

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 actions and conduct of FRANCO DiGIOVANNI, LEL, a member of the Association of Professional Engineers of Ontario.

This matter came to a hearing before a panel of the Discipline Committee on November 30, 2021. The matter arose as a result of three separate complaints against Franco DiGiovanni, LEL (the member), and it proceeded via an Agreed Statement of Facts and a Joint Submission on Penalty.

AGREED STATEMENT OF FACTS

In summary, the Agreed Statement of Facts sets out the following conduct by the member:

- On or about June 13, 2018, the member emailed the company of a professional engineer regarding a disagreement over whether a plan for odour best management practice was required for a particular manufacturer. His email stated: “The discussion I wish to have with [the engineer] is in regards to potential professional malpractice on his part. It would be in his best interest to talk to me first before this proceeds any further.” The member filed a complaint with PEO against the engineer on July 4, 2018; this complaint was not referred to the Discipline Committee.
- On April 23, 2018, the member gave a presentation before a municipal council in which he alleged that the professional planner for an aggregates company had failed to meet her duties as a planner in respect of a proposed gravel pit. He questioned her competence as a planner and suggested that the council initiate a malpractice suit against her. The member later filed a complaint against the planner with the Ontario Professional Planners Institute (OPPI) that was not referred to a disciplinary process.
- On July 16, 2018, the member emailed the planner for the municipality, copying all of the municipal councillors, threatening to file a complaint of professional malpractice against the planner due to his view that the gravel pit development did not require an air quality assessment. The member later filed a complaint against the planner with the OPPI that was not referred to a disciplinary process.
- On April 26, 2019, the member signed a peer review report on an air quality assessment prepared by a professional engineer regarding a proposed quarry. The member wrote in his review that he “would question the competency of [the engineer] to conduct such work.”
- On October 30, 2019, the member gave a presentation at an industry association conference, at which the following events occurred:
 - o The member stated that “planners can make bad mistakes when they deviate outside their own field.” He referred to the professional planner in the case of the gravel pit development and noted that he had filed a malpractice complaint against her to OPPI. He stated that the non-referral of the complaint was “ludicrous” and that he was investigating the OPPI.
 - o The member criticized air-quality assessments prepared by two individuals in attendance at the conference, one of whom was a professional engineer. He described their work as incompetent and accused them both of malpractice because they had not completed cumulative effects assessments with respect to two projects.
 - o The member and the professional engineer in attendance exchanged words. The professional engineer made an obscene gesture towards the member, to which the member responded from the stage with a different obscene gesture. As the member left the stage, he referred to the engineer with a vulgar and misogynistic obscenity that was overheard by other attendees.
- On January 22, 2020, the member gave a presentation at a public meeting hosted by a community advocacy group. The presentation was recorded and posted to social media. The member made allegations of inappropriate conduct on the part of a professional engineer in respect of a proposed quarry. The member stated in respect of the professionals involved in the project: “So it kind of calls in question even the competence or the honesty of the people involved. I don’t know which, but there is something not right there.”
- The member facilitated or filed eight separate complaints against professionals involved in environmental planning, none of which have been referred to disciplinary processes.

FINDING OF MISCONDUCT

The member admitted to the following misconduct:

1. Conduct that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941 under the *Professional Engineers Act* (the act); and
2. Harassment as against three professional engineers, amounting to professional misconduct as defined by section 72(2)(n) of Regulation 941.

The panel accepted that the member's conduct was clearly disgraceful, dishonourable and unprofessional, in particular:

- Impugning without reasonable basis the competence, honesty, motives and integrity of other regulated professionals, both in writing and in public forums, on multiple occasions;
- Making intemperate and inappropriate remarks with respect to other regulated professionals, and threatening or suggesting that legal or regulatory action should be taken against them;
- Filing vexatious or retaliatory complaints against other regulated professionals who had expressed concerns regarding his behaviour; and
- Using an obscene hand gesture and a vulgar and misogynistic obscenity to refer to a professional colleague in a public forum.

Likewise, the panel accepted that the member's conduct with respect to certain complainants amounted to harassment as defined in the regulations.

PENALTY

The panel accepted a Joint Submission on Penalty and issued the following order:

1. Pursuant to s. 28(4)(f) of the act, the member was reprimanded immediately following the hearing, and the fact of the reprimand shall be recorded on the register permanently;

2. Pursuant to s. 28(4)(b) of the act, the member's licence shall be suspended for a period of three (3) months, commencing immediately following the hearing;
3. Pursuant to sections 28(4)(i) and 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;
4. Pursuant to s. 28(4)(d) of the act, it shall be a term or condition on the member's licence that he shall, within eighteen (18) months of the date of the Discipline Committee's order, successfully complete the National Professional Practice Examination (NPPE); and
5. There shall be no order as to costs.

The panel noted that the member's conduct was not in keeping with the expectations of civility and professional courtesy applicable to members of the profession and that instances of professional disagreement must be expressed in a respectful, ethical and reasonable manner. It felt that the member's actions warranted strong condemnation and that the penalty achieved that goal.

The panel was satisfied that the penalty served the purposes of general and specific deterrence, rehabilitation and maintenance of the public's confidence in the regulation of the profession. The panel was reassured by several mitigating factors, including the member's submission of a letter of apology addressed to the relevant complainants, and his acceptance of responsibility for his actions through the Agreed Statement of Facts and Joint Submission on Penalty. The panel also felt that the requirement to complete the NPPE would assist the member's rehabilitation and support his commitment to professional practice in future.

Robert Willson, P.Eng., chair of the discipline panel, signed the Decision and Reasons on December 13, 2021, on behalf of the other panel members: Eric Bruce, JD, and Brian Ross, P.Eng.