

Summary of Decision and Reasons

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter was heard before a panel of the Discipline Committee on October 15, 2003, at the Association of Professional Engineers of Ontario (the “association”) in Toronto. The association was represented by John Abdo of Cassels Brock and Engineer A was unrepresented.

The Allegations

In a Notice of Hearing dated January 14, 2003, it was alleged that Engineer A was guilty of professional misconduct as defined in Regulation 941 and that he was incompetent.

Agreed Facts

The Agreed Statement of Facts, dated September 26, 2003, is summarized as follows:

1. On or about March 16, 2001, Engineer A signed a General Review/Commitment Certificate (“GRCC”) and a letter of undertaking in relation to the construction of an industrial/commercial building.
2. Engineer A prepared structural and architectural drawings for the project.
3. The drawings were submitted to the local municipality on or about September 20, 2001, and a building permit was issued on September 21, 2001, on the basis of the drawings prepared and submitted by Engineer A.
4. Engineer A provided the municipality with his first signed and sealed site review report dated November 30, 2001 (Report #1). Report #1 addressed the placement of the wall footings and stated that the spread footing rein-

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Engineer A

a member and Certificate of Authorization holder of the Association of Professional Engineers of Ontario.

- forcing or sizes could not be verified because they were covered at the time of the review. In Report #1, Engineer A stated that the contractor had advised him that the building inspector had already done this verification. Report #1 also advised of a change to block wall construction.
5. Construction of the building’s steel framing commenced in early March 2002. On or about the evening of Saturday, March 9, 2002, the partially erected structural steel frame of the building collapsed in a windstorm. No further site review reports were received from Engineer A from the time of Report #1 until the date of the collapse.
6. Engineer A attended at the site on March 11, 2002. He subsequently provided the municipality with a second signed and sealed site review report dated March 19, 2002 (Report #2). In Report #2, he stated that the property owner had advised that the structural steel frame had collapsed as a result of high winds. Report #2 provided repair detail and some instructions as to the remedial work to be completed for the project to continue.
7. There was no action or omission by Engineer A that either directly or indirectly caused or contributed to the collapse. The primary reason for the collapse was that the partially erected structural steel frame of the building was not adequately braced, combined with high winds.
8. It is agreed that Engineer A:
 - (a) failed to maintain the standards that a reasonable and prudent practitioner would maintain by producing a structural steel design and sealing associated drawings in which:
 - (i) there were a number of steel beams and columns that were undersized for their intended use,
 - (ii) basic structural items and material, required to construct the building were not sized, dimensioned and/or specified,
 - (iii) the primary lateral stability system was not adequately detailed,
 - (iv) the primary connection loading was not shown,

- (v) the structural framing around the large openings in the exterior walls was not specified,
 - (vi) sufficient structural framing to satisfy the *Ontario Building Code* requirements for support and connection of the exterior precast concrete panels was missing, and
 - (vii) several column piers and footings were omitted from the foundation plan;
- (b) failed to carry out adequate site inspections in accordance with the GRCC prior to the collapse and hence failed to note and/or provide, among other things, that:
- (i) there were adequate drawings and details for the design changes to the foundation walls,
 - (ii) the exterior column piers were not constructed integrally with the exterior foundation wall, and
 - (iii) the interior column piers were undersized when compared to the size of the column base plates; and
- (c) failed to note deficiencies that ought to have been evident upon his inspection of the site on March 11, 2002, after the collapse, including:
- (i) the interior column piers that were undersized when compared to the size of the column base plates, and
 - (ii) the contractor who had used wood shims and/or unusually high stacks of steel shims to level the columns during erection.
9. By reason of the facts set out above, it is agreed that Engineer A is guilty of professional misconduct as defined in section 28(2)(b) of the Act as follows:

limited licence may be found guilty of professional misconduct by the Committee, if ...

“(b) the member or holder has been guilty in the opinion of the Discipline Committee defined in the regulations.”

10. The sections of the regulation, Regulation 941 to the Act, relevant to the alleged professional misconduct by Engineer A are:

- (a) *Section 72(2)(a)*: negligence, which is defined as an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
- (b) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
- (c) *Section 72(2)(g)*: Breach of the act or regulations, other than an action that is solely a breach of the code of ethics; and
- (d) *Section 72(2)(j)*: Conduct or an act relevant to the practice of professional engineering that, having regard to all of the circumstances, would reasonably be regarded by the engineering profession as unprofessional.

Plea by Member

Engineer A admitted to the allegations of professional misconduct referred to in the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the admission was voluntary, informed and unequivocal.

Decision

The panel considered the Agreed Facts and found that the facts support a finding of professional misconduct and, in particular, found that Engineer

A committed an act of professional misconduct as admitted.

Reasons for Decision

The panel accepted the Agreed Facts on the basis that there was no difference of opinion between counsel for the association and Engineer A.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. He further advised that the association was satisfied that the Joint Submission was fair and reasonable. He noted that there had been considerable discussion with Engineer A and that the association had received excellent replies. He also noted that Engineer A had always cooperated with the association and that the association tries to be fair.

Engineer A, in speaking on his own behalf, noted that he had very little to add to the remarks made by Mr. Abdo. He advised that he had a 40-year unblemished career and was very embarrassed. He noted that he felt great respect for the association and acknowledged he had provided an inadequate report after the collapse. He requested the panel not to include his name in the publication of the matter.

Penalty Decision

The panel accepted the Joint Submission as to Penalty and accordingly ordered:

1. **That Engineer A write and pass the Professional Practice Examination within 12 months from the date of the hearing, failing which his licence and Certificate of Authorization would be suspended. This suspension would continue until the exam has been passed, or for a maximum period of 24 months, after which his licence would be revoked;**
2. **That it shall henceforth be a term, condition and limitation on the licence and Certificate of Authorization of Engineer A that**

he only engage in the practice of professional engineering with respect to buildings that fall under Part 9 of the *Ontario Building Code*;

3. That Engineer A provide the association with a written undertaking to the effect that, in all future work involving construction review services, he will comply with the requirements of section 78 of Regulation 941 made under the *Professional Engineers Act*, and the

provisions of the PEO Guideline entitled, *Professional Engineers Providing General Review of Construction as Required by the Ontario Building Code*;

4. That Engineer A receive a reprimand and the fact of the reprimand be recorded on the Register of the association; and
5. That Engineer A pay a costs award to the association in the amount of \$5,000.

The panel concluded that the proposed penalty is reasonable and in the public interest. Engineer A has cooperated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions.

The written Decision and Reasons in this matter were dated October 12, 2004, and were signed by the Chair of the panel, Kam El Guindi, P.Eng., on behalf of the other members of the panel: Barry Hitchcock, P.Eng., Phil Maka, P.Eng., David Smith, P.Eng., and Derek Wilson, P.Eng.

This matter came on for hearing before a panel of the Discipline Committee on February 3, 2004, at the Association of Professional Engineers of Ontario (“PEO”) in Toronto. The association was represented by Michael Royce (“Royce”) of Lenczner Slaght Royce Smith Griffin and John J. Kadlec, P.Eng. (“Kadlec”) was unrepresented.

The Allegations

The allegations against Kadlec as stated in the Notice of Hearing dated July 21, 2003 (Exhibit #1) were as follows:

1. Save as hereinafter stated, Kadlec was at all material times a member of the Association of Professional Engineers of Ontario and was designated by the Council of PEO as a consulting engineer.
2. On March 16, 1994, the Discipline Committee of PEO suspended Kadlec’s licence to practise professional engineering pending an engineering practice inspection. Following that practice inspection and a second hearing before the Discipline Committee of PEO on September 30, 1994, Kadlec’s licence to practise professional engineering was revoked and the

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John J. Kadlec, P.Eng.

a member of the Association of Professional Engineers of Ontario.

Certificate of Authorization of his company, BETA Engineering Inc. (“BETA”) was revoked. Kadlec’s licence to practise professional engineering was reinstated in November 1999.

At this point Royce clarified the dates given above by referring to the PEO Registrar’s Certificate (Exhibit #2). As reflected in the Registrar’s Certificate (Exhibit #2), Mr. Kadlec’s licence was suspended on November 24, 1993, revoked on April 12, 1994, and reinstated on August 26, 1999. It

was noted that prior to Kadlec’s licence suspension, there was a November 24, 1993 Discipline Committee hearing; prior to his licence and BETA’s Certificate of Authorization being revoked there was an April 12, 1994 hearing; and prior to Kadlec’s licence being reinstated there was an August 26, 1999 hearing.

3. In or about March 1994, Kadlec requested that Vilen Zlotnikov, P.Eng. (“Zlotnikov”) assist him and his company, BETA, by reviewing