

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 actions and conduct of KAROL KAROLAK, P.ENG., a member of the Association of Professional Engineers of Ontario.

A panel of the Discipline Committee met at the Association of Professional Engineers of Ontario (the association) at Toronto on April 25, 2016 to hear this matter. Mr. Karol Karolak, P.Eng. (the member), was not present, but was represented by Ms. Frances Mahon. The association was represented by Ms. Leah Price. At the outset of the hearing, Ms. Price advised the panel that the parties agreed on all of the facts and documents supporting a finding of professional misconduct. The parties disagreed, however, on the appropriate disposition in the circumstances.

PRELIMINARY ISSUES

The panel was asked to rule on two preliminary matters:

1. The member was not able to attend the hearing, and the parties requested that the matter proceed in the member's absence. In accordance with Rule 7 of the Discipline Committee's Rules of Procedure, the panel was provided with a Letter of Direction (the direction), which was signed by Mr. Karolak, and dated April 21, 2016. The direction instructed his lawyer, Ms. Mahon, to act on Mr. Karolak's behalf in the proceedings and stated his wish to plead guilty to professional misconduct on the basis of the allegations set out in the Notice of Hearing. The direction expressed Mr. Karolak's understanding of the nature and consequences of a guilty plea, and further set out his instructions to counsel regarding his position on the penalty he felt should be applied following such plea.
2. The parties had prepared an Agreed Statement of Facts, which referred to a Confidential Statement containing information relevant to the panel's consideration of the penalty. The parties advised that the Confidential Statement would be filed separately, and requested that the panel make an order under subsection 30(4.1) of the act that the Confidential Statement be sealed and the public excluded from the parts of the hearing dealing with the contents of the Confidential Statement.

In the result, the panel decided that the circumstances supported both preliminary requests. It accepted the signed direction and agreed that it was appropriate for the hearing to proceed, despite the member not being present in person or by video. Further, the panel agreed that the Confidential Statement contained sensitive information and made an order to seal the Confidential Statement, pursuant to subsection 30(4.1) of the act.

THE ALLEGATIONS

The specific allegations against the member are set out in the Statement of Allegations, which are attached to the Complaints Committee decision dated October 21, 2014. Specifically, the association alleges that Mr. Karolak is guilty of professional misconduct as defined in the *Professional Engineers Act* (the act) and Regulation 941 as follows:

- a) The member made statements against a member of the public that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable and unprofessional, amounting to professional misconduct under section 28(2)(b) of the act and section 72(2)(j) of Regulation 941; and
- b) The member was found guilty of an offence relevant to suitability to practice, amounting to professional misconduct under section 28(2)(a) of the act.

BACKGROUND FACTS

The background facts are straightforward, well supported by evidence, and are not in dispute.

Mr. Karolak held a licence as a professional engineer under the act from April 16, 1991 until August 24, 2015, at which time his licence was cancelled for non-payment of fees.

In or about 2005, Mr. Karolak was engaged in family court proceedings before Justice Nancy L. Backhouse, a justice of the Superior Court of Ontario. Justice Backhouse ruled against Mr. Karolak in those proceedings.

Beginning in approximately 2008 and continuing until at least 2011, Mr. Karolak made various offensive statements in emails and in Internet postings about Justice Backhouse's husband, Mr. Martin Teplitsky, QC (Mr. Teplitsky), a prominent Toronto lawyer, arbitrator and mediator. A number of these communications were signed "Karol Karolak, P.Eng."

The statements included, among other things, allegations that Mr. Teplitsky:

- is a "pimp";
- employs "prostitutes" and "working girls" and runs an "escort agency";
- uses his "working girls" to influence members of Toronto society;
- has prominent members of Toronto society in his back pocket; and
- videotapes members of the legal community engaged with prostitutes to gain influence over them.

On or about July 4, 2011, Mr. Teplitsky submitted a complaint to the association regarding the member's conduct. The complaint included a voluminous copy of the offending communications.

On July 9, 2011, Mr. Karolak wrote Mr. Teplitsky a lengthy email, in which he stated in part:

I hope that you have already read a copy of "Canadian Zyprexa Experiment File" that I have assembled few years ago, and I hope that you already know how easy it is to induce suicide in an intended victim by using well tried Zyprexa pump and dump procedure. Zyprexa Zydis is water soluble, tasteless and colourless when dissolved, so all that it takes is one person close to you and enough pills to alter serotonin production in your brain and you might die of your own hands without ever knowing what have (sic) hit you.

If you have not read a copy of "Canadian Zyprexa Experiment File" as of yet, please let me know and I will gladly send you a copy just so you also know how to dispose of undesirable people without leaving any trace that the murder was committed.

As a result of the July 9, 2011 email, Mr. Karolak was arrested and charged by the Peel Regional Police. He pleaded guilty on August 17, 2011 before the Honourable Justice W.B. Stead of the Ontario Court of Justice to the criminal offence of threatening death. Mr. Karolak was sentenced to 33 days of pre-trial custody and two years of probation. As well, an order was made prohibiting Mr. Karolak from communicating with Mr. Teplitsky or his family, and further prohibiting him from posting, on the Internet or any similar public network, postings about Mr. Teplitsky, his wife, or any other member of Mr. Teplitsky's immediate family.

On or around August 4, 2014, Mr. Karolak wrote to the association to provide a reply to Mr. Teplitsky's complaint. In his letter, Mr. Karolak repeated many of the offending statements and allegations against Mr. Teplitsky. He did not apologize for his behaviour or attempt to demonstrate any compunction for his criminal actions; instead, he made efforts to justify them.

PLEA BY THE MEMBER

The direction contained Mr. Karolak's instructions to counsel regarding his wish to plead guilty to professional misconduct on the basis of the allegations against him. The panel found that the direction was an expression of his understanding of the nature and consequences of a guilty plea and, therefore, accepted the member's plea, being satisfied that the member's admission was voluntary, informed and unequivocal.

FINDING OF PROFESSIONAL MISCONDUCT

The panel considered the evidence and, together with the member's plea, holds that the facts support a finding of professional misconduct. More specifically, the panel accepted that Mr. Karolak made statements about Mr. Teplitsky and his family that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable and unprofessional, amounting to professional misconduct under section 28(2)(b) of the act and section 72(2)(j) of Regulation 941.

Furthermore, the evidence confirmed that Mr. Karolak was convicted of knowingly uttering a death threat, contrary to section 264.1(1)(a) of the Criminal Code of Canada. The panel accepted that this was an offence relevant to suitability to practice, amounting to professional misconduct under section 28(2)(a) of the act.

SUBMISSIONS ON PENALTY

Neither party suggested that the appropriate disposition would allow the member to continue to be licensed as an engineer. The association submits that revocation of the member's licence is required, while the member requests that he be permitted to resign his licence with an undertaking to not seek reinstatement. Both parties agree, however, that regardless of the result, a summary of the facts and the penalty order shall be published in the Gazette, including reference to the member's name.

Importantly, there was also agreement from both parties that, despite Mr. Karolak's licence having been cancelled in August 2015, he is nevertheless still subject to the continuing jurisdiction of the association in respect of disciplinary action arising out of his professional conduct while a member, in accordance with section 22(1) of the act.

THE ASSOCIATION'S POSITION

The association seeks revocation of Mr. Karolak's engineering licence based on its assertion that it is the only penalty available that adequately protects the public interest. In particular, the association submits that, if the member's licence is not revoked, the legislation permits Mr. Karolak to demand reinstatement of his licence as a right.

The applicable statutory provisions are summarized as follows:

Membership

Act, s. 5(1)—Every person who holds a licence is a member of the Association subject to any term, condition or limitation to which the licence is subject.

Cancellation for default of fees

Act, s. 22(1)—The Registrar may cancel a licence...for non-payment of any fee prescribed by the regulations or bylaws...

Reinstatement

Act, s. 22(2)—A person who was a member of the association...whose licence...was cancelled by the Registrar under subsection (1) is entitled to have the licence...reinstated upon compliance with the requirements and qualifications prescribed by the regulations.

Regulation 941. s. 51.(1)—Subject to subsection (2), the following qualifications and requirements are prescribed for the reinstatement of the licence of a member who resigned:

1. Payment of the fees owing by the applicant for reinstatement to the Association at the time the applicant resigned, if any, and of the fees for the current year.
2. Payment of a reinstatement fee of \$230.
3. Production of evidence of good character.

Regulation 941. s. 51.1(1)—Subject to subsection (2), the following qualifications and requirements are prescribed for the reinstatement of the licence that was cancelled for non-payment of fees:

1. Payment of the fees owing by the applicant for reinstatement to the Association

at the time his or her licence...was cancelled and of the fees for the current year.

2. Production of evidence of good character, if the payments referred to in paragraph 1 are made more than one year after the cancellation.

Application for licence, etc., after revocation

Act, s. 37(1)—A person whose licence...has been revoked for cause under this act...may apply in writing to the Registrar for the issuance of a licence...but such application shall not be made sooner than two years after the revocation.

Reference to Discipline Committee

Act, s. 37(3)—The registrar shall refer an application under subsection (1)...in respect of a licence...to the Discipline Committee which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Council and the applicant.

Counsel for the association explained that, at present, if Mr. Karolak were to reapply by August 24, 2016, which is within a year of the date his licence was cancelled, the legislation would permit him to demand reinstatement of his licence without having to do anything more than pay the applicable fees. If he were to reapply after one year and before August 24, 2017, which is two years from the date his licence was cancelled, or otherwise, if he were permitted to resign his licence, Mr. Karolak would need only pay the applicable fees and produce evidence of "good character"; a qualification counsel stated the association has been given no assistance in assessing.

If, however, the panel accepts that revocation is the appropriate remedy, Mr. Karolak would be required to wait a minimum of two years after the date of revocation before he could reapply for licensure. Further, a hearing would necessarily be held before a panel of the Discipline Committee, which would eliminate the requirement for the registrar to consider any evidence relating to the member's good character.

Taken together, the association holds that the revocation of Mr. Karolak's licence is the only option that will ensure that his licence remains revoked, at least until such time as his suitability for licensure is appropriately determined. Without this, counsel for the association submits that there is an apparent presumption of reinstatement, which goes squarely against the association's public interest mandate.

THE MEMBER'S POSITION

Mr. Karolak requests that he be allowed to resign his membership and further make an undertaking that he not reapply for a licence. The member submits that such a response serves the public interest in recognizing that he faces certain difficulties, as is outlined in the Confidential Statement.

The applicable statutory provisions are as follows:

Resignation of membership

Act, s. 5(2)—A member may resign his or her membership by filing with the Registrar a resignation in writing and his or her licence is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of the person’s professional conduct while a member.

Powers of the Discipline Committee

Act, s. 28(4)(c)—Where the Discipline Committee finds a member of the Association... guilty of professional misconduct or to be incompetent it may, by order, accept the undertaking of the member...to limit the professional work of the member...in the practice of professional engineering to the extent specified in the undertaking.

DECISION AND ORDER

The panel makes the following order with respect to penalty:

1. The member’s engineering licence shall be revoked, pursuant to section 28(4)(a) of the act; and
2. The order of the panel, with the reasons therefor, shall be published in the Gazette, and shall include the name of the member, pursuant to section 28(5) of the act.

REASONS FOR PENALTY DECISION

In making its decision on the penalty, the panel carefully considered the Brief of Authorities and the submissions of counsel. The panel also paid close attention to the particular circumstances that were described in the Confidential Statement, and the member’s letter of August 4, 2014 to the association in response to the notice of complaint.

The panel considers the mitigating factors in this case to include the following:

1. Mr. Karolak has been diagnosed with an illness. The symptoms of this illness prevented him from attending the hearing in person and, although he was not diagnosed or treated during the period he perpetuated the conduct in question, the panel accepts that the effects of his illness are likely to have caused or contributed to his behaviour and actions during that time.
2. Mr. Karolak appears to have co-operated with the association by participating in the preparation of an Agreed Statement of Facts and acknowledging, through his guilty plea, his past misconduct.
3. Mr. Karolak also admitted the facts in his 2011 criminal proceedings and pleaded guilty to the charge of uttering a threat. He spent 33 days in prison in answer to that conviction and complied with the conditions that were imposed upon him.

The following are identified as aggravating factors:

1. In his August 4, 2014 reply to the association, Mr. Karolak repeated many of his allegations against Mr. Teplitsky and did not indicate any remorse, introspection or willingness to retract any of the statements, which led to the within discipline proceedings. He did not apologize for his actions but, rather, he attempted to justify his previous misconduct.
2. Mr. Karolak did not take any voluntary steps to remove the offending materials posted, or otherwise attempt to make restitution to Mr. Teplitsky or his family.
3. Mr. Karolak’s August 4, 2014 letter was written during a period when he was allegedly undergoing treatment for, and experiencing some improvement with, his illness.

The penalty order of a professional discipline panel is intended to satisfy several purposes, including protection of the public, general and specific deterrence, rehabilitation of the member, and upholding the reputation of the profession. In this case, the member is unwell and, by his own volition, he has agreed not to continue to practise professional engineering. In fact, the penalty he suggests involves making an undertaking that would prevent him from ever reapplying for licensure which, if adhered to, would have a longer-lasting and more permanent effect than revocation by order of this tribunal. In such circumstances, specific deterrence, or professional rehabilitation of the member, is effectively moot.

So, too, is the goal of general deterrence. The panel was provided with numerous precedents that would support an order for revocation of the member’s licence. Such a strong penalty sends a message to the public that the engineering profession does not tolerate such behaviour and seeks to deter professional engineers from behaving in this way. However, the panel accepts that there are mitigating circumstances worthy of consideration. Because these circumstances are described in the Confidential Statement ordered sealed and because the panel’s decision on penalty does not hinge on general deterrence, we will forego the details herein.

The remaining consideration and overarching objectives for this panel’s penalty order is, therefore, to ensure the protection of the public and support public confidence in the integrity of the profession. In answer to the former concern and, at first glance, the panel finds that the public would adequately be protected through either revocation or resignation of the licence since neither scenario would see the member as a licensed or practising engineer. On the one hand, revocation would ensure that Mr. Karolak could not have his licence reinstated for a minimum of two years. On the other hand, the proposed undertaking would involve that he not (ever) seek reinstatement.

However, if Mr. Karolak is granted the penalty he seeks, the panel would be placing the onus on him to comply with the undertaking and would rely on his commitment thereto. Such a disposition requires that the panel place trust in the member. Ms. Mahon warned that we cannot operate under a presumption that Mr. Karolak might breach the undertaking, which the panel accepts. Mr. Karolak complied with his court order, and there was no evidence to suggest that he breached any conditions following his criminal conviction. At the same time, the panel heard evidence, which seriously calls into question Mr. Karolak's judgment. In particular, the panel finds that, by repeating many of the allegations against Mr. Teplitsky in his reply to the association on August 4, 2014, Mr. Karolak perpetuated the campaign of defamation and abuse against Mr. Teplitsky. In doing so, the member continued to engage in discomfiting conduct, despite the fact that he was undergoing treatment and allegedly experiencing some improvement therefrom at that time. This suggests to the panel that the member may not have learned from his past missteps, and leaves doubt as to whether the member's judgment—with or without treatment—can be trusted.

It follows that, if Mr. Karolak were permitted to resign his licence and he later decided to breach the undertaking by seeking reinstatement under subsection 51.(1) of the regulation, he could be readmitted to the profession, despite that his suitability to practice might still be in question. Certainly, both the breach of the panel's order and Mr. Karolak's actions leading up to the order would be reviewed and considered by the registrar but, as counsel for the association articulated, there is little guidance to inform the registrar with respect to what constitutes evidence of good character. By contrast, if Mr. Karolak's licence is revoked and he later seeks reinstatement, he would be restricted from reapplying until after two years has elapsed and, more significantly, he would be required to have his application brought and heard before a panel of the Discipline Committee. Such an inquiry, we expect, would remove the focus from an obscure consideration of the member's good character and could, instead, or additionally, concentrate on a review of the member's reformation, including a demonstration of remorse for his past misconduct.

Furthermore, the panel's decision to revoke Mr. Karolak's licence is based on its finding that such an order is necessary to maintain the reputation and integrity of the profession. On this point, the panel was guided, in part, by *Bolton v. Law Society*, [1994] 1 W.L.R. 512 (C.A.), which was reproduced in paragraph 73 of *Kazman v. The Law Society of Upper Canada*, 2008 ONLSAP 7 (CANLII). *Bolton* applies in the context of Law Society Discipline Tribunals, and states that the most fundamental purpose of a panel's order is the collective reputation of the accused licensee's peer group:

Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his

lesson and will not offend again...and [he] may also be able to point to real efforts to...redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness...The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

While the evidence in this case indicates that mitigating circumstances may have existed during the period when the member was engaging in professional misconduct, Mr. Karolak's response on August 4th demonstrates that the circumstances may not have been really exceptional after all. Counsel for Mr. Karolak submits that his guilty plea is a significant expression of his remorse. She claimed that this, together with his willingness to co-operate in compiling an Agreed Statement of Facts, helped to speed up the disciplinary process, and indicated an acknowledgement and acceptance by Mr. Karolak of his past wrongdoings. We are not convinced of this. Even after receiving treatment, Mr. Karolak appears to have demonstrated little or no remorse for his actions. He has not taken any voluntary steps to remove the offending materials or make restitution to Mr. Teplitsky or his family. A decision to order the undertaking rather than revoke the licence would, therefore, confuse the public and undermine their trust in the profession. Mr. Karolak engaged in serious professional misconduct and is deserving of a serious penalty.

The potential damage to public confidence in the profession by not ordering the revocation would far outweigh any possible benefit of an alternative penalty. Accordingly, we find that the goals of protecting the public and enhancing the public's confidence in the profession compel such a penalty.

John Vieth, P.Eng., signed this Decision and Reasons for the decision as chair of the discipline panel and on behalf of the members of the discipline panel: Paul Ballantyne, P.Eng., Santosh Gupta, P.Eng., Charles Kidd, P.Eng., and Evelyn Spence, LLB.

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 HOUSTON T. ENGIO, P.ENG., a member of the Association of Professional Engineers of Ontario, and HOUSTON ENGINEERING & DRAFTING INC., a holder of a Certificate of Authorization.

1. This matter came before a panel of the Discipline Committee of the Association of Professional Engineers of Ontario (the association or PEO) for hearing on April 30, May 1, 8 and 9, 2013.

THE COMPLAINTS COMMITTEE'S REFERRAL DECISION AND THE ASSOCIATION'S ALLEGATIONS

2. Mr. Engio was licensed as a professional engineer under the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28 (the act). Houston Engineering & Drafting Inc. (Houston) held a Certificate of Authorization issued under the act. Mr. Engio and Houston are collectively referred to as the "respondents."
3. In a decision dated March 1, 2010, the Complaints Committee referred the following matter to the Discipline Committee: "The CTBD (City of Toronto building department) was concerned regarding the lack of calculations and support for the shoring plan that was submitted by Engio. All communications and correspondence generated by Engio were very difficult to understand. It appeared that Engio withheld an appropriate response to the CTBD concerns due to a payment dispute and scope of work issues with SPH (SkyPoint Hi-Rise Ltd.). Reportedly, some of Engio's drawings were "shop drawings" and not intended for submission to the CTBD. There were concerns about the quality of Engio's work and significant safety issues regarding the shoring plan."
4. The association alleged that the respondents were guilty of professional misconduct as defined in section 28(2)(b) of the act and Regulation 941, in that:
 - 1) They failed to comply with two guidelines issued by the association:
 - (i) *Professional Engineers Providing General Review of Construction as Required by the Ontario Building Code*; and
 - (ii) *Guideline for Professional Engineers—Temporary Works*.
 - 2) They committed negligence, contrary to section 72(2)(a) of Regulation 941;
 - 3) They failed to make reasonable provision for the safeguarding of the life, health or property of the persons affected by their work, contrary to section 72(2)(b) of Regulation 941;

- 4) They failed to make reasonable provision for complying with applicable statutes, regulations, standards, codes and bylaws contrary to section 72(2)(d) of Regulation 941;
- 5) They undertook work they were not competent to perform, contrary to section 72(2)(h) of Regulation 941; and
- 6) They were guilty of 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 unprofessional, contrary to section 72(2)(j) of Regulation 941.

SUMMARY OF THE PANEL'S FINDINGS

5. For reasons set out in detail below, the panel concluded that the respondents:
 - 1) Failed to comply with the two guidelines, as alleged by the association;
 - 2) Engaged in professional misconduct by being negligent, contrary to section 72(2)(a) of Regulation 941;
 - 3) As a designer and site reviewer, engaged in professional misconduct by failing to make reasonable provision for the safeguarding of the life, health or property of others, contrary to section 72(2)(b) of Regulation 941;
 - 4) Engaged in professional misconduct by failing to make responsible provision for complying with application laws and rules, contrary to section 72(2)(d) of Regulation 941; and

- 5) Engaged in unprofessional conduct, contrary to section 72(2)(j) of Regulation 941.

SUMMARY OF THE EVIDENCE

6. This proceeding relates to the construction at the sites of 799 and 801 College Street, Toronto.
7. Before the commencement of the hearing on May 1, 2013, Mr. Engio had asked for, and was granted, adjournment twice: the first time for medical reasons, and the second time for retaining new legal counsel. The second adjournment request was made on December 17, 2012, the first day of the four-day hearing. It was made without any advance notice. Furthermore, Mr. Engio's new counsel did not appear before the panel to make the adjournment request. The panel's independent legal counsel reached Mr. Engio's new counsel to confirm that he was recently retained by Mr. Engio. The last-minute adjournment request was very inconvenient for the five members on the panel, some of whom had travelled from out of Toronto to attend the hearing. In any event, the panel agreed to adjourn the hearing for the second time, and ordered that no further adjournment would be granted, barring "extraordinary circumstances, supported by admissible and sufficient evidence." The hearing was rescheduled to May 1, 8 and 9, 2013.
8. The hearing commenced, as scheduled, on May 1, 2013. The panel was advised on the day of the hearing that Mr. Engio would be self-represented. Mr. Engio attended the hearing on May 1, 2013, and conducted cross-examination of the two fact witnesses produced by the association. At the end of May 1, 2013, Mr. Engio suddenly appeared to collapse from his chair and was lying on the floor. A call was made to 911, and a medical team arrived on site to take Mr. Engio to a Toronto hospital for check-up. On May 8, 2013, Mr. Engio did not show up for the hearing. Instead, he requested another adjournment relying on a "medical note" dated May 3, 2013, which purported to be from a walk-in clinic in Kitchener and stated that he should be "off work" for three weeks for "job related stress." The note made no mention of the discipline hearing; neither did it indicate that he was medically unfit to attend the hearing. Even though Mr. Engio was taken by the medical emergency response team to a nearby hospital on May 1, 2013, Mr. Engio did not produce any medical note or check-out report from that hospital. After reviewing and considering the note from the walk-in clinic, the panel was satisfied that there was no sufficient basis to adjourn the hearing the third time, and that it was appropriate to continue the hearing in his absence. The chair of the panel advised Mr. Engio's friend, Mr. Bob Balog, who had been present throughout the hearing, of the decision to proceed with the hearing and asked him to advise Mr. Engio accordingly.
9. The association produced four witnesses: John Neilas, Bob McKeown, Tim Orpwood and Mr. Daria Khanchi (expert witness).
10. Mr. Neilas is vice president for SkyPoint Hi-Rise Ltd. (SkyPoint). SkyPoint acquired the property at 799 College Street in 2007 for the development of a condominium building. This was SkyPoint's first development project, and it had hoped that the construction would be completed within two years. For reasons that gave rise to this discipline proceeding, at the time of the hearing in 2013, the construction was not yet completed or ready for occupancy.
11. SkyPoint hired Isherwood and Associates, which prepared shoring drawings based on which, on August 7, 2008, the City of Toronto issued a partial permit for foundations and shoring at 799 College Street.
12. At some point, SkyPoint discovered that the property at 799 College Street shared a single wall with 801 College Street. For cost reasons, SkyPoint also changed the building material from steel to concrete, which effectively changed the structure of the building.
13. SkyPoint retained Houston around November 2008 as a contractor for the demolition of the old structure at 799 College Street. He was subsequently retained for the shoring work of the construction project. Mr. Engio prepared two drawings, SK7 and SK8, and submitted them to the City of Toronto on March 9, 2009 in an application for a revision to the partial permit.
14. Mr. McKeown was the deputy building officer for the City of Toronto and had been a professional engineer for 27 years in Ontario. At all material times, his primary responsibility was to review plans to ensure they were in compliance with the Ontario Building Code and other applicable rules and regulations. At any given time, he dealt with 30-50 active applications for building permits. The panel accepted that Mr. McKeown was very experienced with assessing plans against the Ontario Building Code.

15. Mr. McKeown testified that, as a building officer, he found the two drawings SK7 and SK8 deficient in every regard. His complaint was that the drawings were incomplete and the design could not resist applied loads. He advised SkyPoint's representative that the substandard submission made by Mr. Engio would not be reviewed.
 16. On April 29, 2009, Mr. Engio submitted two new drawings, SK1 and SK2, to the city. On April 30, 2009, Mr. McKeown issued an examiner's notice identifying deficiencies in SK1 and SK2, as well as an order to comply. Mr. Engio responded with two letters dated May 3 and 5, 2009, which did not address any of the itemized deficiencies. In the meantime, he allowed the shoring work and the construction to be continued without a permit.
 17. On March 25, 2009, the City of Toronto building office received a permit application to reconstruct the west exterior wall at 797 College Street, which was necessary due to the construction project at 799 College Street. Mr. Engio submitted unsealed and inadequate drawings. It was most unusual that he also provided a General Review Commitment Certificate by signing off on all disciplines, including architectural, mechanical, structural, electrical, fire protection and plumbing (even though no single engineer could cover all of these disciplines), and Existing Life Safety Systems for Building forms (even though he did not have sketches of the building).
 18. On May 4, 2009, Mr. McKeown issued another examiner's notice itemizing the deficiencies on the permit application with respect to 797 College Street, and a stop-work order. The responses from Mr. Engio were stamped with his engineering seal, but completely unresponsive and incoherent.
 19. Mr. McKeown testified that, as a building officer with more than 25 years of review experience, he had never seen an engineering design for a commercial shoring project that was as inadequate as the ones submitted by Mr. Engio.
 20. Mr. Orpwood had been a licensed professional engineer since 1979. He received a bachelor of geological engineering from the University of Toronto. He had been a principal of an engineering firm called Terraprobe Design Ltd., and ran the division in charge of shoring designs. He was retained by SkyPoint in May 2009 with respect to the construction project at 797 College Street. Mr. Orpwood visited the site, reviewed the work and the drawings authored by Mr. Engio and concluded that the system, as designed and partially constructed under Mr. Engio's supervision, was unsafe, lacked structural integrity, failed to provide for the real form of the wall, and precluded the placing of the drainage necessary for the condominium building.
 21. Mr. Khachi was presented by the association as an expert witness. He received a bachelor of civil engineering from McMaster University in 1985, and a master of engineering at the University of British Columbia in 1989. He had been a licensed engineer since 1990. Mr. Khachi had over 20 years of experience in the structural design and rehabilitation of buildings. He is a principal at an engineering firm called Dialog, and had performed structural analysis and design of many commercial buildings.
 22. The panel accepted Mr. Khachi's qualifications as an expert to testify about Mr. Engio's engineering work in this proceeding. Mr. Khachi identified at least 17 errors, omissions and deficiencies in Mr. Engio's drawings that would present a significant risk to public safety and encroach upon neighbouring public properties. Mr. Khachi testified that all of Mr. Engio's drawings failed to identify the applicable codes and standards, geotechnical parameters or design loads. Mr. Engio's drawings lacked the necessary details, such as connection and foundation details. In Mr. Khachi's opinion, the soldier piles and its base connection, as designed by Mr. Engio, were significantly overstressed and could result in catastrophic failure. It is not necessary to set out in detail all of the engineering deficiencies identified by Mr. Khachi. It suffices to say that, in his opinion, Mr. Engio's designs were unworkable and dangerous.
- REASONS FOR THE PANEL'S FINDINGS**
23. As the regulator for professional engineers in Ontario, in order to fulfill its statutory mandate to protect the public interest, the association produces guidelines to educate both members and licence holders about standards of practice.

24. The association alleged that two guidelines are applicable in this proceeding and have not been complied with by the respondents: *Guideline for Professional Engineers–Temporary Works* (guideline for temporary works); and *Guideline for Professional Engineers Providing General Review of Construction as Required by the Ontario Building Code* (guideline for building code).
25. The guideline for temporary works sets out the basic requirements, procedures and duties professional engineers shall consider in order to achieve the proper design and construction of temporary works until the permanent works have been completed. Pursuant to section 2, drawings for temporary works must clearly communicate design requirements and installation details to temporary works contractors, and include a list of enumerated details. None of those details were included in Mr. Engio’s drawings.
26. According to the guideline for building code, a professional engineer must refuse to review work where construction of a building is proceeding without building permits. The guideline sets out a number of steps that an engineer must take when he is hired to review a building project, and finds that no building permit has been issued for the work. In this case, Mr. Engio allowed the construction to proceed without a proper permit and, worse, in the face of a stop-work order issued by the city’s building officer. This is a clear violation of the guideline for building code.
27. As such, the panel finds that the respondents engaged in professional misconduct by failing to comply with the two guidelines and were negligent, contrary to section 72(2)(a) of Regulation 941.
28. Section 72(2)(b), (d) and (j) of Regulation 941 provides that the following conduct constitutes “professional misconduct.”
- (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,
 - (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,
 - (j) 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...
29. In light of the evidence summarized above, the panel finds that the respondents failed to comply with the Ontario Building Code, and irresponsibly produced drawings that had no engineering details or provisions for public safety, contrary to section 72(2)(b) and (d) of Regulation 941. The respondents’ conduct would reasonably be regarded by the engineering profession as unprofessional, contrary to section 72(2)(j) of Regulation 941.
30. The association alleged that the respondents undertook work that they were not competent to perform, contrary to section 72(2)(h) of Regulation 941. However, no evidence was introduced at the hearing about Mr. Engio’s education, prior experience or competence (or lack thereof). As such, the panel finds that the association has not made out its case against the respondents with respect to section 72(2)(h).
31. This matter shall be relisted for hearing to hear submissions from the parties with respect to the appropriate penalty arising from the panel’s findings in this matter.

Michael Wesa, 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: Ishwar Bhatia, P.Eng., Rebecca Huang, LLB, Virendra Sahni, P.Eng., and Henry Tang, P.Eng.

DECISION AND REASONS ON PENALTY

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 HOUSTON T. ENGIO, P.ENG., a member of the Association of Professional Engineers of Ontario, and HOUSTON ENGINEERING & DRAFTING INC., a holder of a Certificate of Authorization.

1. After the Decision and Reasons were issued on July 1, 2015 (the decision), the panel decided to conduct the penalty hearing in writing, pursuant to Rule 7.1 of the Rules of Procedure of the Discipline Committee. A letter was sent to Mr. Houston T. Engio (Engio), Houston Engineering & Drafting Inc. (HEDI), and the Association of the Professional Engineers of Ontario (PEO) requesting written submissions on penalty.
 2. The Tribunal Office has made numerous unsuccessful efforts to locate Engio and HEDI (the defendants). The decision and the letter were sent through Canada Post to the address on file with the registrar, and were returned. The Tribunal Office then attempted to serve Engio personally through a process server at the registered address. The occupant advised the process server that Engio did not reside at that address. The registrar had never been advised of any change in address by the defendants. The Tribunal Office also emailed Engio at the email address on file with the registrar, but has received no response.
 3. Accordingly, the panel only has the written submissions on penalty filed by PEO.
- PEO'S PENALTY SUBMISSION**
4. PEO seeks the following penalties:
 - a) Pursuant to subsection 28(4)(a) of the *Professional Engineers Act* (the act), revoke Engio's licence and HEDI's Certificate of Authorization;
 - b) Pursuant to subsection 28(5) of the act, require that the panel's decision and reasons for decision to be published in PEO's official publication, with reference to names; and
 - c) Pursuant to subsection 28(4)(j) of the act, require the defendants to jointly and severally pay costs to PEO in the amount of \$20,000, within 30 days of the date of the penalty decision.
 5. PEO's penalty submissions referenced Engio's previous conviction of professional misconduct, under which he was found guilty of breach of sections 72(2)(a) of Regulation 941 (the prior conviction). The misconduct in that proceeding included, but not limited to, providing misleading information under oath, and falling below the standards of practice expected from a professional engineer in his communications with clients. In addition to being reprimanded and receiving a six-week licence suspension, Mr. Engio and HEDI were required to complete the professional practice examination (PPE) within 14 months of the date of hearing.
 6. After the suspension was completed, Mr. Engio made no attempt to complete the PPE as ordered. As a result, his licence was suspended on January 8, 2013.
 7. PEO listed the following eight factors to support its argument that the defendants are ungovernable and, therefore, deserve to have licences revoked:
 - (1) Serious misconduct of relatively lengthy duration;
 - (2) There is a prior discipline history;
 - (3) There is no character evidence;
 - (4) There is a complete lack of remorse;
 - (5) The defendants have exhibited complete unwillingness to be governed by PEO;
 - (6) Engio provided doctors' notes that were unrelated to the issues before the panel in his multiple attempts to adjourn and evade the hearing;
 - (7) The defendants have taken no remedial steps, with likelihood of re-offence; and
 - (8) The defendants have been unco-operative, and have not addressed the issues that gave rise to the charges in this proceeding.
 8. In the event that the panel does not find that the defendants are ungovernable, PEO argues that revocation is still the proper remedy because of Mr. Engio's misconduct

in the prior conviction and his misconduct giving rise to the charges in the current proceedings.

9. PEO seeks costs in the amount of \$20,000 on the basis that the defendants' behaviour in the current proceedings created unnecessary costs and delays.

PENALTY DECISION

10. After considering PEO's submissions, and for the following reasons, the panel rules as follows:
 - a) Revoke Engio's licence and HEDI's Certificate of Authorization;
 - b) The panel's Decision and Reasons be published in PEO's official publication, with reference to names; and
 - c) The defendants jointly and severally pay costs to PEO in the amount of \$15,000, within 30 days of the date of this order.

REASONS FOR THE PENALTY DECISION

11. As correctly stated by PEO, penalty serves five objectives:
 - (1) Protection of the public;
 - (2) General deterrence;
 - (3) Specific deterrence;
 - (4) Maintenance of the reputation of the profession in the eye of the public; and
 - (5) Rehabilitation.
12. The significance of each factor varies from case to case depending on many factors, such as the nature and seriousness of the misconduct, the defendants' blameworthiness, and risk to public safety.
13. In this case, the objectives of protection of the public and deterrence are of paramount importance.
14. The defendants engaged in misconduct that directly threatened the safety of others working on the project and the public. Even though Engio was told by the deputy building officer of the City of Toronto that his drawings were deficient and could not resist applied loads, he ignored the warning and allowed the shoring work and the construction to be continued

without a permit. In support of a permit application, he signed off on all disciplines in the General Review Commitment Certificate, despite the fact that no single engineer could cover all of these disciplines. Engio then did not respond to the stop-work order issued by the city.

15. Based on the expert evidence at the hearing, the numerous errors, omissions and deficiencies in Engio's designs would present a significant risk to public safety, encroach upon neighboring public property and result in catastrophic failure. Mr. Engio's designs were simply unworkable and dangerous.
16. In light of the serious and dangerous deficiencies in Engio's work, the first and foremost objective is to protect public safety. Given the prior conviction and Engio's failure to take the PPE as previously ordered, the panel accepts PEO's submission that Engio's licence and HEDI's Certificate of Authorization be revoked.
17. Because licence revocation is an appropriate remedy in this case, there is no need for the panel to decide whether Engio was governable.
18. Both general deterrence and specific deterrence are important and relevant objectives in this case. Members in the engineering profession should know that it is a privilege to practise engineering as a P.Eng., and that the privilege comes with responsibilities. No engineers should be permitted to engage in conduct or omission that disregards applicable codes and bylaws such that public safety is put at risk. To generally and specifically deter such dangerous behaviour, the panel accepts PEO's submission that the panel's Decision and Reasons be published in PEO's official publication, with reference to names.
19. Anytime a P.Eng. or licence holder engages in dangerous conduct, it has the potential to erode the public's confidence in the profession. By denouncing the defendants' misconduct and ordering the publication of the Decision and Reasons, the panel believes

that it will help maintain the reputation of the engineering profession as far as the defendants' misconduct is concerned.

20. The panel has also considered the objective of rehabilitation. The panel is concerned that Engio showed grave disrespect for not attending the entire hearing without valid reasons, and for not informing the registrar or the tribunal of his whereabouts after the hearing.
21. Although the panel is not convinced that rehabilitation could be achieved in this case, we note that section 37 of the act states that he may reapply for his licence after two years of revocation. If at that time he has completed the PPE as previously ordered and is able to convince a panel of the Discipline Committee that he is able to engage in the practice of professional engineering with competence and integrity, then the penalty of revocation will have served a rehabilitative purpose.
22. On the issue of costs, the panel agrees with PEO that the defendants' conduct during the hearing has caused multiple adjournments and significant delays. The defendants made the first adjournment request with a medical note presented by a friend. The note did not say that Engio could not attend hearings, but because it appeared to be a medical note, the panel accepted it on its face value and adjourned the hearing. The defendants made the second adjournment request suggesting that he had just retained counsel. When the hearing resumed the third time, he came without a legal representative. On May 9, 2015, the hearing had to be adjourned when Engio lay down on the ground in the middle of the hearing. No medical note was presented about his

medical condition (if any), even though such request was communicated to him through his friend who was at the hearing. He never came back to attend the rest of the hearing. In the circumstance of this case, the panel is concerned that Engio may have been trying to delay or evade the hearing. This is an appropriate case to order costs in favour of PEO. PEO asked for \$20,000. The panel considered this request and concluded that \$15,000 would be reasonable. Therefore, the panel rules that the defendants should, jointly and severally, pay PEO costs in the amount of \$15,000, within 30 days.

Michael Wesa, P.Eng., signed this Decision and Reasons on Penalty for the decision as chair of this discipline panel and on behalf of the members of the discipline panel: Ishwar Bhatia, P.Eng., Rebecca Huang, LLB, Virendra Sahni, P.Eng., and Henry Tang, P.Eng.

Please report any person or company you suspect is violating the act. Call the PEO enforcement hotline at 416-840-1444, or 800-339-3716, ext. 1444. Or email your questions or concerns to enforcement@peo.on.ca.