the tribunals office staff testified that she sent Garbutt the Notice of Hearing on June 1, 2009 by registered mail to the last mailing address that Garbutt provided to the association. The panel received documentation that indicated that the letter was received. The counsel for the association noted that he had spoken with Garbutt, and that Garbutt indicated to him that Garbutt would not attend the hearing.

The panel, having found that notice had been provided to Garbutt in accordance with section 43 of the *Professional Engineers Act*, proceeded with the hearing.

The chair of the panel then entered a not guilty plea on behalf of the member and the holder.

WITHDRAWAL OF PANEL MEMBER

Denis Carlos, P.Eng., a member of the panel, recused himself from the panel following grounds of reasonable apprehension of bias arising out of the fact that he was a party to another proceeding before the Discipline Committee. The hearing continued with the remaining panel members.

OVERVIEW

In 2006, C.J.M. Property Management (owner) began the construction of a pre-engineered steel frame building in Kingston, Ontario, to be used for public storage. The building superstructure was designed and supplied by Steelway Building Systems. Taskforce Engineering Inc. (TEI) of Belleville

provided the design for the building's foundation and was sealed by David W. Brown, P.Eng. (Brown).

GEL was engaged by the owner to review the construction for compliance with the design in a number of engineering disciplines, including compliance with the foundation design. Garbutt submitted two certificates of completion to the City of Kingston, both of which stated that the foundation was built as designed. Brown, having been sent photographs by the owner, noted that some reinforcing steel bars called hairpins were missing. Brown was concerned that other elements of the foundation were not constructed as designed, which he subsequently confirmed by undertaking the destructive testing of two concrete piers. He informed the city and the owner of the results of his investigation, and informed them that, in his opinion, the structure was unsafe. Faced with a conflicting engineering opinion from Garbutt, the city instructed the owner to investigate two further piers. The second investigation corroborated the results of the first investigation. Garbutt later submitted a remedial design sketch to the city, which called for tie-rods under the slab.

THE EVIDENCE

The association filed the association's Statement of Allegations. The Statement of Allegations set out that Garbutt was a member of the association at all times relevant to this matter and that GEL was the holder of a Certificate of Authorization issued by the association at the same time.

The association called four witnesses:

- David W. Brown, P.Eng. (Brown);
- Lisa Capener-Hunt (Capener-Hunt), a building official with the City of Kingston;
- Renzo Villa, P.Eng. (Villa), an investigator for the association; and
- John Stephenson, P.Eng. (Stephenson), as an expert witness.

EVIDENCE BY BROWN

Brown, a principal of TEI, testified that TEI was contracted by the owner to design the building foundations for a pre-engineered building in Kingston, Ontario. The design drawings, sealed by Brown and dated January 19, 2006, were entered into evidence.

Brown testified that, on May 4, 2006, the owner provided Brown with photographs of the foundation under construction and that these photographs did not show bent reinforcing steel bars (hairpins), which were supposed to be embedded in the foundation walls at the foundation piers and would extend into the floor slab, as set out in his design. He testified that hairpins are required to enable the building to withstand lateral loads such as wind.

Brown stated that he ordered destructive testing (i.e. chipping of the concrete cover) at two piers. He stated that these tests showed that the pier reinforcement was substantially out of position and confirmed that hairpins were omitted. The photographs of these piers without their cement concrete cover were entered as evidence.

Brown said that he was concerned with public safety and the safety of his erection crew, and that the building could be unsafe unless the hairpins were installed. He tried, without success, to contact Garbutt about the safety of the building and subsequently wrote about his concerns to the owner and the City of Kingston (city).

In addition to his concerns set out in his letters, Brown was concerned about the quality of the inspection by Garbutt and Garbutt's lack of professionalism shown to Brown. For these reasons, Brown requested a copy of Garbutt's inspection review report from the city.

Brown stated that he was on site on May 17, 2006 and witnessed the last of the concrete being poured into place. He said that he was surprised that Garbutt's final site inspection report regarding the foundation works was dated May 5, 2006, since this was almost two weeks before the foundation could have been completed.

Brown further gave evidence that Garbutt never requested a copy of the structural drawings from TEI nor the foundation loads.

Brown also testified that he kept in contact with the building officials with the city, but never dealt with Garbutt directly.

EVIDENCE OF CAPENER-HUNT

The prosecution's second witness was Capener-Hunt, a building official for the City of Kingston. Capener-Hunt testified that Garbutt was the engineer of record on the project, and that Garbutt submitted the following documents to the city, all of which were entered into evidence:

- a Commitment to General Reviews by Architect and Engineers (commitment);
- a second commitment specifically for structural field review only;
- a final site review of the foundation dated May 5, 2006, indicating that the foundation work was completed and in general conformance with design drawings; and
- six structural drawings provided to the city, signed and sealed by Garbutt, marked "as built."

Capener-Hunt testified that Garbutt responded to a letter sent by the city by email stating that "the foundation would sustain all loads."

Capener-Hunt stated that she spoke with Brown about the construction and that the city received two reports from

TEI signed by Brown regarding alleged deficiencies in the foundations and his concerns about public safety.

Capener-Hunt gave evidence that she received an email from Garbutt stating that Garbutt did not consider hairpins as an acceptable design, and that he preferred the placement of tie-rods between pairs of pier under the slab.

Capener-Hunt confirmed that she issued an “Order to Comply” to the owner to expose two random piers and report on the reinforcement in them. The owner conducted the destructive tests the next day and confirmed that the hairpins were missing.

Capener-Hunt testified that Garbutt submitted six structural drawings to the city marked “as built,” which were signed and sealed by Garbutt. Included with the drawings was a sketch detailing tie-rod design dated September 10, 2006. Capener-Hunt further testified that she had prior dealings with Garbutt and that she encountered no problems with his work.

EVIDENCE BY VILLA

The prosecution’s third witness was Villa. He testified that Garbutt was familiar with the complaint and took the opportunity to respond to the association by providing some concrete compressive strength reports.

EVIDENCE BY STEPHENSON

The prosecution’s fourth witness was Stephenson. He was qualified as an expert witness by the panel to provide opinion evidence as to the standard of engineering practice for this type of work based upon his long experience as a structural engineer and his past qualification as an expert witness in the Ontario Superior Court.

Stephenson testified that he reviewed relevant documents in this matter.

Stephenson stated that, in signing the commitment document, Garbutt is required by the Ontario Building Code (OBC)—Part 4 structural requirements and construction general review section to carry out periodic site reviews to ensure the building conforms to the design drawings, and is required to issue a report that the work is built in reasonable conformance with the design.

He further said that he believed that Garbutt was on site and investigated the soil conditions prior to the pouring of the concrete foundation based upon his commitment dated April 4, 2006.

He testified that, in his opinion, Garbutt should not have sealed a final inspection report regarding the foundation construction work until the construction was complete.

Stephenson testified that the photographs of the destructive tests show that the hairpins were not installed and that the reinforcing in the piers was not properly installed at the four pier locations.

Stephenson stated hairpins and properly designed tie-rods are both acceptable ways to connect the foundation to the slab to resist horizontal wind loads on the building.

Stephenson discounted the design of the tie-rods proposed by Garbutt because there was no corrosion protection indicated for the tie-rods placed in the soil under the slab, and an absence of corrosion protection could result in the structural failure of the tie-rods. In addition, he testified that the sketch of the tie-rod design lacked sufficient detail.

In Stephenson’s opinion, Garbutt’s as-built drawings were copies of the TEI design drawings in all important respects. These documents, sealed by Garbutt, show hairpins at the piers. Therefore, the as-built drawings did not represent what was actually built.

Stephenson testified that, in his opinion, the services provided by Garbutt did not meet the standard of practice of a competent engineer.

SUMMATION BY THE ASSOCIATION

Counsel for the association noted that it was the only party making a submission since the other parties did not attend, and that the onus on the association is to prove the allegations on a balance of probabilities. He then read into the record the allegations, and sections of Regulation 941, amended to O.Reg. 205/09, under the *Professional Engineers Act*: section 72(1) (negligence) and section 72(2) (professional misconduct), subsections a, b, c, d, h and j.

The association provided evidence that Garbutt had executed a commitment for a general review of the structural foundations as per OBC’s requirements, which serves as an independent check to ensure that the construction was in general conformity with the design drawings submitted for the building permit. Garbutt’s final inspection report indicated that all work was completed in accordance with the design drawings. However, the photographs and the evidence by Brown and Stephenson contradicted that report, and the photographs showed that the work was not in accordance with

the design since there were no hairpins and the reinforcing in the concrete piers was not placed correctly. The association alleged that Garbutt was negligent, failed to maintain standards of the profession and compliance with the OBC since he knew or overlooked the fact that the structure lacked hairpins, which would have been obvious to him when he visited the site.

The association underscored Brown's concern about the safety issue regarding the foundations and Stephenson's testimony that the lack of hairpins could result in a building failure under full loading. The evidence was that, although the building was still standing, nevertheless, the building did not meet OBC requirements and could possibly result in a failure if subjected to full loading. The association submitted that Garbutt sent an email to the city stating that the building could support the full building load; however, he contradicted this position in the email by stating that he would not recommend the building for financing, inferring that there was a problem with the structure. Garbutt later sent an email confirming that the building would support all loads imposed by the superstructure. Following that email, Garbutt issued a tie-rod drawing. The association suggested that the evidence indicates that Garbutt was consistent with someone who has made a mistake and is trying to explain his actions. The association concluded that Garbutt's statements and conduct were inherently inconsistent and that there is overwhelming evidence of incompetence and misconduct.

The association pointed out that Stephenson's evidence showed that Garbutt's tie-rod detail would not be sufficient to resist the lateral loads, as due to its configuration it would "stretch" below the concrete floor since it was not embedded in the concrete. The association urged the panel to accept Stephenson's opinion that Garbutt did not meet the standard required of a reasonable and prudent engineer.

The association submitted that the allegations of incompetence had been proven on the record as Garbutt demonstrated a lack of knowledge, skill or judgment, disregard of public safety and a disregard of building code requirements.

In addition, the association suggested that Garbutt's decision to not attend the hearing was consistent with his actions by not meeting with Brown.

COMMENTS BY ILC

The panel requested the independent legal counsel to provide his comments regarding this matter. His advice was that:

- A finding of incompetence generally requires a pattern of carelessness and, possibly, when advised of a shortcoming, a failure to correct such behaviour;
- A finding that a member's actions were disgraceful or dishonourable generally requires a finding of moral tur-

pitude, and the panel may wish to examine whether such was made out on the facts; and

- The alleged disagreement between Stephenson and Garbutt is a matter for the panel to weigh the evidence.

The association's response was that:

- Professional misconduct is covered in section 72(2)(j) and the panel ought to draw its conclusion not only from an individual email, but from the "forest" of evidence to get an overall conclusion; and
- Garbutt's actions, providing a tie-rod replacement for the missing hairpins, making inconsistent comments that the building was not capable of supporting the loading and then that it was, indicate that he is trying to justify his actions due to missing the hairpin detail.

FINDINGS

The panel finds that:

- Garbutt was a member of the association and that GEL was a member of the association at the material times;
- The foundation was still being constructed by the owner 12 days after Garbutt sealed a commitment on May 5, 2006 for this work;
- The building required the pier foundations to be connected to the floor slab to withstand horizontal wind loads, and that hairpins and tie-rods are both acceptable ways to make this connection;
- Hairpins were not installed and the reinforcing steel bars in the piers were incorrectly installed at the four random pier locations under review and that, based upon this finding, this situation was likely repeated at most, if not all, of the piers;
- The panel finds that Garbutt knew, or should have known, that there were no hairpins installed, and that he should have either removed them from his drawings submitted to the city after consulting with the designer and identified the change from the permitted construction, or he should have taken action to correct the construction;
- The as-built drawings by Garbutt are copies of the TEI design;
- The as-built drawings and the commitment did not identify the elements of the foundation that were not in general conformance to the design drawings that formed part of the application for a building permit, specifically, the hairpins were missing and the reinforcing steel bars in the concrete piers were placed incorrectly;
- Garbutt did not respond appropriately to the issues raised by Brown regarding the safety of the building due to the construction of the foundation;

- On the issue of the emails, the panel considered the emails and determined that they set out clear opinions that were held by Garbutt, and that they were admissible;
- The panel finds that Garbutt's absence from the hearing without explanation after having been properly served with the Notice of Hearing is consistent with the testimony by Brown, but inconsistent with the testimony by Capener-Hunt. Therefore, while Garbutt missed his opportunity to present his case to the panel, Garbutt's actions did not represent a pattern of behaviour;
- There was no evidence as to whether and when the tie-rods were installed but, in the absence of any evidence contrary to the design submitted by Garbutt, the panel finds that they were installed; and
- The association bears the onus of proving the allegations on a balance of probabilities.

DECISION

Having considered the evidence and the onus and standard of proof, the panel finds that Norman D. Garbutt, P.Eng., a member of the Association of Professional Engineers of Ontario, and Garbutt Engineering Ltd., a holder of a Certificate of Authorization issued by the Association of Professional Engineers of Ontario, are guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*.

The panel finds Norman D. Garbutt, P.Eng., not guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*.

The panel finds that Norman D. Garbutt, P.Eng., and Garbutt Engineering Ltd. are guilty of negligence contravening section 72(2)(a) of Regulation 941 under the *Professional Engineers Act*.

The panel finds that Norman D. Garbutt, P.Eng., and Garbutt Engineering Ltd. are not guilty of contravening section 72(2)(b) of Regulation 941 under the *Professional Engineers Act* regarding safeguarding of life, health, and property.

The panel finds that Norman D. Garbutt, P.Eng., and Garbutt Engineering Ltd. are not guilty of contravening sections 72(2)(c), 72(2)(d), 72(2)(k) and 72(2)(h) of Regulation 941 under the *Professional Engineers Act*.

The panel finds that Norman D. Garbutt, P.Eng., and Garbutt Engineering Ltd. are guilty of contravening section 72(2)(j) of Regulation 941

under the *Professional Engineers Act* in that they acted in an unprofessional manner.

The panel finds no evidence of dishonourable or disgraceful conduct.

REASONS FOR DECISION

The panel finds that it has jurisdiction in this matter over Garbutt and GEL as they are a member of the association and the holder of a Certificate of Authorization respectively.

The panel found that Brown was a credible witness as his testimony was corroborated by Capener-Hunt and supported by convincing evidence. He showed a genuine concern for the safety of the public and his steel erection crew, and he risked financial loss by expressing his views to the owner that were not in the interests of the owner.

The panel found that Capener-Hunt was a credible witness. Her evidence was corroborated by Brown and supported by convincing documentary evidence.

The panel found that Stephenson was a credible and helpful expert witness. His expertise was based upon his years of experience; he gave clear and convincing explanations of the technical aspects of the foundation construction and his evidence was presented in an unbiased and straightforward manner. The panel was assisted by his expertise and persuaded by much of his opinions.

In the absence of the member and holder, or counsel acting on their behalf, no evidence was presented to contest the evidence presented by the association.

The panel found Garbutt not guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act* as incompetence requires a pattern of incompetent behaviour, which the panel did not observe in this matter.

The panel decided that Garbutt and GEL acted in an unprofessional manner by providing as-built drawings that show that hairpins were installed when, in fact, they were not installed at the piers, and which show that reinforcing steel bars were installed in accordance with the drawing when, in fact, the reinforcement was not installed correctly at the piers. In addition, Brown's letter and other attempts to communicate with Garbutt about the safety of the building should have been sufficient for Garbutt to make a greater effort to either discuss the situation with Brown or to take prompt corrective action.

The panel found that Garbutt and GEL contravened section 72(2)(a) in that they provided engineering services that failed to maintain the standard that a reasonable and prudent practitioner would maintain in the circumstances.

The panel found that there is no clear evidence to support the allegation of contraventions under section 72(2)(b), a failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work, or under section 72(2)(c), a failure to act to correct or report a situation that the practitioner believes may endanger the safety or the welfare of the public, since there was no evidence to establish when the tie-rods were installed, which Stephenson said was an acceptable approach, or that corrosion protection was not used.

The panel found that Norman D. Garbutt, P.Eng., and GEL are not guilty of contravening section 72(2)(h), undertaking work that the practitioner is not competent to perform, as there was evidence that they had successfully worked on many similar buildings and, further, that the tie-rod solution proposed by Garbutt is an acceptable solution.

The panel found no evidence to support the allegation of contraventions under section 72(2)(k), a failure to abide by the terms, conditions or limitations, provincial licence, limited licence, temporary licence or certificate, since both Garbutt and GEL had a licence and a certificate respectively.

The panel found that Norman D. Garbutt, P.Eng., and GEL are guilty of contravening section 72(2)(d) by contravening the general review requirements in Part 4 of the Ontario Building Code by providing a final inspection report 12 days before the foundation could have been completed.

The panel found that Garbutt and GEL are guilty of negligence in that they provided engineering services that failed to maintain the standard that a reasonable and prudent practitioner would maintain in the circumstances. Garbutt and GEL failed to make reasonable provision to ensure the building was constructed in accordance with the design, and submitted as-built drawings and a commitment that did not identify the elements of the foundation that were not in general conformance to the design drawings that formed part of the application for a building permit. In addition, Garbutt and GEL submitted a tie-rod design to the city that did not take corrosion into account.

The panel finds no evidence of dishonourable or disgraceful conduct in that no moral turpitude was apparent to the panel, or proven, on the basis of the record before the panel.

SUBMISSIONS AS TO PENALTY

As an alternative to an “oral” hearing, the panel proposes receiving submissions as to penalty in writing (written hearing) pursuant to rule 7 of the Rules of Procedure of the

Discipline Committee, or electronically (electronic hearing by teleconference) pursuant to rule 6 of the Rules of Procedure of the Discipline Committee of the Association of Professional Engineers of Ontario (rules).

The panel will not receive a submission in writing if a party objects. The panel will not hold an electronic hearing if a party objects and satisfies the panel that holding an electronic hearing rather than an oral hearing is likely to cause the party significant prejudice.

The panel, therefore, directs the parties to consult each other as to the mode of hearing and to determine a mutually agreeable date to continue the hearing orally, in writing, or electronically. The date of the hearing or the deadline must be within 37 calendar days after the date of this decision.

Written submissions as to the mode of hearing are to be provided, on or before 12 days after the date of this decision, to the panel of the Discipline Committee to:

Professional Engineers Ontario
40 Sheppard Avenue West, Suite 101
Toronto, Ontario
M2N 6K9
Attention: Mr. Ed Rohacek, P.Eng., panel chair

If no submissions are received regarding the mode of hearing by 12 days after the date of this decision, the panel will proceed to hold a penalty hearing in writing and will require written submissions as to penalty from the association on or before 17 days after the date of this decision, and from the member and holder on or before 25 days after the date of this decision.

If there is an objection to holding the penalty hearing in writing and/or there is either: (a) no objection to holding the penalty hearing electronically; or (b) an objection to holding the penalty hearing electronically but the panel is not satisfied that holding an electronic rather than an oral penalty hearing is likely to cause the party significant prejudice, the panel will hold the electronic hearing regarding the penalty on such date as the parties may agree on, and which date is available to the panel or, failing agreement, on or before 37 days after the date of this decision.

In all other circumstances, the panel will reconvene this matter for an oral hearing as to penalty on such date as the parties may agree on, and which date which is available to the panel or, failing agreement, on or before 37 days after the date of this decision at a date and time set by the panel.

The written Decisions and Reasons was dated June 29, 2010 and was signed by Ed Rohacek, P.Eng., as chair on behalf of the other members of the discipline panel: Ishwar Bhatia, P.Eng., Glenn Richardson, P.Eng., and Michael Wesa, P.Eng.

DECISION AND REASONS ON PENALTY

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding the conduct of NORMAN DONALD GARBUTT, P.ENG., a member of the Association of Professional Engineers of Ontario, and GARBUTT ENGINEERING LTD., a holder of a Certificate of Authorization.

PENALTY SUBMISSIONS

On June 29, 2010, the panel issued its Decision and Reasons for finding Norman Donald Garbutt, P.Eng. (Garbutt), and Garbutt Engineering Ltd. guilty of professional misconduct. Pursuant to section 5.1 of the *Statutory Powers Procedure Act* and rule 7.1 of the Rules of Procedure of the Discipline Committee of the Association of Professional Engineers of Ontario, the panel reconvened a written hearing to hear motions as to the penalty. On July 13, 2010, the Association of Professional Engineers of Ontario (association) consented to holding the penalty hearing in writing. In the absence of any correspondence from Garbutt or Garbutt Engineering Ltd., the panel agreed to reconvene the panel in a written hearing to hear motions as to penalty. The panel noted that a copy of the association's submission was sent to Garbutt.

The panel was provided with an email from Garbutt's spouse advising that Garbutt was out of the country and unreachable until September 2010. On July 22, 2010, the panel extended the deadline for Garbutt's submissions until November 5, 2010 to accommodate Garbutt. Neither Garbutt nor Garbutt Engineering Ltd. objected to holding the penalty hearing in writing, nor did either provide the panel with any submission or response to the association's submission.

The association proposed the following penalty:

1. A written reprimand, the fact of which shall be recorded on the register indefinitely.
2. That it be a term and condition on any reinstatement of Garbutt's licence that he is entitled to practise professional engineering only under the direct supervision of another professional engineer, and shall not issue a final

drawing, specification, plan, report or other document unless the supervising professional engineer also signs and dates it and affixes his or her seal to it.

3. That it be a term and condition on any reinstatement of Garbutt's licence that, within six months of the reinstatement, Garbutt shall write and pass the professional practice examination.
4. That the decision and reasons in this matter be published with names.

The association did not seek any costs in this matter.

The association's submission included advice that:

1. Garbutt resigned his licence as of May 8, 2009.
2. The Certificate of Authorization issued to Garbutt Engineering Ltd. was closed on May 7, 2009.

The panel noted that, under sections 5(2) and 22(1) of the *Professional Engineers Act* (act), Garbutt and Garbutt Engineering Ltd. are subject to the continuing jurisdiction of the association in respect of any disciplinary action arising out of the person's professional conduct while a member or holder respectively.

The panel is of the opinion that an application for reinstatement under section 51 of the act should require the registrar to consider the findings of the Discipline Committee before making a decision.

The panel considered the powers of the Discipline Committee set out in section 28(4) of the act, and specifically, subsection (k) thereof, and the purpose of the association as set out in section 2(3) of the act, which is reproduced here for convenience:

"The principal object of the association is to regulate the practice of professional engineering and to govern its members, holders of certificates of authorization, holders of temporary licences, holders of provisional licences and holders of limited licences in accordance with this act, the regulations and the bylaws in order that the public interest may be served and protected."

The panel decided that it serves and protects the public interest to interpret that the powers of the Discipline Committee extend to include the power to impose sanctions and postponing them in accordance with section 28(4)(k) of the act, which is reproduced here for convenience:

- "(4) Where the Discipline Committee finds a member of the association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence guilty of professional misconduct or to be incompetent it may, by order,...
- (k) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms

or for such purpose as the Discipline Committee may specify, including but not limited to,

- (i) the successful completion by the member or the holder of the temporary licence, provisional licence or limited licence of a particular course or courses of study,
- (ii) the production to the Discipline Committee of evidence satisfactory to it that any physical or mental incapacity in respect of which the penalty was imposed has been overcome.”

PENALTY DECISION

Garbutt and Garbutt Engineering Ltd. are reprimanded for their negligence and for acting in an unprofessional manner by:

1. Providing as-built drawings that show that hairpins were installed when, in fact, they were not installed at the piers, and which show that reinforcing steel bars were installed in accordance with the drawing when, in fact, the reinforcement was not installed correctly at the piers;
2. Not responding to attempts by Brown to communicate with Garbutt about the safety of the building, which should have been sufficient for Garbutt to make a greater effort to either discuss the situation with Brown or to take prompt corrective action; and
3. Signing a site inspection report that the work was completed when, in fact, the work was not completed.

The panel orders:

1. That the registrar record the fact of the reprimand against Garbutt and Garbutt Engineering Ltd. and that it be recorded on the register indefinitely;
2. That, if Garbutt’s licence is reinstated, the panel orders that his licence be restricted to engaging in the practice of professional engineering only under the personal supervision of a member of the association for two years from the date of the new licence, and that Garbutt shall not issue a final drawing, specification, plan, report or other document unless the supervising professional engineer first signs and dates it and affixes his or her seal to it;
3. That it be a term and condition on any reinstatement of Garbutt’s licence that, within six months of the reinstatement, Garbutt shall write and pass the professional practice examination; and
4. That both sets of Decision and Reasons in this matter be published, with names, in the official publication of the association, and that the association may make minor formatting and typesetting changes to conform with its publishing standards.

The panel does not impose a requirement that Garbutt or Garbutt Engineering Ltd. pay any costs to the association.

REASONS

There being no submission from Garbutt, the panel considered and made certain amendments to the penalty proposed by the association as follows:

- The panel amended the wording of the restrictions on the licence in item 2. to better conform to the powers granted by the legislation governing the Discipline Committee;
- The panel considered that an unlimited restriction on Garbutt’s licence in item 2. above was too severe in all of the circumstances, and that a two-year period would be sufficient to satisfy the public interest; and
- Minor technical changes.

The panel considered that it would have imposed the same penalty, as stated above, without deferring some parts of it had Garbutt not resigned and had the association not submitted that: “The Certificate of Authorization, issued to Garbutt Engineering Ltd. was closed on May 7, 2009.”

In deciding an appropriate sanction in this matter, the panel considered the following principles of sentencing:

- protection of the public;
- preservation of the standards and reputation of the regulator;
- specific deterrence;
- general deterrence; and
- rehabilitation.

The panel judged that the reprimand, the conditions on a future licence, and publication all protect the public by:

- enabling the public to know that there is a record of a sanction against Garbutt and Garbutt Engineering Ltd.;
- ensuring that future engineering work by Garbutt is checked by a supervising engineer for two years, which the panel finds to be an appropriate sanction for his actions; and
- ensuring that Garbutt demonstrates that he understands the standards required for a professional practice.

The penalty provides both specific deterrence and general deterrence. The reprimand and the conditions on a future licence are intended to ensure that Garbutt will not repeat the misconduct at issue. In addition, the publication of the sanctions will deter other engineers from similar conduct, such as not responding to reasonable inquiries from other members.

The penalty is also designed to rehabilitate Garbutt should he ever decide to practise engineering again.

The written Decisions and Reasons on Penalty was dated March 1, 2011, and was signed by Ed Rohacek, P.Eng., as chair on behalf of the members of the discipline panel: Ishwar Bhatia, P.Eng., Glenn Richardson, P.Eng., and Michael Wesa, P.Eng.

SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint against the conduct of William Gregory Hunt, P.Eng., a member of the Association of Professional Engineers of Ontario, and Hunt Engineering Group Inc., a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on March 23 and 24, 2009; May 14 and 15, 2009; June 23, 2009; and September 9, 2010; at the Association of Professional Engineers of Ontario in Toronto.

BACKGROUND

The hearing arose as a result of the involvement of William Gregory Hunt, P.Eng., and Hunt Engineering Group Inc. in assessment and design services on seven separate bridge projects on behalf of forestry companies, contractors and the Ministry of Natural Resources (MNR) in northern Ontario in the years 1999 to 2005. Because the bridges were for roads on Crown land, many of Hunt's reports and drawings for the forestry companies and contractors were submitted to the MNR for review and approval.

An original Statement of Allegations pertained to seven bridge projects. Prior to the commencement of the hearing, the prosecution withdrew allegations relating to one of the projects. The panel proceeded to hear the case in respect of allegations regarding professional services performed in respect of the remaining six projects.

ALLEGATIONS

It was alleged that William Gregory Hunt, P.Eng. (Hunt), and Hunt Engineering Group Inc. (HEGI), in their work on six projects:

- (a) issued drawings, sketches, reports and other documents that did

- not contain sufficient information and/or details to allow the documents to be reviewed and assessed by the Ministry of Natural Resources of Ontario and/or to allow the bridges to be built/repared by a contractor;
- (b) issued drawings, sketches, reports and other documents that contained errors, omissions and deficiencies relevant to the professional engineering content that had the potential to adversely impact the public safety;
- (c) breached section 53 of Regulation 941 by failing to sign and seal final drawings, sketches, reports and other documents that were issued as part of the professional engineer services provided;
- (d) prepared bridge designs and bridge upgrade/repair proposals that did not comply with the requirements of the Ontario Highway Bridge Design Code or the Canadian Highway Bridge Design Code;
- (e) failed to respond to Ministry of Natural Resources of Ontario requests for additional information and details regarding his design work on the projects;
- (f) advocated for their client and placed their clients' interests ahead of the public welfare; and
- (g) acted in an unprofessional manner.

It was alleged that William Gregory Hunt, P.Eng., is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act*, and that William Gregory Hunt, P.Eng., and Hunt Engineering Group Inc. are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

PLEA OF THE MEMBER AND/OR HOLDER

William Gregory Hunt, P.Eng., and Hunt Engineering Group Inc. denied the allegations set out in the Statement of Allegations and pled not guilty.

THE EVIDENCE

Expert evidence was provided for the association by:

- T. Middleton, P.Eng., who was employed by the Ontario Ministry of Natural Resources in its Timmins regional office throughout the material times. Middleton was involved in the review of submissions dealing with approvals of, among other things, bridges on forest access roads;
- Robert Wilson, P.Eng., who had been an employee of the Ontario Ministry of Natural Resources since 1992 and, at the material times, was the regional engineer for MNR in the Timmins office. In this role, he had oversight of all bridges on public land; and
- Christopher Thompson, P.Eng., who was accepted by the panel as an expert to provide testimony on piled foundations. Thompson, an employee of Trow Consultants Inc., had been retained by MNR to carry out a peer review of

Hunt's engineering design for the Amundsen River bridge, one of the six bridges to which the allegations pertained.

No expert evidence was provided by the defence.

THE DECISION AND REASONS

Having considered the evidence and the onus and standard of proof, the panel found that William Gregory Hunt, P.Eng., a member of the Association of Professional Engineers of Ontario, and Hunt Engineering Group Inc., a holder of a Certificate of Authorization issued by the Association of Professional Engineers of Ontario:

- committed an act of negligence as alleged, contrary to ss. 72(1) and (2)(a) of Regulation 941/90; and
- is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act* and, as such, is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, in that:
 - (1) the member et al. issued drawings, sketches, reports and other documents that contained errors, omissions and deficiencies relevant to the professional engineering content that had the potential to adversely affect the public safety. In particular, a letter report, dated August 3, 2000, signed and sealed by Hunt indicated an incorrect hydraulic calculation. In a follow-up letter, dated August 16, 2000, Hunt changed the hydraulic calculation, but it was still incorrect; and
 - (2) the member issued a geotechnical report dated October 28, 2004, including borehole logs. The member issued a revised version of the same report dated January 12, 2005, including the logs of the very same boreholes where some of the log entries had materially changed. The report also contained errors and inconsistencies relating to engineering practice.

The panel dismissed all the other allegations against the member and the holder.

PENALTY

The panel received written submissions from the association and the member and holder in respect to penalty.

After considering the submissions and by virtue of the authority given under section 28(4)(e) of the *Professional Engineers Act*, the panel ordered that specific restrictions be imposed on the licence of the member and the holder's Certificate of Authorization, requiring that the member and the holder not engage in the practice of professional engineering in relation to geotechnical engineering, foundation design and river hydraulics, as they relate to bridge design.

The panel further directed that the specific restrictions described above be removed if and when the member:

1. successfully completes the following Professional Engineers Ontario examinations: 98-CIV-B3 Geotechnical Design; 07-STR-B5 Foundation Engineering; and 07-WRSE-B Open Channel Hydraulics; and
2. successfully completes the association's practice and ethics examination.

In respect of 1 and 2 above, "successfully completes" means obtaining a pass mark normally required by the association for that particular examination.

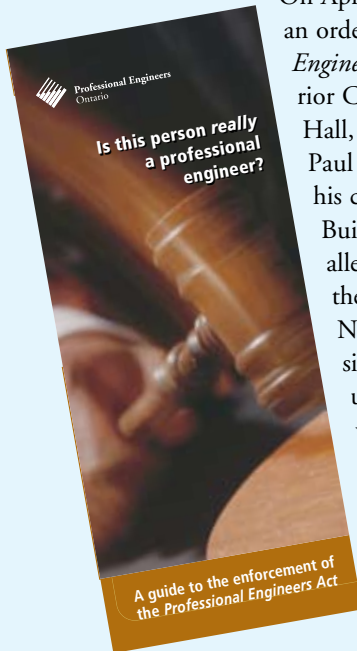
As to publication, the panel ordered that the Decision and Reasons be published in the official publication of the association, in summary and with names.

The panel was of the opinion that the actions, which gave rise to the findings, clearly indicate the need for professional rehabilitation prior to the member and holder continuing in unrestricted practice. The panel is of the view that the penalty achieves an equitable balance recognizing both the protection of the public and fairness to the member (and holder), by giving him the opportunity to demonstrate his ability to be professionally rehabilitated.

The panel made no order in respect of costs.

The written summary of the Decision and Reasons was signed by Bill Walker, P.Eng., as chair on behalf of the other members of the discipline panel: Richard Hilton, P.Eng., Henry Tang, P.Eng., John Vieth, P.Eng., and Michael Wesa, P.Eng.

PEO OBTAINS ORDER AGAINST PAUL DOUGLAS TERRY AND NEXT STEP DESIGN BUILD LTD.



On April 6, 2011, PEO obtained an order under the *Professional Engineers Act* in the Ontario Superior Court of Justice, Osgoode Hall, Toronto, Ontario, against Paul Douglas Terry (Terry) and his company Next Step Design Build Ltd. (Next Step). PEO alleged in an application before the court that Terry and Next Step practised professional engineering and had used an engineering seal without being licensed, and further that they offered and provided professional engineering services to the public without holding a Certificate of Authorization (C of A).

Terry has never held a licence and neither he nor Next Step has ever held a C of A in Ontario.

PEO brought the application after receiving information from a professional engineer who discovered that Terry had applied a copy of the professional engineer's seal to an engineering drawing filed with the City of Barrie building department with respect to a major renovation to a residence in the Barrie area.

The matter was brought to the engineer's attention by a renovator who had been informed by Terry that the drawing in question had in fact been sealed by the engineer.

An investigation by PEO concluded that Terry had in fact applied a copy of the professional engi-

neer's seal to the work without the professional engineer's prior knowledge or consent.

After reviewing the affidavit evidence and hearing from Symon Zucker of the law firm Danson & Zucker, counsel for PEO, that the defendants had consented to an order in the matter, the Hon. Mr. Justice Stinson ordered that Terry refrain from engaging in the practice of professional engineering and using an engineering seal unless or until he obtains a licence from PEO.

Both Terry and Next Step were ordered to refrain from offering or providing professional engineering services to the public, unless or until they obtain a C of A from PEO.

Next Step was also ordered to refrain from using or causing an engineering seal to be used in Ontario unless and until it obtains a C of A from PEO.

Eric Newton, PEO's litigation manager, told *Engineering Dimensions* the success of this matter was due in part to the vigilant reporting by both the engineer and renovator. In addition, the local building department co-operated in the investigation.

Members are reminded that any final drawings should bear the original signature and seal of the professional engineer who takes responsibility for the engineering work. "We would also recommend that building departments demand original signatures and seals on all final drawings, so as to avoid this kind of problem in the future," says Newton.



Publications Order Form

	\$	No.	Total
The Professional Engineers Act, R.S.O. 1990, Chapter P.28	N/C		
Ontario Regulation 941/90.....	N/C		
Ontario Regulation 260/08.....	N/C		
By-law No. 1	N/C		
Practice Guidelines			
Acting as Contract Employees (2001).....	10.00		
Acting as Independent Contractors (2001)	10.00		
Acting Under the Drainage Act (1988).....	10.00		
Acoustical Engineering Services in Land-Use Planning (1998).....	10.00		
Building Projects Using Manufacturer-Designed Systems & Components (1999).....	10.00		
Commissioning Work in Buildings (1992)	10.00		
Communications Services (1993)	10.00		
Engineering Services to Municipalities (1986).....	10.00		
Environmental Site Assessment, Remediation & Management (1996).....	10.00		
General Review of Construction as Required by Ontario Building Code (2008).....	10.00		
Geotechnical Engineering Services (1993).....	10.00		
Guideline to Professional Practice (1998)	10.00		
Human Rights in Professional Practice (2009)	10.00		
Land Development/Redevelopment Engineering Services (1994).....	10.00		
Mechanical & Electrical Engineering Services in Buildings (1997)	10.00		
Professional Engineer as an Expert Witness (1997).....	10.00		
Professional Engineer's Duty to Report (1991)	N/C		
Project Management Services (1991)	10.00		
Reports on Mineral Properties (2002)	10.00		
Reports for Pre-Start Health and Safety Reviews (2001)	10.00		
Roads, Bridges & Associated Facilities (1995).....	10.00		
Selection of Engineering Services (1998).....	10.00		
Services for Demolition of Buildings and other Structures (2011).....	10.00		
Solid Waste Management (1993)	10.00		
Structural Engineering Services in Buildings (1995)	10.00		
Temporary Works (1993).....	10.00		
Transportation & Traffic Engineering (1994).....	10.00		
Use of Agreements Between Clients & Engineers (2000) (including sample agreement)	10.00		
Use of Computer Software Tools Affecting Public Safety & Welfare (1993)	10.00		
Use of the Professional Engineer's Seal (2008)	10.00		
Using Software-Based Engineering Tools (2011).....	10.00		
Business Publications			
Agreement Between Prime Consultant & Sub-Consultant (1993) per package of 10.....	10.00		
Licensing Guide & Application for Licence (2007)	N/C		
Required Experience for Licensing in Ontario (2007)	N/C		

Fax to: 416-224-8168 or 800-268-0496
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