

## 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 KANAN K. SINHA, P.ENG., a member of the Association of Professional Engineers of Ontario, and 1523829 ONTARIO LTD. o/a ENGINEERING ONLINE AMERICA, a holder of a Certificate of Authorization.

A hearing in this matter was held at Toronto on November 25 and 26, 2015.

### THE ALLEGATIONS

“It is alleged that Kanan K. Sinha, P.Eng., and 523829 Ontario Ltd. o/a Engineering Online America (EOA) are guilty of professional misconduct as defined in the *Professional Engineers Act* and Regulation 941, the particulars of which are as follows:

1. The respondent, Sinha, was, at all material times, a professional engineer licensed pursuant to the *Professional Engineers Act*.
2. The respondent, EOA, was, at all material times, a Certificate of Authorization holder. Sinha was EOA’s contact professional engineer.
3. The complainant, Gino Priolo, was, at all material times, a real estate agent and developer who hired Sinha to provide structural drawings and structural review for a construction project.
4. In or about early 2007, Priolo sold a studio space at 2 Denison Rd. West, Toronto (the building) to a digital animation company called Fast Motion Media Group Inc. (Fast Motion). As part of the agreement, Fast Motion required certain structural changes prior to occupancy. It was agreed that Priolo would carry out this construction.
5. The construction involved the removal of the first floor ceiling and structural supports to allow individuals to be suspended from the ceiling. It also required the construction of a catwalk around the studio space and a reorganization of some of the interior structures.
6. Priolo began construction on the studio space without first obtaining a permit. On or about March 21, 2007, a building inspector issued an Order to Comply, requiring Priolo to obtain a building permit.
7. On or about June 16, 2007, Sinha prepared and sealed three drawings, entitled “Proposed alteration for Mr. Gino Priolo,” detailing proposed structural changes to the studio space.
8. On or about June 25, 2007, Priolo submitted to the building office the building permit application, including Sinha’s June 16, 2007 drawings.
9. On or about July 9, 2007, the building office provided written notice to Fast Motion that the permit application had been rejected, stating, in part, that the June 16, 2007 drawings submitted contained insufficient detail to determine whether the proposed construction conformed with the applicable regulations and codes.
10. On or about July 31, 2007, Priolo resubmitted the building permit application with the same drawings, and the building office rejected the application again.
11. Fast Motion subsequently removed Priolo from the project and retained Sinha to provide revised drawings to support the building permit application.
12. On or about October 11, 2007, Sinha produced a new set of structural drawings for the project. A peer review of the drawings determined that they were not in compliance with the 2006 Ontario Building Code and would require alteration before being submitted.
13. On or about November 26, 2007, Sinha prepared new drawings that he altered according to the peer reviewer’s recommendations. These drawings were accepted by the building office, which issued a building permit on or about December 7, 2007.

Based on these facts, it is alleged that Sinha and EOA are guilty of professional misconduct as follows:

**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 416-840-1444 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.

1. Preparing structural drawings sealed on or about June 16, 2007 that were not compliant with the applicable building code, amounting to professional misconduct under sections 72(2)(a) and (c) of Regulation 941; and
2. Preparing structural drawings on or about October 11, 2007 that were not compliant with the applicable building code, amounting to professional misconduct under sections 72(2)(a) and (c) of Regulation 941.

### PLEA OF THE MEMBER AND/OR HOLDER

On November 19, 2015, four business days prior to the scheduled commencement of the hearing, Sinha sent an email to the attention of the chair of the Discipline Committee, which stated in its entirety: “I would not be able to attend the tribunal as scheduled due to health reason. I would like to postpone this till mid-summer.” The hearing dates had been set in accordance with the agreement of the parties set out in correspondence from the prosecutor dated August 17, 2015. The panel sought submissions from the parties. Sinha provided no medical certificate, nor any further information as to why he was unable to attend the hearing. By order dated November 24, 2015, the panel notified the parties that the hearing would proceed as scheduled.

However, Sinha did not attend the hearing, nor did any representative attend on his or EOA’s behalf. At the commencement of the hearing, the prosecutor advised the panel that she had spoken to Sinha that morning and he advised that he had no intention of attending either personally or through a representative in these proceedings. As Sinha did not attend to enter a plea, the panel proceeded as if a not guilty plea had been entered.

### OVERVIEW

The allegations against Sinha and EOA relate to two sets of structural engineering drawings dated June 16, 2007 and October 11, 2007, respectively. It was alleged that neither set of drawings complied with the applicable building code requirements. It was further alleged that, in preparing such non-compliant drawings, Sinha was negligent and failed to make reasonable provision for complying with applicable statutes, regulations, standards, codes,

bylaws and rules in connection with work being undertaken by or under the responsibility of the practitioner. On both of those bases and in the case of both sets of drawings, it was alleged that Sinha’s conduct amounted to professional misconduct as defined in sections 72(2)(a) and (d) of O.Reg. 941.

### THE EVIDENCE

In support of its case, the prosecution called four witnesses:

1. Lawrence Au, a plan examiner with the City of Toronto building office;
2. Gino Priolo, the complainant and Sinha’s initial client;
3. Robert Holroyd, a structural engineer with Halcrowe Yolles, retained by Fast Motion to peer review Sinha’s October 11, 2007 drawings; and
4. Daria Khachi, a structural engineer with Dialog, retained by the association to review both sets of drawings prepared by Sinha.

As noted above, Sinha did not appear, and no evidence was presented at the hearing on his behalf. He forwarded certain documents for the attention of the panel prior to the hearing by email. However, in the panel’s November 24, 2015 order, the parties’ attention was directed to section 30(6) of the *Professional Engineers Act*, R.S.O. 1990, c. P.28, which provides that, “Despite the *Statutory Powers Procedure Act*, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it.” The various documents sent by Sinha were, thus, inadmissible.

Au testified regarding the interactions between Priolo, Fast Motion and the City of Toronto’s building office. He also testified regarding documents that were filed with the city in the course of those interactions. The key evidence provided by Au was:

1. The June 16, 2007 drawings, which were stamped and signed by Sinha, did not contain sufficient detail to permit them to be evaluated for building permit purposes. In particular, these drawings were insufficiently detailed and lacked loading information. For that reason, the city refused to issue a building permit on the basis of the June 16, 2007 drawings.
2. Sinha’s name and apparent signature were included on a number of documents provided to the city building office, including the June 16, 2007 drawings, a designer information form dated June 24, 2007, and a General Review Commitment Certificate dated June 26, 2007.
3. For smaller buildings, such as the building in question at 2 Denison Rd. West, it is common for the first submission to lack detail.

Priolo testified regarding his interactions with Sinha, Fast Motion and the City of Toronto’s building office. He also testified regarding docu-

ments that were filed with the city in the course of those interactions.

The testimony provided by Priolo included:

1. Sinha provided him with the stamped and signed June 16, 2007 drawings by email on June 18, 2007.
2. Sinha provided him with a signed Review Commitment Certificate by fax on June 26, 2007.
3. Sinha was aware that the drawings were being submitted in support of a building permit application.
4. Emails exchanged between himself and Sinha, including a June 26, 2007 email from Priolo, made it clear that Priolo advised Sinha that the City of Toronto required the Review Commitment Certificate in order to process “the permit.”
5. The June 16, 2007 drawings were submitted to the City of Toronto building office in support of an application for a building permit. The application was refused by the city.
6. Sinha suggested that there were reasons for the refusal of the permit other than a lack of detail in his drawings. Sinha did not acknowledge any deficiencies in the June 16, 2007 drawings. Priolo provided an email from Sinha to himself dated July 16, 2007 advising him, “Looks like you need 1) Architectural drawings. 2) Electrical, mechanical & fire drawings.”
7. Sinha offered to assist him in further discussions with the city to assist in his obtaining a building permit. He provided a July 18, 2007 email from Sinha to himself to that effect.

The panel qualified Holroyd, P.Eng., of Engineering Link Incorporated, formerly of Halcrowe Yolles, to give opinion evidence in the area of structural engineering. His testimony included the following points:

1. He was retained by Fast Motion to conduct a peer review of the drawings in question, which had been prepared by Sinha.
2. He believed that both the June 16, 2007 drawings and the October 11, 2007 drawings were intended to be final. He identified Core Architects, the architects retained by Fast Motion, as the source of this belief.
3. He had never spoken to Sinha.
4. He identified a number of deficiencies in Sinha’s October 11, 2007 drawings, some of

which were minor and some of which could lead to failure of the building. These deficiencies included missing or inappropriate information regarding roof beam configuration, roof beam supports and column bases. These deficiencies were set out in detail in an October 19, 2007 report prepared by Holroyd, which was introduced into evidence.

Khachi, P.Eng., a principal of Dialog, a structural design and engineering company, was qualified by the panel to give opinion evidence in the area of structural engineering.

1. He was retained by the Association of Professional Engineers of Ontario in March of 2015 to provide an opinion on both sets of drawings prepared by Sinha.
2. He had never spoken to Sinha, nor had he had any involvement with the renovation of the building, prior to being retained by the association.
3. He identified numerous deficiencies in both sets of drawings prepared by Sinha, some of which were minor and some of which could lead to failure of the building. These deficiencies included roof beam configuration, roof beam supports and column bases, and were set out in detail in an August 6, 2015 report prepared by Khachi, as well as in his testimony.
4. In his experience, it is a common practice for an engineer to affix a seal to drawings, but not sign them pending review. In his evidence, those that follow this practice would not consider a drawing to be final until it had been signed.

## DECISION

The association bears the onus of proving the allegations in accordance with the standard of proof. The standard of proof applied by the panel was a balance of probabilities. Proof must be clear, convincing and based upon cogent evidence accepted by the panel.

Having considered the evidence and the onus and standard of proof, the panel found that the member and licence holder committed an act of professional misconduct, pursuant to sections 72(2)(a) and (d) of O.Reg. 941 under the *Professional Engineers Act*, by preparing structural drawings that were sealed and signed on or about June 16, 2007, which were not compliant with the applicable building code.

However, for the reasons that follow, the panel is not satisfied that the member’s actions in connection with the preparation of the October 11, 2007 drawings amounted to professional misconduct.

## REASONS FOR DECISION

There was uncontroverted evidence before the panel that both the June 16, 2007 drawings and the October 11, 2007 drawings prepared by Sinha were deficient, lacked sufficient detail to demonstrate compliance with the applicable building code, and contained structural elements that were likely to fail if constructed in accordance with the design prepared by Sinha. This evidence was presented by Au and Khachi with

respect to the June 26, 2007 drawings, and by Holroyd and Khachi with respect to the October 11, 2007 drawings.

In the panel's view, the fact that Sinha prepared deficient drawings is not, in and of itself, sufficient to support a finding of professional negligence. It must also be demonstrated that the drawings in question were not drafts and did not represent incomplete work in progress. It must be shown that Sinha treated the deficient drawings as his final work product—drawings that he held out to his client and to the public as issued for permit and/or construction purposes. On this basis, the panel is required to determine whether or not the evidence shows that the drawings in question were treated as final.

The difficulty faced by the panel was that Sinha did not attend the hearing and, therefore, no direct evidence was available from him regarding the purpose of the various sets of drawings. Furthermore, neither Holroyd nor Khachi had ever spoken to Sinha. Holroyd testified that he believed that both sets of drawings were intended to be final but, in response to questions from the panel, he stated that the basis for this belief was that he was told so by Core Architects. This evidence is hearsay and cannot be relied on by the panel. Khachi, having been retained by the association long after the events in question, had no direct knowledge pertinent to this question.

In the absence of direct evidence, the panel was required to look at the circumstances and correspondence in evidence to arrive at conclusions as to whether or not Sinha treated each set of drawings in question as final.

#### The June 16, 2007 drawings

With respect to the June 16, 2007 drawings, the panel has the evidence of Priolo and Au.

Priolo testified that Sinha considered the June 16, 2007 drawings to be final and ready for submission. Again, this is hearsay and, on its own, presents very little basis for the panel to make a conclusive finding. However, this contention is supported by the surrounding circumstances. Sinha's conduct in the course of his dealings with Priolo and the city demonstrated that he treated the June 16, 2007 drawings as final.

While there was no explicit statement from Sinha to this effect, nor any explicit statement authorizing those drawings to be submitted in support of a building permit application, the following factors support the conclusion that he considered them to be final and treated them as such:

1. The drawings had Sinha's seal affixed to them, and were dated and signed.
2. There was no notation on the drawings to the effect that these documents were drafts.
3. After providing the drawings to Priolo, Sinha signed the Designer Information form and General Review Commitment Certificate.

In doing so, he knew, or ought to have known, that an application was being submitted to the building office.

4. After being advised that the drawings had been submitted, there is no evidence that Sinha objected to their submission after the fact. To the contrary, he continued to advise Priolo that there were no deficiencies in regards of their structural content, and offered to participate in further discussions with city staff towards the issuance of a permit.

Based on the evidence available to the panel, Sinha's correspondence and conduct was consistent with a belief, on his part, that the June 16, 2007 drawings were final and were not drafts.

#### The October 11, 2007 drawings

The October 11, 2007 drawings had Sinha's seal affixed; however, unlike the June drawings, they were not signed by Sinha. Holroyd's evidence was that Sinha was aware that he would be peer reviewing the drawings prior to their submission to the city. Following Holroyd's review, Sinha revised the drawings, provided detailed calculations and, ultimately, signed the drawings on November 26, 2007. These signed drawings were submitted to the city and, on that basis, a building permit was issued.

This chain of events appears to be consistent with the practice described by Khachi, i.e. that engineers will often affix their seal to drawings as they near completion, but hold back on signing those drawings until all review has been completed and they are satisfied that the drawings are complete.

The panel notes that this is not a best practice, is not consistent with the association's guidelines on the use of a professional engineer's seal, and should be discouraged.

However, the panel finds that Sinha's conduct with respect to the October 11, 2007 drawings did not amount to negligence or professional misconduct of any other kind. Sinha saw to it that any issues with those drawings were resolved prior to their being signed and submitted to the city.

## PENALTY DECISION

The panel makes no decision as to penalty at this time. The panel directs that the parties be provided with notice of this decision, and the prosecution is to provide the panel with submissions in writing regarding the appropriate penalty within 14 days of such notice having been given. Sinha and EOA shall have an opportunity to respond in writing to the prosecution's submissions within seven days, following which the prosecution will have three days in which to reply, following which the panel will make a decision regarding the appropriate penalty in this matter.

Bruce Clarida, P.Eng., FEC, signed this Decision and Reasons for the decision as chair of the discipline panel and on behalf of the members of the discipline panel: James Amson, P.Eng., Ishwar Bhatia, P.Eng., David Germain, JD, and Charles M. Kidd, P.Eng.

## DECISION AND REASONS ON PENALTY

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 KANAN K. SINHA, P.ENG., a member of the Association of Professional Engineers of Ontario, and 1523829 ONTARIO LTD. o/a ENGINEERING ONLINE AMERICA, a holder of a Certificate of Authorization.

In its decision dated February 23, 2016, the panel found the member, Kanan K. Sinha, and 523829 Ontario Ltd. o/a Engineering Online America guilty of professional misconduct. Further to that finding, the panel requested that the parties to this matter provide their recommendations with respect to an appropriate penalty.

The panel has carefully considered the submissions of counsel for the association, as well as the responding submissions from Sinha.

Further to the association's request for an award of \$10,000 in costs, the panel requested that PEO provide documentation in support of the amount requested. The association provided a detailed outline of costs on March 3, 2016, to which Sinha provided a brief response.

Having considered all of the foregoing submissions, the panel largely accepts the submissions of the association and, for the reason set out in those submissions, imposes the penalties that were requested, with one significant deviation.

The penalties imposed are as follows:

1. Pursuant to subsection 28(4)(f) of the *Professional Engineers Act* (PEA), Sinha shall be reprimanded, and the fact of the reprimand shall be recorded in the register permanently;
2. Pursuant to subsection 28(4)(a) of the PEA, Sinha's licence shall be revoked;
3. Pursuant to subsection 28(4)(i) of the PEA, the findings and the order of the panel shall be published, with reasons therefore, together with the names of the respondents, in the official publication of PEO; and

4. Pursuant to subsection 28(4)(j) of the PEA, the respondents shall pay costs to PEO in the amount of \$10,000, within three months of the date of this penalty decision.

The panel finds that the above penalties are appropriate in this matter to ensure that this decision serves as a significant deterrent.

In the matter of the revocation of Sinha's licence, the association had asked that a condition be imposed on the licence prohibiting the member from practising engineering alone. The panel, in its deliberations, concluded that the requested condition would not provide a sufficient level of protection to the public at large. This panel's finding in this matter was the second finding of misconduct against Sinha. Furthermore, the misconduct in this case involved the approval of a design that the evidence demonstrated was likely to fail and, thus, in the panel's view, posed a significant danger to the public.

The panel has determined that the goal of protecting the public would not have been adequately served by the placing of a limitation on Sinha's