

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 ROBERT G. WOOD, P.ENG., a member of the Association of Professional Engineers of Ontario, GREGORY J. SAUNDERS, P.ENG., a member of the Association of Professional Engineers of Ontario, and M.R. WRIGHT & ASSOCIATES CO. LTD., a holder of a Certificate of Authorization.

This matter came for hearing before a panel of the Discipline Committee on November 17, 2008, and March 3, 4 and 5, 2009, at the Association of Professional Engineers of Ontario (association) in Toronto. The association was represented by Neil J. Perrier. The members and Certificate of Authorization holder were represented by Gordon P. Acton. David P. Jacobs acted as independent legal counsel.

The parties attended a pre-hearing conference with a member of the Discipline Committee on June 17, 2008. Two referrals to discipline had been ordered by the Complaints Committee; one in respect of a complaint against Robert G. Wood, P.Eng. (Wood), and M.R. Wright & Associates Co. Ltd. (MRW), and the other in respect of a complaint against Gregory J. Saunders, P.Eng. (Saunders), and MRW. On consent of the parties, both referrals were combined into one proceeding before the Discipline Committee as, among other things, similar questions of fact and law were raised in respect of both referrals.

THE ALLEGATIONS

1. The association alleged that Wood and Saunders were incompetent under the definition in section 28(3)(a) of the *Professional Engineers Act* (act), and that Wood, Saunders and MRW were guilty of professional misconduct as defined in section 28(2)(b) of the act.
2. The association filed two Statements of Allegations in this matter. The particulars of the allegations against Saunders and MRW were that:
 - (a) Saunders and MRW provided a stamped (February 14, 2005) Kabinakagami Bridge Rehabilitation bridge design issued for tender for Modified CL-635-ONT Truck Loading design code–CAN/CSA-S6-00 (code), for a 91 tonne (100 ton) capacity, which greatly exceeded the actual capacity and which, itself, did not meet the CHBDC minimum unposted capacity of 62.5 tonnes. Additionally, site work was reported by Wood as completed;
 - (b) Saunders and MRW provided a stamped (September 20, 2005) Kabinakagami Bridge Rehabilitation bridge design issued for tender for CL-625-ONT Truck Loading design code–CAN/CSA-S9-00, but did not meet the CHBDC minimum unposted capacity of 62.5 tonnes and which listed the attached drawings as “As built drawing reflecting construction”;
 - (c) Saunders and MRW provided a stamped (January 19, 2006) Kabinakagami Bridge Rehabilitation design issued for tender for CL-625-ONT Truck Loading design code–CAN/CSA-S6-00, but did not meet the CHBDC minimum unposted capacity of 62.5 tonnes;
 - (d) Saunders and MRW provided sets of stamped drawings that contained numerous errors, omissions or deficiencies, and were inconsistent with existing site conditions, MRW’s pile survey inspection notes and design notes provided in September 2005; and
 - (e) Saunders and MRW provided design briefs that did not follow the CHBDC CAN/CSA-S6-00 in the most appropriate manner and, in some cases, did not apply it in an appropriate manner, including:
 - (i) failing to appropriately apply the target reliability index and subsequent dead and live load factors when checking the wood stringers under “normal traffic” loading,
 - (ii) failing to evaluate bridge for “normal traffic” loadings to determine posting requirements. Rather, an inappropriate application of permit load live load factors was invoked such that no sign posting was recommended,

- (iii) applying the wrong table of the CHBDC [i.e. Table 9.11.2(b) instead of Table 9.11.2(c)] to determine the strength of the timber stringers,
 - (iv) failing to perform/provide calculations to evaluate the capacity of the laminated deck,
 - (v) failing to apply all data and measurements of the MRW September 2005 pile survey to the design brief analysis,
 - (vi) failing to apply the CHBDC 6.6.2.1 factor of 0.4 to the pile geotechnical resistance, and
 - (vii) failing to provide a complete analysis of the steel stringers, providing only a bending analysis, which itself was not reasonable.
3. The particulars of the allegations against Wood and MRW repeated the allegations against Saunders and MRW, with the following additional particulars:
- (a) Wood and MRW provided a stamped (November 29, 2004) Kabinakagami River Bridge Rehabilitation bridge design for tender using the Modified CL-625-ONT Truck Loading design code—CAN/CSA-S6-00 (100 ton) 91 tonne capacity, which greatly exceeded the actual capacity and that, itself, did not meet the CHBDC minimum unposted capacity of 62.5 tonnes; and
 - (b) Wood performed site inspections for work for which he knew or ought to have known that the Ministry of Natural Resources (MNR) was requiring a work permit.

The association said it would not be presenting any evidence in respect of the allegation set out in sub-subparagraph 2(e)(vii).

PLEA OF THE MEMBERS AND THE HOLDER

Wood, Saunders and MRW initially denied the allegations.

In the course of the cross-examination of Wood, the parties presented a plea agreement that included an agreement as to penalty. Wood, Saunders and MRW changed their pleas and admitted to the allegations set out in the following paragraphs in the allegations section above:

- (a) paragraph 1, regarding professional misconduct only;
- (b) subparagraphs 2(a), (b) and (d); and
- (c) sub-subparagraphs 2(e)(i), (ii), (iii), (v) and (vi).

In addition, Wood and MRW admitted to the allegations set out in the subparagraphs 3(a) and 3(b) in the allegations section above.

The plea agreement demonstrated the association's acceptance of the pleas, and the association presented no evidence as to those allegations that were disputed.

EVIDENCE

As stated, the panel did hear some evidence and, in reviewing the evidence, the panel noted that the designs entered into evidence in this matter show that the bridge was a single-lane, wood structure with steel beams across the central span, and that the bridge was 4.88 metres wide and 48.8 metres long. The bridge was located on a private logging road.

The association called two witnesses, Robert Wilson, P.Eng. (Wilson), and Kevin Brown, P.Eng. (Brown), from the MNR of the Government of Ontario. Wood testified in his own defence up to the entry of his plea of guilty.

FINDINGS

It was unchallenged that Wood and Saunders were members of the association and that MRW was a holder of a Certificate of Authorization at all times relevant to this matter and the panel so finds.

The panel inspected the notes on the drawings stamped by Wood and Saunders on February 14, 2005, and January 19, 2006, and found that they purport that the design complies with the code. The panel found that the design did not comply with the requirements of the code.

The panel noted that the association had said it would not present any evidence in regard to the allegation set out in sub-subparagraph 2(e)(vii) above. In accordance with the plea agreement, the association did not present any evidence as to the allegations of incompetence against Wood or Saunders. The panel, thus, does not find Wood, Saunders or MRW liable for the matters alleged in sub-subparagraph 2(e)(vii) and does not find Wood or Saunders guilty of incompetence.

DECISION

On the basis of the admissions made by the members and holder, the panel finds Wood, Saunders and MRW guilty of professional misconduct as set out in section 28(2)(b) of the *Professional Engineers Act* as defined in sections 72(2)(a) and 72(2)(d) of Regulation 941 under the *Professional Engineers Act*, for their actions as set out in the findings section above. The panel's decision was buttressed by the evidence heard, confirming the admissions made.

The association did not pursue the allegation of incompetence, and the panel does not find either Wood or Saunders guilty of incompetence.

The panel noted that, since Wood, Saunders and MRW admitted to the allegations, the association did not have to prove every element in the Statement of Allegations.

PENALTY

The parties made a joint submission as to penalty. The panel considered the joint submission and decided the proposed penalty would protect the public, maintain public confidence, provide a general deterrence to actions by other members, provide specific deterrence against similar actions by the members in this matter, and rehabilitate the members in this matter. The panel adopts the joint submission.

In coming to this decision, the panel noted that, in respect of Wood, an aggravating factor was that he had a number of opportunities to reconsider the elements of his design and failed to do so, and his conduct created avoidable work for the MNR. The panel considered the fact that the members admitted to the bulk of the allegations, that the submission as to penalty was agreed to by the parties, and that the penalty would not impose a burden on the other employees of MRW, as mitigating factors in its decision.

The panel found that the joint submission as to penalty proposed sanctions that were within the reasonable range for contraventions of the *Professional Engineers Act* and Regulation 941. The penalty is not contrary to the public interest.

Therefore the panel orders the following:

- (a) that Wood be reprimanded and that the fact of the reprimand be recorded on the register of the association;
- (b) that Saunders be reprimanded and that the fact of the reprimand be recorded on the register of the association;
- (c) that MRW be reprimanded and that the fact of the reprimand be recorded on the register of the association;
- (d) that Wood's licence be suspended for two months from December 1, 2010 to January 31, 2011;
- (e) that Wood and Saunders must each write and pass the association's professional practice examination between March 3, 2009 and 12 months after the date of this decision;
- (f) that the licence of Saunders be suspended for 12 months on the day after 12 months from the date of this decision if Saunders does not pass the association's professional practice examination between March 3, 2009 and 12 months after the date of this decision;
- (g) that the licence of Saunders be revoked on the day after 24 months from the date of this decision if Saunders

does not pass the association's professional practice examination between March 3, 2009 and 24 months after the date of this decision;

- (h) that Wood must write and pass the following technical examinations set by the association between March 3, 2009 and 12 months after the date of this decision: 98 CIV V1 and V2, advanced structural analysis and design;
- (i) that the licence of Wood be suspended for 12 months on the day after 12 months from the date of this decision if Wood does not pass the association's professional practice examination and the technical examinations 98 CIV V1 and V2 and advanced structural analysis and design, between March 3, 2009 and 12 months after the date of this decision;
- (j) that the licence of Wood be revoked on the day after 24 months from the date of this decision if Wood does not pass the association's professional practice examination and the technical examinations 98 CIV V1 and V2 and advanced structural analysis and design, between March 3, 2009 and 24 months after the date of this decision;
- (k) that the panel's Decision and Reasons will be published with the names of the members and the holder with reasons in the official publication of the association, and that the association may edit the Decision and Reasons to fit the publishing standards and available space in the publication;
- (l) that Wood, Saunders and MRW pay \$10,000 in total to the association immediately in costs, if this amount has not already been paid; and
- (m) that the association will make reasonable efforts to accommodate and facilitate the members in complying with this order, including providing the members with the ability to write the examinations ordered at a location near the members' locations.

The written Decision and Reasons was signed on November 15, 2010, by Glenn Richardson, P.Eng., as chair on behalf of the other members of the discipline panel: Santosh Gupta, P.Eng., Daniela Iliescu, P.Eng., Len King, P.Eng., and Henry Tang, P.Eng.

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 ABRAHAM BUECKERT, P.ENG., a member of the Association of Professional Engineers of Ontario, and AB ENGINEERING INC., a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on September 27, 2010, at the Association of Professional Engineers of Ontario (association) in Toronto. All parties were present. The association and Bueckert were represented by legal counsel. David Fine acted as independent legal counsel to the panel.

THE ALLEGATIONS

It is alleged that Abraham Bueckert, P.Eng. (Bueckert), is guilty of incompetence and/or professional misconduct as defined in the *Professional Engineers Act*.