

SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, c. P.28; and in the matter of a complaint regarding the conduct of SIRAJUL B. MOFAK-KHARUL IQBAL, P.ENG., a member of the Association of Professional Engineers of Ontario and IQBAL & ASSOCIATES ENGINEERING, a holder of a Certificate of Authorization issued by the Association of Professional Engineers of Ontario.

This matter was brought forward for a hearing before a panel of the Discipline Committee on May 3, 2013, at the Association of Professional Engineers of Ontario (the association) in Toronto.

BACKGROUND

The hearing arose as a result of the member and holder having inspected a number of single-family dwellings and having subsequently signed and sealed letters to the effect that the member found these buildings to be in general compliance with the Ontario Fire Code.

On the basis of a review by an independent fire safety engineering expert, it was alleged that the member and holder conducted themselves improperly. The expert was asked to review the Iqbal reports as well as the actions and conduct of Iqbal and Iqbal & Associates Engineering (IAE) and concluded that there were, in fact, several deficiencies in the buildings and significant omissions in Iqbal's statements of compliance with the Ontario Fire Code as issued for these single-family dwellings. The fire safety expert also concluded that Iqbal and IAE did not meet the acceptable standard of practice for engineering work related to the general review of the safety condition of single-family dwelling houses.

AGREED FACTS

The parties presented an Agreed Statement of Facts, setting out that:

- Iqbal is a professional engineer licensed pursuant to the *Professional Engineers Act*.
- IAE is an unincorporated sole proprietorship and a Certificate of Authorization holder. Iqbal was at all material times the contact engineer responsible for the professional engineering services provided under the Certificate of Authorization.
- In or about early April 2010, Iqbal conducted an inspection of a single-family dwelling at 420 Rutherford Road North in Brampton, Ontario, which had been renovated following damage by illegal marijuana cultivation operations. The purpose of Iqbal's inspection was to determine whether the renovated building complied with the fire code. Iqbal also signed and sealed a letter to the City of Brampton dated April 11, 2010, confirming that the Rutherford Road North building had been found "in general conformance with the Ontario Fire Codes [sic]."
- On April 11, 2010, Mourad Mourad, P.Eng., an engineer with Professional Home and Building Inspectors, produced a structural review report of the Rutherford Road North building. The report identified several deficiencies in the building, including the following: (a) a door between the garage and house was very short, not insulated, and was missing an auto-closer; (b) a second-floor stairway railing was loose; and (c) the power was disconnected in the house.
- On June 10, 2010, Iqbal conducted an inspection at a separate single-family dwelling at 171 Edenbrook Hill Drive in Brampton, Ontario. As with the Rutherford Road North building, Iqbal sent a letter addressed to the City of Brampton confirming that the Edenbrook Hill Drive building had been found "in general conformance with the Ontario Fire Code."
- Brian Maltby is the fire protection division chief for the City of Brampton, Ontario. As fire chief, Maltby reviewed Iqbal's reports for

the buildings at Rutherford Road North and Edenbrook Hill Drive, as well as Mourad's report. He noted that Mourad had observed Ontario Fire Code and Building Code violations in the Rutherford Road North building that Iqbal had not identified. He also noted that the power at the building was disconnected at the time of Iqbal's report. Maltby then discovered that the power had also been disconnected at the Edenbrook Hill Drive building at the time of Iqbal's inspection of that property. Maltby filed a complaint with PEO on August 11, 2010.

- PEO retained John Roberts, P.Eng., an independent expert, to review the actions and conduct of the respondents. Roberts provided a report dated February 17, 2012. Roberts concluded, among other things, that there were significant omissions in Iqbal's statement of compliance issued for the single-family dwellings at 171 Edenbrook Hill Drive and 420 Rutherford Road North. Specifically, the letters did not identify the lack of electricity available at the time of the general reviews and the consequences: it was not possible to verify operation of the smoke alarms and the CO detectors without power to the units.

Roberts further concluded that Iqbal did not meet the acceptable standard of practice for engineering work related to the general review of the condition of a single-family dwelling house.

By reason of the facts set out above, it was alleged that the member and holder were guilty of professional misconduct as defined in section 28(2)(a) of the act. The member and holder pled guilty to these charges in the Agreed Statement of Facts.

ADMISSIONS

- As per the Agreed Statement of Facts, Iqbal and IAE accept and have agreed in writing that they are guilty of professional misconduct as defined in the *Professional Engineers Act*.
- Iqbal and IAE admit that their conduct in this matter constitutes professional misconduct as defined by the *Professional Engineers Act*, section 28(2) and Regulation 941, sections 72(2)(a), 72(2)(b), 72(2)(c), 72(2)(d) and 72(2)(j).

PLEA OF THE MEMBER AND HOLDER

The member and holder admitted and pled guilty to the allegations in the Agreed Statement of Facts.

The panel conducted a plea inquiry and was satisfied that the member's and holder's admissions were voluntary, informed and unequivocal. The engineer and holder also freely admitted and fully accepted that their conduct in this matter constituted professional misconduct as defined by the *Professional Engineers Act*, section 28(2) and Regulation 941, sections 72(2)(a),(b),(c),(d) and (j).

DECISION AND REASONS

The panel considered the Agreed Statement of Facts and the parties' submissions. The panel found that the agreed facts supported a finding

of professional misconduct contrary to section 28(2) of the *Professional Engineers Act*. In particular, the panel determined that the member and holder were guilty of misconduct, as admitted, under the following sections of Regulation 941 made under the act:

- **SUBSECTION 72(2)(A):** negligence as defined in subsection 72(1), namely an act or omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
- **SUBSECTION 72(2)(B):** failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
- **SUBSECTION 72(2)(C):** failure to act to correct or report a situation that the practitioner believes may endanger the safety or welfare of the public;
- **SUBSECTION 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
- **SUBSECTION 72(2)(J):** conduct or an act relevant to the practice of professional engineering that, having regard to all of the circumstances, would reasonably be regarded by the engineering profession as unprofessional.

PENALTY DECISION

The parties filed a joint submission as to penalty. The panel accepted the joint submission and accordingly ordered:

- Pursuant to s. 28(4)(f) of the act, Iqbal and IAE shall be orally reprimanded and the fact of the reprimand shall be recorded on the register for a period of one year;
- Pursuant to s. 28(4)(b) of the act, Iqbal's licence shall be suspended for a period of five days commencing the day of 2013-05-04;
- Pursuant to s. 28(4)(d) of the act, it shall be a term, condition or limitation on the licence of

Iqbal that he shall successfully complete PEO's professional practice exam (PPE), within one year of the date of hearing of this matter, failing which his licence shall be suspended pending successful completion of the PPE.

4. Pursuant to s. 28(4)(i) of the act, the finding and order of the Discipline Committee shall be published in summary form, including reference to names; and
5. On agreement by the parties, the panel made no order with respect to costs.

The panel concluded that the proposed penalty is reasonable and in the public interest. Iqbal and IAE have co-operated with the association and, in agreeing to the facts and a proposed penalty, have accepted responsibility for their actions and avoided unnecessary expense to the association.

REPRIMAND

Following the member's and holder's waiver of their right to appeal, the panel administered the oral reprimand immediately after the hearing.

The written summary of the Decision and Reasons was signed by Jim Lucey, P.Eng., as chair on behalf of the other members of the discipline panel: Tim Benson, P.Eng., Ishwar Bhatia, P.Eng., Evelyn Spence, LGA, and Michael Wesa, P.Eng.

SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, c. P.28; and in the matter of a complaint regarding the conduct of GERARD J. VAN ITERSON, P.ENG., a member of the Association of Professional Engineers of Ontario and 694470 ONTARIO LTD. o/a UNICON ENGINEERING, a holder of a Certificate of Authorization issued by the Association of Professional Engineers of Ontario.

This matter was brought forward for a hearing before a panel of the Discipline Committee on May 3, 2013, at the Association of Professional Engineers of Ontario (the association) in Toronto.

BACKGROUND

The hearing arose as a result of the member and holder having signed and sealed an environmental assessment report, which was alleged to have been deficient in numerous respects and did not meet minimum industry standards or the minimum standard of practice for engineering work of this kind.

ADMISSIONS

The parties reached agreement on the facts and filed an Agreed Statement of Facts (ASF). For summary purposes, the essential facts of these admissions are as follows:

1. A report titled "Phase I and II Environmental Site Assessment" (ESA) was signed by Van Iterson on or about February 22, 2010, and to which Van Iterson affixed his seal pursuant to sections 52 and 53 of the act as the qualified person required by sections 26 and 33.3 of Ontario Regulation 153/04, as amended, under the *Environmental Protection Act*, RSO 1990, c E-19 (qualified person).
2. As the qualified person, Van Iterson took responsibility for the work documented in the report as a professional engineer.
3. The report stated that its terms of reference for the Phase I Environmental Site Assessment were prepared in general accordance with CSA Standard Z768-01 and that the Phase II Environmental Site Assessment was conducted under the guidance of CSA Standard Z769-00 and in accordance with Part XV.1 of the *Environmental Protection Act*, O. Reg. 153/04, as amended.

- (a) The report was deficient in numerous respects and did not meet minimum industry standards, nor did it meet the minimum standard of practice for engineering work of this kind; and
- (b) The report failed to meet the requirements of the *Environmental Protection Act* and its regulation *Records of Site Condition—Part XV.1 of the Act*, O. Reg. 153/04.

By reason of the facts set out above, it was alleged that the member and holder were guilty of professional misconduct as defined in section 28(2)(a) of the act. The member and holder pled guilty to these charges in the ASF.

PLEA OF THE MEMBER AND HOLDER

The member and holder admitted the allegations as outlined in the ASF.

The panel conducted a plea inquiry and was satisfied that the member's and holder's admissions were voluntary, informed and unequivocal. The engineer and holder also admitted and fully accepted that their conduct in this matter constituted professional misconduct as defined by the *Professional Engineers Act*, section 28(2) and Regulation 941, sections 72(2)(a),(b),(d) and (j).

DECISION AND REASONS

The panel considered the Agreed Statement of Facts and the submissions of the parties and found that the agreed facts supported a finding of professional misconduct contrary to section 28(2) of the *Professional Engineers Act*. The panel thus found the member and holder guilty of professional misconduct under the following sections of Regulation 941 made under the act:

- (a) SUBSECTION 72(2)(A): they were negligent;
- (b) SUBSECTION 72(2)(B): they failed to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which they were responsible;
- (c) SUBSECTION 72(2)(D): they failed to make responsible provisions for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under their responsibility; and
- (d) SUBSECTION 72(2)(J): they engaged in conduct or performed 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 disgraceful, or unprofessional.

PENALTY DECISION

The parties filed a Joint Submission as to Penalty. The panel accepted the joint submission and accordingly ordered:

1. Pursuant to s. 28(4)(f) of the act, Van Iterson and Unicon shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of six months;
2. The finding and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) of the act, with names;
3. Within one year of the decision of the Discipline Committee, Van Iterson shall successfully complete the professional practice examination (PPE), failing which Van Iterson's licence shall be suspended until such time as he successfully passes the PPE; and
4. There shall be no order with respect to costs.

The panel concluded that the proposed penalty is reasonable in all the circumstances.

When considered in its totality, it achieves an equitable balance by recognizing both the protection of the public and fairness also to the member and holder, giving them the opportunity to demonstrate their ability to be professionally rehabilitated. The panel made special note of the fact that Van Iterson and Unicon had fully co-operated with the inquiry throughout and by agreeing to the facts and a proposed penalty have accepted responsibility for their actions and avoided unnecessary expense to the association.

REPRIMAND

Following the member's waiver of his right to appeal, the panel administered the oral reprimand immediately after the hearing.

The written summary of the Decision and Reasons was signed by Jim Lucey, P.Eng., as chair on behalf of the other members of the discipline panel: Tim Benson, P.Eng., Ishwar Bhatia, P.Eng., Evelyn Spence, LLB, and Michael Wesa, P.Eng.