

SUMMARY OF 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 PAUL Y. W. HO, P.ENG., a member of the Association of Professional Engineers of Ontario.

This matter came to a hearing before a panel of the Discipline Committee on July 28, 2014, at the Association of Professional Engineers of Ontario (association) in Toronto. All parties were present. The association was represented by Leah Price. The member was not represented by counsel. Steven Bosnick acted as independent legal counsel.

The Notice of Hearing issued on July 8, 2014, was filed with the panel. There was no issue as to the panel's jurisdiction to determine this matter, which had been referred to the Discipline Committee for disposition. The parties filed an Agreed Statement of Facts signed by the member and counsel for the Association of Professional Engineers of Ontario.

The member admitted the conduct alleged as set out in the Agreed Statement of Facts. The panel then conducted a plea inquiry and was satisfied that the member's admissions were voluntary, informed and unequivocal. The parties submitted that the agreed-upon facts as presented supported the allegations.

SUMMARY OF THE MATTER

The member, Paul Y. W. Ho, had requested and been granted remission status of his professional engineer licence by reason of retirement in 2005 and at that time he declared he would not practise while designated by the registrar as a fee-remission member. He had not practised structural engineering during his career, nor did he hold a Certificate of Authorization at relevant times.

In 2013, Ho prepared, signed and sealed documents in support of a building permit application as a service for a relative. He signed a Commitment to General Review by Architects and Engineers form as an engineer consultant. He also signed and sealed a Building Footing Assessment. These documents were submitted to the Town of Ajax building department. To address deficiencies in the application, Ho

signed and sealed various drawings regarding the proposed construction, which were also submitted to the Town of Ajax. The drawings were deficient in one or more ways, including not adequately demonstrating how the existing structure could support the load imposed by the proposed third floor, non-compliance with the Ontario Building Code requirements and providing insufficient detail to demonstrate compliance with the Ontario Building Code or to allow a builder to carry out the construction according to the drawings.

The plans examiner with the Town of Ajax filed a complaint to the association regarding both the member's non-practising status and that the "sealed documents do not demonstrate competency in structural design." During the investigation of the complaint, the association retained an independent expert to review Ho's work and reported it was grossly deficient in relation to what would be expected of a professional engineer experienced in this type of work. When presented the evidence by the association, Ho admitted creating drawings that failed to conform to the Ontario Building Code and/or the minimum standards of a professional engineer and that, by virtue of his training and experience, he was not competent to perform this work. He also admitted to engaging in the practice of professional engineering while licensed as a fee-remission member and to providing professional engineering services while not holding a Certificate of Authorization.

DECISION

The panel considered the Agreed Statement of Facts and the guilty plea of the member. In its oral decision the panel found that Ho had committed acts of negligence as defined under paragraph 72(2)(a) of Regulation 941; failed to safeguard life, health or property as defined under paragraph 72(2)(b) of Regulation 941; failed to make reasonable provisions for

complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under his responsibility, pursuant to section 72(2)(d) of Regulation 941; and had provided professional engineering services while in fee remission status contrary to subsection 41.1(2), amounting to professional misconduct under paragraphs 72(2)(g) regarding committing a breach of the *Professional Engineers Act* or regulations and 72(2)(k) regarding a failure to abide by the conditions of a practitioner's licence. The panel found the member's conduct was unprofessional, though not disgraceful or dishonourable, as defined under section 72(2)(j) of Regulation 941. All of the aforementioned constitute professional misconduct as defined in section 28(2)(a) of the act.

PENALTY SUBMISSIONS

The parties filed a Joint Submission on Penalty, which read as follows:

- (a) Pursuant to paragraph 28(4)(f) of the *Professional Engineers Act*, Ho shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of one (1) year;
- (b) The finding and order of the Discipline Committee shall be published in summary form under paragraph 28(4)(i) of the *Professional Engineers Act*, with reference to names; and
- (c) Pursuant to paragraph 28(4)(h) of the *Professional Engineers Act*, Ho shall pay a fine in the amount of \$1,000 (one thousand dollars) to the Minister of Finance (for payment to the consolidated revenue fund) within 30 days of the date of pronouncement of the penalty decision of the Discipline Committee; and
- (d) There shall be no order with respect to costs.

The submission stated that the member had the opportunity to obtain independent legal advice with respect to the penalty.

The panel was advised that the member was retired and that he had not provided professional engineering services since he signed his declaration in or about April of 2005, with the sole exception

of the work that forms the subject of this complaint. In other words, this was an isolated incident. The panel was advised the member did not understand he could not provide professional engineering services to an immediate family member and misunderstood the limitations of his licensing status and as such did not deliberately or intentionally contravene the act or regulations. The panel was advised that the member would remain fully retired from now on. The penalty was crafted in light of these facts.

The association submitted that the joint submission as to penalty was reasonable. Publication of a summary of the order, including publication of names, and the recording of a reprimand to remain on the register for a period of one year were proposed to serve as general deterrence for members of the profession and as specific deterrence to the member. Nonetheless, the association submitted that specific deterrence was less of a concern given the member was retired and intended to remain retired. For that reason, the association submitted that the usual penalties of suspension, restrictions on the member's licence and training requirements were not appropriate in the circumstances of this case. For specific deterrence and to signal to the membership that the conduct cannot be condoned, the association instead proposed a fine of \$1,000. The association did not seek an order for costs.

The member was invited to provide his comments on the penalty and he confirmed that he felt the penalty was fair. The member was retired and he had co-operated with the process and acknowledged his wrongdoing, avoiding the need for aggressive prosecution by the association. The proposed penalty, although unusual, was appropriate in all of the circumstances.

PENALTY DECISION

The panel deliberated and concluded that the proposed penalty was reasonable and in the public interest. The member co-operated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association. As such, the panel finds an award for costs was not warranted. It is neither disproportionate nor does it bring the administration of justice into disrepute. Accordingly, the panel ordered the penalty in accordance with the Joint Submission on Penalty.

The panel rendered its decision on penalty orally at the conclusion of the hearing. The member waived his right to appeal. The association advised it would not appeal.

The oral reprimand was administered at the conclusion of the hearing on July 28, 2014.

The written summary of the Decision and Reasons was signed by John Vieth, P.Eng., as chair on behalf of the other members of the discipline panel: Thomas Chong, P.Eng., Santosh Gupta, P.Eng., Kathleen Robichaud, LLB, and Diane Freeman, P.Eng.

SUSPENSION NOTICE—JIRI KRUPKA, P.ENG.

Jiri Krupka, P.Eng., was found guilty of professional misconduct as a result of a Discipline Committee hearing held on October 23 and 24, 2013. The penalty ordered against Krupka included a suspension of his licence for two months commencing one week after release of the panel's decision on penalty. As such, Krupka's professional engineering licence is suspended from November 10, 2014 to January 9, 2015, inclusive.

NOTICE OF LICENCE REVOCATION— MICHAEL M. COOK

Michael M. Cook, P.Eng., was found guilty of professional misconduct as a result of a discipline hearing on September 10, 2012. As part of the penalty ordered, Cook was to write and pass two technical examinations within 24 months of the discipline hearing, failing which his licence was to be revoked. As Cook has not passed the two exams ordered to be written, his professional engineering licence is revoked.

INCOMPETENCE

A very serious matter in PEO's regulation of the profession...

Incompetence is defined under section 28(3) of the *Professional Engineers Act* as follows:

- 28(3) The Discipline Committee may find a member of the association or a holder of a temporary licence, a provisional licence or a limited licence to be incompetent if in its opinion,
- (a) the member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer; or
 - (b) the member or holder is suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member or holder that the member or holder no longer be permitted to engage in the practice of professional engineering or that his or her practice of professional engineering be restricted. R.S.O. 1990, c. P.28, s. 28(3); 2001, c. 9, Sched. B, s. 11(37).

Allegations of incompetence can be determined by the Discipline Committee only at the conclusion of a discipline hearing. PEO council,

the Executive Committee or the Complaints Committee can direct the Discipline Committee to hold a hearing into an allegation of incompetence. It becomes PEO's burden to prove the allegation during the discipline hearing.

Since the definitions of incompetence suggest that the individual is unfit to carry out the responsibilities of a professional engineer or should no longer be permitted to engage in the practice of professional engineering, PEO takes allegations of incompetence very seriously. An individual who has been found by the Discipline Committee to be incompetent should, as a minimum, have their licence suspended for a period of time to permit PEO to be satisfied they are qualified or able to practise as a professional engineer. In certain circumstances, revocation of the licence may be required to serve and protect the public interest.

