

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 DOMINECO CUGLIARI, P.ENG., a member of the Association of Professional Engineers of Ontario, and 10948411 CANADA INC. (formerly CONSTRUCTION CONTROL INC.)

The panel of the Discipline Committee heard this matter on November 16, 2020, 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 counsel for the Association of Professional Engineers of Ontario (the association or PEO) and the former member, Mr. Domineco Cugliari (the member or Cugliari), and his legal counsel, attended via videoconference. The panel notes that although Cugliari is described as “P.Eng.” in the title of proceedings, Cugliari’s licence was cancelled due to voluntary resignation on July 13, 2018. He remains subject to the jurisdiction of the association in respect of any professional misconduct referable to a time when he was a member pursuant to s. 22.1(1) of the *Professional Engineers Act*, R.S.O. 1990, c. P.28 (the act). He is referred to herein as the “member” (or Cugliari) for convenience.

PRELIMINARY MATTER—CONSTRUCTION CONTROL INC. / 10948411 CANADA INC.

At the outset of the hearing, counsel for PEO advised that the name Construction Control Inc., which had initially been named as a respondent on the Notice of Hearing, should be replaced by the name of its legal successor corporation, 10948411 Canada Inc. Further, counsel advised that 10948411 Canada Inc. had since declared bankruptcy and was not represented at the hearing; however, counsel confirmed that the corporation had been properly served with notice of the hearing.

For ease of reference, the respondent 10948411 Canada Inc. will be referred to as “Construction Control” throughout these reasons.

THE ALLEGATIONS

The panel was provided with the original Statement of Allegations dated August 1, 2019, against the member and Construction Control, that were referred to the Discipline Committee for determina-

tion. The parties also provided the panel with an Agreed Statement of Facts, discussed below.

Counsel for the association explained that, to the extent that the original Statement of Allegations contained additional allegations as compared with the facts agreed on in the Agreed Statement of Facts, such additional allegations were withdrawn by the association.

AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that the association and the member had reached agreement on the facts. She introduced an Agreed Statement of Facts signed by the member on November 10, 2020, and by the association on November 11, 2020. The Agreed Statement of Facts provided as follows, with references to the schedules that were attached, omitted below:

1. At all material times, Cugliari was a professional engineer licensed pursuant to the act. Cugliari was employed by the respondent, Construction Control Inc. (Construction Control), as a structural engineer focusing on temporary structures. Cugliari was listed on the certificate of authorization issued to Construction Control at the material time as a responsible engineer for the purposes of s. 17 of the act.
2. At all material times, Construction Control held a certificate of authorization (No. 100183928). On March 31, 2013, Construction Control relinquished its certificate, and it was cancelled effective April 3, 2013. On September 6, 2018, 10948411 Canada Inc. (formerly Construction Control) was declared bankrupt under the *Bankruptcy and Insolvency Act*, R.S. 1985, c. B-3, s.1.
3. Construction Control was the successor firm to Stanford Cody Ltd., whose employee George Snowden, P.Eng., had, in the 1992–1994 period, designed the component parts of a large performance stage (the Stage) owned and maintained by Optex Staging & Services Inc. (Optex).
4. On May 13, 2012, Optex emailed Cugliari concept drawings of a 138-foot-wide by 60-foot-high iteration of the Stage to be assembled for a June 2012 concert in Downsview Park (the Downsview Park Stage). The email from Optex stated, “I will need this engineered—please check brace and how much weight

- I need. Fully tarped and scrimmed. Will go with the other drawings with roof specs.”
5. On June 5, 2012, Optex sent Cugliari three emails, attaching additional concept drawings of the Downsview Park Stage and referring to the significant weight of the equipment intended to be hung from the roof. One of the emails stated that Optex needed the drawings “analyzed prior to the June 11th install.”
 6. On June 7, 2012, Optex emailed Cugliari stating that it needed “the Engineering” for the Downsview Park Stage by the end of the next day.
 7. On June 8, 2012, Construction Control emailed Optex seven drawings, listed as: S12-4139-02; 01-7570-01-R1; 94-5654-01; 94-5654-02; 94-5654-03; 94-5654-04; and S12-4139-01 (the Stage Drawings). Stage Drawing 94-5654-01 was dated July 21, 1992 and was signed and sealed by Snowden. Stage Drawing 94-5654-02 was dated April 28, 1994 and was signed and sealed by Snowden. The remaining Stage Drawings are dated either June 7, 2012, or June 8, 2012. Stage Drawings 94-5654-03, S12-4139-01 and S12-4139-02 were signed and sealed by Cugliari on June 8, 2012. Stage Drawings 01-7570-01-R1 and 94-5654-04, although noted as checked by Cugliari and approved for construction, were never signed or sealed.
 8. The Downsview Park Stage was intended to be constructed utilizing two large scaffold wings. Each scaffold wing had three pick-up towers and each tower had two “pickup trusses.” Each pair of pick-up trusses supported one “cathead beam.” The Stage roof was assembled using two primary trusses with thirteen secondary trusses connected to the primary trusses. Three cables on each side ran from the primary trusses up to the pulleys of the cathead beams and 3 back down to the cathead bases on which the scaffold pick-up towers rested. The secondary trusses supported all the lighting equipment hanging above the floor of the stage.
 9. Stage Drawings 94-5654-01 dated July 21, 1992, and 01-7570-01-R1 dated June 8, 2012, both depicted the pickup truss details, among other things. The details depict a 10-foot-long pickup truss, even though the Stage configuration (as shown in Stage Drawings S12-4139-01 and S12-4139-02) required 7-foot-long pickup trusses.
 10. The steel tube components of the pick-up trusses (top and bottom chords, as well as the diagonals) were to be 3 inches in diameter, with wall thickness of .21 inches. These are not typical sizes for commercially produced truss components and would have required custom fabricating. Stage Drawing 94-5654-01 contains fabrication details for the primary truss and for a 10-foot-long pickup truss. None of the Stage Drawings depicted details of the connections between the cathead beams and the pickup trusses. The only information provided regarding connections to the pick-up trusses was on Stage Drawings S-12-4139-01 and S-12-4139-02, which stated only, “Cathead Assembly T & C to Truss (see C.C.I. Dwg. No. 5-G-01-7570-01).”
 11. The Stage Drawings also contained many other errors, omissions and discrepancies. These include primary truss and primary truss pickup point discrepancies, pulley beam/cathead beam discrepancies, omission of pulley beam connection details, scaffold bay size discrepancies, suspension cable connection detail omission and failure to adequately evaluate the entire structural system when altering one component. These errors, omissions and discrepancies are set out in greater detail in the expert report of Art Ivanchouk, PhD, P.Eng., dated July 23, 2019.
 12. Despite the fact that Construction Control and Cugliari had utilized the same design details for the stages built by Optex for many years, the pickup trusses actually used by Optex were not the ones designed by Snowden and depicted in Stage Drawings 94-5654-01 and 01-7570-01-R1 and were, in fact, substantially structurally weaker. Cugliari was the structural engineer

responsible for the design and construction review of several stages built by Optex before it built the Downsview Park Stage. Cugliari at no time revised his drawings to account for the pickup trusses and other components used by Optex. Cugliari acknowledges that he ought to have noticed the discrepancies, and he should have taken appropriate steps to revise his design and drawings accordingly.

13. On or about June 15, 2012, Cugliari attended Downsview Park to conduct a general field review of the construction of the Downsview Park Stage. He did not take any steps to examine either the pickup trusses or their connection to the cathead beams. Had he done so, he would have seen that the pickup trusses actually used were not the ones depicted in the Stage Drawings and that the cathead beams were not properly connected to the pickup trusses.
14. On the morning of June 16, 2012, Cugliari sent Optex a signed and sealed "Field Review Report" dated June 15, 2012. It stated that "a review was carried out to verify structural adequacy of concert Stage as per design drawings 4-G-S12-4139-01 & 02." The Report stated, among other things, as follows: "...
 - 3) Secondary trusses were further reinforced with additional diagonal, vertical and plan bracing members to accept additional lighting and motor loads—now satisfactory.
 - 4) Other items including primary truss and supports, scaffold wings c/w [complete with] bracing & weights at base, main stage deck and sills, were found to be structurally sound and satisfactory for intended use."

Cugliari regrets that he issued the Field Review Report stating that the Stage was structurally sound and satisfactory for its intended use without ensuring that the proper pick-up trusses had been installed.

15. At approximately 4 p.m. on June 16, 2012, as the Downsview Park Stage was being prepared for a performance, the roof collapsed, killing one worker and injuring three others. The collapse originated at the location of one of the pickup trusses. The pickup trusses and their connections to the cathead beams were inadequate to support the loads imposed on them.
16. On July 13, 2018, Cugliari retired from his employer, resigned his licence as a professional engineer and returned his seal.
17. For the purposes of this proceeding, Cugliari accepts as correct the findings, opinions and conclusions contained in the Ivantchouk Report as redacted. Cugliari admits that he failed to meet the minimum acceptable standard for engineering work of this type and that he failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances.
18. By reason of the aforesaid, the parties agree that Cugliari is guilty of professional misconduct, as follows:
 - a. Affirming the structural adequacy of a structure designed for public use without having a reasonable basis for doing so, amounting to professional misconduct as defined by sections 72(2)(a), and (b) of Regulation 941 under the *Professional Engineers Act*;
 - b. Conducting an inadequate review of the construction of a temporary stage structure, amounting to professional misconduct as defined by sections 72(2)(a) and (b) of Regulation 941, and that his conduct would reasonably be regarded by the engineering profession as unprofessional, amounting to professional misconduct under section 72(2)(j) of Regulation 941; and
 - c. Preparing, signing and sealing, or transmitting for use by the client, incomplete, inconsistent, incorrect or inadequate structural drawings of a temporary stage structure, amounting to professional misconduct as defined by section 72(2)(a) and (b) of Regulation 941, and that his conduct would reasonably be regarded by the engineering profession as unprofessional, amounting to professional misconduct under section 72(2)(j) of Regulation 941.

PLEA Member

The member admitted the allegations set out in paragraph 18 (a) to (c) of the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the member's admission was voluntary, informed and unequivocal.

Construction Control

As Construction Control was not present or represented at the hearing, the panel entered a plea of not guilty on its behalf.

DECISION

Member

The panel considered the Agreed Statement of Facts. It finds that the facts, as agreed, support findings of professional misconduct against the member. In particular, the panel finds that the member committed acts of professional misconduct as set out in paragraphs 18 (a) to (c), above.

Construction Control

The panel accepts that the facts, as established by the Agreed Statement of Facts, can be used to support findings of professional misconduct against Construction Control. In particular, the panel finds that Construction Control committed acts of professional misconduct as follows:

- a. Affirming the structural adequacy of a structure designed for public use without having a reasonable basis for doing so, amounting to professional misconduct as defined by sections 72(2)(a), and (b) of Regulation 941 under the act;
- b. Conducting an inadequate review of the construction of a temporary stage structure, amounting to professional misconduct as defined by sections 72(2)(a) and (b) of Regulation 941, and that its conduct would reasonably be regarded by the engineering profession as unprofessional, amounting to professional misconduct under section 72(2)(j) of Regulation 941; and
- c. Preparing, signing and sealing or transmitting for use by the client, incomplete, inconsistent, incorrect or inadequate structural drawings of a temporary stage structure, amounting to professional misconduct as defined by section 72(2)(a) and (b) of Regulation 941, and that its conduct would reasonably be regarded by the engineering profession as unprofessional, amounting to professional misconduct under section 72(2)(j) of Regulation 941.

REASONS FOR DECISION

Member

When presented with a guilty plea and an Agreed Statement of Facts, the panel must still satisfy itself whether the facts presented support a finding with respect to each of the acts of professional misconduct alleged by the association.

In this case, the panel is of the view that the acts of professional misconduct alleged in paragraphs 18 (a) to (c) of the Agreed Statement of Facts were amply made out on the facts as agreed to by the member and the association and accepted by the panel.

The panel finds that the member prepared, signed and sealed and transmitted for use by his client structural drawings for a temporary stage that were clearly deficient and that he failed to meet the standard of a reasonable and prudent practitioner in numerous respects.

The panel notes that the structural drawings are patently inconsistent; for example, while the stage configuration illustrates 7-foot-long pickup trusses, details contained in related drawings depict a 10-foot-long pickup truss. Notably, these related drawings are specifically referenced in the stage configuration. Such inconsistencies should have, therefore, been apparent to any structural engineer reviewing the drawings. The fact that these overt inconsistencies were overlooked by the member is greatly concerning to the panel.

The structural drawings are also incomplete in that they contain no details of the connections between the cathead beams and pickup trusses. This was particularly concerning to the panel, given that the client had specifically alerted the member to the significant weight of the equipment to be installed and suspended from the structure and of the need to analyze and confirm that the structural design was adequate.

The panel accepts the findings of the expert report of Dr. Art Ivanouchouk, PhD, P.Eng., which was attached to and included in the Agreed Statement of Facts and which catalogued the numerous other errors and omissions found in the drawings supplied by the member. These included: primary truss and primary truss pick-up point discrepancies; pulley beam/cathead beam discrepancies; omission of pulley beam connection details; scaffold bay size discrepancies; suspension cable connection detail omission; and failure to adequately evaluate the entire structural system when altering one component.

Given the above numerous, overlapping shortcomings, the panel has no hesitation in concluding that the member was negligent in his preparation, signing and sealing and transmission for use of the structural drawings. Moreover, given that the structure was designed as a temporary stage for a live concert performance and that the failure of the structure posed an obvious risk to the health and safety of the public, the panel finds that the member failed to make reasonable provision for the safeguarding of life, health and property of those who were likely to be affected by his work.

Similarly, the panel finds that the member was negligent and failed to make reasonable provision for safety when he conducted an inadequate site review of the stage structure. The member has admitted that

although he attended the site where the stage was being constructed, he failed to take adequate steps to examine either the pickup trusses or their connection to the cathead beams. As admitted, had he done so, he would have observed that the pickup trusses being used were not those depicted in the drawings and that they were not properly connected to the cathead beams.

This was concerning to the panel, as it is also admitted that the member had used the same designs for stages for many years. The panel fails to understand how the member could have overlooked this discrepancy between the actual trusses in use and those contained in the structural drawings other than by negligence and disregard.

The panel also finds that the member affirmed the structural adequacy of the stage without having a reasonable basis for doing so. By his field report dated June 15, 2012, the member asserted that he had conducted a review to verify the structural adequacy of the stage and asserted that the varied portions, including the primary truss and supports, were “found to be structurally sound and satisfactory for intended use.” The panel notes that this affirmation by the member was without foundation given his failure to conduct an adequate inspection and in light of the numerous errors and omissions in the drawings underlying the stage’s construction. Accordingly, the panel finds that the member was both negligent and failed to make reasonable provision for the safeguarding of life, health and property in making such an affirmation.

Finally, the panel concludes that the member’s actions in respect of the drawings and his inadequate review of the construction of the stage clearly amount to conduct that would be regarded by the profession as unprofessional. Such significant and repeated failures to maintain the standards of the profession are self-evidently unprofessional and would be seen as unacceptable by the profession.

Construction Control

With respect to Construction Control, counsel for the association submitted that facts contained and admitted by the member in the Agreed Statement of Facts concerning the conduct of Construction Control could be relied upon by the panel as evidence of professional misconduct on the part of Construction Control. Counsel noted that, at the relevant

times, Construction Control held a certificate of authorization issued by the association that listed Cugliari as a responsible engineer for the purposes of s. 17 of the act. Moreover, counsel submitted that, as the holder of the certificate of authorization and as Cugliari’s employer, Construction Control was responsible for Cugliari’s conduct. In support of this position, counsel referred the panel to the decision of the Discipline Committee in *PEO v. Saunders and M.R. Wright and Associates Co. Ltd.* from March 18, 2016.

The panel accepts that the aforesaid evidence inculcating Construction Control supported a finding of professional misconduct against Construction Control, 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 Construction Control guilty of professional misconduct in the same manner.

PENALTY

Member

Counsel for the association advised the panel that the member and the association were making a joint submission on penalty and provided a Joint Submission as to Penalty and Costs signed by the member on November 10, 2020, and by the association on November 11, 2020.

The Joint Submission as to Penalty and Costs provided, in part, as follows:

3. The PEO and Cugliari make the following joint submission on penalty and costs:
 - a. Pursuant to s. 28(4)(a) of the *Professional Engineers Act*, Cugliari’s licence shall be revoked;
 - b. Pursuant to s. 28(5) of the *Professional Engineers Act*, the findings and order of the Discipline Committee shall be published, together with reasons therefor, *with* reference to Cugliari’s name.
 - c. There shall be no order as to costs.

Counsel for the association submitted that the 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. She noted that the aims of rehabilitation and specific deterrence were not applicable in light of the fact that the member had resigned his licence.

Counsel further submitted that revocation serves to protect the public by ensuring that any future application for reinstatement by the member would have to be reviewed and determined by the Discipline Committee. This is in contrast to an undertaking to not reapply follow-

ing resignation, which would not require a formal hearing when reapplying for a licence.

Counsel for the member submitted that the member had fully co-operated with the association's investigation, had no prior disciplinary history and expressed remorse and apologized for his conduct.

Construction Control

Counsel for the association pointed out that Construction Control had relinquished its certificate of authorization and has since been declared bankrupt, although to her knowledge, the company still existed. She noted that it, therefore, did not pose a risk to the public, as it was not engaged in the provision of engineering services. She submitted that a \$5,000 fine payable to the Minister of Finance should Construction Control ever seek reinstatement of a certificate of authorization and publication of the penalty with the respondent's name would be sufficient to achieve aims of general deterrence.

Because it was not represented at the hearing, Construction Control made no submissions on penalty.

PENALTY DECISION

Member

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 revocation of the member's licence and publication of the panel's findings and order with reference to the member's name is the only reasonable outcome in this matter; a lesser penalty would fail to appropriately serve the aims of general deterrence, protecting the public and maintenance of 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 detract from the aggravating factors, given the seriousness of the misconduct in question.

The panel has already detailed 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. The seriousness of these findings cannot be overstated. Tragically, this misconduct led to the death of one individual and the injury of three others.

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 an outcome short of revocation would undermine public confidence in the regulation of the profession and fail to adequately provide for protection of the public and general deterrence to the profession at large. The panel acknowledges that revocation is the most severe penalty the panel may impose upon a member of the profession; however, it is of the view that it is entirely justified in light of the magnitude of the misconduct at issue in this case.

The panel recognizes that the member has already resigned from the profession and is not engaged in the practice of the profession; however, the panel agrees with the submissions of the association that revocation appropriately protects the public by ensuring that should the member ever seek to return to practice, his licence application would have to be considered by the Discipline Committee in accordance with section 37(3) of the act. This would enable the Discipline Committee to consider the full set of circumstances and appropriately weigh whether the member poses an ongoing risk to the public. Under section 22(2) of the act, such an application for reinstatement cannot be made until two years have passed after revocation of a licence.

The panel notes that, under section 28(5) of the act, the panel is required to order the publication of revocations of licences and certificates of authorizations with names. Additionally, the panel notes that publication of its findings and reasons with the names serves to promote general deterrence of the profession and reinforce the public confidence in the regulation of the profession. Far from bringing the administration of the disciplinary process into disrepute, publication demonstrates, both to the profession and to the public, the seriousness with which the Discipline Committee regards significant lapses of professional standards and the penalties for engaging in such misconduct.

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

- a. Pursuant to s. 28(4)(a) of the act, the member's licence shall be revoked.
- b. Pursuant to s. 28(5) of the act, the findings and order of the Discipline Committee shall be published, together with reasons therefor, *with* reference to the member's name.
- c. There shall be no order as to costs.

Construction Control

The panel notes that Construction Control has already relinquished its certificate of authorization and was declared bankrupt. The panel accepts the association's submission that Construction Control does not currently pose a risk to public safety as it is not providing engineering services, and it is unlikely to do so in future.

The panel accepts the association's submission that imposing a fine of \$5,000—the maximum permissible under the act—to be payable should Construction Control ever reapply for a certificate of authorization is a reasonable and appropriate penalty. The panel observes that this penalty is in line with prior decisions of the Discipline Committee where a former holder of a certificate of authorization is no longer active, including *PEO v. Saunders* above, and *PEO v. Jiri Krupka and CA Elliott Inc.* decided October 30, 2014. The panel is of the view that this penalty, combined with publication of the panel's findings and reasons, serves to provide general deterrence and to help maintain public confidence in the regulation of the profession.

Accordingly, the panel orders as follows with respect to Construction Control:

- a. Pursuant to s. 28(4)(h) of the act, Construction Control shall pay a fine in the amount of \$5,000 to the Minister of Finance for payment into the Consolidated Revenue Fund, if and when Construction Control seeks reinstatement as a holder of a certificate of authorization to provide engineering services in Ontario.
- b. Pursuant to s. 28(4)(i) of the act, the findings and order of the Discipline Committee shall be published, together with reasons therefor, with reference to the name of Construction Control.

The panel pronounced its determinations as to convictions and penalty at the conclusion of the hearing on November 16, 2020 and advised that its reasons were to follow. At the hearing, after the pronouncement of the penalty, the member waived his right to appeal and, thus, the effective date of the revocation of his licence is November 16, 2020, and it is so ordered.

Glenn Richardson, 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 Eric Bruce, J.D.