

Association of Professional Engineers of Ontario examination 98-Elec-87 (Power Systems Engineering), the term, condition or limitation set out in subparagraph (c) above shall be amended to add electrical engineering as subparagraph (iii) thereof.

The written Decision and Reasons were dated August 31, 2017, and were signed by Richard Austin as the chair of the panel on behalf of himself and panel members Santosh Gupta, P.Eng., and Charles Kidd, P.Eng. Panel member Ravi Gupta, P.Eng., dissented in respect of the penalty. Previous panel chair Kenneth Serdula, P.Eng., passed away before the Decision and Reasons were concluded and Richard Austin chaired the panel subsequently.

SUMMARY OF 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 PEO v. JASON W. BRASSEUR, P.ENG., a member of the Association of Professional Engineers of Ontario.

The panel of the Discipline Committee met to hear this matter on October 13, 2016 at the Association of Professional Engineers of Ontario at Toronto.

The notice of hearing was issued on September 22, 2016. The decision of the Complaints Committee to refer the matter, dated March 21, 2016, including the Statement of Allegations as referred and a Registrar's Certificate attesting that the member's licence issued December 3, 1997 was current, were filed with the panel.

OVERVIEW

In July 2009, the town of Parry Sound awarded a fixed price (\$3,184,948 + GST) contract to Samson Management and Solutions Ltd. for renovations to the Bobby Orr Community Centre. The contract included a Request for Change (RFC) process for work beyond the scope of the contract. Work on the contract commenced in August 2009.

Steenhof Building Services Group was retained by the town to supervise the project and administer the contract. In March 2010, an employee of Steenhof discovered apparent discrepancies in an RFC submitted by Samson in that a subcontractor's stipulated quote was different from the quote provided by the subcontractor to the general contractor, Samson. Subsequent investigation showed a number of other irregularities and the town terminated the contract.

The member was the sole officer and director of Samson, a general contracting company incorporated in 1999. Samson specialized in open

tender public construction projects and did not hold a certificate of authorization under the act. The member directly caused to be prepared all RFCs submitted by Samson.

As a result of a police investigation, the member was charged on September 29, 2010 with 32 counts of fraud and use of forged documents. Samson was also charged with 16 counts of fraud and attempted fraud for the same occurrences. Negotiations between the crown prosecutor and the defendant's legal counsel pursued and on September 6, 2011 and the Ontario Court of Justice found Samson guilty of attempted fraud according to section 24(1) and section 380(1) of the Criminal Code of Canada. The charges against the member were withdrawn.

Samson was ordered to reimburse the town \$873.65, the actual amount of the fraudulent benefit, and pay a fine totalling \$5,000.

THE ALLEGATIONS

The Statement of Allegations against Jason W. Brasseur, P.Eng., as referred by the Complaints Committee, was dated March 21, 2016.

AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which provides as follows:

1. At all material times, the respondent, Jason Brasseur, P.Eng. (Brasseur), was a professional engineer licensed pursuant to the *Professional Engineers Act*.
2. At all material times, Brasseur was the sole officer and director of Samson Management and Solutions Ltd. (Samson), a general contracting company specializing in open tender public construction projects. Samson did not hold a certificate of authorization. A Corporation Profile Report for Samson, dated February 11, 2016, was attached to the Agreed Statement of Facts.
3. In or about July 2009, the Town of Parry Sound (the town) awarded a fixed-price contract to Samson to conduct renovations to the Bobby Orr Community Centre. Work under the contract commenced in or about August 2009.

4. Under the arrangement in place under the contract, Samson was required to submit Requests for Change (RFCs) to the town's contract administrator in the event it sought additional payments. These RFCs were required to be accompanied by supporting documentation, including quotations or invoices for the work from Samson's subcontractor(s). Brasseur directly caused to be prepared all RFCs submitted by Samson.
5. The town retained Steenhof Building Services Group (Steenhof) to supervise the project on behalf of the town. Among other things, Steenhof was responsible for reviewing the RFCs submitted by Samson.
6. In or about early March 2010, Gerald Slavish, an employee of Steenhof, discovered a discrepancy in connection with one of Samson's RFCs. Revised RFC#61 contained a price regarding welding work by Seguin Welding. Slavish requested clarification from Brasseur, who provided him with a purported quote on Seguin Welding letterhead. It was subsequently determined that the quote was false and the quote letter was forged. An unsigned affidavit from Slavish, which describes how he found out about the forgery, was attached to the Agreed Statement of Facts.
7. Subsequent investigation showed that a number of other quotes and/or invoices were false and/or forged. The town terminated the contract.
8. The fraudulent documents were prepared at Brasseur's direction. Brasseur admits that he put forward to the town as "costs," amounts he knew were fictitious and inflated, and that he knew fraudulent documents were being prepared and provided to the town as "quotes" or "invoices." Among the fraudulent documents were the following:
 - a) on or about March 1, 2010, Samson submitted a Request for Change that included purported costs of approximately \$13,612.00, with a supporting quotation on what appeared to be "Seguin Welding" letterhead, which quotation was fabricated;
 - b) on or about March 10, 2010, Samson submitted a Request for Change that included purported costs of approximately \$2420.00, with a supporting quotation on what appeared to be "Ray White Masonry" letterhead, which quotation was fabricated;
 - c) on or about March 10, 2010, Samson submitted a Request for Change that included purported costs of \$200.00, with a supporting quotation on what appeared to be "Seguin Welding" letterhead, which quotation was fabricated;
 - d) on or about March 11, 2010, Samson submitted a revised Request for Change that included purported costs of \$12,250.80, with a supporting quotation on what appeared to be "Seguin Welding" letterhead, which quotation was fabricated; and
- e) on or about April 5, 2010, Samson submitted a Request for Change that included purported costs of \$730.00, with a supporting quotation on what appeared to be "Ray White Masonry" letterhead, which quotation was fabricated.
9. Brasseur was charged on or about September 29, 2010, with 32 counts of fraud and use of forged documents, contrary to sections 380(1) and 368 (1)(a) of the Criminal Code. A copy of the information sworn against Brasseur was attached to the Agreed Statement of Facts. As a result of negotiations between the Crown and counsel for Brasseur, Samson agreed to plead guilty to 16 counts of fraud and attempted fraud, and the charges against Brasseur were withdrawn. The information in connection with the charges to which Samson pleaded guilty, a copy of the transcript of the court hearing, which took place on September 6, 2011, at which the plea was accepted and Samson was found guilty and a copy of the Certificate of Conviction were attached to the Agreed Statement of Facts.
10. Based on these facts, it is agreed that Brasseur is guilty of professional misconduct as follows:
 - a) In or about March 2010 and April 2010, in the course of carrying out a contract, Brasseur directly caused to be prepared, false or fabricated subcontractor quotations in an attempt to defraud the Town of Parry Sound, amounting to professional misconduct as defined by s. 72(2)(j) of Regulation 941;
 - b) Brasseur was the sole officer and director of a company, Samson Management Solutions Ltd., that was convicted on or about September 6, 2011 of 16 counts of fraud committed against a client in the course of carrying out a contract, amounting to professional misconduct as defined by s. 72(2)(j) of Regulation 941.

PLEA BY MEMBER

Jason Brasseur, P.Eng., admitted to the allegations set out in the Agreed Statement of Facts and stated that he had solicited and received legal counsel independently. The panel conducted a plea inquiry and was satisfied that the member's admission was voluntary, informed and unequivocal.

DECISION

The panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct pursuant to section 28(2)(b) of the act by contravening section 72(2)(j) of Regulation 941.

REASONS FOR DECISION

Section 72(2)(j) of Regulation 941 defines professional misconduct as "conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonorable or unprofessional."

As set out in the Agreed Statement of Facts, a) In or about March, 2010 and April 2010, in the course of carrying out a contract, Brasseur directly caused to be prepared, false or fabricated subcontractor quotations in an attempt to defraud the Town of Parry Sound, amounting to professional misconduct as defined by s. 72(2)(j) of Regulation 941; b) Brasseur was the sole officer and director of a company, Samson Management Solutions Ltd., that was convicted on or about September 6, 2011 of 16 counts of fraud committed against a client in the course of carrying out a contract, amounting to professional misconduct as defined by s. 72(2)(j) of Regulation 941.

The panel accepted that the parties had reached agreement on fact in good faith and with access to legal counsel. The monetary amount was relatively small, however, the fraud did involve public funds. The profession requires a high level of integrity and the conduct of the member was inappropriate and unacceptable to that standard.

PENALTY

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon and dated October 11, 2016.

The association considers fraud a serious offence and provided precedents to support the proposed five-month licence suspension. Two Discipline Committee decisions (PEO vs Bedard – June 2003 and PEO vs Kalaycioglu – February 2009) entailed fraud

and resulted in revocation of licence. In May 2016, an appeal by Gagnon of an 18-month suspension ordered in Quebec was denied. In each case, complex fraud schemes resulted in significant loss to others over a sustained period of time.

The association also referred to the Ontario court finding that Samson had altered or falsely created subcontractor's quotes. The presiding judge accepted that although \$22,512 worth of quotes had been falsely submitted, not all of the work had been approved and/or completed. The amount falsely claimed and actually paid was only \$873.65, small in comparison to the total value of the contract. The company was found guilty, paid the fine and reimbursed the town.

Mitigating factors in the proposed penalty were the small monetary value of the fraudulent actions and that the contract was terminated prior to completion as a result. Both the company and the member had suffered severe adverse effects through the resolution process. Furthermore, the member co-operated with the association in resolving agreement on fact and a joint submission on penalty.

The member confirmed that resolution had been a complex and stressful process over six years. A number of factors have affected the outcome and Samson was effectively bankrupt. The member accepts the proposed penalty as fair.

PENALTY DECISION

The panel accepted the Joint Submission as to Penalty and accordingly ordered:

- a) Pursuant to s. 28(4)(f) of the *Professional Engineers Act*, Brasseur shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of two (2) years;
- b) Pursuant to s. 28(4)(b) of the *Professional Engineers Act*, Brasseur's licence shall be suspended for a period of five (5) months, commencing on the day the penalty decision is pronounced by the Discipline Committee;
- c) Pursuant to s. 28(4)(h) of the *Professional Engineers Act*, Brasseur shall, within forty-five (45) days of the day the penalty decision is pronounced by the Discipline Committee, pay a fine in the amount of two thousand, five hundred dollars (\$2500) to the minister of finance; and
- d) The finding and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) and 28(5) of the *Professional Engineers Act*, with reference to names.
- e) There shall be no order as to costs.

REASONS FOR DECISION ON PENALTY

The panel considered the penalty significant, but appropriate under the circumstances. The member committed fraudulent acts in the operation of his company. Such misconduct cannot be tolerated by the profession. However, the panel saw no evidence of personal gain as the motive. Furthermore, there was no indication in the submissions that the member would be unable or unwilling to serve the public in a professional manner in future.

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.