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 CHITRA K.G. PERERA, P.ENG., a member of the Association of Professional Engineers of Ontario.

This matter came before a panel of the Discipline Committee for hearing on February 9, 2012, at the Association of Professional Engineers of Ontario (the association) in Toronto.

THE ALLEGATIONS

The allegations against Chitra Perera, as stated in the Notice of Hearing dated January 16, 2012, are that Perera was guilty of professional misconduct under section 28(2)(b) of the *Professional Engineers Act* (the act), which is reproduced below:

Professional misconduct

(2) A member of the association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a 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 of professional misconduct as defined in the regulations.

The sections of Regulation 941 made under the act that are relevant to the alleged misconduct are:

- 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;
- SECTION 72(2)(H): undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
- SECTION 72(2)(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.

THE EVIDENCE

The association filed an Agreed Statement of Facts dated November 1, 2011, and signed by the parties. The association and Perera did not call any witnesses or introduce any other evidence.

The entire Agreed Statement of Facts is reproduced "as is" below:

1. At all material times, Chitra K.G. Perera, P.Eng. (Perera), was licensed as a professional engineer pursuant to the *Professional Engineers Act*, and was a member of the Association of Professional Engineers of Ontario (PEO).

2. From July 2003 and at all material times, Perera was employed as an engineer by MNA Engineering Ltd. (MNA), which held a Certificate of Authorization issued by PEO allowing it to offer and provide to the public services that are within the practice of professional engineering. Ponnudurai Balendran (Balendran), a member of PEO, is the contact professional engineer listed under MNA's Certificate of Authorization.

3. Perera does not have any laboratory testing certification with the Canadian Council of Independent Laboratories (CCIL) or other organization.

Ministry of Transportation contract

4. In or about 2007, the Ministry of Transportation Ontario (MTO) contract 2007-2264 was

awarded to B. Gottardo Construction Limited (Gottardo), with a starting date of July 18, 2007, and a completion date of October 12, 2009. The project included grading, drainage, granular base, hot mix paving, illumination and four concrete bridge structures on Highway 410 from Mayfield Road to Highway 10.

5. The MTO contract required high performance concrete to meet specifications including SP 904S13, which details the construction requirements and acceptance criteria for various concrete structural elements. One of the acceptance criteria is that the hardened concrete must meet air void system (AVS) parameters for minimum air content and maximum spacing factor.

6. The two factors are important to the long-term durability of the concrete in that the air content and distance between air voids (spacing factor) impact on the concrete's ability to resist freeze thaw damage.

7. The spacing factor was required to meet MTO and CSA specifications with a maximum measure of 0.250 mm. If a concrete core sample fails to meet this criterion, the lot of concrete represented by the cores is considered unacceptable, and is subject to removal and replacement or price adjustment.

8. The spacing factor is a function of the number of "air voids intercepted" counted under microscopic examination of the polished surface of the concrete samples. The higher the number of air voids intercepted, the lower the spacing factor.

9. The AVS testing was to be carried out pursuant to the "Standard Test Method for Microscopical Determination of Parameters of the Air-Void System in Hardened Concrete" published by the American Society for Testing and Materials (ASTM 457).

10. Gottardo was responsible for delivering concrete core samples to a laboratory of its choosing, provided it was on the MTO's list of qualified laboratories and operators for the specific test.

11. MNA was retained by Gottardo as the quality control laboratory to perform AVS testing on high performance concrete samples for MTO contract 2007-2264.

AVS Testing at MNA

12. Perera was the engineer at MNA who signed AVS parameter results reports (the AVS reports) on concrete samples tested in MNA's laboratory for the MTO contract. She signed the AVS reports using her P.Eng. designation.

13. However, Perera was not designated by MNA or certified to carry out testing of core samples under microscope.

14. The samples themselves were tested by Xuemei Zhang (Zhang), a certified AVS operator employed by MNA, who is not an engineer. Zhang collected data from each concrete sample on handwritten worksheets (the worksheets), which she submitted to Perera. In particular, the air voids intercepted were counted by Zhang and recorded on the worksheets.

15. Perera was responsible for calculating the spacing factor and other parameters based on data Zhang recorded on the worksheets, in order to complete the AVS reports. She submitted the signed AVS reports to Gottardo.

MTO investigation of altered worksheets

16. On or about July 17, 2008, the contract administrator (CA) submitted a summary of the AVS results to the MTO Central Region Quality Assurance (QA) office. Fifteen of the 18 sample results reviewed were identified as having spacing factor test results to be slightly below the maximum allowable limit of 0.250 mm, i.e. between 0.240 and 0.250.

17. As a result of the findings, the MTO's QA section requested audit testing of two of the concrete core samples marked as 50-5 and 50-8. This was followed by referee testing on those two lots of concrete, plus a third (50-5, 50-8 and 50-2).

18. The audit revealed that one out of the six samples (i.e. one of three lots) was determined to be unacceptable based on the referee test results. (The referee confirmed that the cut surface of each core was defectively polished and

SAMPLE LOT	APPROXIMATE NUMBER OF ALTERATIONS	SPACING FACTOR REPORTED BY MNA ON SIGNED AVS REPORTS	SPACING FACTOR CALCULATED BY MTO BASED ON ORIGINAL DATA	SPACING FACTOR AS TESTED BY REFEREE HIRED BY MTO
50-4-1	1	0.247	0.267	
50-4-2	9	0.249	0.294	
50-8-1	3	0.242	0.264	0.221
50-8-2	17	0.247	0.318	0.294
50-9-1	17	0.241	0.306	
50-9-2	22	0.247	0.349	

additional polishing of the core surfaces was required.) The MTO decided to investigate and attended at MNA to review its test results and raw data on file.

19. The MTO discovered that some of the AVS reports submitted by Gottardo to the CA and marked as "acceptable" were noted as "unacceptable" on the original AVS reports in the files of MNA (for lots 50-3, 50-6 and 50-7). The test results had been altered prior to submission to the CA office. The MTO pursued this issue directly with Gottardo, as MNA's reports on file were not altered.

20. The MTO decided to review the underlying laboratory worksheets to check the calculations against the raw data. Perera provided the MTO with copies of the AVS reports and worksheets for all relevant samples.

21. The MTO identified irregularities with the recording of the raw data on some of the worksheets. In particular, the results for air voids intercepted for lots 50-4, 50-8 and 50-9 appeared to have been altered.

22. In all cases, the alteration was such that the first digit of the air voids intercepted had been increased by one; for example, from 19 to 29, or from 23 to 33. This number has the most impact on the spacing factor; increasing the number of voids intercepted reduces the spacing factor.

23. Perera reported the spacing factor calculated based on the altered data on the AVS reports. Those reports state "Test Results meet the MTO and CSA A23.1-00 Specifications."

24. The number of data altered on each worksheet and the impact on the calculated spacing factor reported on the AVS reports was as follows [see chart above].

25. On or about November 10, 2008, two members of the forensic investigation team of the Ontario Internal Audit Division, accompanied by the MTO's QA engineer, attended at MNA.

26. They interviewed MNA's laboratory employees, including Perera and Zhang. They confirmed that the information on the worksheets had been altered. Initially, Perera denied responsibility for making changes to the worksheets.

27. Subsequent to the interview, Perera admitted to T. Kopp, of the forensic investigation team, that she personally made the changes to the worksheets.

28. Perera also admitted to PEO that she altered the data for the air voids intercepted on the worksheets. She also stated that:
    - The samples were defectively polished;
    - MNA's mechanical polishing equipment was broken and appropriate sanding papers for manual polishing were not available in the laboratory;

- Poorly polished samples make the air voids difficult to read;
- The operator expressed an opinion that inability to read the air voids makes the spacing factor higher;
- She used her reasonable judgment to alter the air voids intercepted data;
- Her alterations were an approximation; and
- She did not gain any personal profit or benefit.

29. Normal laboratory protocol if an error has been made in data recording is to strike out the number, record the correct number and initial the change. Perera did not do so for any of the changes she made to the worksheets.

30. Moreover, she did not make any notation on the face of the corresponding AVS reports that she had approximated the underlying data for the spacing factor, or that polishing and/or testing of samples was defective.

31. Further, Perera did not order that the samples be re-polished and retested.

Impact of the altered AVS test results

32. The altered data on the worksheets was used to generate the results for spacing factor, which results were reported to the MTO on the AVS reports.

33. The AVS test results are a measure of "value for money" and do not present issues pertaining to structural integrity. The concrete for which the data was altered continued to be placed in the project. If the samples did not in fact meet the MTO's criteria, concrete placed in bridge piers and abutments of bridges could require preventive maintenance earlier in its life than normally expected.

34. On or about November 21, 2008, MTO notified MNA that it had been removed from the list of qualified laboratories for testing of concrete on MTO contracts as a result of manipulation of AVS results on MTO Contract 2007-2264.

35. MTO filed a formal complaint of professional misconduct against MNA with the CCIL. MNA resigned from membership in the CCIL while under investigation.

Admissions of professional misconduct

36. Perera admits that her actions and conduct in this matter constitute professional misconduct as defined under the *Professional Engineers Act*, s. 28(2)(b), and Regulation 941, s. 72(2), and specifically as follows:
    (d) that she failed 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 her responsibility;
    (h) that she undertook work she was not competent to perform by virtue of her training and experience; and
    (j) that she engaged in conduct 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.

37. A hearing in this matter against MNA and Balendran was heard before the Discipline Committee of PEO on September 14, 2011. MNA was found guilty of professional misconduct as defined by the *Professional Engineers Act*, s. 28(2)(b), and Regulation 941, s. 72(2)(d), and a penalty was imposed against MNA. Balendran gave an undertaking to supervise Perera for one year or such lesser period of time she is employed by MNA.

38. Perera has had independent legal advice or has had the opportunity to obtain independent legal advice with respect to her admissions set out above.

PLEA BY MEMBER

The association filed a written plea inquiry that was affirmatively answered by Perera and signed by her on February 9, 2012. During the hearing, the panel conducted a plea inquiry. Perera admitted to the allegations as set out in the Agreed Statement of Facts. The panel is satisfied that Perera's admission was voluntary, informed and unequivocal. Perera previously had legal representation, and continued to have the opportunity to obtain inde-

pendent legal advice with respect to the Agreed Statement of Facts.

DECISION

The panel considered the Agreed Statement of Facts and found Perera guilty of professional misconduct as defined in s. 28(2)(b) of the act and s. 72(2) of Regulation 941, and in particular:

(d) that she failed to make responsible provisions for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under her responsibility; and

(j) that she engaged in conduct relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as unprofessional.

REASONS FOR DECISION

The Agreed Statement of Facts identified the circumstances leading up to Perera's alleged misconduct, including but not limited to: (1) defective samples; (2) broken polishing equipment; (3) difficulty reading the air voids; and (4) the operator's opinion that inability to read the air voids made the spacing factor higher. Under these circumstances, Perera stated that she used "her reasonable judgment" to approximate and alter the "air voids intercepted" data. She failed to strike out the altered number, record the correct number, or initial the change on the worksheets; neither did she make any such notation on the corresponding AVS reports. She could have ordered that the samples be re-polished and retested which, for whatever reasons, was not done. The altered test results and reports were submitted to the contract administrator's office. When she was initially confronted by the Ontario Internal Audit Division and the quality assurance engineer from the Ministry of Transportation Ontario, she confirmed that the data had been altered, but denied that she was the one who had made the alteration. She later admitted to having made the changes to the worksheets. The panel accepted and relied on the Agreed Statement of Facts. On the basis of the facts set out in the Agreed Statement of Facts, the panel found that the conduct of Perera in respect of the alterations constituted unprofessional conduct under the act.

Perera agreed to the allegations that she undertook work she was not competent to perform, as well as "disgraceful" or "dishonourable" conduct. The panel considered the facts contained in the Agreed Statement of Facts and did not find a factual basis to support those allegations. The association argued that, by altering the data and the AVS test results, Perera was not competent to perform the task. The panel rejected this argument. Section 72(2)(h) of Regulation 941 is clear that competence is assessed based on training and experience. Neither party led evidence as to Perera's training or experience (or lack thereof) in relation to the AVS test. Therefore, there was no factual basis on which the panel could conclude that Perera undertook work she was not competent to perform by virtue of training and experience.

Furthermore, there is no evidentiary basis on which the panel could find that Perera's conduct was also disgraceful or dishonourable. The only admissible evidence is contained in the Agreed Statement of Facts. In order for the panel to find disgraceful or dishonourable conduct, more admissible evidence would have been required. The panel emphasizes "admissible" evidence here because many alleged facts were made in the submissions that were beyond the four corners of the Agreed Statement of Facts and were not properly tendered before the panel. They could not, and did not, form the evidentiary basis for the panel's consideration in this proceeding. There is neither allegation nor evidence of fraudulent intent. Perera did not gain any personal profit or benefit. Based on the admissible evidence in this proceeding, the panel finds that the act by Perera was a temporary lapse of judgment, which was unprofessional, but was not of such a degree that should be considered disgraceful or dishonourable.

PENALTY SUBMISSIONS

The association filed a Joint Submission on Penalty dated November 1, 2011, signed by the parties, which provides as follows:

1. Perera shall be reprimanded and that the fact of the reprimand will be recorded on the register;

2. Perera's licence shall be suspended for a period of two months;

3. It shall be a term and condition of the licence of Perera that she will successfully complete the PPE examination within one year of the date of the hearing;

4. It shall be a restriction on the licence of Perera requiring her to engage in the practice of professional engineering only under the personal supervision and direction of a member for a period of one year following her return to practice after the suspension is discharged;

5. The order of the Discipline Committee suspending Perera's licence shall be published in summary, together with the name of the member, pursuant to s. 28(4)(i) of the *Professional Engineers Act*; and

6. There shall be no order with respect to costs.

Perera has had independent legal advice, or has had the opportunity to obtain independent legal advice, with respect to her agreement to the penalty set out above.

The association submitted that the above penalty was appropriate having regard to the purposes of: (1) protection of the public; (2) specific deterrence to the member; (3) general deterrence to the membership at large; and (4) remediation of the member back to the practice of professional engineering.

The association urged the panel to consider the seriousness of Perera's conduct in at least two respects: (1) her altered data was relied on by the government to determine the long-term durability of the highway concrete; and (2) Perera did not note her alterations on the worksheets.

The association further urged the panel to take into account the aggravating factors, including the facts that: (1) Perera made numerous alterations; (2) she signed the report as a P.Eng.; and (3) she initially denied the misconduct.

In the course of the oral submissions during the hearing, the association acknowledged that, despite paragraph 5 of the Joint Submission on Penalty, s. 28(4)(i) of the act does not apply to provide the panel with discretion as to whether to order publication in summary or in detail in cases where a licence is suspended or revoked. Instead, s. 28(5) applies under which the panel "shall cause" the order revoking or suspending a licence to be published in the official publication of the association with or without the reasons. The parties agreed to leave it in the discretion of the panel to decide whether to publish with or without reasons.

During the penalty stage of the hearing, Perera requested a less severe penalty than set out in the Joint Submission on Penalty. She said that she had had an unblemished professional record in her home country and Canada until now and that, since the incident, she had been in agony and distress. She regretted her actions and indicated that, had she known about the significance of the breach of her conduct, she would have acted differently, including obtaining accurate and reliable test results at her own expense. Perera was visibly upset and remorseful during the hearing. The panel believed that her remorse was genuine and heartfelt.

In reply, the association urged the panel to hold the parties to their agreement as to penalty. After deliberation, the panel indicated to the parties that it intended to depart from the Joint Submission on Penalty by eliminating the proposed two-month licence suspension.

The association sought an opportunity to make submissions to the intended penalty. The panel agreed and invited the parties to make written submissions on penalty according to a stipulated timetable, the details of which are set out in the Interim Direction and Proposal issued by the panel and dated February 27, 2012.

The parties and independent legal counsel filed written submissions in due course. On April 5, 2012, Perera advised the panel in writing that she affirmed the Joint Submission on Penalty.

The panel notes here, again, that some statements of "facts" were made during oral and written submissions beyond the facts stipulated in the Agreed Statement of Facts. The panel finds that such statements are not admissible as, among other things, they were contentious and have not been made by a witness under oath. In the end, the panel reached a penalty decision without taking those statements into account.

PENALTY DECISION

After reviewing all of the written submissions, the panel accepts the Joint Submission on Penalty as falling within the reasonable range in the circumstances, and orders that:

1. Perera receive a reprimand, and the fact of the reprimand be recorded on the register of PEO until the penalty provisions in paragraphs 2-4 below have been complied with.

2. Perera's licence be suspended for two months, taking effect from August 14, 2012 to October 13, 2012.

3. Perera write and pass the professional practice exam set by PEO within one year from April 16, 2012. If Perera fails to pass the professional practice exam, PEO will bring this matter to the Discipline Committee for further penalty.

4. A condition and limitation be imposed on Perera's licence so that she can only engage in the practice of professional engineering under the personal supervision and direction of a licensed professional engineer. This condition and limitation will be in effect for one year immediately following her return to practice after the suspension is discharged.

5. The order of the Discipline Committee suspending Perera's licence be published with reasons, pursuant to s. 28(5) of the act.

6. There shall be no order with respect to costs.

REASONS FOR THE PENALTY DECISION

The panel received extensive advice and submissions from independent legal counsel and the association, respectively, on the test that a PEO discipline panel should apply if and when it intends to depart from a penalty agreement. They suggested that the principles applied in criminal law with respect to joint penalty submissions should be applicable in the penalty stage of PEO discipline hearings, as has been the case in respect of Law Society discipline hearings. See for example, *Law Society of Upper Canada v. Cooper* [2009] L.S.D.D. No. 81. Joint penalty agreements are a frequent phenomenon

in criminal and professional discipline proceedings. The Ontario Court of Appeal set out the test and policy considerations in *R. v. Jason Carmen Cerasuolo*, 2001 CanLII 24172 (Ont. C.A.) as follows:

> [8] This court has repeatedly held that trial judges should not reject joint submissions unless the joint submission is contrary to the public interest and the sentence would bring the administration of justice into disrepute: e.g. *R. v. Dorsey* 1999 CanLII 3759 (ON CA), (1999), 123 O.A.C. 342 at 345. This is a high threshold and is intended to foster confidence in an accused, who has given up his right to a trial, that the joint submission he obtained in return for a plea of guilty will be respected by the sentencing judge.
>
> [9] The Crown and the defence bar have co-operated in fostering an atmosphere where the parties are encouraged to discuss the issues in a criminal trial with a view to shortening the trial process. This includes bringing issues to a final resolution through plea bargaining. This laudable initiative cannot succeed unless the accused has some assurance that the trial judge will in most instances honour agreements entered into by the Crown. While we cannot over emphasize that these agreements are not to fetter the independent evaluation of the sentences proposed, there is no interference with the judicial independence of the sentencing judge in requiring him or her to explain in what way a particular joint submission is contrary to the public interest and would bring the administration of justice into disrepute.

Similar policy interests exist in PEO discipline proceedings. In our view, where the parties choose to enter into a penalty agreement after discussions and negotiations, with full awareness of their respective rights or in the absence of duress, such agreement should not be disregarded unless the proposed penalty falls outside a range of penalties that is reasonable for the nature of the misconduct in the circumstances.

There were also written submissions on whether a panel intending to depart from a joint submission on penalty should give parties an opportunity to make further submissions before passing the final penalty decision. Independent legal counsel highlighted a few cases suggesting that a party should be given an opportunity to make submissions to the court or tribunal if it intends to deviate from a joint submission and impose more severe penalties. The advice was that "it is not clear that the procedural rule should be applied equally whether the deviation from the jointly proposed penalty is 'upward' or 'downward.'" The association submitted that the same procedural caution should apply whether the deviation is more or less severe than what the parties agree to, on the basis that the association is equally entitled to be heard and have its submissions given fair weight. After the submissions had been received by the panel and during the period when this decision was under reserve, the Ontario Court of Appeal released a decision on April 20, 2012 in *R. v. DeSousa*, 2012 ONCA 254 (CanLII) and stated that a trial judge should apply the same test (that is, whether the proposed penalty would bring the administration of justice into disrepute or would otherwise not be in the public interest) when deciding whether to depart from a joint submission on penalty, upward or downward. In light of this decision, the panel is of the view that, when a PEO discipline panel intends to depart from a joint submission on penalty, whether upward or downward, the best practice is to provide the parties with an opportunity to make submissions. In this proceeding, as set out above, the parties were invited to make submissions on the panel's intended penalty.

As there is no admissible evidence of duress in this case, the key is to determine the reasonable range of penalties for the nature of misconduct by Perera. As stated above, based on the Agreed Statement of Facts, the panel concluded that Perera demonstrated a temporary lapse in judgment in altering the data and test results without proper notations on the worksheets. However, there was no factual or evidentiary basis on which the panel could conclude that she had any fraudulent intent or acted in bad faith.

The association forcefully argued during the hearing and in written submissions that the case of *PEO v. Campbell*, in which a 24-month licence suspension was imposed, sets the upside of the range applicable to this case and any sanction below is "within the range." The panel rejected this argument. Very few PEO discipline proceedings share identical facts. However, the nature and degree of blameworthiness of the misconduct in prior PEO discipline proceedings could be instructive for the determination of the reasonable range of penalties in subsequent proceedings.

The nature and blameworthiness of the misconduct by Campbell, as found by the panel in that case, is much more serious and nefarious than that of Perera. The panel in *PEO v. Campbell* found that Campbell asked another person to falsify the test results and had the deliberate intention to mislead people about the status of the contract. He lied when confronted with the falsified test results. There was also a finding that he breached his fiduciary duty to his client. In the end, the panel found Campbell's conduct was disgraceful, dishonourable and unprofessional.

In this case, the panel found that Perera was in a laboratory environment with defective samples and broken polishing equipment, resulting in inaccurate spacing factors. She attempted to rectify the situation by using what she said was her "reasonable judgment" in altering the results, but

failed to record the alterations on paper. *PEO v. Campbell* can easily be distinguished as there is no sufficient evidence in the Agreed Statement of Facts to suggest that Perera intended to mislead the MTO or others.

The association also urged the panel to consider *PEO v. Crozier*, one of the many sample cases summarized by independent legal counsel. In that case, according to the Agreed Statement of Facts therein and the evidence introduced during the hearing, Crozier was found to engage in professional misconduct for failing to maintain the standards expected of a reasonable and prudent practitioner and using the title "consulting engineers" without permission from PEO. Crozier's conduct was described as a lapse of judgment. The panel in *PEO v. Crozier* accepted the parties' Joint Submission on Penalty that included a two-month licence suspension.

In the result, the panel accepted the argument that *PEO v. Crozier* is relevant for the determination of the reasonable range of penalty in this case. Both cases deal with misconduct that resulted from a lapse of judgment and was found to be unprofessional, but not disgraceful or dishonourable. In light of *PEO v. Crozier*, the panel concluded that a two-month licence suspension falls within the reasonable range of penalties in this case, even though, arguably, it may represent the upper end of the range. Accordingly, the panel accepted the proposed penalty as agreed to between the parties.

Colin Cantlie, P.Eng., signed this Decision and Reasons for the decision as chair of the discipline panel on behalf of the members of the discipline panel: Santosh Gupta, P.Eng., Rebecca Huang, LLB, Phil Maka, P.Eng., and Patrick Quinn, P.Eng.

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 PETER J. FAMIGLIETTI, a former member of the Association of Professional Engineers of Ontario.

This matter came on for hearing before a panel of the Discipline Committee on August 27, 2012, at the Association of Professional Engineers of Ontario in Toronto, to hear and determine allegations against Peter J. Famiglietti (Famiglietti).

The panel waited until 10:00 a.m. before commencing the hearing in the event that Famiglietti was delayed. However, Famiglietti did not attend the hearing, nor was he represented by counsel. Counsel for the association presented an Affidavit of Service, indicating that Famiglietti was served with the Complaints Committee decision and the Statement of Allegations, by forwarding a signed copy of the said documents by ordinary mail on March 28, 2012, to his home address on record. Counsel advised that no response was received from Famiglietti.

Counsel for the association also presented a registrar's certificate, indicating that Famiglietti was licensed as a professional engineer under the provisions of the *Professional Engineers Act* from December 12, 2005 to April 13, 2010. His licence was lapsed due to non-payment of annual fees. Further, Famiglietti never held a Certificate of Authorization (C of A) under the provisions of the *Professional Engineers Act*, and he has never been the professional engineer responsible for, or who supervised, the services provided that are within the practice of professional engineering on behalf of a Certificate of Authorization holder.

THE ALLEGATIONS

The Statement of Allegations presented by the counsel for the Association of Professional Engineers of Ontario (the association) included the following.

It is alleged that Peter J. Famiglietti is guilty of professional misconduct as defined in the *Professional Engineers Act* and Regulation 941, the particulars of which are as follows:

1. Famiglietti was a professional engineer licensed pursuant to the *Professional Engineers Act* from December 2005 until his licence was cancelled for non-payment of fees on April 13, 2010. The association has never issued Famiglietti a Certificate of Authorization.

2. The complainant was, at all material times, a plans examiner (plans examiner) for a city near Toronto, Ontario (the city).

3. In or about 2008, a home owner (the owner) retained a contractor to build a set of stairs for his house. The contractor advised that the owner did not need a building permit.