

confidence in the regulation of the engineering profession. These measures demonstrate to the public and the profession that practising beyond the scope of one's competence will be taken seriously by PEO and result in significant consequences.

The Panel was reassured in its conclusions by the cooperation of the Member throughout the investigation, including his guilty plea and agreement to an agreed statement of facts and joint submission on penalty. This suggested to the Panel that the Member has demonstrated insight into the issues identified in his practice and has the ability to better recognize the limits of his competence in future. The Panel also noted that this was the Member's first appearance before the Discipline Committee, which was a further mitigating factor.

Finally, the Panel noted that the penalty ordered in this matter is in line with two previous decisions of the Discipline Committee that dealt with similar cases involving inadequate structural designs. The Panel was therefore of

the view that it falls within a reasonable range of penalties ordered in previous cases.

For all of the above reasons, the Panel accepted the Joint Submission as to Penalty and Costs. The Panel delivered the reprimand immediately following the conclusion of the hearing. During the reprimand, the Panel highlighted the importance of recognizing the limits of one's competence, of having an established quality assurance process to identify errors and omissions, and of remembering that while software is an important tool, it does not replace the need for an engineer's analytical skills.

On June 19, 2023, Glenn Richardson, P.Eng., signed the Decision and Reasons for the decision as Chair of the Discipline Panel and on behalf of the Members of the Discipline Panel: Jag Mohan, P.Eng. and Eric Bruce, J.D.

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 KAZI A. MAROUF, P.ENG., a member of the Association of Professional Engineers of Ontario.

This panel of the Discipline Committee (the "Panel") of the Association of Professional Engineers of Ontario (the "PEO") convened a hearing electronically via Zoom on March 30, 2023, to consider the conduct of Kazi A. Marouf ("Mr. Marouf") as described more particularly herein.

As Mr. Marouf was not present at the time specified for the commencement of the hearing in the Notice of Hearing and not represented, the Panel took a fifteen minute break before the start of the hearing to see if Mr. Marouf and/or a representative would arrive at the hearing. That did not occur, and the Panel commenced the hearing immediately following the fifteen minute break.

At the beginning of the hearing (i.e. following the fifteen minute break), counsel for the PEO provided an Affidavit of Service which showed that on February 19, 2023, Mr. Marouf was personally served with the Notice of Hearing for this matter and a copy of the Rules of Procedure of the Discipline Committee of the PEO. Counsel for the PEO also

provided an Affidavit of Service showing that on March 28, 2023, Mr. Marouf was served with a letter reiterating the hearing date and providing details regarding the electronic hearing. Based on the evidence, the Panel concluded that Mr. Marouf was given reasonable notice of the hearing pursuant to Sections 6 and 7 of the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22* and that the hearing could proceed in his absence.

THE ALLEGATIONS

The allegations against Mr. Marouf are stated in the Statement of Allegations dated October 18, 2022. The relevant parts of the Statement of Allegations, taken directly therefrom, are as follows:

It is alleged that Kazi Abdul Marouf, P. Eng. ("Marouf") is guilty of professional misconduct as defined in the *[Professional Engineers] Act* and Regulation 941 [of the Act], as follows:

1. At all material times, Marouf was a professional engineer licensed pursuant to the Act. Marouf holds a bachelor's degree in applied science from the University of Ottawa.
2. The Complainant, Tim Curtis ("Curtis"), was at all material times the President of Niagara-on-the-Lake Hydro ("NOTLH").
3. On May 11, 2017, Marouf was hired by NOTLH as its Vice President, Operations.
4. Between March 25, 2019 and August 20, 2020, Marouf engaged in a course of fraudulent activity against his employer, NOTLH, consisting of the fabrication, delivery and approval of a fraudulent quote for engineering services to NOTLH, a fake purchase order, and approval for payment by NOTLH of 17 invoices for fictitious engineering services and supplies totalling \$446,074.81, resulting in the theft by Marouf of that amount from his employer.
5. On September 14, 2020, Marouf was confronted by NOTLH. He admitted to the fraud, and his employment was terminated for cause on that date.
6. Marouf was arrested on January 12, 2021, and was charged the following day with the offence of fraud over \$5,000 contrary to s. 380(1)(a) of the Criminal Code (Canada). He pleaded guilty to that charge on September 7, 2021, and he was convicted of that offence.
7. Prior to the guilty plea and the sentencing, which took place on September 27, 2021, Marouf had made payments to NOTLH amounting to restitution of the entire amount misappropriated.
8. It is therefore alleged that Marouf is guilty of professional misconduct as defined in ss. 28(2)(a) of the Act, in being found guilty of an offence relevant to his suitability to practise.
9. It is further alleged that the conduct of Marouf described herein also amounted to professional misconduct under section 72(2)(j) of Regulation 941.

The Panel advised that because Mr. Marouf was not present, the Panel would proceed on the basis that he denied all of the allegations set out in the Statement of Allegations.

THE EVIDENCE

Counsel for the PEO called one witness, Mr. Tim Curtis, who was the complainant in this matter. At the time of the events in the Statement of Allegations, Mr. Curtis held the role of President of Niagara on-the-Lake Hydro ("NOTLH"). Mr. Curtis still holds that role today.

Mr. Curtis testified that Mr. Marouf was the Vice President of Operations of NOTLH ("VP of Operations"). In that role, Mr. Marouf was involved in a number of major projects. Mr. Curtis testified that although he does not believe it is necessary for the VP of Operations to be a professional engineer, he does find it helpful for the VP of Operations to have this designation.

Mr. Curtis stated that Mr. Marouf committed the fraud at issue in this matter by creating fake invoices and presenting them to Mr. Curtis as work required to complete these major projects. In addition, Mr. Curtis testified that the fraud was discovered because HST was incorrectly calculated on one of the fraudulent invoices. As a result, an employee of NOTLH called the number on the invoice and it was discovered that the person on the answering machine recording was Mr. Marouf's son. At this time, Mr. Curtis contacted a lawyer and a forensic accountant. The forensic accountant confirmed that fraud occurred and that it was in the amount of \$446,074.81, as noted above. Mr. Marouf was confronted and signed a document admitting to the fraud. In the document signed by Mr. Marouf, he also consented to the termination of his employment at NOTLH, with cause. Mr. Curtis testified that the Board of Directors of NOTLH was kept apprised of the above and supported Mr. Curtis' actions.

Counsel for the PEO presented the Panel with court documents, including the court Information which was sworn by a Peace Officer on January 13, 2021 (the "Information"). The Information showed that Mr. Marouf was arrested on January 12, 2021, at which time he was charged with fraud over \$5000 contrary to Section 380(1)(a) of the Criminal Code of Canada ("Criminal Code"). Counsel for the PEO also presented the Panel with an "Adult Conditional Sentence Order" dated September 27, 2021 (the "Order"). The Order showed that Mr. Marouf was sentenced to a conditional sentence of two years less a day for fraud over \$5000, contrary to Section 380(1)(a) of the Criminal Code, which could be served in the community as long as Mr. Marouf obeyed the conditions in the Order.

The court documents included a Victim Impact Statement ("Statement") dated July 21, 2021, which Mr. Curtis submitted to the Attorney General, Criminal Law Division, Niagara North on behalf of NOTLH. In the Statement, as well as in his tes-

timony before the Panel, Mr. Curtis recounted the shock and sense of betrayal he felt by Mr. Marouf's fraudulent actions. He testified that Mr. Marouf repaid the amounts taken from NOTLH, which was a relief, but it also made him question why the fraud was committed in the first place. In the Statement, Mr. Curtis advised that NOTLH supported the criminal conviction of Mr. Marouf, with a guilty verdict. NOTLH also supported a conditional sentence with house arrest. NOTLH did not support a jail sentence since they did not believe Mr. Marouf was a threat to society.

The Statement also said that Mr. Curtis would be complaining to the PEO and seeking to have Mr. Marouf's professional engineering license revoked. Mr. Curtis did in fact complain to the PEO and did seek to have Mr. Marouf's professional engineering license revoked in the complaint dated November 18, 2021, which resulted in the hearing before this Panel.

The Panel found Mr. Curtis to be credible. His testimony appeared to be truthful and accurate and it was supported by the documents presented to the Panel by counsel for the PEO. In addition, Mr. Curtis seemed to have a clear memory of the events that occurred which bolstered the Panel's finding that Mr. Curtis was credible.

Counsel for PEO took the position that the allegations of fact in this matter were all proven through the testimony of Mr. Curtis and the court documents. Counsel for the PEO also stated that Mr. Marouf took advantage of his senior position at NOTLH and the trust that was placed in him. Furthermore, counsel for the PEO stated that Mr. Marouf's actions were a major betrayal of the principles that all engineers should follow and that his actions are related to his suitability to practice as a professional engineer.

DECISION AND REASONS FOR DECISION

The PEO bears the onus of proving the allegations in the Statement of Allegations in accordance with the applicable standard of proof. The applicable standard of proof applied by the Panel in this instance is a balance of probabilities. Having considered the evidence, the onus and the standard of proof, this Panel finds that Mr. Marouf committed acts of profes-

sional misconduct as alleged in the Statement of Allegations. In particular, the Panel finds that Mr. Marouf committed professional misconduct as defined in Section 28(2)(a) of the *Professional Engineers Act* (the "Act"), because he was found guilty of an offence relevant to his suitability to practise as a professional engineer. Section 28(2)(a) of the Act states:

- (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,
- (a) the member or holder **has been found guilty of an offence relevant to suitability to practise, upon proof of such conviction;** or [emphasis added]

...

As noted above, the PEO submitted evidence which proved that Mr. Marouf has been found guilty of the offence of fraud over \$5000 contrary to Section 380(1)(a) the Criminal Code. The Panel believes that this offence is relevant to Mr. Marouf's suitability to practise as a professional engineer. This is because Mr. Marouf's conduct involved dishonesty and the abuse of a position of trust. The Panel finds that the public and other professional engineers would be shocked by Mr. Marouf's conduct.

The Panel also finds that Mr. Marouf committed professional misconduct as defined in Section 72(2)(j) of Regulation 941. Section 72(2)(j) of Regulation 941 states:

"professional misconduct" means,

...

- (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,** [emphasis added]

...

Counsel for the PEO argued that in this case Mr. Marouf's conduct was all three of the above – disgraceful, dishonourable and unprofessional. The Panel agrees with counsel for the PEO in this regard. The Panel believes that other professional engineers, as well as the public, would find Mr. Marouf's conduct shocking and contrary to the values that professional engineers should hold. The Panel also believes that Mr. Marouf's conduct involved serious dishonesty and moral failing. As such, the Panel finds that Mr. Marouf's actions rise to the level of disgraceful, dishonourable, and unprofessional conduct.

PENALTY

Having found that Mr. Marouf is guilty of professional misconduct as noted above, it is necessary to proceed to the penalty phase of this matter. The Panel has decided to proceed with an oral penalty hearing. Although Mr. Marouf is not entitled to further notice of the proceedings, the Panel's expectation is that Mr. Marouf will receive a copy of this Decision and

Reasons and have the opportunity to attend the penalty hearing if he chooses to do so.

The Panel requests that the PEO Tribunal Office canvass dates for a one day penalty hearing with the parties, the Panel members and ILC, with the view of scheduling the penalty hearing as soon as possible.

Alisa Chaplick, LL.B., LL.M., signed this Decision and Reasons for the decision as Chair of this Discipline Panel and on behalf of the members of the Discipline Panel: Tommy Sin, P.Eng., and Rishi Kumar, 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 KAZI A. MAROUF, P.ENG., a member of the Association of Professional Engineers of Ontario.

This panel of the Discipline Committee (the “Panel”) of the Association of Professional Engineers of Ontario (the “PEO” or the “Association”) convened a hearing electronically via Zoom on June 27, 2023, for the penalty phase of a matter regarding Kazi A. Marouf, P.Eng. (“Mr. Marouf”) as described more particularly herein.

In particular, this is the Decision and Reasons on Penalty, rendered further to this Panel’s Decision and Reasons on the merits of this matter issued on April 19, 2023 (“Decision on the Merits”). In its Decision on the Merits, this Panel found Mr. Marouf guilty of professional misconduct as defined in Section 28(2)(a) of the *Professional Engineers Act* (the “Act”) and Section 72(2)(j) of Regulation 941 of the Act, as described more particularly below. In the Decision on the Merits, this Panel also directed that a further hearing date be set to determine the issue of penalty. As noted above, on June 27, 2023, this Panel held the penalty phase of the hearing. What follows is the Decision and Reasons on penalty.

NOTICE TO MR. MAROUF

As Mr. Marouf was not present at the time specified for the commencement of the penalty hearing in the Notice of Hearing described below, and not represented, the Panel took a fifteen-minute break before the start of the hearing to see if Mr. Marouf and/or a representative would arrive at the hearing. That did not occur, and the Panel commenced the hearing immediately following the fifteen-minute break.

At the beginning of the hearing (i.e., following the fifteen-minute break), an Affidavit of Service was provided which showed that on May 15, 2023, Mr. Marouf was personally served with the Notice of Hearing for the penalty phase of this matter and a copy of the Rules of Procedure of the Discipline Committee of the PEO.

The Panel’s Independent Legal Counsel (“ILC”) advised that pursuant to the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (“SPPA”) reasonable notice of a hearing must be given. He stated that

personal service, which was the manner in which Mr. Marouf was served, is the best form of notice. He further stated that, technically, pursuant to section 7 of the SPPA, no notice of the penalty phase of the proceeding was required because Mr. Marouf had previously failed to attend the merits phase of the hearing after being given sufficient notice. Nevertheless, he advised that reasonable notice had been given and the penalty phase of the hearing could proceed in Mr. Marouf’s absence. Counsel for the Association agreed with ILC’s advice in this regard.

Based on the evidence, the advice of ILC and the position of counsel for the Association, the Panel concluded that Mr. Marouf was given reasonable notice of the hearing pursuant to sections 6 and 7 of the SPPA and that the penalty phase of the hearing could proceed in his absence.

DECISION ON THE MERITS

The allegations in this case, as taken directly from the Statement of Allegations and as reflected in the Decision on the Merits, were as follows:

It is alleged that Kazi Abdul Marouf, P. Eng. (“Marouf”) is guilty of professional misconduct as defined in the *[Professional Engineers] Act* and Regulation 941 [of the Act], as follows:

1. At all material times, Marouf was a professional engineer licensed pursuant to the Act. Marouf holds a bachelor’s degree in applied science from the University of Ottawa.