

SUMMARY OF DECISION AND REASONS

Association of Professional Engineers Ontario and
HENRY J JANSEN, P.ENG., and 2154512 ONTARIO INC.
o/a CRITERIUM-JANSEN ENGINEERS

A panel of the Discipline Committee met to hear this matter on September 20, 2017 at the offices of the Association of Professional Engineers of Ontario (the association) at Toronto.

The association had alleged that Henry J. Jansen, P.Eng. (Jansen), and 2154512 Ontario Inc. o/a Criterium-Jansen Engineers (CJE) were guilty of professional misconduct in a number of respects. Counsel for the association advised the panel that agreement had been reached with Jansen and CJE (collectively, the parties) on the facts, which included admissions on most of the allegations of professional misconduct, but that the association would not be presenting evidence to support one of the allegations.

AGREED STATEMENT OF FACTS

According to the Agreed Statement of Facts, Jansen and CJE were retained by the owner of a building in Dundalk, Ontario to perform a site inspection pertaining to the structural integrity of the foundation sill plate and the floor framing on the first and second floors of the building. The owner had been ordered by the chief building official of the Township of Southgate, Ontario, who had inspected the building, to obtain an engineer's report regarding necessary repairs.

Jansen inspected the building, and delivered to the owner a signed and sealed "Site Inspection Report." Jansen's report stated, among other things, that "based on visible evidence and our analysis, we find the flooring framing in the building to be serviceable, presenting no immediate structural concern."

Both Jansen's inspection and report fell below the standard of a reasonable and prudent engineer. Jansen failed to properly inspect the premises, and failed to identify structural deficiencies in the building that posed a danger to persons and property.

The owner submitted Jansen's report to the chief building official, who rejected its conclusions. The town issued an unsafe building order in relation to the building. A few months later, the building's west wall partially collapsed. The town issued an "emergency order concerning immediate danger" and ordered that barriers be erected immediately.

PEO obtained an independent expert report which concluded, among other things:

- Jansen ought to have required that the floors and roof be shored immediately and that a comprehensive evaluation of the safety and serviceability of the building be done; and

- a reasonable and prudent engineer would have considered, not just the visible sag and decay or deformation, but the possible implications of not attending to the underlying problems of moisture infiltration, decay and sag in the structural components. The practitioner would also recommend any temporary measures necessary to safeguard the structure against ongoing deterioration or collapse.

For the purposes of this proceeding, Jansen and CJE accepted as correct the findings, opinions and conclusions contained in the expert report. Jansen and CJE admitted 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.

The parties agreed that Jansen and CJE were guilty of professional misconduct as follows:

- Conducting a building inspection in a manner that failed to meet the standard of a reasonable and prudent practitioner;
- Conducting a building inspection in a manner that failed to make reasonable provision for complying with applicable standards and/or codes;
- Signing and sealing a building inspection report that failed to meet the standard of a reasonable and prudent practitioner;
- Signing and sealing a building inspection report that failed to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work;
- Signing and sealing a building inspection report that failed to make reasonable provision for complying with applicable standards and/or codes;
- Undertaking work in a manner that would reasonably be regarded by the engineering profession as unprofessional.

The Agreed Statement of Facts also made reference to a number of courses and examinations that Jansen had taken or planned to take.

The panel conducted a plea inquiry and was satisfied that Jansen and CJE's admissions of professional misconduct were voluntary, informed and unequivocal.

DECISION AND REASONS—PROFESSIONAL MISCONDUCT

The panel considered the Agreed Statement of Facts and accepted the guilty plea as set out above. The panel also accepted the findings and conclusions of the expert report that support the admission by Jansen and CJE and the guilty plea in this case. The panel therefore found Jansen and CJE guilty of professional misconduct as set out in paragraph 14 of the Agreed Statement of Facts.

DECISION—PENALTY AND COSTS

The parties presented a Joint Submission on Penalty and Costs. After a question from the panel, the parties agreed to a clarification to one of the proposed terms. The panel accepted the Joint Submission and ordered:

- a. Jansen and CJE shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of one (1) year;
- b. Jansen's licence shall be suspended for a period of two weeks commencing on the date of the Discipline Committee's decision, which is September 20, 2017;
- c. the finding and order of the Discipline Committee shall be published in summary form in PEO's official publication with reference to names;
- d. it shall be a term or condition on Jansen's licence that he shall, within fourteen (14) months of the Discipline Committee's decision, successfully complete PEO's Advanced Structural Analysis (16-CIV-B1) and Advanced Structural Design (16-CIV-B2) examinations;
- e. in the event Jansen does not successfully complete the examinations set out in subparagraph (d), his licence shall be suspended up to the maximum period prescribed by section 28(4) of the *Professional Engineers Act*, pending successful completion of the examinations;
- f. a restriction shall be placed upon Jansen's licence prohibiting him from practicing structural engineering unless and until he passes the examinations set out in subparagraph (d); and
- g. a restriction shall be placed upon CJE's certificate of authorization, prohibiting it from practising structural engineering unless and until Jansen passes the examinations set out in subparagraph (d), or unless and until another holder of a licence is designated by CJE pursuant to section 17 of the *Professional Engineers Act* as the person responsible for the professional engineering services provided by CJE, whichever comes first.

REASONS FOR DECISION—PENALTY AND COSTS

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 Jansen;
- 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 were reasonable and in the public interest. Jansen and CJE have co-operated with the association and, by agreeing to the facts and a proposed penalty, have accepted responsibility for their actions and have avoided unnecessary expense to the association.

ADDITIONAL NOTE

Counsel for the association undertook to provide the town with a copy of the expert report.

Ishwar Bhatia, 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: James Amson, P. Eng., Robert Dony, P. Eng., Leigh Lampert, LLB, and Glenn Richardson, P.Eng.