

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 A MEMBER of the Association of Professional Engineers of Ontario.

The panel of the Discipline Committee heard this matter on December 2, 2020, by means of an online video conference platform that was simultaneously broadcast in a publicly accessible format over the internet. All participants in the proceedings, including counsel for the Association of Professional Engineers of Ontario (the association or PEO), the member and their legal counsel attended via videoconference.

The association provided the panel with the tribunal's Amended Notice of Hearing dated September 8, 2020, and the decision of the Complaints Committee dated September 11, 2019, referring the matter to the Discipline Committee. The parties also provided the panel with an Agreed Statement of Facts signed December 1, 2020.

AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that the association and the member had reached agreement on the facts. At the conclusion of the hearing, and due to the nature of the penalty ordered by the panel, the panel requested that the parties submit a revised and redacted form of Agreed Statement of Facts solely to ensure confidentiality of the member's identity for the publication of this decision in the official publication of the association. Counsel for the parties accordingly submitted to the panel a form of the Agreed Statement of Facts with certain information redacted, notably the member's name, on December 4, 2020. The redacted Agreed Statement of Facts is as follows:

1. The member is, and was at all material times, a professional engineer licensed in good standing pursuant to the *Professional Engineers Act* (the act).
2. Two individuals filed formal complaints regarding the matters in issue. As the complaints dealt with factually similar issues, the complaint of Ralph Martin, manager of secretariat of PEO (Martin), was deferred by the Complaints Committee pending the outcome of this matter.

The only complainant in this matter is Allison Elliot, PEO's chief elections officer (Elliot), and Martin is a witness.

3. In 2017, the member ran as a candidate in the election to become a member of PEO Council. PEO Council is the body of elected professional engineers and individuals appointed by the office of the Attorney General of Ontario responsible for the overall direction of PEO. The member was ultimately not elected to a seat on PEO Council.
4. The member did not register to be a candidate in the 2019 PEO Council elections. However, on December 10, 2018, during the campaign period for the 2019 elections, the member sent an email to Elliot regarding the possible use by candidates of certain material that the member had produced during the 2017 campaign. The member's email stated as follows:

Chief Elections Officer,
A few years back I ran as a candidate for [PEO Council]. I had the material on my website, my platform sent during various Candidate messages [sic]. This is to inform you I have copyrighted that material. The website is still active.
Please let every candidate know, if they use my campaign material in their campaign, I will go after that candidate and/or you.
Don't make excuses afterwards. You have been informed upfront.
Thank you,
Member
5. Elliot felt personally threatened by the member's email but did not respond to the member directly other than in her email on December 13, 2018.
6. Further, in or about January 2019, the member posted a number of comments in response to a LinkedIn posting by another candidate for PEO Council in the 2019 election campaign. These comments contained various allegations regarding the electoral process against PEO, PEO Council and Ralph Martin, PEO's manager, secretariat, including:
 - a. that PEO Council is a "deep state" and that PEO adopted "deep state" policies;
 - b. that the 2017 PEO Council election was "fixed" by the manager of the secretariat and others within PEO;

- c. that PEO “rigged” the PEO Council elections in 2017 and 2019;
 - d. that PEO denied the member their “fundamental right to vote”; and
 - e. that PEO / the “deep state” sought to ensure that certain candidates won the election.
7. The member provided no evidence to support their allegations. The comments were made in a public forum, visible to non-members of PEO, and identified PEO members and other individuals by name, as set out in the postings. The comments were deeply troubling to Martin and had the potential to undermine public confidence in PEO and the integrity of its electoral process.
8. The member and the association agree that based on the preceding facts, the member is guilty of professional misconduct as follows:
- a. Conduct or an act relevant to the practice of professional engineering during the said election of 2019 that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as unbecoming and unprofessional, contrary to section 72(2)(j) of Regulation 941.

PLEA

The member admitted the allegations set out in the Agreed Statement of Facts. 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. It finds that the facts, as agreed, support findings of professional misconduct against the member. In particular, the panel finds that the member committed acts of professional misconduct as set out in subparagraph 8(a) of the Agreed Statement of Facts.

REASONS FOR DECISION

When presented with a guilty plea and an Agreed Statement of Facts, the panel must still satisfy itself whether the facts presented support a finding with respect to each of the acts of professional misconduct alleged by the association.

Further to the decision of the Discipline Committee in *The Matter of a Complaint Against Engineer A* cited in the November/December 2002 edition of the PEO Gazette (page 32) cited in the hearing by counsel for the association, the panel is of the view that the conduct alleged in subparagraph 8(a) of the Agreed Statement of Facts constitutes acts of professional misconduct under section 72(2)(j) of Regulation 941 under the *Professional Engineers Act*, R.S.O. 1990, c. P.28 (the act), and that the member committed such acts is amply made out on the facts as agreed to by the member and the association and accepted by the panel.

Specifically, the panel finds that the member’s conduct during the 2019 PEO Council election campaign period was inappropriate, unprofessional and disparaging to both Elliott and Martin. The member’s comments as against PEO Council and PEO generally were also inappropriate and unduly disparaging.

PENALTY

Counsel for the association advised the panel that the member and the association were making a joint submission on penalty and provided a Joint Submission on Penalty dated December 1, 2020.

The Joint Submission on Penalty provided, in part, as follows:

1. Pursuant to subsection 28(4)(f) of the *Professional Engineers Act*, the member shall be orally reprimanded, and the fact of the reprimand shall be recorded on the register for a period of six months;
2. There shall be no order with respect to costs; and
3. The issue of publication shall be determined by the panel at the hearing of this matter.

Counsel for the association submitted that the association is not taking a position in regard to publication.

Counsel for the member provided an expert medical report that found that the member had been undergoing difficult health challenges during the relevant period and beyond. Counsel for the member requested that the report be entered as an exhibit and that the panel consider sealing it from the public record. Counsel for the association acknowledged that the report contained medical information personal to the member and did not object to it being made subject to a confidentiality order. The panel found that the desirability of avoiding public disclosure of this report in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public. This panel thus ordered that the report shall be treated as confidential, sealed and shall not form a part of the public record under section 30(5.1) of the act or otherwise, pursuant to section 30(4.1)2 of the act and sections 9 and 25.0.1, among others, of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, unless and until otherwise ordered, as it contains personal medical information. (Footnote: See, in a different context, *Toronto Star v. AG*

Ontario, 2018 ONSC 2586 (CanLII) at paragraphs 89, 90 and 138, and the decisions cited therein. The panel adopts the reasoning in that case as applicable herein.) Any non-party who wishes to obtain access to this exhibit must do so by motion to the Discipline Committee on reasonable notice to the parties.

Counsel for the member also submitted that the member had fully co-operated with the association's investigation, has no prior disciplinary history and expressed remorse and apologized for their conduct. The panel also notes that the member has voluntarily sent letters of apology to Martin and to Elliott. Counsel for the member further read out a number of letters of reference written by certain of the member's employer, colleagues, community friends and family, some of which explained the adverse impact that the stress of these proceedings have had on the member both personally and professionally. Counsel for the member concluded that these facts and evidence supported a finding against publication and that, given that this case has already attracted some attention, publication could inadvertently cause further stress and reputational harm to the member.

PENALTY DECISION

The panel carefully considered the Joint Submission on Penalty. It is a well-established principle of law that a disciplinary panel should not interfere with a joint submission on penalty except where the panel is of the view that to accept the joint submission would bring the administration of the disciplinary process into disrepute or would be contrary to the public interest. In the circumstances of this case, the panel is of the view that an oral reprimand and publication of the panel's findings and order in the official publication of the association is a reasonable outcome in this matter. A lesser penalty would fail to appropriately serve the aims of general deterrence, protecting the public and maintaining the public's confidence in the regulation of the profession. A more severe penalty has the potential to cause the member continued stress and reputational harm which, in the circumstances of this case, the panel views as unnecessary.

The panel also acknowledges the member's co-operation and good faith conduct with the association as expressed in the Agreed Statement of Facts, the recitals to the Joint Submission on Penalty, their statement of remorse and the issues

identified in the expert medical report. These considerations, combined with their lack of a prior disciplinary history, are mitigating factors in determining an appropriate penalty.

Public trust is at the core of what it means to be a professional. Members of the public must have confidence that professionals are held to high standards of conduct and that serious breaches of those standards are dealt with appropriately. Failing to take a proportionate response to protect the public in the face of professional misconduct undermines that trust and harms both the reputation of the profession and the legitimacy of professional regulation.

The panel notes that publication of its findings and reasons without names serves to promote general deterrence of the profession and reinforce the public confidence in the regulation of the profession. Far from bringing the administration of the disciplinary process into disrepute, publication demonstrates, both to the profession and to the public, the seriousness with which the Discipline Committee regards significant lapses of professional standards and the penalties for engaging in such misconduct. However, in this matter the member's actions are sufficiently addressed in this penalty by publication of the facts found and the penalty such that the principle of general deterrence will still be served.

Accordingly, the panel accepts the Joint Submission on Penalty for the member, together with publication of the panel's findings and reasons but without the member's name, and orders as follows:

- a. Pursuant to subsection 28(4)(f) of the *Professional Engineers Act*, the member shall be orally reprimanded, and the fact of the reprimand shall be recorded on the register for a period of six months;
- b. Pursuant to subparagraph 28(5) of the *Professional Engineers Act*, the findings and order of the Discipline Committee shall be published, together with reasons therefore, without reference to the member's name.
- c. There shall be no order as to costs.

The panel pronounced its determinations as to convictions and penalty at the conclusion of the hearing on December 2, 2020, and advised that its reasons were to follow. At the hearing, after the pronouncement of the penalty, the member waived their right to appeal and the panel administered the oral reprimand.