

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 ANTHONY A. IKPONG, P.ENG., a member of the Association of Professional Engineers of Ontario.

This is the Decision and Reasons on Penalty further to this panel's Decision and Reasons on the merits of this matter issued December 13, 2017. In its Decision and Reasons on the merits, this panel found the member, Dr. Anthony A. Ikpong, guilty of professional misconduct under sections 72(2) (j) (unprofessional conduct) and (h) (harassment) of Ontario Regulation 941 of the *Professional Engineers Act* (PEA). The hearing on the merits lasted eight days, spread over seven months. The panel, with the parties' consent, decided that conducting the penalty phase of the hearing in writing was the most efficient and fair way to move forward in light of existing scheduling difficulties. Accordingly, the panel invited and received submissions on penalty in writing from the Association of Professional Engineers Ontario (PEO) and Dr. Ikpong.

PEO'S SUBMISSIONS ON PENALTY

PEO submits Dr. Ikpong's conduct merits a very serious penalty that focuses on the protection of the public and on maintaining the reputation of the profession in the eyes of the public. PEO argues that Dr. Ikpong has shown no remorse or insight into his actions and that he will likely reoffend by insulting, accusing and harassing anyone with whom he disagrees. PEO submits that Dr. Ikpong has not shown any willingness to co-operate or accept the views of others because he believes he alone has all the right answers.

PEO asks the panel to:

- a. Reprimand Dr. Ikpong pursuant to section 28(4)(f) of the PEA and record the fact of the reprimand on the register permanently.
- b. Suspend Dr. Ikpong's licence for four months pursuant to section 28(4)(b) of the PEA.
- c. Impose the term or condition on Dr. Ikpong's licence that he shall successfully complete PEO's Professional Practice Examination within fourteen months pursuant to section 28(4)(d) of the PEA.

- d. Revoke Dr. Ikpong's licence pursuant to sections 28(4)(a) and (k) of the PEA if he does not successfully complete the Professional Practice Examination within fourteen months.
- e. Publish the Decisions and Reasons of the panel, together with Dr. Ikpong's name, in PEO's official publication.

PEO states that it does not seek costs because Dr. Ikpong is unlikely to pay them.

THE MEMBER'S SUBMISSIONS ON PENALTY

In response, Dr. Ikpong submits that he has concerns about this panel's decision to exclude the testimony of PEO's expert witnesses in its Decision and Reasons on the merits. He repeats his view that his "solution" was correct all along and that the expert witnesses who testified at the hearing were "wrong." He asserts that the panel should have acknowledged this in its Decision and Reasons on the merits but, instead, decided "to hide PEO's 4 witnesses and their proven, erroneous, testimony from public view."

Dr. Ikpong states that, because the panel "did not deliver to [him] the verdict that [he] so thoroughly deserved in respect of the correct magnitude of girder design forces, and given [his] pledge to work co-operatively with the Canadian Standards Association" (CSA) to determine what the Canadian Highway Bridge Design Code (the code) provisions for precast/prestressed concrete box girder bridges should be, he asks the panel to:

- a. Not publish his name but, rather, to refer to him as "the member."
- b. Not include information on his academic/university degrees other than his P.Eng. licence.
- c. Not suspend his licence.
- d. Not impose any course work or examination on him.
- e. Only state in its written decision that he was admonished for the tone of his communication

with the Ministry of Transportation of Ontario (MTO) engineers.

Dr. Ikpong's grounds for his request are that his "engineering on this matter was and remains perfect"; he admits that his communication with MTO engineers was imperfect, and he agrees to work co-operatively with the CSA on the code provisions for the future analysis of precast/prestressed concrete box girder bridges.

Dr. Ikpong concludes by stating that he regrets that he ever brought this matter to PEO, but he has also done a lot of good because his "comprehensive 3-dimensional structural analysis of the precast site-connected concrete box girder bridge superstructure is unchallengeable" and will greatly benefit the public.

PEO'S REPLY SUBMISSIONS ON PENALTY

In its reply submissions, PEO asserts that the evidence of all of the witnesses was that Dr. Ikpong's methods and conclusions were severely flawed, but that the panel decided his conduct in "volunteering his views on bridge design" did not fall within the first part of the definition of negligence in Regulation 941 of the PEA, because they were not "in the carrying out" of "work." PEO argues that, because the panel decided that Dr. Ikpong was not carrying out engineering work, Dr. Ikpong's conduct cannot be said to be either "engineering work" or "excellent," and the panel should so find.

PEO argues that the panel's findings must be based "exclusively on evidence admitted before it" in accordance with section 30(6) of the PEA and it submits that the evidence, including Dr. Ikpong's own testimony and his behaviour towards the panel and its rulings, as well as his rudeness to the witnesses, shows that Dr. Ikpong is either incapable of or unwilling to work co-operatively with anyone. PEO submits that Dr. Ikpong's history of interactions with others, from his conduct towards his supervisor and continuing with what PEO describes as his scurrilous attacks on MTO engineers, members of CSA committees and eminent experts in the field of bridge design, demonstrates that his "pledge to work co-operatively" is meaningless. PEO argues that Dr. Ikpong's submissions on penalty show that he continues to believe that he, and only he, has all the right answers. PEO states that Dr. Ikpong's

"submissions repeat the vainglorious assertions contained in his prior materials and continue his attacks on everyone else's ethics and competence" and that the serious penalties it seeks are warranted.

REASONS FOR PENALTY DECISION

A Discipline hearing penalty is meant to address the goals of: deterring the member specifically, and all members of the engineering profession generally, from engaging in professional misconduct; rehabilitating the member; protecting the public; and maintaining the reputation of the engineering profession. Having regard to these goals, the panel agrees with PEO's submissions on penalty to the effect that Dr. Ikpong's conduct warrants a serious penalty. His unprofessional conduct demonstrated poor judgment and negatively impacted the engineers he harassed.

Dr. Ikpong's submissions on penalty, in which he continues to insist that he is correct and that the other engineers who challenged him are wrong, demonstrate a continued lack of professionalism and arrogance that troubles the panel. The panel notes that Dr. Ikpong mischaracterizes and/or misunderstands its Decision and Reasons on the merits as a confirmation that his volunteered views on bridge design were correct; this is not the case as the panel's Decision and Reasons on the merits make clear and as PEO's reply submissions accurately state. The panel made no findings on Dr. Ikpong's views because they were not "an act or omission in the carrying out of the work of a practitioner" as required for the panel to make a finding of professional misconduct under the negligence provision in section 72(2)(a) of Regulation 941 of the PEA, nor were they a display "in his professional responsibilities," again as required for the panel to make a finding of professional misconduct under section 28(3)(a) of the PEA. The panel did not consider Dr. Ikpong's volunteered views on bridge design to be "engineering work" for the purposes of the PEA. The panel is disturbed by Dr. Ikpong's failure to understand and/or accept this.

Despite Dr. Ikpong's stated regret in his submissions and his pledge to work co-operatively with other engineers going forward, the panel believes that it is necessary to impose a penalty that includes a reprimand, a suspension of the member's licence,

a requirement that he complete remediation, and that the panel's Decisions and Reasons be published. The suspension, reprimand and publication provisions of the penalty sought by PEO satisfy the purposes of general and specific deterrence. Dr. Ikpong and the engineering profession must understand that interactions among engineers must always be professional and co-operative, particularly where safety concerns are at issue. The requirement that Dr. Ikpong successfully complete the Professional Practice Examination satisfies the goals of rehabilitation and protection of the public. Dr. Ikpong must learn how to engage professionally and co-operatively with engineering peers. By doing so, he will be better equipped to satisfy his professional responsibilities as an engineer. These penalty provisions taken together serve the purpose of upholding the reputation of the profession as they send a message to the public that the engineering profession does not tolerate unprofessional and harassing conduct, and that it seeks to deter professional engineers from behaving this way.

PENALTY DECISION

The panel makes the following order as to penalty:

- a. The member shall be reprimanded pursuant to section 28(4)(f) of the PEA, and the fact of the reprimand shall be recorded on the PEO register permanently.
- b. The member's licence shall be suspended for four months pursuant to section 28(4)(b) of the PEA, commencing on the date of this Decision and Reasons on Penalty.

- c. Pursuant to section 28(4)(d) of the PEA, it shall be a term or condition of the member's licence that he shall, within eighteen months of the date of this Decision and Reasons on Penalty, successfully complete PEO's Professional Practice Examination and provide evidence of his successful completion to PEO.
- d. The Decisions and Reasons on the merits and s official publication pursuant to section 28(5) of the PEA.

Henry Tang, 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: Stella Ball, LLB, Paul Ballantyne, P.Eng., Tim Kirkby, P.Eng., and Patrick Quinn, P.Eng.

NOTICE OF LICENCE SUSPENSION, DR. ANTHONY IKPONG, P.ENG.

On February 27, 2018, the Discipline Committee ordered that Dr. Anthony Ikpong's professional engineering licence be suspended for a period of four months. Dr. Ikpong's appeal from this order was dismissed by the Divisional Court, and the Court of Appeal dismissed his motion for leave to appeal to that court on October 3, 2019. The suspension ordered by the Discipline Committee was implemented upon the dismissal of the motion for leave to appeal, namely, on October 4, 2019.