

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.

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.

As noted above, Mr. Marouf pleaded guilty and was subsequently found guilty of fraud over \$5,000 contrary to Section 380(1)(a) of the Criminal Code (Canada). He was sentenced to a conditional sen-

tence of two years less a day which could be served in a community as long as Mr. Marouf obeyed various enumerated conditions.

As noted above, in the Decision on the Merits, this Panel found Mr. Marouf guilty of professional misconduct as defined in Section 28(2)(a) of the Act and Section 72(2)(j) of Regulation 941 of the Act. 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]
 ...

With respect to Section 28(2)(a) of the Act, in the Decision on the Merits, the Panel noted that Mr. Marouf has been found guilty of the offence of fraud over \$5000 contrary to Section 380(1)(a) of the Criminal Code. The Panel stated that it believes that this offence is relevant to Mr. Marouf’s suitability to practise as a professional engineer.

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]
- ...

In the Decision on the Merits, the Panel stated that it found that Mr. Marouf’s actions rise to the level of disgraceful, dishonourable and unprofessional conduct.

PEO’S SUBMISSIONS ON PENALTY

Counsel for the Association sought revocation of Mr. Marouf’s licence. Counsel for the Association stated that pursuant to section 28(4)(a)¹ of the Act, the Panel has the authority to revoke Mr. Marouf’s license. Further, counsel for the Association advised that pursuant to the Act, where the Discipline Committee revokes a member’s license, its finding and the order of the Discipline Committee must be published with the member’s name². The publication can be with or without reasons.

The Panel decided to revoke Mr. Marouf’s license, as described more particularly below. In addition, the Panel decided that the find-

ings and order in this matter would be published with reasons, given the importance of providing members of the profession with particulars of the case. In deciding to publish with reasons, the Panel considered factors including the need for general deterrence and the serious nature of the matter.

Jurisdiction

Counsel for the Association stated that although Mr. Marouf is not currently a member of the PEO, the Panel has jurisdiction in this matter. This is because Mr. Marouf's misconduct occurred when he was a member of the PEO. The authority for this is section 22.1(1) of the Act. The Panel agrees that it has jurisdiction in this matter pursuant to Section 22.1(1)³ of the Act.

Aggravating and Mitigating Factors

Counsel for the Association noted aggravating and mitigating factors in the case. The mitigating factors that she noted were that this was Mr. Marouf's first offence and that he repaid the stolen money. The aggravating factors included the size and duration of the fraud. Counsel for the Association also stated that Mr. Marouf was very well-respected within Niagara-on-the-Lake Hydro ("NOTLH") and in his community, which made this a very serious breach of trust.

In addition, counsel for the Association pointed to the Victim Impact Statement from the criminal trial, dated July 21, 2021, which outlined some of the aggravating factors in this matter. This Victim Impact Statement was printed on NOTLH letterhead and signed by Tim Curtis ("Mr. Curtis"), the

President of NOTLH. The Victim Impact Statement noted the shock and betrayal that people felt when it was discovered that Mr. Marouf had committed a fraud of such magnitude. It also stated that NOTLH would be seeking revocation of Mr. Marouf's Professional Engineer (P.Eng.) license. As noted above, Mr. Curtis complained to the PEO about Mr. Marouf's conduct, which resulted in this matter before this Panel. In his complaint to PEO Mr. Curtis did, in fact, seek revocation of Mr. Marouf's P.Eng. license.

In addition, counsel for the Association noted that one of the purposes of a penalty is protection of the public. Furthermore, she stated that the penalty of revocation would maintain the reputation of the profession in the eyes of the public. She mentioned the relevance of general deterrence and the importance of letting the public know that this matter has been taken very seriously. Counsel for the Association also stated that if Mr. Marouf's license was revoked, he would not be able to apply for reinstatement for two years⁴ and the Registrar would have standing to make submissions regarding any potential reinstatement.

Counsel for the Association presented caselaw to support the argument that Mr. Marouf's license with the Association should be revoked. One of these cases was the PEO Discipline Committee's decision in *PEO v. Serdar Kalaycioglu* ("Kalaycioglu Decision"), which followed from a hearing that took place before a panel of the Discipline Committee on February 17, 2009. Although this decision was unreported, a summary of the decision can be found in PEO's July/August 2009 *Engineering Dimensions* publication.

In this case, there was also a criminal matter involving Mr. Kalaycioglu. As a result of the criminal matter, Mr. Kalaycioglu was found guilty of 11 counts of wire fraud and 1 count of conspiracy to commit wire fraud by the United States district court in the southern district of the State of Florida. He was sentenced to 324 months of imprisonment and ordered to pay \$6,722,592.29 in restitution.

As a result, a panel of the Discipline Committee of the PEO revoked Mr. Kalaycioglu's license and directed that the findings of the Discipline Committee proceedings would be published with names.

¹Section 28(4)(a) of the Act states:

28 (4) Where the Discipline Committee finds a member of the Association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence guilty of professional misconduct or to be incompetent it may, by order,

(a) revoke the licence of the member or the certificate of authorization, temporary licence, provisional licence or limited licence of the holder;

²Section 28(4)(i) and 28(5) of the Act state the following:

28(4) Where the Discipline Committee finds a member of the Association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence guilty of professional misconduct or to be incompetent it may, by order,

...

(i) subject to subsection (5) in respect of orders of revocation or suspension, direct that the finding and the order of the Discipline Committee be published in detail or in summary and either with or without including the name of the member or holder in the official publication of the Association and in such other manner or medium as the Discipline Committee considers appropriate in the particular case;

28(5) The Discipline Committee shall cause an order of the Committee revoking or suspending a licence or certificate of authorization, temporary licence, provisional licence or limited licence to be published, with or without the reasons therefor, in the official publication of the Association together with the name of the member or holder of the revoked or suspended licence or certificate of authorization, temporary licence, provisional licence or limited licence.

This, along with the other decisions cited by counsel for the Association, support the Panel's decision. (*College of Nurses of Ontario v. Pierce-Nagel*, 2013 CanLII 93845 (ON CNO); *Ontario College of Teachers v. Williams*, 2008 ONOCT 67 (CanLII)).

PANEL'S DECISION AND REASONS ON PENALTY

As noted above, the Panel decided to revoke Mr. Marouf's license, and decided that the findings and order in this matter would be published with reasons. In doing so, the Panel accepted the following submissions by counsel for the Association:

- The size and duration of the fraud were aggravating factors in this matter;
- The respect that Mr. Marouf had at NOTLH and in his community made this a very serious breach of trust;
- The Victim Impact Statement supports the penalty;
- This penalty is important to protect the public and for general deterrence reasons;
- This penalty is important because the Registrar will have standing to make submissions if Mr. Marouf seeks reinstatement pursuant to the Act; and
- The caselaw supports the penalty in this matter.

Mr. Marouf did not attend the hearing before this Panel and therefore did not express remorse to the engineering profession at the hearing. There was some evidence in the hearing record in the case before this Panel, that Mr. Marouf felt and expressed remorse in the criminal matter. For example, in the Justice Calderwood's Reasons for Sentence in the criminal proceedings, delivered orally on September 27, 2021, Justice Calderwood stated that both in Mr. Marouf's words and in his guilty plea, he showed evidence of remorse.

Nevertheless, as noted above, Mr. Marouf did not express remorse to the engineering profession at the hearing before this Panel. ILC stated that since the Association has an obligation to prove the allegations in its case, it would be difficult to describe Mr. Marouf's lack of attendance and expression of remorse as an aggravating factor. However, it would be fair to describe his lack of attendance and expression of remorse as an absence of a mitigating factor. The Panel agrees that Mr. Marouf's lack of attendance and expression of remorse at the hearing is an absence of a mitigating factor.

Oral Order

Immediately following the hearing, the Panel deliberated. The Panel then returned to the hearing and orally ordered that Mr. Marouf's Professional Engineer (P.Eng.) licence is revoked effective on the hearing date being June 27, 2023. The Panel also ordered that its decision would be published with reasons.

Written Order

The Panel released a written order reflecting its oral order on June 29, 2023. In particular, the Panel ordered that:

1. Pursuant to subsection 28(4)(a) of the Act, the licence of Mr. Marouf is revoked, effective June 27, 2023; and
2. Pursuant to subsections 28(4)(i) and 28(5) of the Act, the findings and order of the Discipline Committee shall be published with reasons and with the name of Mr. Marouf in the official publication of the Association.

The Panel reiterates the June 27, 2023, oral order and the June 29, 2023, written order in this Decision and Reasons, for the reasons stated above. Note that the PEO did not seek costs from Mr. Marouf and no costs were ordered.

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.

³ Section 22.1(1) of the Act states:

22.1 (1) A member who resigns or a holder of a licence, temporary licence, provisional licence, limited licence or certificate of authorization that is cancelled or revoked continues to be subject to the jurisdiction of the Association in respect of any professional misconduct or incompetence referable to a time when the person was a member or holder.

⁴ Section 37.1(1) of the Act states:

37.1(1) A person whose licence, certificate of authorization, temporary licence, provisional licence or limited licence has been revoked for cause under this Act, or whose membership has been cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence, certificate of authorization, temporary licence, provisional licence or limited licence, but such application shall not be made sooner than two years after the revocation.