

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 JOHN R. MACINTYRE, P.ENG., a member of the Association of Professional Engineers of Ontario, and TSC ENGINEERING INC., a holder of a certificate of authorization.

The panel of the Discipline Committee convened to hear and determine allegations of professional misconduct on the part of the respondents, Mr. John R. MacIntyre (MacIntyre or the member), a member of the Association of Professional Engineers of Ontario (the association or PEO), and TSC Engineering Inc. (the holder or TSC), a holder of a certificate of authorization from the association, which had been properly referred to us by the decision of the Complaints Committee dated January 22, 2020. The panel heard this matter on March 12, 2021, by means of an online video conference platform that was simultaneously broadcast in a publicly accessible format over the internet. All participants in the proceedings, including the member and holder and counsel for the association, attended via videoconference.

AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that the association and the member and holder had reached agreement on the facts. She introduced an Agreed Statement of Facts signed by the member and holder on February 22, 2021, and by the association on February 23, 2021. The Agreed Statement of Facts provided as follows. (Although we reproduce the Agreed Statement of Facts in whole below, including the references to schedules that were attached, the schedules themselves are not included here.)

1. “At all material times, the respondent, John R. MacIntyre, P.Eng. (MacIntyre), was a professional engineer licensed pursuant to the *Professional Engineers Act* (the act). At all material times, the respondent TSC Engineering Inc. (TSC) held a certificate of authorization issued under the act, and listed MacIntyre as the individual taking responsibility for the professional engineering services provided by TSC.
2. ThermoEnergy Structures Inc. (TSI) was hired by the complainant, Herma Van Beek, to build a barn superstructure on an already-built foundation on her farm in Asphodel-Norwood Township, Ontario (the Barn). TSI assembles and installs prefabricated farm superstructures using construction drawings prepared by Wolf System, a German manufacturer (the Design). In this instance, TSI retained TSC to review the Design and to review the Barn itself once construction was underway.
3. In May of 2013, MacIntyre reviewed the Design, which included a large format drawing sheet labelled “POSITIONSPLAN” and 19 letter size pages of construction details including a cover page. The “POSITIONSPLAN” included a roof framing plan and typical superstructure sections, all prepared by Wolf System, as well as foundation plan and section details prepared by TSI. MacIntyre provided handwritten notes on the “POSITIONSPLAN” and initialed key information. On May 15, 2013, MacIntyre signed and sealed the “POSITIONSPLAN.” MacIntyre mistakenly assumed that the letter size construction details were shop drawings and did not seal those sheets. On the cover page, MacIntyre hand-wrote the name and location of the complainant’s farm, hand-wrote “reviewed 15/05/13,” affixed TSC’s business stamp and signed the sheet. MacIntyre affixed TSC’s business stamp, wrote the date and initialed each detail sheet. A building permit was issued shortly thereafter.
4. As construction of the Barn advanced MacIntyre signed and sealed a total of three site visit reports. In his first report, dated July 24, 2013, and addressed to the complainant and TSI, MacIntyre noted that the wall and roof framing was nearly complete. He stated that all structural work completed to date, including all connections, satisfied the intent of the Design and the structural requirements of Part 4 of the OBC and the NFBC.
5. On August 2, 2013, Ed Whitmore, the local chief building official (Whitmore), emailed MacIntyre several dozen questions following a site inspection of the Barn on July 29, 2013. Whitmore’s questions focused on the need for brackets at various connection points, and MacIntyre replied stating that most of the questions dealt with as yet incomplete work which he would review in due course.

6. In his second sealed report dated October 21, 2013 (a copy of the report is attached hereto as Schedule “A”) and addressed to TSI, the complainant and Whitmore, MacIntyre stated that the connections that had not been completed at the time of the previous visit were sampled for completeness and that all connections sampled were found to be adequate. In addition, MacIntyre provided design information on wind uplift loading and roof snow loading and stated that design loads for wind and snow were adequate. Finally, MacIntyre stated that “all structural work” satisfied the intent of the Design and the requirements of the OBC and the NFBC.
7. On October 29, 2013, Whitmore conducted a site inspection to confirm completeness of the work but continued to have concerns. In or around November 2013, the complainant retained Sara Bradley, P.Eng., of Bradley Engineering (Bradley) to prepare a second opinion regarding the structural engineering of the Barn.
8. On December 10, 2013, MacIntyre sealed a third report, addressed to Whitmore, TSI, Bradley and the complainant (a copy of the report is attached hereto as Schedule “B”). The report stated that MacIntyre had reviewed the areas of concern identified in Whitmore’s photos taken on July 29, 2013, and that his review included visual examination of typical connections that were incomplete in the photos, as well as proof load testing for pull-out of the typical wedge anchors. Based on this review, MacIntyre stated that the “areas of concern” had been addressed and met the structural requirements of the OBC and NFBC.
9. On December 11, 2013, Bradley sealed an inspection report with enclosed photos addressed to the complainant. Bradley’s report advised that “numerous brackets” had been omitted from the Barn’s gable end wall framing.
10. On March 28, 2014, Whitmore emailed the complainant following a site inspection conducted with Bradley. Whitmore and Bradley were of the opinion that the Barn had several deficiencies requiring correction “prior to occupancy.”
11. On May 1, 2014, Bradley wrote again to the complainant enclosing more photos and setting out a number of “completion requirement[s] specific to obtaining an occupancy permit,” as follows:
- installation of six omitted corner connections;
 - installation of omitted endwall connections;
 - installation of connection brackets on roof purlins;
 - shimmying vertical plates on column bases to the foundation;
 - installation of omitted anchor bolts from the vertical plates on column bases;
 - replacement of an apparently deficiently welded wind bracing rod; and
 - installation of connections at the top of a specified wood post.
12. The work recommended by Bradley was carried out and, as a result, on September 17, 2014, Whitmore conducted a final inspection of the Barn and confirmed that the deficiencies appeared to have been corrected and that the Barn now appeared to comply with the OBC.
13. PEO retained Tacoma Engineers (Tacoma) to prepare an independent review report. Tacoma’s report, dated April 21, 2019 (the Report), concluded, among other things, that:
- MacIntyre failed to be aware of or comply with the OBC and NFBC in reviewing the Design and the construction of the Barn;
 - the Design and the construction of the Barn presented safety concerns for people and property due to inadequate force resistance; and
 - a reasonable and prudent practitioner would have ensured compliance with the OBC and the NFBC and would not have signed off on the identified errors and omissions.
- A copy of the Report is attached hereto as Schedule “C.” Following receipt of comments dated June 10, 2019, from the respondents (attached hereto as Schedule “D”), Tacoma prepared a second report (Reply Report 1) dated June 24, 2019, a copy of which is attached hereto as Schedule “E.” Following receipt of comments dated December 1, 2020, from the respondents (attached hereto as Schedule “F”), Tacoma prepared a third and final report (Reply Report 2) dated December 30, 2020, a copy of which is attached hereto as Schedule “G.” Reply Report 2 concluded as follows: “In conclusion, the MacIntyre letter of December 1, 2020, does not provide any information that materially changes the conclusions presented in my initial report—MacIntyre failed to comply with codes and standards, these failures represent a safety hazard

and as such MacIntyre failed to meet the standard expected of a reasonable and prudent engineer.”

14. For the purposes of these proceedings, the respondents accept as correct the findings, opinions and conclusions contained in the Report and in the Reply Reports and admit that they failed to make responsible provision for complying with applicable statutes, regulations and codes. The respondents further admit that their professional engineering work, as described above, fell below the expected standards that a reasonable and prudent practitioner should maintain in the circumstances, and did not make reasonable provision for the safeguarding of life, health or property of the persons affected by the work.
15. The parties therefore agree that MacIntyre and TSC are guilty of professional misconduct as follows:
 - a. They conducted an inadequate review of design drawings, amounting to professional misconduct as defined by sections 72(2)(a), (b), (d) and (j) of Regulation 941 under the act;
 - b. They affirmed the adequacy of design drawings that did not meet or make reference to applicable codes and standards, amounting to professional misconduct as defined by sections 72(2)(a), (b), (d) and (j) of Regulation 941; and
 - c. They affirmed the structural adequacy of an engineered structure that failed to comply with applicable codes and standards, amounting to professional misconduct as defined by sections 72(2)(a), (b), (d) and (j) of Regulation 941.

The respondents have had independent legal advice, or have had the opportunity to obtain independent legal advice, with respect to their agreement as to the facts, as set out above.

Counsel for the association advised that insofar as there was agreement that the conduct of the member and holder amounted to professional misconduct as defined by subsection 72(2)(j) of Regulation 941 under the *Professional Engineers Act*, R.S.O. 1990,

c. P.28 (the act) (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 parties agreed that the conduct would reasonably be regarded by the engineering profession as unprofessional, and not disgraceful or dishonourable.

PLEA BY MEMBER AND HOLDER

The member and holder admitted the allegations set out in paragraphs 15 a. to c. of the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the admissions were voluntary, informed and unequivocal.

DECISION

The panel considered the Agreed Statement of Facts. It finds that the facts, as admitted, support findings of professional misconduct against the member and holder. In particular, the panel finds that the member and holder committed acts of professional misconduct as follows:

- a) Conducted an inadequate review of design drawings, amounting to professional misconduct as defined by subsections 72(2)(a), (b), (d) and (j) of Regulation 941 under the act;
- b) Affirmed the adequacy of design drawings that did not meet or make reference to applicable codes and standards, amounting to professional misconduct as defined by subsections 72(2)(a), (b), (d) and (j) of Regulation 941 under the act;
- c) Affirmed the structural adequacy of an engineered structure that failed to comply with applicable codes and standards, amounting to professional misconduct as defined by subsections 72(2)(a), (b), (d) and (j) of Regulation 941 under the act; and
- d) Insofar as the member and holder are found guilty of misconduct under subsection 72(2)(j) of Regulation 941 under the act the finding is that the conduct was unprofessional, not disgraceful or dishonourable.

REASONS FOR DECISION

Member

The panel is of the view that the conduct admitted in paragraphs 1 to 14 of the Agreed Statement of Facts constitutes professional misconduct under subsections 72(2)(a), (b), (d) and (j) of Regulation 941 under the act. That the member committed such acts is confirmed by the facts as agreed to by the parties in the Agreed Statement of Facts, admitted by the member and accepted by the panel.

Holder

With respect to TSC, counsel for the association submitted that facts contained and admitted by the holder in the Agreed Statement of Facts concerning the conduct of TSC was sufficient evidence of professional misconduct by TSC. Counsel for the association noted that, at the relevant times, TSC held a certificate of authorization issued by the

association that listed MacIntyre as a responsible engineer for the purposes of section 17 of the act.

The panel accepts that the aforesaid evidence inculcating TSC supports a finding of professional misconduct against TSC, which employed the member and for which the member served as a responsible engineer at the relevant times. Accordingly, for reasons analogous to those outlined above with respect to the member, the panel finds the holder, TSC, guilty of professional misconduct in the same manner.

PENALTY

The panel received a Joint Submission as to Penalty and Costs signed by the member and holder on January 22, 2021, and by the association on January 23, 2021.

The Joint Submission on Penalty provides as follows:

1. MacIntyre was at all material times a member of the PEO. TSC was at all material times the holder of a certificate of authorization issued by the PEO.
2. MacIntyre and TSC are the subjects of a proceeding before a panel of the Discipline Committee of PEO pursuant to section 28 of the *Professional Engineers Act*.
3. PEO, MacIntyre and TSC make the following joint submission on penalty and costs:
 - a) Pursuant to s. 28(4)(f) of the *Professional Engineers Act*, MacIntyre and TSC shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently;
 - b) Pursuant to s. 28(4)(b) of the *Professional Engineers Act*, MacIntyre's licence and TSC's certificate of authorization shall both be suspended for a period of one (1) month, commencing on the day the penalty decision is pronounced by the Discipline Committee;
 - c) Pursuant to s. 28(4)(d) and (e) of the *Professional Engineers Act*, there shall be a term, condition, limitation and restriction imposed on MacIntyre's licence and on TSC's certificate of authorization, prohibiting them from providing profes-

sional engineering services in connection with any structures governed by, or falling within the ambit of, the National Farm Building Code;

- d) The findings and order of the Discipline Committee shall be published, pursuant to s. 28(4)(i) and 28(5) of the *Professional Engineers Act*, with reference to names; and
- e) There shall be no order as to costs.

Counsel for the association submitted that the joint proposed penalty fell within a reasonable range of penalties imposed in previous cases and appropriately served the principles of sentencing, including the protection of the public and maintenance of the public's confidence in the profession.

The panel notes that the member and holder fully co-operated with the association's investigation, had no prior disciplinary history and expressed remorse and apologized for the misconduct.

PENALTY DECISION

The panel carefully considered the Joint Submission as to Penalty and Costs. It is a well-established principle of law that a disciplinary panel should not interfere with a Joint Submission on Penalty, except where the panel is of the view that to accept the joint submission would bring the administration of the disciplinary process into disrepute or would be contrary to the public interest.

In the circumstances of this case, the panel is of the view that a reprimand, the fact of which is to be recorded permanently on the register, a one (1) month suspension of the member's licence and TSC's certificate of authorization, a permanent prohibition from providing professional engineering services in connection with any structures governed by, or falling within the ambit of, the National Farm Building Code, and publication of the panel's findings and order with reference to the member's name, is a reasonable outcome in this matter. A lesser penalty would fail to appropriately serve the aims of specific and general deterrence, protecting the public and maintaining the public's confidence in the regulation of the profession.

The panel acknowledges the member's co-operation with the association through the Agreed Statement of Facts and his statement of remorse. These considerations, combined with his lack of a prior disciplinary history, are mitigating factors in determining an appropriate penalty. It is the panel's view, however, that these mitigating factors do not completely detract from the aggravating factors, given the seriousness of the misconduct in question.

The panel has been made aware of the significant and troubling shortcomings in the member's practice in this case. The panel reiterates that the member has been found guilty of negligence and of failing to take reasonable precautions to safeguard the life and health of those who were affected by and relied on his work.

Public trust is at the core of what it means to be a professional. Members of the public must have confidence that professionals are

held to high standards of conduct and that serious breaches of those standards are dealt with appropriately. Failing to take a proportionate response to protect the public in the face of professional misconduct undermines that trust and harms both the reputation of the profession and the legitimacy of professional regulation.

In the circumstances of this case, the panel is of the view that a one (1) month suspension of the member's licence and TSC's certificate of authorization, and permanent prohibition from providing professional engineering services in connection with any structures governed by, or falling within the ambit of, the National Farm Building Code, will maintain public confidence in the regulation of the profession and adequately provide for protection of the public and general deterrence to the profession at large.

Additionally, the panel notes that the fact of a reprimand to be permanently recorded on the register and publication of the panel's findings and reasons with names serves to promote both specific and general deterrence and reinforce the public confidence in the regulation of the profession. Publication demonstrates, both to the profession and to the public, the seriousness with which the Discipline Committee regards lapses of professional standards, and the penalties for engaging in such misconduct.

Notwithstanding the above, the panel wishes to emphasize that, although the member and holder have been found guilty of professional misconduct under subsection 72(2)(j) of Regulation 941, nothing in this Decision and Reasons, including penalty, should be interpreted as the member or TSC being found guilty of conduct that is "disgraceful" or "dishonourable" under subsection 72(2)(j). The parties agreed that the finding under subsection 72(2)(j) is in reference to unprofessional conduct only.

Accordingly, the panel accepts the Joint Submission as to Penalty and Costs for the member and TSC, and orders as follows:

- a) Pursuant to subsection 28(4)(f) of the *Professional Engineers Act*, MacIntyre and TSC shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently;
- b) Pursuant to subsection 28(4)(b) of the *Professional Engineers Act*, MacIntyre's licence and TSC's certificate of authorization shall both be suspended for a period of one (1) month, commencing March 12, 2021;
- c) Pursuant to subsection 28(4)(d) and (e) of the *Professional Engineers Act*, there shall be a term, condition, limitation and restriction imposed on MacIntyre's licence and on TSC's certificate of authorization, prohibiting them from providing professional engineering services in connection with any structures governed by, or falling within the ambit of, the National Farm Building Code;
- d) The findings and order of the Discipline Committee shall be published, pursuant to subsections 28(4)(i) and 28(5) of the *Professional Engineers Act*, with reference to names; and
- e) There shall be no order as to costs.

The panel pronounced its determinations as to convictions and penalty at the conclusion of the hearing on March 12, 2021, and advised that its reasons were to follow. At the hearing, after the pronouncement of the penalty, the member and holder waived their rights to appeal and, thus, the effective date of the one (1) month suspension of the member's licence and TSC's certificate of authorization is March 12, 2021, and it is so ordered. The panel administered an oral reprimand to the member and holder immediately following the hearing.

Robert Willson, P.Eng., signed this Decision and Reasons for the decision as chair of this discipline panel and on behalf of the members of the discipline panel: Paul Ballantyne, P.Eng., and Reena Goyal, JD.