

The panel considered the precedent decisions provided and decided that the proposed penalty provides an appropriate balance of severity and compassion. The five-month suspension, the fine and the two-year registration of the reprimand are severe enough to send a message that maintains the reputation of the profession in the eyes of the public and provides a general deterrent to such misconduct. However, these are not so severe as to ignore that

the member was co-operative, showed remorse and already suffered the collateral loss of his business.

The panel concluded that the proposed penalty is reasonable and in the public interest.

REPRIMAND

Following the member's waiver of his right to appeal the panel administered an oral reprimand immediately after the hearing.

SUMMARY OF DECISION AND REASONS

In the matter of the Association of Professional Engineers of Ontario v. ANTERO M. GOMES, P.ENG., a member of the Association of Professional Engineers of Ontario, and the certificate of authorization holder.

The association was represented by Leah Price, the respondents were represented by Ryan Breedon, and Sean McFarling acted as independent legal counsel for the panel.

This matter came before a panel of the Discipline Committee of the Association of Professional Engineers of Ontario (PEO) for hearing on November 2, 2015 in Toronto.

COMPLAINTS COMMITTEE REFERRAL AND STATEMENT OF ALLEGATIONS

The Complaints Committee of Professional Engineers Ontario referred the matter to the Discipline Committee on May 25, 2015, the Notice of Hearing was issued on September 30, 2015 and the Statement of Allegations referred by the Complaints Committee was dated May 14, 2015 (under cover notice dated May 25, 2015).

The allegations against Antero M. Gomes, P.Eng. (Gomes or the member) and the holder are that they are guilty of professional misconduct as defined in the *Professional Engineers Act* pursuant to s.72 (2)(a), (b), (d) and (j) of Regulation 941, for sealing an engineering opinion that failed to recommend an adequate safeguarding barrier over the in-feed conveyor on a shrink wrapper machine and that failed to recommend certain required hard-wired, or equivalent, interlocks as safety features on shrink wrapper machines.

AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that an agreement had been reached on the facts and that no witnesses would be called. The Agreed Statement of Facts included the following material facts:

a. The respondent, Antero M. Gomes, P.Eng. (Gomes), is a professional engineer licensed pursuant to the *Professional Engineers Act* (the act).

- b. Gomes was first licensed in 1986, and has practised continuously as a professional engineer since that time. Since 2006, he has practised exclusively in the area of safety engineering.
- c. Gomes was, at all material times, the member of the association designated by the holder under section 47 of Regulation 941 under the act as assuming responsibility for the professional engineering services provided by the holder.
- d. Between February 2009 and March 2010, Gomes stamped three Pre-Start Health and Safety Reviews (PSRs) for McCormick Canada (McCormick) reporting on his review of three shrink wrapper machines that had been newly installed by McCormick at its facility in London, Ontario. It was stated in the PSRs that the safety of the equipment had been assessed "...in accordance with... The *Occupational Health and Safety Act*, specifically Reg. 851... and [a]pplicable clauses from the Ontario Fire Code 1997 and the Ontario Building Code 2006" and that CSA standard CSA-Z432-04 "Safeguarding of Machinery" was taken into consideration.
- e. The first sealed PSR (related to the review of the Line 21 shrink wrapper machine) provided a single specific recommendation for safety compliance, namely, that McCormick modify the existing emergency stop buttons on the equipment.

- f. The second sealed PSW (related to the review of Line 24 EDL shrink wrapper machine) concluded that the machine was considered “sufficiently similar enough to the original” shrink wrapper such that all findings in the previous report could be applied to the new machine.
- g. The third sealed PSR (related to the review of Line 2 shrink wrapper machine) made a single specific recommendation that McCormick install signage by the machine to provide awareness of certain hazards. Gomes also made general recommendations that McCormick provide appropriate training for the use of the machinery, appropriate testing of the devices, as well as the installation of “energy-isolating devices that are capable of controlling and/or dissipating hazardous energy.”
- h. In/about July or August 2013, an employee of McCormick reached through the tunnel guard into the Line 2 shrink wrapper while it was powered. This tripped a sensor for the servo-powered pusher, pushing the employee’s forearm against a rail inside the machine resulting in a broken arm, which then required surgery.
- i. As a result of the injury, McCormick shut down the Line 2 shrink wrapper, and installed an extension to the tunnel guard to prevent reoccurrence of the event.
- j. Following receipt of the complaint, the association retained Thomas L. Norton, P.Eng., as an independent expert. His report identified the following key errors/omissions, which he said should have been noted in the PSRs:
 - a) The tunnel guard over the in-feed conveyor of the Line 2 shrink wrapper was too short, was inadequate to prevent contact with the machine, contrary to R.R.O. 1990, Reg. 851, s. 24, and did not comply with the “minimum distance from hazard” parameters found in Table 3 of CSA-Z432-04.
 - b) The power to the Collation Pusher Servo Motor of the Line 2 shrink wrapper was not interrupted in a hardwired manner, constituting a non-compliance as per section 5 and section 8 of CSA-Z432-04.
 - c) The emergency stops of the Line 2 shrink wrapper were not hardwired to override all other machine controls as required by CSA-Z432-04, section 7.17.1.1.
 - d) The power to the Flight Bar Motors of the Line 21 and Line 24 shrink wrappers were not interrupted in a hardwired manner to interrupt power to the drive enable terminal, and to the load side of the drive, in accordance with section 8 of CSA-Z432-04.
- k. The respondents admitted that the contents of, and the conclusions in, the independent expert’s report were correct, and further admitted that they made the errors/omissions referred to above. The respondents admitted that, in so doing, they:
 - a) failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - b) failed to make reasonable provision for the safeguarding of the health of persons who might be, and indeed were, affected by the work for which they were responsible; and
 - c) failed to make reasonable provision for complying with applicable regulations, and standards, and in particular, with R.R.O. 1990 Reg. 851 and CSA Standard Z432-04.
- l. After PEO communicated the complaint to Gomes and the holder, Gomes responded to PEO acknowledging the errors and omissions contained in the PSRs and noting that the holder had adopted additional review procedures to ensure that this did not occur again. Gomes also informed PEO of eight education programs that he had completed to improve his skills. In addition, Gomes noted that he had applied for the Certified Health & Safety Consultant designation from the Canadian Society of Safety Engineering, which will require him to complete six courses offered by the CSSE over the next six years.

MEMBER AND HOLDER’S GUILTY PLEA

Counsel for the member and holder advised that his clients had no objection or comments on the Agreed Statement of Facts. The member pled guilty to all the allegations of professional misconduct set out therein. The panel conducted a plea inquiry and was satisfied that the member’s and holder’s admission was voluntary, informed and unequivocal.

DECISION AND REASONS

The panel considered the Agreed Statement of Facts and the submissions and agreement of the parties, and found the agreed facts support a finding of professional misconduct against the member and the holder as set out in the Statement of Allegations.

JOINT SUBMISSION AS TO PENALTY AND COSTS

Counsel for the association advised the panel that a Joint Submission as to Penalty and Costs had been agreed upon and that Gomes and the holder had independent legal advice/opportunity to obtain independent legal advice.

Counsel for the association submitted that the purposes of penalty are served in this matter in that Gomes has demonstrated specific steps were taken to

ensure there would be no recurrence, the suspension demonstrates to PEO members that quality control is important, and that PEO takes the matter seriously given that there was an injury as a result of the matter. Counsel for the association stated that steps were taken in 2013 by the member to put in place quality control measures within his practice before the complaint was registered.

Counsel for the member concurred with counsel for the association on mitigating factors stating that McCormick did not find any other problems with the machines and as such it was considered to be an isolated case. Counsel for the member stated that there was very little risk of a re-offense; the member has continued with his continuing education program and has new quality assurance measures in place and untaken by the holder. He also stated that the conduct of the member shows responsiveness and acceptance of responsibility by all subsequent actions prior to and following the filing of the complaint.

PENALTY DECISION

The panel accepted the Joint Submission as to Penalty and concluded that the proposed penalty is reasonable and in the public interest. The member and holder co-operated with the association and by

agreeing to the facts and proposed penalty, have accepted responsibility for their actions and avoided unnecessary expense to the association.

Accordingly, the panel ordered:

- a. Pursuant to s. 28(4)(f) of the act, Gomes shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of eight (8) months;
- b. Pursuant to s. 28(4)(f) of the act, the holder shall receive an oral reprimand and the fact of the reprimand shall not be recorded on the register;
- c. Pursuant to s. 28(4)(b) of the act, Gomes' licence shall be suspended for a period of one (1) week, commencing on December 13, 2015;
- d. The finding and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) of the act (the summary). The summary shall be published with reference to Gomes' name but without reference to the holder's name; and
- e. There shall be no order as to costs.

REPRIMAND

Following the member's and holder's waiving their right to appeal, the panel administered the reprimand immediately following the conclusion of the hearing.

The Decision and Reasons was signed on March 22, 2016 by panel chair Anne Poschmann, P.Eng., on behalf of the members of the Discipline panel: Santosh Gupta, P.Eng., Rebecca Huang, LLB, LLM, Patrick Quinn, P.Eng., and Rob Willson, P.Eng.

WOODBRIIDGE AREA CONTRACTOR FINED \$5,000 FOR UNAUTHORIZED USE OF A PROFESSIONAL ENGINEER'S SEAL

On September 15, 2017, Dole Contracting Inc. of Woodbridge, Ontario, was convicted of breaching the *Professional Engineers Act* by the Ontario Court of Justice and fined \$5,000 for use of a professional engineer's seal.

Dole was retained as the contractor for a building retrofit in Toronto in April 2015, and was working under the supervision of the project architect. As part of the project, Dole was responsible for the demolition of a non-loadbearing cinder block partition wall. Dole was required to install temporary shoring, for which a professional engineer was needed to prepare drawings and review its installation. The partition wall was demolished without temporary shoring or the involvement of a professional engineer.

A Dole employee submitted two letters to the project architect stating the temporary shoring had been installed and had been reviewed by a professional engineer. These letters bore a professional engineer's seal without the affected professional engineer's knowledge or consent.

Dole was convicted of two offences relating to use of the seal.

Nick Hambleton, associate counsel, regulatory compliance, represented PEO in this matter.