

SUMMARY OF DECISION AND REASONS

On allegations of professional misconduct under the *Professional Engineers Act* regarding the conduct of SIU H.E. LEUNG, P.ENG., a member of the Association of Professional Engineers of Ontario, and JIT PROFESSIONAL SERVICES INC., a holder of a certificate of authorization.

This matter was heard before a panel of the Discipline Committee on January 25 and 26, 2016, for the first part, with neither the member, Siu H.E. Leung, P.Eng. (Leung), nor the holder, JIT Professional Services Inc. (JIT), present or represented.

This proceeding arose from a complaint from a property owner pertaining to the renovations to her house in Scarborough. She contended that the engineer and his engineering firm did not complete their contracted work.

The Association of Professional Engineers of Ontario alleged that Siu H.E. Leung, P.Eng. (Leung), and JIT Professional Services Inc. (JIT) were guilty of professional misconduct as defined in the act and R.R.O. 1990, Regulation 941: General under the act (Regulation 941), in particular by:

- a. Failing to remedy deficiencies in a building permit application submitted on behalf of a client, amounting to professional misconduct as defined by sections 72(2)(a), (d) and (j) of Regulation 941;
- b. Failing to complete contracted work for a client and failing to respond to a client's inquiries regarding the work, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941; and
- c. Providing engineering services to the public while JIT was not the holder of a certificate of authorization, contrary to section 12(2) of the act, amounting to professional misconduct pursuant to sections 72(2)(g) and (j) of Regulation 941.

In its written Decision and Reasons dated January 23, 2017, the panel found allegation (c) proven and that Leung was guilty of conduct or an act rea-

sonably regarded as unprofessional, but that allegations (a) and (b) were not proven.

The association presented its case primarily through documents (including a number under the seal of the city clerk of the City of Toronto, in reliance on subsection 447.6(1) of the *Municipal Act*) and oral evidence provided by the complainant and a professional engineer. The panel did not place full weight on the city's documents, as the association did not provide proof that the documents comprised the city's complete file on the matter. The engineer had been hired by the complainant to prepare and submit "as-built" drawings to allow the city to process and approve an application for a variance to the zoning bylaw for land coverage and building setback. The engineer testified that he did not find any deficiencies in the construction.

ISSUE 1—CERTIFICATE OF AUTHORIZATION

JIT is a company providing engineering services in Toronto, Ontario. It was issued a certificate of authorization on or about May 4, 2012. The certificate was cancelled in or about September 2013 for non-payment of fees, reinstated in or about March 2014, and was cancelled again for non-payment of fees on August 19, 2015. JIT was issued a certificate of authorization on September 14, 2015. Leung, on behalf of JIT, signed a contract to provide professional engineering services to the complainant on August 31, 2011—before JIT received a certificate of authorization. The professional services were provided during 2011 and again in July 2012. JIT was the holder of a certificate of authorization, however, at the times of the complaint (April 25, 2014), the Complaints Committee referral to the Discipline Committee (July 15, 2014), and during the discipline hearing.

The panel ruled that the Discipline Committee had no jurisdiction over the conduct of JIT prior to it obtaining a certificate of authorization. However, the panel determined that Leung's conduct in supervising the practice of professional engineering provided by JIT was within the committee's jurisdiction because Leung was a P.Eng. licence holder when he was the president and director at JIT and JIT's signatory on the contract with the complainant.

ENFORCEMENT HOTLINE Please report any person or company you suspect is practising engineering illegally or illegally using engineering titles. Call the PEO enforcement hotline at 416-224-1100, ext. 1444 or 800-339-3716, ext. 1444. Or email enforcement@peo.on.ca. Through the *Professional Engineers Act*, Professional Engineers Ontario governs licence and certificate holders and regulates professional engineering in Ontario to serve and protect the public.

It is without dispute that JIT entered into a contract to provide the complainant with engineering services. Leung was a member when he signed it on behalf of JIT on August 31, 2011. The panel concluded that Leung knew, or should have known, that it was wrong and unprofessional to hold out JIT as an engineering firm when JIT did not have a certificate of authorization as required by the *Professional Engineers Act*.

Accordingly, the panel finds Leung guilty of conduct or an act reasonably regarded as dishonourable and unprofessional under section 72(2)(j) of Regulation 941 for allowing and assisting his company, JIT Professional Services Inc., to provide engineering services while it did not possess a certificate of authorization.

ISSUE 2—THE SCOPE OF CONTRACTED WORK AND WHETHER IT WAS COMPLETED

A one-page contract between the complainant and JIT covered architectural and mechanical drawings and structural specifications for an addition of approximately 24 feet by 14 feet, at a fixed price with building permit fees extra. In October 2011, JIT submitted a building permit application for a one-storey rear addition, supported by several drawings stamped by Leung. On about July 30, 2012, Leung provided the city, as it had requested, with heat-loss calculations and his stamped drawings that included measurements for a proposed porch extension.

The complainant stated that Mr. Leung failed to provide the final construction drawings for the new garage and the front porch extension. The contract did not stipulate any work related to “as-built” drawings. Although the complainant contacted and expected JIT and Leung in 2014 to prepare “as-built” drawings required by the city, there was no evidence that she offered to pay JIT and Leung to perform that additional work.

In reviewing the 24' X 14' area referenced in the contract, the panel noted that it was significantly less than the total area constructed and renovated. The finished construction consisted of the rear addition, front porch extension and a new garage. The garage replaced the one that was demolished to allow construction equipment access to the rear of the property. Initially, the plans had designated the area occupied by the garage as parking. The panel found that there is insufficient evidence to establish that Leung or JIT were hired to do more than what

had been done as defined by the written contract. The rear addition to the house had been completed; the area of which was in reasonable agreement with the 24' x 14' area specified in the contract.

There was evidence that Leung did not respond to the complainant's repeated inquiries. Although the panel disapproves of the member's failure to respond, there is insufficient evidence to find professional misconduct on this basis. As a result, the panel does not find that Leung is guilty of professional misconduct with respect to the allegation of failure to complete contracted work for a client or failing to respond to a client's inquiries regarding such work.

ISSUE 3—NOT REMEDYING DEFICIENCIES IN BUILDING PERMIT APPLICATION

The allegation of failure to remedy deficiencies in a building permit application hinges on the question of the scope of work, as discussed above.

There was a defect in the permit application, resulting in the city requesting heat-loss calculations, which Leung and JIT subsequently provided.

The panel finds that the demand for “as-built” drawings was outside the agreed scope of work and did not constitute a deficiency in the building permit application. Rather, the actual construction work seems to have gone beyond the scope of the original building permit.

Accordingly, the panel found insufficient evidence to establish professional misconduct with respect to this allegation.

The panel issued the Decision and Reasons on the allegations on January 23, 2017, and directed the parties to make written penalty submissions to the panel within thirty (30) days of the issuance.

DETERMINATION OF PENALTY ON THE FINDING OF PROFESSIONAL MISCONDUCT

The penalty phase of the hearing was held in abeyance while the association appealed the panel's decision on the association not having jurisdiction over JIT prior to it obtaining a certificate of authorization to the Ontario Superior Court of Justice, Divisional Court. The court dismissed the association's appeal on July 17, 2018, allowing the panel's decision on lack of jurisdiction to stand. The penalty phase of the hearing continued on April 11, 2019, with the member attending via telephone and represented in person at the hearing by a paralegal.

The parties presented a joint submission as to penalty. Mr. Leung expressly affirmed the joint submission as to penalty and agreed to the proposed penalties. The panel agreed that the joint submission was reasonable and that it satisfied the guiding principles of penalties (protection of the public, remediation of the member, accountability of the profession, general deterrence and specific deterrence).

Accordingly, the panel ordered that:

- a. Pursuant to s.28(4)(f) of the act, Siu H.E. Leung, P.Eng. (Leung), shall be reprimanded, and the fact of the reprimand shall be recorded on the registrar permanently;
- b. Pursuant to sections 28(4)(i) and 28(5) of the act, the finding and order of the Discipline Committee shall be published in summary

- form in PEO's official publication, with reference to names;
- c. Pursuant to section 28(4)(d) of the *Professional Engineers Act* it shall be a term or condition on Leung's licence that he shall, within fourteen (14) months of the date of pronouncement of the decision of the Discipline Committee, successfully complete the association's Professional Practice Examination (PPE);
- d. Pursuant to section 28(4)(b) and (k) of the *Professional Engineers Act*, in the event that Leung does not successfully complete the above-mentioned examination within the time set out

- in (c) above, his licence shall be suspended for a period of ten (10) months thereafter, or until he successfully completes the examinations, whichever comes first; and
- e. There shall be no order as to costs.

A verbal reprimand was delivered over the telephone immediately following the hearing.

The panel issued written Decision and Reasons on Penalty on June 10, 2019.

This written summary of the Decision and Reasons is authorized by L. Brian Ross, P.Eng., as chair on behalf of the other members of the discipline panel: Ishwar Bhatia, P.Eng., Colin Cantlie, P.Eng., Rebecca Huang, LLB, LLM, and Charles M. Kidd, P.Eng.

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

This panel of the Discipline Committee convened in Toronto to hear this matter. The hearing lasted eight days over a six-month period and was mostly conducted electronically. The hearing involved a number of witnesses called by the prosecution. Dr. Anthony Ikpong, P.Eng., represented himself throughout and testified on his own behalf. The panel invited and received the parties' closing submissions in writing over the months of June, July and August 2017. In this decision, the panel refers only to the facts, evidence and submissions relevant to its decision on each of the four allegations set out in paragraph 23 of the Amended Statement of Allegations reproduced below.

THE ALLEGATIONS

The Amended Statement of Allegations dated October 17, 2016, sets out the following allegations against the member and corresponding particulars:

- At all material times, Ikpong was a professional engineer licensed pursuant to the *Professional Engineers Act*.
- Between approximately January 2013 and June 2015, Ikpong exchanged communications with Professional Engineers Ontario, the Ministry of Transportation, the Minister of Transportation and/or other professional engineers regarding his concern that the analyses relating to the design of shear-connected box girder bridges in Ontario were faulty.
- Between approximately 2011 and 2013, while working as an engineer for WSP Canada Inc. (WSP), Ikpong was involved in the design of a number of bridge projects for WSP, including the Bug River Bridge, for which Ikpong jointly authored a Structural Design Report (the report) dated May 1, 2012.
- In or about January 2013, Ikpong raised concerns with the joint author of the report regarding the analysis set out therein.
- In or about February 2014, Ikpong sent an email to the Ministry of Transportation of Ontario (MTO) questioning the analysis performed by the bridge design consultants retained by the MTO regarding their assumptions about the transfer of wheel load effects between girders.
- In its response, the MTO described the mechanisms in place to ensure bridge safety in Canada but invited Ikpong to be more