

## 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 ALEXANDER COLAS, P.ENG., a member of the Association of Professional Engineers of Ontario.

The panel of the Discipline Committee met to hear this matter on November 5, 2018, at the Association of Professional Engineers of Ontario at Toronto.

### THE ALLEGATIONS

The Statement of Allegations against Alexander Colas (Colas), as stated in the Statement of Allegations referred by the Complaints Committee, was dated February 14, 2018.

### SUMMARY OF AGREED STATEMENT OF FACTS

1. Alexander Colas is a professional engineer licensed pursuant to the *Professional Engineers Act* since 2002. Colas graduated from the University of Toronto in 1995 with a Bachelor of Applied Science in Mechanical Engineering.
2. Colas' training in structural engineering is limited to some undergraduate courses and examinations for a Building Inspector licence. Colas does not have sufficient training or experience to practise in the area of structural engineering.
3. Colas was the owner and operator of Pure Logic Homes Inc. (Pure Logic) from 2007 until at least October 2014. Pure Logic is described on its website as a private corporation providing home renovation solutions to a variety of residential clients throughout the Greater Toronto Area. Pure Logic Renovations was a division of Pure Logic and was "a full-service design and construction company" that included structural assessment and planning among its offered services. At all material times, neither Colas nor Pure Logic held a certificate of authorization.
4. In or about July 2014, the complainant, Susan Qing Tan (Tan), retained Colas to provide structural engineering services in relation to a renovation at 510 Ontario Street in Toronto. The renovation involved adding four new dwelling units, balconies and a detached parking garage to an existing 12-unit apartment. Tan had found Pure Logic and Colas on kijiji.ca.
5. Colas and Tan exchanged various sets of drawings, including structural drawings, during July 2014. Tan paid Colas \$1,271.25 on August 2, 2014. Colas signed and sealed final drawings, including structural drawings for the project (the Drawings), on August 3, 2014. The Drawings were marked with the notation: "Release for Permit."
6. The Drawings were deficient for several reasons, including (but not limited to):
  - a. Inaccurately indicating two floors, whereas the building plans indicated three;
  - b. Indicating structural features that did not comply with the Ontario Building Code, including inadequacies in the footings, floor slabs, foundation wall, floor joists, built up lintel and plywood sheathing; and
  - c. Omitting connection details, guard details, framing elements and design loads.
7. Colas and Tan met with Richard Chiu, a plan examiner at the City of Toronto, on August 15, 2014, to discuss the Drawings and to determine what was required in order to allow the issuance of a building permit for the project. By email dated August 15, 2014, Colas summarized the city's concerns. He subsequently promised to follow up and to provide the required updated drawings. Tan made extensive efforts thereafter to contact Colas to resolve the deficiencies in the Drawings. By early September 2014, Colas stopped communicating with Tan. Colas never took any steps to resolve the deficiencies in the Drawings.

**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 416-224-1100, ext. 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.

8. Tan made her complaint to PEO on October 27, 2014. The chronology attached to the complaint sets out Tan's many attempts to contact Colas. The complaint was sent by PEO to Colas. On November 11, 2014, the same day he advised PEO that he had received the complaint, Colas emailed Tan to advise her that he had not responded to her because he had commenced work at the City of Toronto as a building inspector on September 15, 2014.
9. PEO retained Steven Adema, P.Eng., as an independent expert to review the work done by Colas. His report concluded as follows: "After reviewing the drawings, we have the following conclusions:
- 1) The drawings as submitted contain serious structural flaws.
  - 2) These flaws, if constructed as indicated, would pose grave risk to the safety of the occupants.
  - 3) The risks are, but not limited to:
    - a. Complete collapse of the garage structure roof framing under occupancy loads.
    - b. Collapse of the foundation wall under lateral soil pressure (likely during backfilling operations).
    - c. Collapse or excessive deflections of the existing framing under the new third floor/roof enclosure.
    - d. Failure of the exterior stair framing under occupant loading.
    - e. Failure of the upper level exterior guards under occupant loading.

This leads us to state the following:

- 1) Colas failed to be aware of, consider or comply with standards and codes as outlined in the report above.
  - 2) Colas' work included errors, omissions and deficiencies that a reasonable and prudent practitioner should have identified in the circumstances.
  - 3) As such, Colas failed to meet the standard of a reasonable and prudent practitioner."
10. For the purposes of this proceeding, the respondent accepts as correct the findings, opinions and conclusions contained in the expert report

referred to above. The respondent 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. The respondent further admits that he is not competent, by virtue of his training and experience, to practise structural engineering.

11. By reason of the aforesaid, the parties agree that the respondent, Alexander Colas, P.Eng., is guilty of professional misconduct, as follows:
- a. Signing and sealing structural drawings 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 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 that failed to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws, amounting to professional misconduct as defined by section 72(2)(d) of Regulation 941;
  - d. Offering and providing professional engineering services without a certificate of authorization, amounting to professional misconduct as defined by section 72(2)(g) of Regulation 941;
  - e. Undertaking work he was not competent to perform by virtue of his training and experience, amounting to professional misconduct as defined by section 72(2)(h) of Regulation 941; and
  - f. Providing engineering services in an unprofessional manner, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

The respondent had independent legal advice with respect to his agreement as to the facts, as set out above.

#### PENALTY

The parties submitted a written Joint Submission as to Penalty and association counsel provided oral submissions as to the appropriateness of the Joint Submission as to Penalty. In support of the penalty agreement, counsel for the association referred to two previous decisions: *Association of Professional Engineers of Ontario v. Bruce D. Crozier, P.Eng.*, and *Association of Professional Engineers of Ontario v. Michael A. Schor, P.Eng.*

In the Crozier case, the engineer had submitted a letter to a building official discussing construction work in progress without reviewing the work on site and had later submitted a deficient sketch to the same

official while using his stamp improperly. In the Schor case, the member had provided inadequate designs for a lifting device that later was found by his client to be deficient.

In both cases, the penalties were similar to the penalty agreement before this panel, except the previous penalties had invoked, respectively, a two-month and six-week suspension of licence, rather than the one month proposed here. However, in the Crozier case, the member had denied guilt and hearings took place. In the present case, the member has admitted guilt, avoiding the cost of a full hearing. In the Schor case, the member also took responsibility for his actions and pleaded guilty, and his suspension was accordingly reduced. Schor also received a permanent prohibition on the practice of structural engineering, except under the direct supervision of another professional engineer, which is essentially the same as the penalty in the current matter.

Counsel for the association advised that the agreed plea satisfies the four purposes of penalty as follows:

- a. The permanent prohibition on Colas practising structural engineering ensures protection of the public;
- b. Suspension of the member's licence to practise in concert with publication of the results of the hearing indicates that the reputation of the profession is taken seriously;
- c. Suspension of the member's licence to practise is a serious penalty that provides specific deterrence to the member and general deterrence to other members of the association and the public;
- d. Reprimanding of the member and recording the reprimand on the register for two years will enhance the rehabilitation of the member.

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

- a. Pursuant to section 28(4)(f) of the act, Colas 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 section 28(4)(b) of the act, Colas' licence shall be suspended for a period of one month, commencing on November 5, 2018;
- c. Pursuant to section 28(4)(i) and section 28(5) of the act, the finding and 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) and section 28(4)(e) of the act, there shall be a permanent term, condition limitation and restriction placed on Colas' licence, prohibiting him from engaging in the practice of structural engineering; and
- e. There shall be no order as to costs.

The panel concluded that the proposed penalty was reasonable and in the public interest. Colas has co-operated with the association and, by agreeing to the facts and proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association. To ensure that Colas does not practice structural engineering in the future, there will be a permanent limitation on his professional licence in this regard. The panel considered that the two previous Discipline Committee decisions referred to by counsel for the association were similar to the current matter and provide reasonable guidance with respect to penalty. In the present case, a suspension of one month, rather than two, is reasonable given the co-operation given by the member.

The panel was concerned about the potential that the member might have previously practised structural engineering in other projects, given that his company had been in business for a number of years. The member, thereby, testified that he had used section 9 of the Ontario Building Code, which does not require structural engineering, to determine structural aspects for almost all his projects. However, he did practice structural engineering for one project when he made calculations regarding the structural integrity of a steel beam. He offered to provide PEO with a copy of these for its review. Counsel for the association advised that it will follow up on this, confirm that this work was done correctly, and ensure that public safety was not compromised. The results of this review will not affect the current matter.

The Decision and Reasons was signed on December 10, 2018, by the panel chair, Albert Sweetnam, P.Eng., on behalf of the panel, which included Paul Ballantyne, P.Eng., Michael Wesa, P.Eng., Nadine Rush, C.E.T., and Robert Willson, P.Eng.