

DECISION AND REASONS

In the matter of a proceeding under section 27 et seq. of the *Professional Engineers Act*, R.S.O. 1990, c. P.28; and in the matter of a complaint regarding the actions and conduct of GEORGE A. SEDRA, P.ENG., a member of the Association of Professional Engineers of Ontario and holder of a Certificate of Authorization (as of January 12, 2009) issued by the Association of Professional Engineers of Ontario.

This matter was heard before a panel of the Discipline Committee on January 17, 2011, at a hearing room at the offices of the Association of Professional Engineers of Ontario (the association) at 40 Sheppard Avenue West, in Toronto.

All parties were present. The association and Mr. Sedra were represented by legal counsel, Symon Zucker and David B. Cousins, respectively. David P. Jacobs acted as independent legal counsel to the panel.

The parties acknowledged proper and timely service of the tribunal's Notice of Hearing dated December 3, 2010, issued by the chair of the Discipline Committee.

According to the Notice of Hearing, this matter was referred to the Discipline Committee by way of a decision of the Complaints Committee dated March 1, 2010.

THE ALLEGATIONS

At the hearing, the association submitted a Statement of Allegations dated March 12, 2010, alleging that George A. Sedra, P.Eng., is guilty of professional misconduct and is incompetent, as defined in the *Professional Engineers Act*.

The parties provided the panel with an Agreed Statement of Facts. The association presented no evidence as to any allegations not admitted in the Agreed Statement of Facts.

AGREED STATEMENT OF FACTS

The Agreed Statement of Facts provided as follows:

1. At all material times, George A. Sedra, P.Eng. (Sedra), was licensed as a professional engineer pursuant to the *Professional Engineers Act*.
2. Since January 12, 2009, Sedra was the holder of a Certificate of Authorization issued pursuant to the *Professional Engineers Act*.
3. On or about February 20, 2008, Sedra prepared and sealed drawings for an additional garage bay for a residence located at 1575 Huron Road,

R.R. #2, Wilmot, Ontario. Sedra was retained by Gerard O'Rourke, a contractor, for this project. At the time of this project, Sedra did not hold a Certificate of Authorization.

4. On or about March 7, 2008, a building permit application for the additional garage bay was submitted to the Township of Wilmot. Sedra completed the Schedule 1, required under the new designer requirements for the Ontario Building Code (OBC). Sedra did not have a Building Code Identification Number at the time of the application. Sedra sealed and signed the drawings for the project and did not indicate any limitations.
5. On or about April 20, 2008, Sedra prepared and sealed drawings for the addition of a play room and family room to a residence at 65 Alderside Drive, Wilmot, Ontario. Sedra did not hold a Certificate of Authorization at the time of this project.
6. On or about May 2, 2008, a building permit application for the Alderside Drive project was submitted to the Township of Wilmot. Sedra completed the Schedule 1. Sedra did not have a Building Code Identification Number at the time of the application. Sedra sealed and signed the drawings for the project and did not indicate any limitations.

7. On or about October 22, 2008, Sedra prepared and sealed drawings for an addition to a residence located at 3017 Bridge Street, New Dundee, Ontario. Sedra was retained by O'Rourke for this project. Sedra did not hold a Certificate of Authorization at the time of this project.
8. On or about November 7, 2008, a building permit was submitted to the Township of Wilmot for the Bridge Street project. Sedra completed the Schedule 1. Sedra did not have a Building Code Identification Number at the time of the application. Sedra sealed and signed the drawings for the project and did not indicate any limitations.
9. Sedra admits to having breached the *Professional Engineers Act*, Regulation 941, section 72(2)(g).

In clause 9 of the Agreed Statement of Facts, George A. Sedra, P.Eng., admitted breach of section 72(2)(g) of Regulation 941/90: a “breach of the act or regulations, other than an action that is solely a breach of the code of ethics.”

The panel requested clarification from the parties as to the specific sections of the act or regulations that Sedra was admitting that he had breached in clause 9.

Association counsel and the member's counsel jointly submitted that section 12(2) of the *Professional Engineers Act* is the only provision in the act and regulations that the member was admitting to having breached. Section 12(2) provides that “no person shall offer to the public or engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a Certificate of Authorization.”

The association advised that it would not lead any evidence on any allegations not admitted in the Agreed Statement of Facts.

MEMBER'S PLEA AND PLEA INQUIRY

George A. Sedra, P.Eng., denied the allegation of incompetence set out in the Statement of Allegations.

George A. Sedra, P.Eng., admitted to the allegations of professional misconduct, specifi-

cally that he breached the *Professional Engineers Act*, Regulation 941, section 72(2)(g), as set out in the Agreed Statement of Facts.

The panel conducted a plea inquiry and found such admission to have been made freely, voluntarily and unequivocally, with full understanding that the discipline panel has discretion in the ordering of a penalty, and accepts such admission as a guilty plea.

APPLICABLE LAW

The applicable law in this matter is found in sections 12 and 28 of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28, and section 72 of Regulation 941, R.R.O. 1990, which read as follows, in part:

- “A member of the association or a holder of a Certificate of Authorization, a temporary licence, a provisional licence or a limited licence may be found guilty of professional misconduct by the [Discipline] Committee if...the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.” [Act: s. 28(2)(b), in part]
- “For the purposes of the act and this regulation, ‘professional misconduct’ means...breach of the act or regulations, other than an action that is solely a breach of the code of ethics...” [Reg. 941: s. 72(2)(g), in part]
- “No person shall offer to the public or engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a Certificate of Authorization.” [Act: s. 12(2)]

FINDINGS OF FACT

The panel has jurisdiction in this matter as George A. Sedra, P.Eng., was, and is, a member of the association, and the activities at issue involved the practice of professional engineering.

Drawing from the Agreed Statement of Facts, the panel finds that, on three occasions during 2008 (February, April and October), by preparing and sealing drawings as described therein, George A. Sedra, P.Eng., engaged in the business of providing to the public services that are within the practice of professional engineering.

The panel also notes that the fact that the member sealed drawings underscores the conclusion that George A. Sedra, P.Eng., was engaging in the provision of professional engineering services to the public on the material occasions. In this respect, section 53 of Regulation 941/90 states:

“53. Every holder of a licence, temporary licence, provisional licence or limited licence who provides to the public a service that is *within the practice of professional engineering* shall sign, date and affix the holder's seal to every final drawing, specification, plan, report or other document prepared or checked by the holder as part of the service before it is issued.” (emphasis added)

The panel further finds that, at the time of the three projects (namely, February, April and October of 2008), George A. Sedra, P.Eng., did not hold a Certificate of Authorization issued by the association.

The panel was informed that since January 12, 2009, George A. Sedra, P.Eng., has been the holder of a Certificate of Authorization issued pursuant to the *Professional Engineers Act*.

The panel finds the member not guilty of misconduct in relation to his admission that, in connection with three building permit applications submitted to the Township of Wilmot in 2008, George A. Sedra, P.Eng.,

completed the associated “Schedule 1” (required under the new designer requirements for the Ontario Building Code) while not having a Building Code Identification Number (BCIN) at the time of application. This is not professional misconduct in the circumstances.

- Failure to have a BCIN is unrelated to the sole act and regulation provision admitted as breached, namely, section 12(2) of the *Professional Engineers Act*; and
- In *Assn. of Professional Engineers of Ontario v. Ontario (Minister of Municipal Affairs and Housing)* [2007] O.J. No. 1971, the divisional court found that the sections of the building code dealing with Building Code Identification Numbers (BCINs) conflict with the regulatory jurisdiction of PEO and do not apply to any holder of any licence or certificate issued under the *Professional Engineers Act*.

DECISION OF THE PANEL

The panel reviewed the Agreed Statement of Facts and the submissions of the parties and found that the facts support a finding of professional misconduct, as defined by section 72(2)(g) of Regulation 941/90 and, more specifically, found that the member committed misconduct in contravention of section 12(2) of the *Professional Engineers Act*.

The association did not pursue the allegation of incompetence and presented no evidence in that respect, and the panel thus finds the member not to be incompetent.

REASONS FOR THE DECISION

In the Agreed Statement of Facts, the member admitted to having breached the *Professional Engineers Act*, Regulation 941, section 72(2)(g), insofar as he had breached section 12(2) of the act.

In particular, in the Agreed Statement of Facts, the member admitted that, on or about February 20, 2008, April 20, 2008 and October 22, 2008, he prepared and sealed (for clients) drawings for additions to residences and admits that, at the time of each project, he did not hold a Certificate of Authorization. These actions contravene section 12(2) of the act and, therefore, constitute professional misconduct as defined by section 72(2)(g) of Regulation 941/90.

The panel finds the member not guilty in respect of the balance of the allegations against the member and finds the member not to be incompetent.

SUBMISSIONS ON PENALTY

At the hearing, the parties filed a Joint Submission on Penalty in writing, as follows:

1. The parties to this proceeding, the Association of Professional Engineers of Ontario and George A. Sedra, P.Eng., make the following Joint Submission on Penalty:
 - a. George A. Sedra, P.Eng., shall be reprimanded and that the fact of the reprimand be recorded on the register for two years.
 - b. George A. Sedra, P.Eng., shall successfully complete the 98-Civ-B1 advanced structural analysis exam at the next available date, and shall provide written confirmation of same to the registrar within five days of successful completion of the exam.
 - c. There shall be publication, with names, of the decision and reasons of the panel.
 - d. There shall be no order with respect to costs.
2. The member has had independent legal advice, or has had the opportunity to obtain independent legal advice, with respect to his agreement to the penalty set out herein.

The panel was satisfied that the member has had independent legal advice with respect to his agreement to this penalty.

The panel asked the parties to clarify which provisions of the Discipline Committee’s powers are intended to be invoked for the penalty proposed at item 1(b).

Counsel for the association and for the member advised the panel that the penalty in question had been arrived at through a process of plea negotiations. They submitted that the panel had the authority to grant the remedy at 1(b) under section 28(4)(d) of the act, whereby the Discipline Committee may impose terms or conditions on a licence. The parties also clarified that the timeframe for completing the examination should be revised from “next available date” to being “within 12 months.”

“Where the Discipline Committee finds a member of the association...guilty of professional misconduct...it may, by order,...impose terms, conditions or limitations on the licence...of the member..., including but not limited to the successful completion of a particular course or courses of study, as are specified by the Discipline Committee.” [Act: s. 28(4)(d), in part]

The panel sought advice from independent legal counsel, who noted that the courts have ruled a panel ought only to set aside a negotiated (agreed) penalty when it is so disproportionate to the offence that imposing the agreed penalty would bring the administration of justice into disrepute and be contrary to the public interest.

Counsel for the member submitted the following as to Mr. Sedra’s professional background, good character and involvement in community service:

- Mr. Sedra holds a master’s in structural engineering from both the University of Cairo and the University of Waterloo.
- Mr. Sedra has never had any prior disciplinary issues with PEO.
- Mr. Sedra has successfully undertaken other engineering design work without issue or complaint from clients, for which a letter of

reference from Michael Kirlos, dated January 16, 2011, was offered as substantiation.

- Mr. Sedra passed his PPE exam in 1999, but was not licensed until 2005 due to a requirement that he accumulate one year's Canadian experience with a Canadian mentor.
- When advised by PEO staff, Mr. Sedra immediately obtained his Certificate of Authorization and, when recommended by PEO, he immediately wrote his exam and obtained his BCIN number.
- Apart from his professional engineering career, Mr. Sedra is a leader in his church congregation. A newspaper article authored by Mr. Sedra published in the *Waterloo Region Record* dated January 7, 2011 (page A6) was offered as substantiation.

Counsel for the member submitted that he doubted Mr. Sedra would ever be coming before a discipline panel again.

DECISION AND REASONS ON PENALTY

The panel delivered its decision on penalty orally at the hearing, after adopting the penalty proposed in the joint submission, as clarified by the parties.

While the panel may not have arrived at the penalty in question in the circumstances without the benefit of a joint submission as to penalty and, while the panel states that this decision as to penalty should not serve as a precedent or guidance in future matters, it adopted the joint submission given the desire to adhere to a resolution arrived at in a process of negotiation and presented to the panel by experienced counsel and whereby, in the circumstances, it does not appear to be disproportionate to the offence.

The panel considered that an oral reprimand to follow the requirements in the act and regulations for holding a Certificate of Authorization when providing the public with professional engineering services, including the linkage to liability insurance, was part of an appropriate sanction for having contravened section 12(2) of the act, considering that the member had promptly obtained a Certificate of Authorization when made aware of the requirement.

The panel noted that it was the member's obligation to have been aware of the requirement to hold a Certificate of Authorization and to have obtained it before providing the public with professional engineering services.

The panel was informed that, subsequent to the events detailed in the Agreed Statement of Facts, Sedra acquired the BCIN. For the panel, this indicates that the member desires rehabilitation, even though the BCIN is not a requirement for engineers.

The panel was of the view that the penalties proposed in the joint submission were within the powers and discretion of the Discipline Committee and served the interests of justice. The panel concluded that the parties were represented by experienced counsel at the hearing who presented the submission, and that the panel should respect the negotiated conclusion arrived at.

The panel, thus, ordered that:

1. George A. Sedra, P.Eng., shall be reprimanded and that the fact of the reprimand shall be recorded on the register for two years; and
2. It shall be a term and condition of George A. Sedra's licence that he successfully complete the 98-Civ-B1 advanced structural analysis exam within 12 months of the date of this hearing and that he then provide written confirmation of same to the registrar within five days of successful completion of the exam.

A Notice of Waiver of appeal dated January 17, 2011 was obtained from the member and the oral reprimand was delivered by the panel on January 17, 2011 immediately after the conclusion of the hearing.

COSTS AND PUBLICATION

The panel adopted without issue the parties' joint submission concerning publication and costs and ordered:

1. This Decision and Reasons shall be published, with names, in the official publication of the association; and
2. There is no order with respect to costs.

The panel agreed that a cost penalty was not appropriate in this case. An appropriate waiver (by the member) of appeal was obtained, which reduces any future cost related to the disposition of the matter. Actions by both parties in arriving at an Agreed Statement of Facts and a Joint Submission as to Penalty saved the costs of an extended hearing.

The association is entitled to request publication when a member has been found guilty and, in this instance, the member did not oppose the association's request, and this remedy is granted.

The written Decision and Reasons was dated February 2011 and was signed by Colin Cantlie, P.Eng., as chair of this discipline panel and on behalf of the members of the discipline panel: Paul Ballantyne, P.Eng., Daniela Iliescu, P.Eng., James Lee, P.Eng., and David Smith, P.Eng.