

SUMMARY OF DECISION AND REASONS

On allegations of professional misconduct under the *Professional Engineers Act* regarding the conduct of HARJINDER SINGH, P.ENG., a member of the Association of Professional Engineers of Ontario, and MEM ENGINEERING INC., a holder of a certificate of authorization.

The Decision and Reasons was signed on January 15, 2021, by the panel chair, Glenn Richardson, P.Eng., on behalf of the panel, which was composed of Lorne Cutler, P.Eng., and Reena Goyal, JD. The panel of the Discipline Committee (the panel) of the Association of Professional Engineers of Ontario (the association or PEO) convened a hearing remotely via Zoom to hear this matter on July 9, 2020, and October 1, 2020. The association was represented by Leah Price. Harjinder Singh (Singh) and MEM Engineering Inc. (MEM) were unrepresented.

STATEMENT OF ALLEGATIONS

PEO alleged that Singh and MEM are guilty of professional misconduct, in contravention of the *Professional Engineers Act*, R.S.O. 1990, c. P.28 (the act) and Regulation 941, R.R.O. 1990 as amended (Regulation 941) as described in a Statement of Allegations dated November 20, 2019.

SUMMARY OF AGREED STATEMENT OF FACTS

1. Singh has at all material times been licensed under the act. MEM has at all material times held a certificate of authorization issued under the act. Singh is identified under the certificate as the person accepting professional responsibility for the engineering services provided by MEM.
2. Singh's practice focuses on structural engineering. He does not have training in electrical or mechanical engineering.
3. In or about June 2017, Singh and MEM were retained by the complainant, Mark Kasper (Kasper), to provide professional engineering services in connection with the design of a two-storey rental building.
4. The quote for the services was provided on behalf of MEM by Raman Sandhu, whose email signature identified him as "Project Engineer." Raman Sandhu is not licensed under the act.
5. In or about March 2018, MEM provided Kasper with a set of drawings signed and sealed by Singh and dated March 6, 2018 (the Drawings).
6. Kasper submitted the Drawings to the City of Thunder Bay (the City) as part of an application for a building permit.
7. On April 12, 2018, the City advised Kasper, with respect to the building permit application, that "[t]here is a substantial amount of information missing as well as some design concerns" and recommended that he "resubmit architectural drawings completed by an architect or registered small buildings designer with a more proficient understanding of the Ontario Building Code." In addition, the City explained that it required an electrical engineer to complete the electrical design and a mechanical engineer to complete the mechanical design.
8. On April 20, 2018, the City advised Kasper that the structural specifications appeared to have been copied from a different site, as they referred to "existing building conditions and openings over swimming pools." The property had no existing buildings and no swimming pools.
9. On or about May 3, 2018, Kasper provided to MEM a set of plumbing drawings prepared by Allied Plumbing and Drains North.
10. On or about May 14, 2018, MEM made minor revisions to the Drawings, and returned them to Kasper. The revised drawings still bore Singh's stamp and seal dated March 6, 2018. Kasper submitted the revised drawings to the City.
11. On May 24, 2018, the City emailed Kasper stating that the plans had "not been adequately revised" and encouraging Kasper "to find a designer who has thorough knowledge of the Ontario Building Code."
12. On May 31, 2018, the City emailed Kasper explaining that, given the proposed size of the Building, which had a gross floor area exceeding 600m², he was required to have drawings for the relevant components prepared by an architect, "as well as engineers for each of the structural, mechanical and electrical components of this project." The City continued: "...[as the drawings] do not meet the minimum standards required by our office, we will not accept these drawings for any of the disciplines."

13. Kasper ended the contract with MEM.
14. PEO retained NORR Architects and Engineers Limited as independent experts to review the work done by the Respondents. NORR concluded:
 - a) In the matter of whether or not Singh and MEM failed to comply with any standards applicable to the design, review and signoff of drawings and construction details, it is our opinion that the design drawings authenticated for building permit submission were missing a significant amount of information. The drawings do not provide sufficient level of information for us to consider whether or not the design met applicable codes and standards, nor do they include construction details.
 - b) In the matter of errors, it is our opinion that the referenced drawings do not provide sufficient level of information for us to consider design implications. There were only a limited number of errors identified in the documents. A reasonable and prudent practitioner would have provided a more complete set of documents.
 - c) In the matter of whether or not Singh and MEM failed to meet the standard expected of a reasonable and prudent practitioner, it is our opinion that the documentation submitted did not meet the expected standard.
15. For the purposes of these proceedings, Singh and MEM accept as correct the findings in the NORR Report. Singh and MEM admit that they failed to meet the minimum acceptable standard for engineering work of this type, and that they failed to maintain the standards of a reasonable and prudent practitioner.
16. The parties agree that Singh and MEM are guilty of professional misconduct as follows:
 - a) They signed and sealed inadequate design drawings, amounting to professional misconduct as defined by sections 72(2)(a), (d) and (j) of Regulation 941;
 - b) They signed and sealed design drawings without having the necessary competency or competencies to do so, amounting to professional misconduct as defined by sections 72(2)(h) and (j) of Regulation 941;
 - c) They signed and sealed draft or preliminary drawings, and then failed to sign and seal revised final drawings, amounting to professional misconduct as defined by sections 72(2)(g) and (j) of Regulation 941; and
 - d) They allowed an employee to use the title “engineer” when the employee was not a holder of a licence to practice engineering, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

SUMMARY OF ORIGINAL JOINT SUBMISSION AS TO PENALTY AND COSTS

The Joint Submission as to Penalty and Costs (Original Joint Submission as to Penalty) submitted on the first day of the hearing stated the following, in relevant part:

- a) Pursuant to s. 28(4)(f) of the act, Singh and MEM shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently;
- b) The findings and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) of the act, with names;
- c) Pursuant to s. 28(4)(b),(d), and (k) of the act, it shall be a term or condition on Singh’s licence that he shall successfully complete PEO’s Professional Practice Examination (PPE) within eighteen (18) months of the decision of the Discipline Committee, failing which his licence shall be suspended for a period of ten (10) months, or until such time as he successfully completes the PPE, whichever comes first.
- d) Pursuant to s. 28(4)(d) and (e) of the act, there shall be a term, condition and restriction on Singh’s licence, prohibiting him from practising:
 - (i) electrical engineering, unless and until he successfully completes two (2) of PEO’s advanced electrical engineering examinations of his choice from the list attached [to the Original Joint Submission as to Penalty] as Schedule “A”; and further prohibiting him from practising;
 - (ii) mechanical engineering, unless and until he successfully completes two (2) of PEO’s advanced mechanical engineering examinations of his choice from the list attached [to the Original Joint Submission as to Penalty] as Schedule “B”;
- e) Pursuant to s. 28(4)(h) of the act, Singh shall be required to pay a fine in the amount of one thousand dollars (\$1000) within thirty (30) days of the decision of the Discipline Committee; and
- f) There shall be no order with respect to costs.

SUMMARY OF SUBMISSIONS OF COUNSEL FOR THE ASSOCIATION / ADVICE OF ILC

Counsel for the association stated that a joint submission should not be rejected unless the panel concludes that to adopt the joint submission would bring the administration of justice into disrepute (*PEO v. George William Meyer, P.Eng., and Quartz Holdings Limited*, PEO Gazette, *Engineering Dimensions*, March/April 2010, and *R. v. Anthony-Cook*, [2016]

2 S.C.R. 204 (Cook)). However, on the panel's request for submissions, independent legal counsel David Jacobs (ILC) advised the panel, among other things, that paragraph 3(c) of the Original Joint Submission as to Penalty would not meet the test set out in Cook. In particular, paragraph 3(c), which states that Singh must complete the PPE within 18 months failing which his licence is suspended for 10 months or until he completes the PPE, whichever comes first, is contrary to public interest. ILC advised that this is because the panel does not have the authority to impose a penalty for a future event that has not yet occurred.

In support of the above penalty, counsel for the association relied on section 28(4)(k) of the act. It was ILC's view that section 28(4)(k) allows the panel to impose a penalty and then suspend the imposition of that penalty on completion of a course of study. In this case it was proposed to impose a penalty (i.e. passage of the PPE) and then impose a further penalty (i.e. suspension) if the member failed the PPE. ILC submitted that this is not permitted under the act.

The panel determined that the original penalty proposed under paragraph 3(c) of the Original Joint Submission as to Penalty was unlawful but the rest of the Original Joint Submission as to Penalty was acceptable. The parties agreed to revise the Original Joint Submission as to Penalty and the hearing was adjourned until October 1, 2020.

SUMMARY OF AMENDED JOINT SUBMISSION AS TO PENALTY AND COSTS

An Amended Joint Submission as to Penalty and Costs (Amended Joint Submission as to Penalty) was submitted by the parties on October 1, 2020. It was identical to the Original Joint Submission as to Penalty, with the exception of paragraph 3(c) which deleted paragraph 3(c) of the Original Joint Submission as to Penalty and now reads:

- (c) Pursuant to s. 28(4)(d) of the act, it shall be a term and condition on Singh's licence that he shall successfully complete PEO's Professional Practice Examination within twelve (12) months of the decision of the Discipline Committee;

ILC advised the panel that given paragraph 3(c), above, no longer provides a penalty and suspends it for a future event that has not yet occurred, it is no longer contrary to public interest.

SUMMARY OF PLEA BY SINGH AND MEM AND DECISION ON MISCONDUCT

Singh and MEM admitted to the allegations. The panel conducted a plea inquiry and was satisfied that Singh and MEM's admissions were voluntary, informed and unequivocal.

The panel considered the Agreed Statement of Facts and found that the facts supported a finding of professional misconduct and that Singh and MEM committed acts of professional misconduct as alleged therein.

SUMMARY OF PENALTY DECISION

The panel accepted the Amended Joint Submission as to Penalty. It was the view of the panel that the penalty was reasonable and in the public interest. The panel was satisfied that adopting the Amended Joint Submission as to Penalty would not bring the administration of justice into disrepute.

The panel ordered the following as per the Amended Joint Submission as to Penalty:

- a) Pursuant to s. 28(4)(f) of the act, Singh and MEM shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently;
- b) The findings and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) of the act, with names;
- c) Pursuant to s. 28(4)(d) of the act, it shall be a term and condition on Singh's licence that he shall successfully complete PEO's Professional Practice Examination within twelve (12) months of the decision of the Discipline Committee;
- d) Pursuant to s. 28(4)(d) and (e) of the act, there shall be a term, condition and restriction on Singh's licence, prohibiting him from practising:
 - (i) electrical engineering, unless and until he successfully completes two (2) of PEO's advanced electrical engineering examinations of his choice from the list attached [to the Amended Joint Submission as to Penalty] as Schedule "A"; and further prohibiting him from practising;
 - (ii) mechanical engineering, unless and until he successfully completes two (2) of PEO's advanced mechanical engineering examinations of his choice from the list attached [to the Amended Joint Submission as to Penalty] as Schedule "B";
- e) Pursuant to s. 28(4)(h) of the act, Singh shall be required to pay a fine in the amount of one thousand dollars (\$1000) within thirty (30) days of the decision of the Discipline Committee; and
- f) There shall be no order with respect to costs.

REPRIMAND

The panel administered an oral reprimand immediately after the hearing.

Charles McDermott, P.Eng., signed the Decision and Reasons for the decision as chair of the discipline panel on October 22, 2020, and on behalf of the members of the discipline panel: Alisa Chaplick, LLB, and Rishi Kumar, P.Eng.