

SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding the conduct of DANIEL ROBERT PIESCIC, P.ENG., a member of the Association of Professional Engineers of Ontario and PIESCIC ENGINEERING INC., a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on May 20 and 21 and July 23, 2008, at the Association of Professional Engineers of Ontario in Toronto.

This matter arises from deficiencies noted by Wayne Mills, chief building official (CBO) for the Town of Essex, during an inspection of a site with Wesley Maslancka (Maslancka) of Wescon Builders Windsor Inc. Maslancka contacted the member [Daniel Piescic, P.Eng.] for engineering review assistance and provided him with drawings marking the areas of concern and photographs.

The member submitted a report dated December 21, 2005. This report was rejected by the CBO on January 20, 2006, as it contained clauses restricting third party use and was not sealed. The report was resubmitted with an engineering seal and removal of the third party restriction clause, without a change in date. The resubmitted report was also deemed unacceptable as it was noted that there had been no site visit by the member and there were deficiencies other than those noted in the report.

THE HEARING

At the outset of the hearing, counsel for the member objected to counsel for the association presenting the evidence in that the expert witness would be testifying ahead of the fact witness, providing evidence on facts that may not have been admitted. This is an error in law and against the principles of justice. This may be prejudicial to the member.

Counsel for the association agreed that it was preferable to hear the fact witnesses before the testimony of expert witnesses; however, hearing the witnesses out of order was not unprecedented in tribunal hearings. The two counsels agreed on a number of documents by way of

consent, including one of the reports from the member. The issue was with respect to the second report by the member, dealing with the same project, and if it was deemed admissible by the panel.

The independent legal counsel (ILC) advised that the expert opinion evidence is intended to assist the panel with technical issues, such as the standard of practice. The expert witness does not provide factual evidence, but provides an opinion on the admitted facts. The panel may hear the testimony of an expert witness prior to a fact witness with the caveat that facts on which the expert witness may rely upon may not have been proven. It is up to the panel to determine which facts have been proven at the hearing and assign proper weight and consideration to the evidence that is deemed to be admissible.

The panel denied the objection.

THE ALLEGATIONS

It is alleged that Daniel Robert Piescic, P.Eng. (Piescic), is guilty of incompetence and that Piescic and Piescic Engineering Inc. (PEI), is guilty of professional misconduct. On January 27, 2006, the CBO sent a letter of complaint against the member to the association.

The Town of Essex issued an Order to Comply on February 7, 2006.

As the member did not have a BCIN, which is required under the regulations that came into effect after January 1, 2006, he recommended that the builder retain the services of another engineer, Richard Patterson of Chall-Eng Inc. Patterson reviewed the deficiencies with the CBO at site on February 15, 2006, and recommended some repairs. The Order to Comply was lifted on February 15, 2006 by the CBO.

THE DECISION

Having considered the evidence and the onus and standard of proof, the panel finds that Piescic and PEI are not guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act* and finds that Piescic is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

In particular, the panel heard no evidence to justify making a finding of negligence under section 28(3) of the *Professional Engineers Act*.

Regarding the allegations of professional misconduct under Regulation 941 of the *Professional Engineers Act*:

- section 72(2)(a): the panel made no finding of negligence;
- section 72(2)(b): the panel made no finding of failure to make reasonable provision;
- section 72(2)(d): the panel finds Piescic guilty;
- section 72(2)(g): the panel found no evidence to support a finding of guilt; and
- section 72(2)(j): the panel finds Piescic guilty of unprofessional conduct, but not disgraceful or dishonourable conduct.

REASONS FOR THE DECISION

The panel found all the witnesses to be credible. The panel found that the report prepared by the member was deficient as it was incomplete and provided findings that could be misinterpreted. The panel believed that the lack of a site visit by the member was an important omission that led to several problems.

The member was not found to be negligent in that the panel believed that the member did carry out an engineering analysis and found that additional support in some areas was not warranted.

The panel also believed that the member should have consulted with the CBO to make sure that he had full appreciation for the deficiencies the CBO wanted addressed and not just believe what the builder had told him or wanted him to look at. In such matters, the CBO represents the interests of the township as well as the homeowner and is a very important resource.

Whereas there was likely no threat to public safety in terms of threat to life, there was a potential of reduced enjoyment and future problems for the homeowner if the deficiencies had remained unchecked.

The panel also noted that the member bowed out of the assignment and recommended another engineer when he did not have the req-

uisite BCIN. This was viewed as the appropriate action to take.

JOINT AGREEMENT ON PENALTY

Counsel for the association submitted a joint agreement as follows:

1. Piescic and Piescic Engineering Inc. is to be orally reprimanded, the fact of which is to be recorded on the register;
2. Piescic shall write and pass the professional practice examination (PPE) within 12 months of the date of the hearing, failing which his licence shall be suspended;
3. In the event that Piescic fails to write and pass the PPE within 24 months of the date of the hearing, his licence shall be revoked; and
4. A summary of the decision and order of the Discipline Committee shall be published in Gazette, including reference to names.

The publication of the decision with names, as outlined in item 4, served as a general deterrent to the other members of the profession, reminding them of their specific responsibilities to the public and the profession. It also served to maintain a positive image of the profession in the eyes of the public indicating that the profession views such actions seriously.

The panel also considered that the member and the holder had extensive and wide-ranging experience in the field of structural engineering and his accomplishments had been well recognized. This was the first complaint against the member. The member and holder also accepted responsibility for their actions and are unlikely to offend again.

DISCIPLINE HEARING SCHEDULE

JUNE 9, 2010

SALVATORE A. DE ROSE, P.ENG.