DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, RSO 1990, c. P.28; and in the matter of a complaint regarding the conduct of GREGORY J. SAUNDERS, P.ENG., a member of the Association of Professional Engineers of Ontario, and M.R. WRIGHT AND ASSOCIATES CO. LTD., a holder of a Certificate of Authorization.

This matter relates to the structural investigation of the Algo Centre Mall (the mall) in Elliot Lake, Ontario, and the subsequent partial collapse of the rooftop parking structure of the mall on June 23, 2012, which killed two people.

The Complaints Committee of the Association of Professional Engineers of Ontario (the association) referred this matter to the Discipline Committee on April 1, 2015, under section 24(2)(a) of the *Professional Engineers Act* (the act).

PRELIMINARY MATTER–SERVICE OF NOTICE OF HEARING ON M.R. WRIGHT AND ASSOCIATES CO. LTD.

The association entered into evidence a copy of the Notice of Hearing issued September 16, 2015, and advised the panel that, although the holder of the Certificate of Authorization, M.R. Wright and Associates Co. Ltd. (MRW), was neither present nor represented, it would, nonetheless, be asking the panel to make certain findings of guilt against MRW. The association explained that it would be asking this based on findings of fact agreed to between it and Gregory J. Saunders (the member), who was the contact professional for MRW, in accordance with section 47 of Regulation 941 (1) of the act, at the time of the mall collapse. The association clarified that the member was not currently an officer and director of MRW. It further explained that it had cancelled MRW's Certificate of Authorization for non-payment on October 11, 2012.

The panel asked the association whether MRW had been notified of the hearing and the association advised that the Notice of Hearing for MRW had been sent to the member's lawyer in accordance with its understanding that the lawyer was counsel of record for MRW.

The panel expressed concern about whether the Notice of Hearing had been properly served on MRW and asked for the parties' submissions.

The association advised that its files indicated that counsel for the member was counsel of record for MRW at the time that the Notice of Hearing was issued. The association stated that it relied on the Statement of Readiness submitted by counsel for the member, which it understood to have been filed on the belief that MRW was a defunct company. The association submitted that evidence provided at the Elliot Lake Inquiry (2) indicated that MRW had been shut down and was no longer in operation. The association included, as Schedule E to the Agreed Statement of Facts (ASF) entered into evidence as Exhibit 5, an excerpt from Chapter 12 of Part One of the *Report of the Elliot Lake Inquiry*, which confirmed that MRW was dissolved after the collapse of the mall (3). The association stated that this information, along with the fact that MRW does not currently hold a Certificate of Authorization, should be considered by the panel. The association stated that it had maintained contact with the member, who was the contact professional for MRW at the time of the collapse and continued to be an officer and director of MRW until November 11, 2015, according to the corporation profile report tendered as evidence. The association added that its practice is to deal with the contact professional and that it followed its usual practice, noting that the member was still technically an officer and director of MRW when the Notice of Hearing was issued.

The association conceded that if, in fact, Johnson was not counsel for MRW, service on MRW may not have been properly made. Nonetheless, the association submitted that, because the ASF and the Joint Submission on Penalty (JSP) between Saunders and the association were to be introduced at the hearing, the hearing should proceed in MRW's absence. The association asked the panel to proceed with the hearing based on the ASF and to make findings subject to providing an opportunity for MRW to come forward and make submissions

after being served with the Notice of Hearing again. It argued that this approach would allow the hearing to proceed so that the evidentiary portion could be dealt with, while still providing an opportunity for MRW to provide submissions should it wish to do so.

Counsel for the member advised the panel that he was not counsel for MRW and that his firm did not represent MRW. In support of his position, Johnson referred to the Statement of Readiness that he sent to the association on June 29, 2015, which stated that he was responding on behalf of Saunders "and to the extent necessary where the interests of Saunders require the within response applies to [MRW]." Johnson submitted that Saunders resigned as an officer and director of MRW in August 2012, but that MRW had not updated its corporate records to reflect the resignation. He stated that his firm updated the corporate records recently to reflect the fact that Saunders was no longer involved with MRW. Johnson concluded by stating that he has no legal authority to take a position on MRW or to proceed with the hearing as it relates to MRW's interests. However, he advised that he agreed to proceed with the hearing in accordance with the association's request.

Independent legal counsel (ILC) advised the panel that the Notice of Hearing was not served on MRW in accordance with section 43 of the act, which requires notice to be served personally or by mail in order to be sufficiently given. ILC advised that in the circumstances–the hearing related primarily to the member and MRW was likely defunct and no longer holds a Certificate of Authorization–there were no natural justice or procedural concerns to prevent the panel from hearing the evidence.

However, ILC advised that it would be necessary to provide MRW with a Notice of Hearing and an opportunity to make submissions and/or call evidence if it contested the ASF or the association's submissions on penalty.

The panel considered the submissions of the parties and the advice provided by ILC, and decided to proceed with the hearing against the member and to hear the evidence against MRW. The panel directed ILC to notify MRW at the conclusion of the hearing and give it the opportunity to call evidence and/or make submissions with respect to the allegations and/or penalty against it. The panel asked ILC to send the notice to MRW's last known address at 17 Black Road, Suite 8, Sault Ste. Marie, Ontario, providing a copy to the panel and the association of both the notice and MRW's response, if any.

In accordance with the panel's direction, ILC notified MRW of the hearing by letter dated December 2, 2015, and invited its submissions on the allegations against it and the order and fine requested by the association with respect to MRW during the hearing of November 16, 2015. MRW did not provide submissions or respond to the letter. The panel, therefore, issues its Decision and Reasons regarding MRW after having given MRW an opportunity to address the issues herein.

THE ALLEGATIONS

The Statement of Allegations referred by the Complaints Committee to the Discipline Committee on February 12, 2015, was filed with the panel for the purpose of establishing its jurisdiction. With respect to MRW, the association submitted that section 22(1) of the act, which addresses the cancellation of a Certificate of Authorization for default of fees, gives it continuing jurisdiction to deal with the conduct of a certificate holder. After reviewing the Statement of Allegations for this purpose, the panel was satisfied that it had jurisdiction under sections 5(1) and 22(1) of the act to hear and determine the matter with respect to the member and MRW, respectively.

The Statement of Allegations alleged that the member and MRW are guilty of professional misconduct as follows:

1. signing an engineering opinion dated April 30, 2012, without having prepared or checked the work supporting the opinion, amounting to professional misconduct pursuant to sections 72(2)(a), (b), (e) and (j) of Regulation 941 of the act.
2. signing a final engineering opinion dated April 30, 2012, without applying a seal contrary to section 53 of Regulation 941 of the act, amounting to professional misconduct pursuant to sections 72(2)(g) and (j) of Regulation 941 of the act.
3. signing an engineering opinion dated April 30, 2012, confirming the structural integrity of a building without making reasonable provision to ensure the validity of the opinion, amounting to professional misconduct pursuant to sections 72(2)(a), (b), (d) and (j) of Regulation 941 of the act.
4. signing an engineering opinion dated May 3, 2012, without having prepared or checked the work underlying the opinion, amounting to professional misconduct pursuant to sections 72(2)(a), (b), (e) and (j) of Regulation 941 of the act.
5. signing a final engineering opinion dated May 3, 2012, without applying a seal contrary to section 53 of Regulation 941 of the act, amounting to professional misconduct pursuant to sections 72(2)(g) and (j) of Regulation 941 of the act.
6. signing an engineering opinion dated May 3, 2012, confirming the structural integrity of a building without making reasonable provision to ensure the validity of the opinion, amounting to professional misconduct pursuant to sections 72(2)(a), (b), (d) and (j) of Regulation 941 of the act.
7. permitting or assisting a non-practitioner to engage in the practice of professional engineering in or about April and/or May 2012, amounting to professional misconduct pursuant to sections 72(2)(m) and (j) of Regulation 941 of the act.

AGREED STATEMENT OF FACTS AND MEMBER's PLEA

The association provided a copy of the ASF signed by the member. The member admitted all of the facts in the ASF and pled guilty to the allegations of professional misconduct as follows (the schedules referred to in the ASF below are omitted):

1. Saunders was, at all material times, a professional engineer licensed pursuant to the *Professional Engineers Act* (the act). The respondent, M.R. Wright and Associates Co. Ltd. (MRW), was, at all material times, the holder of a Certificate of Authorization under the act.
2. Robert G. Wood (Wood) was, at all material times, the president of MRW. Until on or about October 28, 2011, Wood was the member of the association designated by MRW under section 47 of Regulation 941 under the act as assuming responsibility for the professional engineering services provided by MRW (the contact professional). At all material times thereafter, Saunders was the contact professional for MRW.
3. Wood, Saunders and MRW were convicted by a panel of the Discipline Committee of professional misconduct on the basis of a consent plea and joint submission as to penalty in connection with work done on a bridge rehabilitation design in 2005 (the previous work). Attached, as Schedule A, is a copy of the decision of the panel dated November 15, 2010, as published in the March/April 2011 edition of *Engineering Dimensions*.
4. Although Saunders signed and sealed the drawings at issue in connection with the previous work, he was not directly involved in the project, and did not actually attend at the site. Rather, he relied upon the drawings, information and representations provided to him by Wood, who had attended at the site and who had performed the site inspections referred to in the panel's decision (Schedule A).
5. As part of the penalty arising out of the previous work, the panel imposed a requirement on each of Saunders and Wood that they write and pass the association's professional practice examination (PPE) by November 15, 2011. In addition, Wood was required to write and pass certain technical examinations by November 15, 2011. In both instances, failure to write and pass the specified examinations by the deadline would result in licence suspension for 12 months, and failure to write and pass the examinations within 12 months thereafter would result in licence revocation. Saunders wrote and passed the PPE within the time allowed, but Wood did not write any of the examinations he had agreed to write. Saunders knew that Wood, within the time allowed, did not write any of the required examinations.
6. As a result of Wood's failure to write any of the specified examinations, his licence was suspended effective November 16, 2011. As the contact professional for MRW, Saunders was notified of the suspension by a letter from Linda Latham, P.Eng., deputy registrar, regulatory compliance, dated November 24, 2011. Attached, at Schedule B, is a copy of this letter.
7. On or about April 12, 2012, Wood attended at the Algo Centre Mall in Elliot Lake, Ontario (the mall), to conduct a "structural condition inspection" at the request of the mall's management. On or about April 30, 2012, Saunders co-signed, with Wood, a letter to the mall's management, a copy of which is attached as Schedule C, stating in part: "We have no structural concerns over the additional loading of caulking or waterproofing."
8. Saunders had, in fact, not attended the mall on April 12, 2012, and had no involvement in the "on-site review." In fact, Saunders had never been to the mall. The letter was not sealed, contrary to the requirements of section 53 of Regulation 941 under the act.
9. On or about May 3, 2012, Saunders co-signed, with Wood, a report entitled "Structural Condition Inspection" based on Wood's April 12, 2012 on-site review. Attached, as Schedule D, is a copy of the May 3, 2012 report (the May 3rd report) co-signed by Saunders.
10. The May 3rd report stated that "we" had been requested to "inspect the above-noted mall complex." The May 3rd report was not sealed, contrary to the requirements of section 53 of Regulation 941 under the act. The May 3rd report did not identify any structural concerns with the mall, and stated that the beams inspected were "structurally sound" and that "no visual signs of structural distress were observed."
11. Prior to co-signing the May 3rd report, Saunders met with Wood at the MRW office, during which meeting Saunders reviewed the said report with Wood. During that meeting, Wood told Saunders that the report was requisitioned by mall representatives for the purposes of financing and that Wood, during his on-site inspection, had been taken by a mall employee to the worst areas of leakage in the mall. Wood informed Saunders that he looked at the steel above the ceiling tiles in these areas and found no loss of section on any of the beams inspected. Wood reviewed with Saunders all of the pictures Wood took of the mall structure during his on-site inspection. Based upon Wood's representations, Saunders co-signed the May 3rd report. Those representations of Wood turned out to be false.
12. The April 12 on-site review, the April 30th letter (Schedule C) and the May 3rd report were all deficient because Wood:
    (a) failed to consider previous reports that were available to him;
    (b) failed to look at important parts of the mall that he knew, or should have known, ought to be inspected;
    (c) failed to adequately inspect or examine those parts of the mall that he did look at;
    (d) failed to notice, or failed to appreciate, the effects of continued leakage on the structural integrity of the mall;

(e) drew conclusions about the structural integrity of the mall without an adequate basis for doing so;
(f) failed to notice or to identify the effects of corrosion on structural elements of the mall;
(g) failed to identify deficiencies that compromised the structural integrity of the mall; and
(h) implicitly affirmed the structural integrity of the mall without having an adequate basis for doing so.

Attached, as Schedule E hereto, is a copy of that portion of the *Report of the Elliot Lake Commission of Inquiry* that discusses Wood's and Saunders' conduct in connection with the May 3rd report.

13. Although Saunders co-signed the April 30th letter and the May 3rd report, he had not visited the mall. Rather, he again relied upon the information and representations provided by Wood. He did not insist on seeing any drawings or field notes, nor did he examine MRW's own records to ascertain whether there had been any prior reports relating to the mall. He did not inquire, and therefore did not know, that there was a long history of leakage at the mall. He did not closely question Wood as to the limited scope of his inspection and whether it was sufficiently comprehensive in the circumstances. Saunders did not ask, and therefore did not know, that Wood had failed to take any measurements of the beams that were referred to in the May 3rd report as being "structurally sound," nor had Wood inspected the condition of the welds at connections in the areas experiencing leakage.
14. Saunders should have known, as a result of the previous conviction, that Wood was not always as thorough as he should be. Further, Saunders knew that Wood was planning to "retire" and that he had made no effort to write any of the examinations he had agreed to write. In all the circumstances, Saunders should have taken steps to double-check Wood's work. He should have been much more careful. Saunders did not conduct a proper or adequate review of the April 30th letter or the May 3rd report or the work leading to them, and fell below the expected standard of practice in his supervision of Wood's work in connection with the April 30th letter and the May 3rd report.
15. Saunders admits that the work carried out by him in connection with the April 30th letter and the May 3rd report was deficient, as set out above, and fell below the expected standard of practice for engineering work of this type.
16. On June 23, 2012, about two months after the April 12th inspection, a portion of the mall's rooftop parking structure collapsed causing two deaths, several non-fatal injuries, and substantial damage to a number of areas of the mall. After the mall collapse, Saunders co-operated with the association and the Ontario Provincial Police in their investigations.
17. The cause of the collapse was failure of a heavily corroded steel connection located below the parking deck. The expert report commissioned by the Ontario Provincial Police following the collapse concluded that the general condition of the structure of the mall was poor. The experts found that the welds and other components of the connections in more than 40 per cent of the locations they inspected had severe to very severe corrosion. The expert report concluded that corrosion was a widespread issue that affected significantly more than the connection that ultimately failed.
18. By reason of the aforesaid, the parties agree that Saunders is guilty of professional misconduct as follows:
    (a) on or about April 30, 2012 and May 3, 2012, signing a final engineering opinion without applying a seal contrary to section 53 of Regulation 941 of the act, amounting to professional misconduct pursuant to section 72(2)(g) of Regulation 941 of the act;
    (b) on or about April 30, 2012 and May 3, 2012, signing an engineering opinion confirming the structural integrity of a building without making reasonable provision to ensure the validity of the opinion, amounting to professional misconduct pursuant to sections 72(2)(a) and (d) of Regulation 941 of the act; and
    (c) by reason of the foregoing, 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 unprofessional, amounting to professional misconduct under section 72(2)(j) of the act.

DECISION REGARDING THE MEMBER

The panel conducted a plea inquiry and was satisfied that the member's admission and plea were voluntary, informed and unequivocal. Having considered the ASF and the submissions and agreement of the parties, the panel found that the facts, as agreed, supported a finding of professional misconduct against the member. The panel found that Gregory J. Saunders, P.Eng., committed the acts of professional misconduct set out in paragraphs 18(a), (b) and (c) of the ASF set out above, and was guilty of professional misconduct under sections 72(2)(a), (d), (g) and (j) of Regulation 941.

PENALTY DECISION REGARDING THE MEMBER

The association advised the panel that it and the member had agreed to the Joint Submission on Penalty (JSP), which they submitted to the panel for its consideration. Counsel for the parties then provided submissions on the appropriateness and adequacy of the penalty agreed to.

The association submitted that the purposes of penalty are served in this matter in the following ways: the long suspension, fine, reprimand

and discipline publication will specifically deter the member and generally deter other engineers who may be inclined to breach the law, while protecting the public interest. The penalty also demonstrates the seriousness with which the association takes the member's professional misconduct, and maintains the association's reputation in appropriately and effectively regulating the practice of engineering. The association added that there is no evidence the member is incompetent and, therefore, no remediation is required. As well, the association submitted that the penalty accounts for the member's discipline history and the mitigating steps he took in the present matter, including his co-operation with the association and with the authorities after the mall collapse, and his serious admission of the allegations of professional misconduct, which made a difficult, contested hearing unnecessary. It added that these mitigating factors also demonstrate that the member has learned his lesson and is unlikely to reoffend. The association referred the panel to three decisions of the Discipline Committee that supported its submission that the penalty was reasonable: the 2009 decision regarding Suli Braunshtein, P.Eng. (4); the 2002 decision regarding Man-Woon Lai, P.Eng. (5); and the 2005 decision regarding Kwang-Ray Hsu, P.Eng. (6).

Counsel for the member acknowledged the submissions of the association on the mitigating factors in this matter. He added that the member has been practising for 24 years in good standing. Regarding the member's previous discipline matter, Johnson noted that the member complied with the remediation requirement of his penalty and the fine ordered was paid. Counsel for the member submitted that the member co-operated with the association throughout the complaint and discipline processes, and spared the association the cost of a lengthy hearing by making his consent plea at the earliest stage of this discipline matter. He added that the member has accepted responsibility and a suitable penalty that satisfies the principles of penalty.

The panel concluded that the proposed penalty is reasonable and clearly within the appropriate range. The member co-operated with the association, accepted responsibility for his actions, pled guilty, and spared the association the costs of a contested hearing by agreeing to the facts and to an appropriate penalty. The panel accepted the JSP set out below and, accordingly, ordered:

(a) Pursuant to section 28(4)(f) of the act, the member shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of one (1) year;
(b) Pursuant to section 28(4)(b) of the act, the member's licence shall be suspended for a period of seven (7) months, commencing 14 days after the day the penalty decision is pronounced by the Discipline Committee;
(c) Pursuant to section 28(4)(h) of the act, the member shall pay a fine in the amount of $2,000 (two thousand dollars) within 30 days of the date the penalty decision is pronounced by the Discipline Committee;
(d) The findings and order of the Discipline Committee shall be published in full under sections 28(4)(i) and 28(5) of the act, with reference to the member's name; and
(e) There shall be no order as to costs.

The panel then asked the member if he wished to waive his right to appeal and have the penalty and reprimand administered without delay. The member confirmed that he waived his right to appeal. As a result, the panel administered the reprimand to the member at the conclusion of the hearing.

ALLEGATIONS AND SUBMISSIONS REGARDING MRW AND PLEA ENTERED

As noted above, MRW was neither present at the hearing, nor represented; nor did MRW make submissions after the hearing when it was invited to do so by ILC. A plea of not guilty was, thus, entered on MRW's behalf at the hearing.

The association stated that it was withdrawing allegations 1, 4 and 7 against MRW and was only pursuing allegations 2, 3, 5 and 6 of the Statement of Allegations, which are set out in the allegations section above.

In accordance with allegations 2, 3, 5 and 6, the association asked the panel to make findings of professional misconduct against MRW under sections 72(2)(a), (b), (d), (g) and (j) of Regulation 941. It submitted that, despite the fact that MRW is not a signatory to the ASF, the member, who has agreed to the ASF, was the contact professional responsible for MRW at the relevant time, and the evidence before the panel in the form of the member's admissions is sufficient to ground a finding of guilt in respect of MRW. The association also argued that MRW, as the holder of the Certificate of Authorization and as the employer of Wood, was responsible for Wood's conduct. The association referred the panel to Wood's conduct as set out in the ASF, and as set out in the excerpt from Chapter 12 of the *Report of the Elliot Lake Commission of Inquiry* attached as Schedule E to the ASF. The association asked the panel to make findings of professional misconduct based on the evidence before it that was adduced during the hearing. The association submitted that allegations 2, 3, 5 and 6 are made out against MRW based on the evidence and that the panel can make findings against MRW on the basis of this evidence. In support of its submission, the association referred the panel to the Discipline Committee's decision in Jiri Krupka, P.Eng., and CAElliott Inc. issued on May 12, 2014 (7). In that matter, the Discipline Committee made a finding of guilt with respect to the certificate holder based on a finding of guilt for the member.

With respect to penalty, the association asked the panel to impose a fine of $5,000. It noted that, because MRW no longer holds a Certificate of Authorization to provide engineering services, the fine would be payable if and when MRW sought a new or renewed Certificate of Authorization in the

future. The association noted the principles of penalty and emphasized that a fine of $5,000, which is the maximum permitted under the act, would signal the seriousness with which the association takes MRW's professional misconduct, thus upholding the association's reputation in protecting the public interest.

REASONS FOR DECISION AND PENALTY REGARDING MRW

The panel considered all of the evidence before it, including the ASF and the schedules to it. The panel accepted the ASF between the member and the association as evidence of MRW's professional misconduct in allowing Wood, who did not hold a licence as a professional engineer at the time, to attend the mall and perform an inadequate engineering inspection. The panel found MRW guilty of professional misconduct contrary to sections 72(2)(a), (b), (d), (g) and (j) of Regulation 941.

The panel also accepted the penalty sought by the association as appropriate in the circumstances. The panel was satisfied that MRW does not currently pose a risk to the public since it no longer holds a Certificate of Authorization. The panel was also satisfied that the imposition of a $5,000 fine and the publication of this penalty would demonstrate to the public that the association is capably protecting the public interest. Accordingly, the panel ordered MRW to pay a fine in the amount of $5,000 to the Minister of Finance for payment into the Consolidated Revenue Fund, pursuant to section 28(4)(h) of the act, if and when MRW seeks reinstatement as a holder of the Certificate of Authorization to provide engineering services in Ontario. The panel also directed that its findings and order with respect to MRW be published in *Engineering Dimensions* in full with reference to MRW by name, pursuant to section 28(4)(i) of the act.

Glenn Richardson, P.Eng., signed this Decision and Reasons for the decision as chair of this discipline panel and on behalf of the members of the discipline panel: Stella Ball, LLB, Ishwar Bhatia, P.Eng., and Anne Poschmann, P.Eng.

END NOTES

1. RRO 1990, Reg 941 (Regulation 941).
2. The Elliot Lake Commission of Inquiry was established on July 19, 2012, by the Government of Ontario to inquire into and report on events surrounding the mall collapse. The results of the inquiry were released in a report published October 15, 2014, at: www.attorneygeneral.jus.gov.on.ca/inquiries/elliotlake/report/index.html.
3. See part one, chapter 12 of the report, at paragraph 2, page 573 and footnote 138 citing the testimony of Wood on June 7, 2013 (at pages 13467-9) and Saunders on June 6, 2013 (at page 13089).
4. Published in the September/October 2010 issue of *Engineering Dimensions*.
5. Published in the January/February 2002 issue of *Engineering Dimensions*.
6. Published in the July/August 2005 issue of *Engineering Dimensions*.
7. Published in the March/April 2015 issue of *Engineering Dimensions*.

SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, c. P.28, of a complaint regarding the conduct of GEORGE MIKHAEL, P.ENG., a member of the Association of Professional Engineers of Ontario.

The panel of the Discipline Committee met to hear this matter on January 12, 2016 at the Association of Professional Engineers of Ontario in Toronto.

THE ALLEGATIONS

This case arose from a complaint filed by Albert Bastien concerning a solar panel system installed on the roof of his house. The Statement of Allegations dated April 24, 2015 against George Mikhael, P.Eng. (the member), alleged that he was guilty of professional misconduct.

AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts summarized as follows:

In 2011, the complainant, Albert Bastien, retained Powerserve/Neighbourhood Electric Company (Neighbourhood Electric) to install a solar panel system on the roof of his residence located in Amherstburg, Ontario. Neighbourhood Electric applied for a building permit from the Town of Amherstburg on April 1, 2011 for the project.

Bastien and/or Neighbourhood Electric retained the member to analyze the impact of the solar panel system on the structural integrity of the roof. There was no written contract between the member in respect to the scope of his retainer.

As part of the permit application, the member prepared a letter of conformance for Bastien dated March 25, 2011 addressed "to whom it may concern." He described his analysis of the existing roof trusses to sustain an additional load of the solar panel system. The member stated that, "The existing structure will sustain the additional load of 5 pounds per square foot (PSF), imposed from the solar system."

This letter was signed, dated and sealed by the member.

On March 30, 2011, the member revised his March 25, 2011 letter as follows:

"I certify that the anchors have the required strength to withstand any uplift caused by the wind."

The March 30, 2011 letter was signed and sealed by the member. The member also dated, signed and sealed a construction drawing bearing the title block of Mitek, as supplier of roof trusses.

On or about March 31, 2011, the town issued a building permit for the installation of a solar panel system at Bastien's home. The permit was issued to Bastien.

Neighbourhood Electric installed the solar panel system. The member was not involved with the installation of the solar panel system.

During the installation, Bastien was concerned about the security of the framing on the roof. As a result, Neighbourhood Electric added numerous additional anchors that attached the frame to the roof.

After installation, at Bastien's request, Neighbourhood Electric inspected and photographed his attic area to confirm that the anchorage points were sufficient and properly installed. Neighbourhood Electric noted that one anchorage in the garage was protruding through the side of the roof truss. Neighbourhood Electric offered to fix it, but Bastien declined.

On October 25, 2011, the building department of the town requested a General Review Certificate or Letter of Conformance from the design engineer in accordance with Division C, section 1.2 and division A, section 1.3.1.1 of the Ontario Building Code. The building department required confirmation that the member had inspected and reviewed the site installation and that the installation was compliant with his design.

The member reviewed information forwarded to him by Neighbourhood Electric, which consisted of: installation specifications, anchor drawings (showing location and number), and photographs of Neighbourhood Electric's inspection of Bastien's attic. He did not physically attend Bastien's home or inspect the solar panel system.

On October 26, 2011, the member prepared a Letter of Conformance, to Bastien's attention, in which he stated that he had reviewed the solar system installation. The member stated that "after reviewing the installation of the solar panels on your roof" and the technical data, he confirmed that the solar system was installed according to the manufacturing recommendations, and with two bolts where only one bolt was required. The member gave the structure a safety factor of 3, and stated that there "will be no danger that the rack solar system will be blown in the future." He confirmed that the installation was acceptable and "structurally safe, sound and capable to sustain the wind loads."

The association obtained an independent engineer's report dated January 30, 2015. The independent engineer's report concluded that:

(a) The member failed to comply with the Ontario Building Code in his review and analysis of the trusses as set out in his March 25, 2011 and March 30, 2011 letters. He did not consider the possible load conditions or the actual load conditions, nor did he apply the design requirements of the Ontario Building Code, including the assessment of the dead loads, snow loads, downward wind loading, and concentrated loads, or any loading caused by wind uplift. The loads imposed on the trusses are in excess of their original design load. As a result, his opinion set out in his March 25, 2011 and March 30, 2011 letters was incomplete, inaccurate and not in compliance with sections 4.1.5.1 and 4.1.5.9 of the Ontario Building Code. In the circumstances, he failed to maintain the minimum standards that a reasonable and prudent practitioner would maintain in the circumstances; and

(b) The member failed to comply with the Ontario Building Code in his review and analysis of the trusses as set out in his October 26, 2011 Letter of Conformance. He did not consider the possible load conditions or the actual load conditions, nor did he apply the design requirements of the Ontario Building Code, including the assessment of the dead loads, snow loads, downward wind loading, and concentrated loads, or any loading caused by wind uplift. The member also failed to properly consider the installation variances to assess the anchor capacity. He provided his opinion that there would be no danger of the solar rack being "blown in the future" without adequate information to come to such a conclusion. As a result, his opinion set out in this October 26, 2011 Letter of Conformance was incomplete, inaccurate and not in compliance with the Ontario Building Code. In the circumstances, he failed to maintain the minimum standards that a reasonable and prudent practitioner would maintain in the circumstances.

The member admitted that the work carried out by him, as set out in the Agreed Statement of Facts, was deficient, and fell below the expected standard of practice for engineering work of this type, and that he failed to comply with the applicable standards and codes, as set out in the independent engineer's report.

PLEA BY MEMBER

The member admitted to the allegations as set out in the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the member's admission was voluntary, informed and unequivocal.

DECISION

The panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and found that George Mikhael, P.Eng., committed an act of professional misconduct.

JOINT SUBMISSION ON PENALTY

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. The association put forward that the penalty would:

(a) provide sufficient protection to the public by ensuring that the member had the necessary technical knowledge to undertake structural engineering, noting that the member is a sole practitioner and failure to pass the required exams would mean that he would be unable to practise for 10 months, which would be a severe penalty;
(b) maintain the reputation of the profession by publishing this decision with the member's name;
(c) provide general deterrence to others in the profession to be careful in all their dealings, including on relatively small jobs;
(d) provide specific deterrence to the member to be more careful in the future to ensure that his work does not give rise to a complaint; and
(e) rehabilitate the member, which was demonstrated by his willingness to co-operate with the association in its investigation and with the association's engineer, the member's admission of guilt and his willingness to write two difficult exams on his technical knowledge.

The association cited two previous decisions of the Discipline Committee, demonstrating that the proposed penalty in the current matter was within the acceptable range of penalties. The association submitted that the penalty would be fair and appropriate in this matter.

Counsel for the member noted that the matter involved an isolated incident, that it was the member's first and only complaint, that the member has great remorse, and that he recognizes what he should have done in the circumstances.

PENALTY DECISION

The panel concluded that the proposed penalty is reasonable and in the public interest and accepted the Joint Submission as to Penalty. George Mikhael, P.Eng., 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.

The panel ordered:

(a) Pursuant to s. 28(4)(f) of the *Professional Engineers Act*, George Mikhael, P.Eng., shall be reprimanded orally, and the fact of the reprimand shall be recorded on the register for a period of three (3) months from January 12, 2016;
(b) The finding and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) of the *Professional Engineers Act* and include George Mikhael's name;
(c) Pursuant to s. 28(4)(d) of the *Professional Engineers Act*, it shall be a term or condition on George Mikhael's licence that he shall, within fourteen (14) months from January 12, 2016, successfully complete the following two technical examinations administered by the association: 98 Civ-B1 (Advanced Structural Analysis) and 98-Civ-B2 (Advanced Structural Design);
(d) Pursuant to s. 28(4)(b) and (k) of the *Professional Engineers Act*, in the event that George Mikhael, P.Eng., does not successfully complete the two examinations within the time set out in (c) above, his licence shall be suspended for a period of ten (10) months thereafter, or until he successfully completed the examinations, whichever comes first.

George Mikhael, P.Eng., waived his right to appeal and the oral reprimand was delivered following the hearing.

Patrick Quinn, P.Eng., signed the Decision and Reasons on January 19, 2016 on behalf of the discipline panel: Santosh Gupta, P.Eng., Rishi Kumar, P.Eng., Sharon Reid, C.Tech., and Glenn Richardson, 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 JAMES R. McGERRIGLE, P.ENG., a member of the Association of Professional Engineers of Ontario and EFCO CANADA CO., a holder of a Certificate of Authorization.

James R. McGerrigle, P.Eng. (the member), and EFCO Canada Co. (EFCO), a holder of a Certificate of Authorization, pled guilty to allegations of professional misconduct as defined in the *Profes-*

sional Engineers Act (the act) and Regulation 941 thereunder as follows:

(a) The member and the certificate holder designed a falsework structure containing clip connections without making responsible provisions for complying with the applicable CSA standard, amounting to professional misconduct under subsection 72(2)(d) of Regulation 941; and
(b) The member and the certificate holder designed a falsework structure without taking any or adequate steps to determine whether its clip connections could withstand the loads to which the falsework would be subjected, amounting to professional misconduct under subsections 72(2)(a), (b) and (j) of Regulation 941.

In respect of subsection 72(2)(j) of the Regulation, "conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional," the parties agreed that the conduct in question was "unprofessional," not disgraceful or dishonourable.

The actions giving rise to the allegations relate to a bridge being constructed with rebar reinforced concrete by GBL Construction across the 18 Mile River near Lucknow, Ontario. The bridge required a falsework structure to provide temporary support for the bridge formwork while the concrete was being poured and had sufficient time to set.

The member and EFCO designed and supplied the materials for the bridge falsework structure. On or about November 5, 2007, the member sealed and signed a letter that certified that EFCO's falsework installation conformed to EFCO's erection drawings. On November 10, 2007, the partially-built bridge collapsed while workers were pouring concrete. Several workers were injured as a result of the collapse. It was agreed that the member and EFCO had not conducted any or sufficient testing to determine whether the clip connections were an adequate substitute for the bolts called for in the original design, including whether they could withstand the loads to which the false work would be subjected. It was also agreed that the member and EFCO had not taken steps to ensure that the clip connections complied with Canadian Standards Association Standard 5269.1–1975.

At the time of the hearing, McGerrigle was a retired member of the association who had no record of past disciplinary proceedings.

The member and EFCO were found guilty of professional misconduct under section 28(2)(b) of the act as a result of having committed acts of professional misconduct as set out in subsections 72(2)(a)(b) and (d) and (j) of Regulation 941 under the act.

In respect of the finding under subsection 72(2)(j) the panel found that the conduct in question was unprofessional, but not disgraceful or dishonourable, in accord with the Agreed Statement of Facts from the parties.

PENALTY DECISION

The parties submitted a Joint Submission as to Penalty, which the panel imposed with one minor modification. In the original joint submission it was proposed that the member maintain his status as a retired member and required him not to resume the practice of professional engineering. The panel was concerned, among other things, about its authority to order a member to maintain his membership status. The parties thus agreed to the wording in paragraph (d) below in place of the original wording. The panel thus ordered:

(a) Pursuant to paragraph 28(4)(f) of the *Professional Engineers Act*, McGerrigle and EFCO Canada Co. shall both be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of two (2) years;
(b) The finding and order of the Discipline Committee shall be published in Gazette 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*, either EFCO Canada Co. or McGerrigle shall pay a fine in the amount of $5,000 (five thousand dollars) to the Minister of Finance (for payment to the consolidated revenue fund) within 45 days of the date of pronouncement of the penalty decision of the Discipline Committee;
(d) Pursuant to paragraph 28(4)(c) of the *Professional Engineers Act*, McGerrigle shall provide a written undertaking to the Association of Professional Engineers of Ontario that he will not resume the practice of professional engineering; and
(e) There shall be no order with respect to costs.

The reprimand was delivered by the panel immediately following the hearing on April 13, 2015.

The written summary of the Decision and Reasons was signed by Brian Ross, P.Eng., as chair on behalf of the other members of the discipline panel: Charles Kidd, P.Eng., Rishi Kumar, P.Eng., Kathleen Robichaud, LLB, and Edward Rohacek, P.Eng.

OTTAWA-AREA CONTRACTOR FINED $7,500 FOR USE OF PROFESSIONAL ENGINEER's SEAL AND USE OF TITLE "PROFESSIONAL ENGINEER"

On March 3, 2016, Jeff Rubino of Carleton Place, Ontario, was convicted of three counts of breaching the *Professional Engineers Act* and fined $7,500 for using a fabricated professional engineer's seal and the title "professional engineer" on a report submitted to the Ottawa building department.

The City of Ottawa had sought additional information, including a professional engineer's approval, in relation to a building permit application to modify a local home that included the removal of a load-bearing wall and inserting a laminated veneer lumber beam and adjustable posts. The general contractor on the project had retained Rubino to respond to the city. Rubino has never been licensed as a professional engineer in the province of Ontario nor has he ever held or acted under and in accordance with a Certificate of Authorization.

In the report, Rubino used a seal that duplicated the wording, content and style of the seal reserved for professional engineers. He also referred to himself as a "Professional Engineer of Ontario" and used a purported licence number that was similar to those issued to professional engineers, but that did not match any number in PEO's register of licence holders.

The matter came to the attention of PEO after a city building department official attempted to check Rubino's licence status upon receiving the report bearing the seal and title.

His Worship, Justice of the Peace Richard C.P. Sculthorpe, of the Ontario Court of Justice at Ottawa, convicted Rubino of three offences relating to the illegal use of the seal and protected title, and for not acting under and in accordance with a Certificate of Authorization.

Nick Hambleton, associate counsel, regulatory compliance, represented PEO in this matter.

The success in this matter was due in no small part to the vigilance of the Ottawa building department and the co-operation of the general contractor and the homeowner during the investigation.

PICKERING MAN FINED $6,000 FOR USE OF THE TITLE "PROFESSIONAL ENGINEER"

On March 14, 2016, Cosimo Polidoro of Pickering, Ontario, was convicted of three counts of breaching section 40(2)(a) of the *Professional Engineers Act* for using the protected title "P.Eng." in a resume and in two emails in response to an employment opportunity with a Toronto-area construction firm. The employer asked for confirmation of Polidoro's licensure status on several occasions before checking with PEO, which informed the employer that Polidoro had never been licensed as a professional engineer in Ontario.

His Worship, Justice of the Peace Sisay Woldermichael, of the Ontario Court of Justice in Toronto, levied a fine of $2,000 on each of the three counts after finding Polidoro guilty of holding himself out as a professional engineer on three different occasions.

Nick Hambleton, associate counsel, regulatory compliance, represented PEO in this matter.

PEO thanks the construction firm and its employees for their co-operation in its investigation and for their vigilance in reporting the concern.

REGULATION 260/08 AMENDED, EFFECTIVE JULY 1, 2016

Amendments include the introduction of a new performance standard for tower crane inspection and housekeeping items.

On February 12, 2016, the registrar of regulations filed Ontario Regulation 29/16, amending Ontario Regulation 260/08, Performance Standards, made under the *Professional Engineers Act*. The amendments include housekeeping changes to better organize the regulation's content and introduction of a fourth performance standard. The new standard deals with tower crane inspections in accordance with sections 158 and 159 of Ontario Regulation 213/91 (Construction Projects) made under the *Occupational Health and Safety Act*. The following are the amended sections of Regulation 260/08. To view Regulation 260/08 as amended, visit www.peo.on.ca/index.php?ci_id=1812&la_id=1. To view the new performance standard *Review of Tower Cranes as Required by the* Occupational Health and Safety Act, visit www.peo.on.ca/index.php/ci_id/29690/la_id/1.htm.

CHANGES TO REGULATION 260/08, EFFECTIVE JULY 1

PART I
PERFORMANCE STANDARDS FOR BUILDING CONSTRUCTION, ENLARGEMENT, ALTERATION AND DEMOLITION

Definitions

1. In this part,

"building" means a building as defined in the *Building Code Act*, 1992;

"building code" means Ontario Regulation 332/12 (Building Code) made under the *Building Code Act*, 1992. O. Reg. 260/08, s. 1; O. Reg. 91/14, s. 1; O. Reg. 29/16, ss. 1, 2.

PART II
PERFORMANCE STANDARDS FOR DRINKING WATER SYSTEM EVALUATIONS

Engineering evaluation reports under *Safe Drinking Water Act, 2002* (drinking water systems)

4. (1) In this section,

"available" means, in reference to a document, that it is present at or immediately accessible from the site of a drinking water system, whether in paper or electronic format;

"distribution systems", "drinking water system", "raw water" and "raw water supply" have the same meaning as in the *Safe Drinking Water Act, 2002*;

"Drinking Water Systems Regulation" means Ontario Regulation 170/03 (Drinking Water Systems) made under the *Safe Drinking Water Act, 2002*;

"operational check equipment" means equipment installed in a drinking water system, or portable equipment present at the site of a drinking water system, for the purpose of carrying out,

(a) operational checks, sample and testing under Schedule 6 to the Drinking Water Systems Regulation, and

(b) the maintenance and operational checks under Schedules 8 and 9 to that Regulation. O. Reg. 91/14, s. 3; O. Reg. 29/16, s. 3.

(2) The following are prescribed as performance standards with respect to the assessment of a drinking water system and the preparation of an engineering evaluation report on a drinking water system under Schedule 21 to the Drinking Water Systems Regulation by a holder of a licence, temporary licence or limited licence: ...

5. If any part of the source of the raw water supply is ground water, the holder shall,

   i. include in the site plan the location of any wells that form part of the drinking water system and the location of any known water courses, drains, septic tanks, tile fields and any other structures that may affect the quality of the well water, and

   ii. include in the site plan a description of the physical characteristics of each well that forms part of the drinking water system including, if available, a copy of the well record, and an indication of whether any of the wells obtains water from a raw water supply that was determined for the purposes of section 2 of the Drinking Water Systems Regulation to be ground water that is under the direct influence of surface water. O. Reg. 29/16, s. 4.

PART III
PERFORMANCE STANDARDS FOR ENVIRONMENTAL SITE ASSESSMENT REPORTS

Environmental site assessment reports

5. (1) In this section,

"environmental site assessment" means an investigation in relation to land to determine the environmental condition of property, and includes a phase one environmental site assessment or a phase two environmental site assessment under Ontario Regulation 153/04 (Records of Site Condition–Part XV.1 of the Act) made under the *Environmental Protection Act*. O. Reg. 91/14, s. 3; O. Reg. 29/16, s. 5.

PART IV
PERFORMANCE STANDARDS FOR TOWER CRANE INSPECTIONS

Tower crane performance standards

6. The performance standards for inspecting a tower crane in accordance with sections 158 and 159 of Ontario Regulation 213/91 (Construction Projects) made under the *Occupational Health and Safety Act* are prescribed as being set out in the document entitled "Review of Tower Cranes as Required by the *Occupational Health and Safety Act*" and dated November 20, 2015, published by the Association and available on its website. O. Reg. 29/16, s. 6.

Professional Engineers
Ontario

Order form is online at www.peo.on.ca

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		
Conducting a Practice Review (2014)	10.00		
Developing Software for Safety Critical Engineering Applications (2013)	10.00		
Engineering Evaluation Reports for Drinking Water Systems (2014)	10.00		
Engineering Services to Municipalities (1986)	10.00		
Environmental Site Assessment, Remediation & Management (1996)	10.00		
Forensic Engineering Investigations (2015)	10.00		
General Review of Construction as Required by Ontario Building Code (2009)	10.00		
Geotechnical Engineering Services (1993)	10.00		
Guideline to Professional Engineering Practice (2012)	10.00		
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Professional Engineering Practice (2012)	10.00		
Professional Engineer's Duty to Report (1991)	N/C		
Project Management Services (1991)	10.00		
Reports for Pre-Start Health and Safety Reviews (2001)	10.00		
Reports on Mineral Properties (2002)	10.00		
Reviewing Work Prepared by Another Professional Engineer (2011)	10.00		
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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		
Selection of Engineering Services (1998)	10.00		
Use of Agreements Between Clients & Engineers (2000) (including sample agreement)	10.00		

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40 Sheppard Ave. W., Suite 101
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April 2016