

## DECISIONS 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 GHOLAMREZA SEKHAVATI, P.ENG., a member of the Association of Professional Engineers of Ontario, and GHOLAMREZA SEKHAVATI O/A RE-CON CONSULTING, a holder of a certificate of authorization.

The panel of the Discipline Committee met to hear this matter on July 24, 2017 at the Association of Professional Engineers of Ontario (the association) at Toronto.

### THE ALLEGATIONS

The association alleged that Gholamreza Sekhavati, P.Eng. (Sekhavati), and Gholamreza Sekhavati o/a Re-Con Consulting (Re-Con) were guilty of professional misconduct as follows:

- a. Signing and sealing structural drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that failed to meet the standard of a reasonable and prudent practitioner, amounting to professional misconduct as defined by section 72(2)(a) of Regulation 941.
- b. Signing and sealing structural drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that failed to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work, amounting to professional misconduct as defined by section 72(2)(b) of Regulation 941.
- c. Signing and sealing structural drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that failed to make reasonable provision or complying with applicable standards and/or codes, amounting to professional misconduct as defined by section 72(2)(d) of Regulation 941.
- d. Signing and sealing structural drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that were prepared in an unprofessional manner, amount-

ing to professional misconduct as defined by section 72(2)(j) of Regulation 941.

### AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that agreement had been reached with Sekhavati and Re-Con (collectively, the respondents) on the facts, and introduced an Agreed Statement of Facts, which provides as follows:

1. Sekhavati is a professional engineer licensed pursuant to the *Professional Engineers Act* (the act).
2. Re-Con is an unincorporated sole proprietorship and a certificate of authorization holder. Sekhavati is the principal of Re-Con, and is the person designated under section 47 of Regulation 941 under the act as assuming responsibility for the professional engineering services provided by Re-Con. All of the structural drawings referred to below were signed and sealed by Sekhavati, and referred to Re-Con in the title block.
3. The complainant, Brett Forestell (Forestell), is the deputy chief building official, engineering & development services department, City of Belleville, Ontario. The complaint was made on February 5, 2014, and was accompanied by a letter, which referred to s. 8(9) of the *Building Code Act*.
4. Prior to November 2013, Rajinder Chaku of the architectural firm Rajinder Chaku Architect Inc. (RCA) retained Re-Con to provide structural drawings related to the proposed construction of a new hotel and retail space located at 245 North Front St., Belleville, Ontario.
5. On or about November 21, 2013, RCA submitted to the city of Belleville (city) an Application for a Permit to Construct a new hotel located at 245 North Front St., Belleville, Ontario.

**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 416-840-1444 or 800-339-3716, ext. 1444. Or email [enforcement@peo.on.ca](mailto: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.

6. On or about December 18, 2013, RCA submitted to the city an Application for a Permit to Construct a single storey retail use building (the retail building) at the same city address.
7. Both permit applications included Commitments to General Review for structural engineering signed by Sekhavati, and each attached structural design drawings signed and sealed by Sekhavati on October 10, 2013.
8. Forestell issued a permit application review letter dated January 30, 2014, in connection with the retail building. The letter listed 35 separate deficiencies in the drawings submitted with the Application for a Permit. Of these, the items numbered 19 to 29 related to Sekhavati's work. Attached as Schedule A [to the Agreed Statement of Facts] is a copy of this letter. RCA provided a response to this letter on April 29, 2014, which response included revised structural drawings signed and sealed by Sekhavati on April 24, 2014. No further steps have been taken to date by the owner to pursue the retail building, and no further drawings have been prepared.
9. Forestell issued a permit application review letter dated February 7, 2014, in connection with the proposed hotel (the hotel). This letter listed 74 separate deficiencies in the drawings and other materials submitted with the Application for a Permit. Of these, items numbered 47 to 51 related to Sekhavati's work. Attached as Schedule B [to the Agreed Statement of Facts] is a copy of this letter.
10. Forestell sent further permit application review letters to RCA dated: May 9, 2014, June 9, 2014, September 11, 2014, November 6, 2014, February 17, 2015, March 30, 2015, and April 27, 2015, all of which related to drawings that had been revised and re-submitted by RCA in connection with the hotel. In each case, Forestell identified either new or continuing deficiencies in the signed and sealed structural drawings of Sekhavati and Re-Con that prevented the issuance of a building permit. Attached as Schedule C [to the Agreed Statement of Facts] is a chart showing the structural issues raised in these permit application review letters.
11. With regard to the hotel only, all of the issues identified by Forestell in the review letters referred to above were eventually rectified, and a Building Permit for the hotel was finally issued on August 25, 2015. Construction of the hotel commenced on or about September 2015.
12. The association retained Daria Khachi, P.Eng., as an independent expert, to review the respondent's work. Mr. Khachi prepared a report dated August 2, 2016 (the first report), a copy of which (without appendices) is attached [to the Agreed Statement of Facts] as Schedule D. The first report identified additional structural design deficiencies, over and above the issues that had been identified by Forestell, and also commented on the many iterations of the structural drawings. Mr. Khachi concluded:

“Acknowledging that numerous submissions were provided to the building department with ample time in between to complete coordination of work between all disciplines, and to complete proper peer review and quality assurance checks, I would respectfully conclude that the design of G. Sekhavati, P.Eng., and Re-Con Consulting are inconsistent with generally accepted standards in the field of professional engineering.

Besides coordination issues, we have also identified design deficiencies that were not identified by the city's deputy chief building official in the correspondence I have reviewed. These items as noted in my report are critical and need to be reviewed by the engineer of record and rectified. As these deficiencies are a building code violation and a potential risk to public safety, a proper design would be expected of a reasonable and prudent practitioner.”
13. Mr. Khachi provided a further report (the second report) by a letter dated April 7, 2017. The second report commented on additional information and drawings provided to the association by counsel for the respondents. A copy of this second report is attached [to the Agreed Statement of Facts] as Schedule E.
14. For the purposes of this proceeding, the association and the respondents accept as correct the findings, opinions and conclusions contained in the first and second reports. The respondents admit that they failed to meet the minimum acceptable standard for engineering work of this type, and that they failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances.
15. The respondents obtained a report from Ralph Balbaa, P.Eng., dated June 12, 2017 (the responding report), which referred to

even more drawings, and responded to several of the issues raised by Mr. Khachi. A copy of the responding report is attached [to the Agreed Statement of Facts] as Schedule F.

16. The parties agree that, as of the final set of drawings reviewed by Misters Khachi and Balbaa, the final structural design deficiencies identified by Mr. Khachi have still *not* been rectified:
    - a. All of the deficiencies in the retail building drawings dated April 24, 2014. As mentioned above, no further steps have been taken to date by the owner and RCA to pursue the retail building, and, as a result, no further revised drawings have been prepared.
    - b. Number 1 in the first report, namely “Structural drawing SOI (Notes and Specifications), revision per City Notice June 2014. The noted roof live load of 1.5 kPa specified on sheet SOI is incorrect and too low for the roof design of the hotel building.” The respondents state that the roof live load used by Lake Scugog Lumber Inc. (the timber fabricator) to design the roof as built is 3.01 kPa, which is twice as much as required by the building code.
    - c. 6(b) in the first report namely “On sheet SOI,” the Stair Section 1/S03 and Elevator Section 2/S03 specify lintel angles L-4x4x1/4 above the door openings. These are different than the lintel angles specified on the lintel schedule on sheets S03 and S04 (L4x3x1/4 noted). Furthermore, different lintel angles are specified on the lintel schedule on sheet SOS (L3x3x1/4 noted). The respondents state that this is an organizational issue, not a safety one.
    - d. The issue raised by Mr. Khachi on page 7 of the second report (Safety Harness Anchorage) namely “Reference: Structural drawing SK09 with engineer seal dated November 11, 2015, labelled ‘Safety Harness Anchorage.’ The detail on this sheet refers to a ‘safety’ item. The *Occupational Health and Safety Act* has stringent requirements for the supports of life lines and other safety tie-backs. Although this may not be a code violation (since not enough information has been provided on this sheet), as an engineer who notices the words ‘safety harness’ on these drawings, I am concerned that a ½ inch diameter mechanical bolt fastened to an unspecified masonry wall (is the block wall hollow or solid?) could potentially be a dangerous detail. Sekhavati should review the details on this sheet and ensure these details comply with the requirements of the *Occupational Health and Safety Act*.” The respondents agree that this detail was inadequate, but state that this was a temporary tie-back used during construction only.
  - e. In addition, a review by Mr. Khachi of drawings titled “As Built,” signed and sealed by Sekhavati on December 18, 2015, disclosed that the W310x52 steel beam above the main floor of the hotel along gridline 5, between grids C and D, is severely underdesigned. Attached [to the Agreed Statement of Facts] as Schedule G is an email from counsel for PEO to counsel for the respondents, notifying him of the problem, and requesting immediate rectification. The respondents acknowledge that this design is flawed. However, the respondents state that the actual built opening is only 11 feet, and a revised shorter beam has been substituted for the beam reviewed by Mr. Khachi. The shorter beam is adequate.
17. By reason of the aforesaid, the association and the respondents agree that Gholamreza Sekhavati, P.Eng., and Gholamreza Sekhavati o/a Re-Con Consulting are guilty of professional misconduct as follows:
    - a. Signing and sealing structural drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that failed to meet the standard of a reasonable and prudent practitioner, amounting to professional misconduct as defined by section 72(2)(a) of Regulation 941.
    - b. Signing and sealing structural drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that failed to make reasonable provision or complying with applicable standards and/or codes, amounting to professional misconduct as defined by section 72(2)(d) of Regulation 941.
    - c. Signing and sealing structural drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that were prepared in an unprofessional manner, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

#### ADDITIONAL EVIDENCE

As requested by the panel, counsel for the association also provided the panel with a copy of the complaint form filed February 14, 2014.

#### PLEA BY MEMBER AND HOLDER

Gholamreza Sekhavati, P.Eng., and Gholamreza Sekhavati o/a Re-Con Consulting admitted to all allegations as set out

in paragraph 17 of the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the member and holder's admissions were voluntary, informed and unequivocal.

## DECISION

The panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and, in particular, that Gholamreza Sekhavati, P.Eng., and Gholamreza Sekhavati o/a Re-Con Consulting committed acts of professional misconduct as set out in paragraphs 7, 8, 10 and 16 of the Agreed Statement of Facts, in that they:

- a. Signed and sealed drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that failed to meet the standard of a reasonable and prudent practitioner, amounting to professional misconduct as defined by section 72(2)(a) of Regulation 941.
- b. Signed and sealed drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that failed to make reasonable provision or complying with applicable standards and/or codes, amounting to professional misconduct as defined by section 72(2)(d) of Regulation 941;
- c. Signed and sealed drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario that were prepared in an unprofessional manner, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941;

Counsel for the association advised that the association was not calling any evidence with respect to the allegation of professional misconduct set out in subparagraph (b) of the Statement of Allegations. Gholamreza Sekhavati, P.Eng., and Gholamreza Sekhavati o/a Re-Con Consulting are, therefore, found to be not guilty with respect to that allegation.

## PENALTY

Counsel for the association advised the panel that a Joint Submission as to Penalty and Costs had been agreed upon. The joint submission provides as follows:

- a. Pursuant to section 28(4)(f) of the act, Sekhavati and Re-Con shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently.
- b. Pursuant to section 28(4)(b) of the act, Sekhavati's licence and Re-Con's certificate of authorization shall be suspended for a period of two (2) weeks, commencing on a date to be agreed, such date to be no later than three (3) weeks after the date of the Discipline Committee's decision.
- c. Pursuant to sections 28(4)(j) and 28(5) of the act, the finding and order of the Discipline Committee shall be

published in summary form in the Professional Engineers Ontario's (PEO's) official publication, with reference to names.

- d. Pursuant to section 28(4)(d) of the act, it shall be a term or condition on Sekhavati's licence that he shall, within fourteen (14) months from July 24, 2017, successfully complete PEO's Advanced Structural Analysis (16-CIV-B1) and Advanced Structural Design (16-CIV-B2) examinations.
- e. Pursuant to sections 28(4)(b) and (k) of the act, in the event Sekhavati does not successfully complete the examinations set out in (d), his licence shall be suspended pending successful completion of the examinations.
- f. Pursuant to section 28(4)(e) of the act, there shall be an order requiring the respondents to provide to the registrar, for review by PEO's expert at the respondents' expense, a full set of actual as-built structural drawings of the hotel, and further requiring the respondents to inform the owner, the architect, and the city of any public safety concerns identified by PEO's expert as a result of such review. The fees payable by the respondents for PEO's expert's review shall not exceed \$3,000.
- g. There shall be no order as to costs.

The Joint Submission as to Penalty and Costs included that the respondents had independent legal advice, or had the opportunity to obtain independent legal advice, with respect to the penalty set out above.

The association and the respondents agreed, at the hearing, that the two-week suspension would start on July 31, 2017. The panel noted that, under section 28(4) of the act, the panel only had the power to suspend a licence for up to two years, not indefinitely. The association and the respondents agreed that the respondents will provide the association with the as-built drawings on or before August 24, 2017.

## PENALTY DECISION

The panel determined that the penalties and costs set out in the joint submission were appropriate as they fell within a reasonable range of acceptability, taking into account the following items:

- a. Protection of the public interest;
- b. Remediation of Sekhavati;
- c. Maintenance of the reputation of the profession in the eyes of the public;
- d. General deterrence; and
- e. Specific deterrence.

The panel concluded that the proposed penalty and costs are reasonable and in the public interest. Sekhavati has co-operated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association.

The panel orders:

- a. Pursuant to section 28(4)(f) of the act, that Sekhavati and Re-Con shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently.
- b. Pursuant to section 28(4)(b) of the act, that Sekhavati's licence and Re-Con's certificate of authorization shall be suspended for a period of two (2) weeks starting on July 31, 2017.
- c. Pursuant to sections 28(4)(j) and 28(5) of the act, that the finding and the order of the Discipline Committee shall be published in summary form in PEO's official publication, with reference to names.
- d. Pursuant to section (28(4)(d) of the act, that it shall be a term or condition on Sekhavati's licence that he shall, within fourteen (14) months from July 24, 2017, successfully complete PEO's Advanced Structural Analysis (16-CIV-B1) and Advanced Structural Design (16-CIV-B2) examinations.
- e. Pursuant to sections 28(4)(b) and (k) of the act, that in the event Sekhavati does not successfully complete the examinations set out in the preceding subparagraph, his licence shall be suspended for up to the maximum period prescribed by section 28(4) of the act, pending successful completion of the examinations.
- f. Pursuant to section 28(4)(e) of the act, that the respondents provide to the registrar, for review by the association's expert at the respondent's

expense on or before August 24, 2017, a full set of actual as-built structural drawings of the hotel and, further, that the respondents inform the owner, the architect, and the city of any public safety concerns identified by the association's expert as a result of such review. The fees payable by the respondents for the association's expert review shall not exceed \$3,000.

#### ADDITIONAL NOTE

Counsel for the association undertook to provide the city with copies of the first and second reports.

Jag Mohan, 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: Ishwar Bhatia, P.Eng., David Germain, J.D., Glenn Richardson, P.Eng., and Michael Wesa, P.Eng.