

## SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the conduct of SIRAJUL B.M. IQBAL, P.ENG., a member of the Association of Professional Engineers of Ontario, and IQBAL & IQBAL ASSOCIATES ENGINEERING, a holder of a certificate of authorization.

This matter came on for hearing before a panel of the Discipline Committee on May 7, 2018, at the Association of Professional Engineers of Ontario (association) in Toronto. The association was represented by Leah Price. Sirajul B.M. Iqbal, P.Eng., and Iqbal and Iqbal Associates Engineering were represented by Gary W Gibbs. Jill Dougherty acted as independent legal counsel (ILC).

At the opening of the hearing, the panel received the following documents: the Notice of Hearing, the referral by the Complaints Committee to discipline, the Statement of Allegations, and the confirmation of the respondents' standing.

### THE ALLEGATIONS

The allegations against the member are of professional misconduct as per section 72(2)(a), (b), (d), (j) of Regulation 941.

### PLEA BY MEMBER AND HOLDER

The member, Sirajul B.M. Iqbal, P.Eng., and holder, Iqbal & Iqbal Associates Engineering (IIA), pled guilty to, and admitted to, the allegations in the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the member's and holder's pleas were voluntary, informed and given without any reservations.

### AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts dated March 01, 2018, made between the Association of Professional Engineers and Sirajul B.M. Iqbal, P.Eng. (the member) (collectively, the parties), which provides as follows:

1. The member is a professional engineer licensed pursuant to the *Professional Engineers Act* (the act). The member is also the holder of a certificate of authorization under the act. The member signed and sealed all the electrical and mechanical engineering drawings referred to below.
2. The member carries on business as "Iqbal & Iqbal Associates Engineering" (IIA) as authorized by PEO. IIA's name appears on the drawings and other associated documents referred to below.
3. The member was previously convicted of professional misconduct. Attached as Schedule A is a copy of the Reasons for Decision in that case, dated June 14, 2013.
4. The complainant, Brett Forestell (Forestell), is the Deputy Chief Building Official, Engineering & Development Services Department, City of Belleville, Ontario. The complaint was made on February 5, 2014. A copy of the complaint and the accompanying letter dated February 5, 2014, (without attachments) is attached as Schedule B.
5. Prior to November 2013, Rajinder Chaku of the architectural firm Rajinder Chaku Architect Inc. (RCA) retained the member to provide electrical and mechanical engineering design services, including required electrical, mechanical and fire safety drawings, for a proposed new hotel and retail space (the hotel), and for a separate single-storey retail use building (the retail building). Both the hotel and the retail building were to be located at 245 North Front St., Belleville, Ontario.
6. On or about November 21, 2013, RCA submitted to the City of Belleville (city) an Application for a Permit to Construct the Hotel. On or about December 18, 2013, RCA submitted to the city an Application for a Permit to Construct the Retail Building.

**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.

7. Both permit applications included Commitments to General Review for mechanical and electrical engineering signed by the member, and each attached mechanical design drawings. Electrical design drawings were included for the hotel, but not for the retail building.
8. Forestell issued a permit application review letter dated January 30, 2014, in connection with the retail building. The letter listed 35 separate deficiencies in the drawings and other materials submitted with the Application for a Permit. Of these, items numbered 4, 5, 6, 14, 15, and 30 to 34 related to the member's work. Forestell also required RCA to provide electrical drawings. Attached as Schedule C is a copy of this letter. RCA provided a response to this letter on April 29, 2014. The response included an electrical drawing and revised mechanical drawings signed and sealed by the member on April 23, 2014. No further steps have been taken to date by the owner to pursue the retail building, and no further revised drawings have been prepared.
9. Forestell issued a permit application review letter dated February 7, 2014, in connection with the hotel. This letter listed 74 separate deficiencies in the drawings and other materials submitted with the Application for a Permit. Of these, items numbered 7, 8, 9, 52, 54, and 56 to 73 related to the member's work. Attached as Schedule D is a copy of this letter.
10. Forestell sent further permit application review letters to RCA dated: May 9, 2014; June 9, 2014; September 11, 2014; November 6, 2014; and February 17, 2015, all of which related to drawings that had been revised and resubmitted by RCA in connection with the hotel. In each case, Forestell identified either new or continuing deficiencies in the drawings signed and sealed by the member that prevented the issuance of a building permit. Attached as Schedule E is a chart showing the mechanical and electrical issues raised in these permit application review letters.
11. By an email dated March 6, 2015, the member advised the association's investigator that he had "requested architect to consult with an electrical engineer to address the issues." By an email dated April 7, 2015, in response to the investigator's further inquiries, the member clarified that a new electrical engineer had been retained by the architect "to deal with item 72 Fire Alarm system which is life safety issue and all other electrical aspects." Due to illness, the member did no work on the hotel after some time in February 2015 and retired from this project. Attached as Schedule F are the relevant communications in this regard.
12. The association retained Raul Dominguez, P.Eng., as an independent expert to review the mechanical engineering aspects of the member's work. Mr. Dominguez prepared a report dated September 12, 2016 (the mechanical report), a copy of which (without appendices) is attached as Schedule G. The mechanical report identified additional mechanical design deficiencies, over and above the issues that had been identified by Forestell, and also commented on the many iterations of the mechanical drawings. Dominguez concluded:

"Acknowledging that numerous submissions were provided to the building department with ample time in between to complete coordination, proper peer review and quality assurance checks, I would respectfully conclude that the mechanical design of Iqbal & Iqbal Associates Engineers [sic] are inconsistent with generally accepted standards in the field of professional engineering.

Besides coordination issues, we have also identified design deficiencies that were not identified by the city's Deputy Chief Building Official in the correspondence I have reviewed. These items, as noted in the report above need to be reviewed and addressed by the engineer of record."
13. The association retained Naresh Arora, P.Eng., as an independent expert to review the electrical engineering and fire safety aspects of the member's work. Mr. Arora prepared a report (the electrical report) dated October 7, 2016, a copy of which (without appendices) is attached as Schedule H. The electrical report identified additional electrical engineering and fire safety issues in the member's work, over and above the issues that had been identified by Forestell. Mr. Arora concluded, in part, as follows:

"I believe that the level of errors and omissions that I have noted in the final submission to the city dated November 28, 2014 are definitely not expected of a reasonable and prudent practitioner in the circumstances. It appears to me that the member is not familiar with the latest codes and standards which has led to major errors and emissions [sic] such as the ones mentioned above.

I would respectfully conclude that the design of the member operating as Iqbal & Iqbal Associate Engineering as noted on the Drawings E1 to E5 and associated corresponds [sic] are inconsistent with generally accepted standards in the field of professional engineering.”

14. For the purposes of this proceeding, the member and IIA accept as correct the findings, opinions and conclusions contained in the mechanical report and in the electrical report. The member 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.
15. By reason of the aforesaid, the parties agree that the member and IIA are guilty of professional misconduct as follows:
  - a. Signing and sealing mechanical, electrical and fire safety drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario, that failed to meet the standard of a reasonable and prudent practitioner, amounting to professional misconduct as defined by sections 72(2)(a) of Regulation 941;
  - b. Signing and sealing mechanical, electrical and fire safety drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario, 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 sections 72(2)(b) of Regulation 941;
  - c. Signing and sealing mechanical, electrical and fire safety drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario, that failed to make reasonable provision for complying with applicable standards and/or codes, amounting to professional misconduct as defined by sections 72(2)(d) of Regulation 941; and

- d. Signing and sealing mechanical, electrical and fire safety drawings related to two proposed buildings located at 245 North Front Street in Belleville, Ontario, that were prepared in an unprofessional manner, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

The member and IIA have had independent legal advice with respect to their agreement as to the facts, as set out above.

The schedules referenced in the Agreed Statement of Facts were available to, and were considered by, the panel, but are not included in the text of this decision.

The wording of the referenced subparagraphs of section 72 of Regulation 941<sup>1</sup> under the act, defining the professional misconduct admitted in the Agreed Statement of Facts, is as follows:

72(2) For the purposes of the act and this regulation,

“professional misconduct” means,

- (a) negligence<sup>2</sup>,
- (b) failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible,
- (d) failure to make responsible 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,
- (j) conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional,

Counsel for the member and holder focused on paragraphs 8, 9, 10 and 11 of the Agreed Statement of Facts, submitting that most of the deficiencies raised by the city were not related to the member’s work. After February of 2015, the member retired from the project due to illness, and his counsel submitted that the electrical and mechanical issues that then remained outstanding were limited to the fire alarm and sprinkler systems.

## DECISION

The panel considered the guilty plea of the member and IIA, and the Agreed Statement of Facts, and finds that the plea and the facts and misconduct admitted in the Agreed Statement of Facts support a finding of professional misconduct. In particular, the panel finds that Sirajul B. M. Iqbal, P.Eng., and IIA committed acts of professional misconduct (and are guilty of professional misconduct) as defined in subparagraphs 72(2)(a), (b), (d) and (j) of Regulation 941.

<sup>1</sup> R.R.O. 1990, Reg. 941

<sup>2</sup> Section 72. (1) provides that “In this section, ... “negligence” means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances.

**PENALTY**

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon by the parties. The Joint Submission as to Penalty is as follows:

1. Pursuant to subsection 28(4)(a) of the *Professional Engineers Act* (the act), Iqbal's licence and certificate of authorization shall both be revoked.
2. Pursuant to subsection 28(4)(k) of the act, the imposition of the penalty set out in paragraph 1 above shall be suspended upon the following terms and conditions:
  - a. within seven (7) days of the date of pronouncement of the Discipline Committee's decision on penalty, Iqbal shall file with the registrar a resignation in writing, pursuant to subsection 5(2) of the act;
  - b. within seven (7) days of the date of pronouncement of the Discipline Committee's decision, Iqbal shall surrender his certificate of authorization; and
  - c. Neither Iqbal nor IIA will ever apply for reinstatement.
3. If any of the terms and conditions set out in paragraph 2 above are breached, the suspension of the revocation referred to above will be lifted, and the revocation shall take effect immediately thereafter.
4. The findings and order of the Discipline Committee shall be published in summary form in the official publication of PEO, and the issue of whether such publication shall be with or without reference to names shall be determined by the panel at the hearing of this matter; and
5. There shall be no order with respect to costs.

As indicated in paragraph 4 of the Joint Submission as to Penalty, the issue of whether the publication of the Discipline Committee's finding and order should be with or without reference to names (including the name of the member or IIA) remained in dispute.

Counsel for the association submitted to the panel that the proposed penalty set out in the Joint Submission as to Penalty should be accepted and imposed by the panel, on the basis that it would:

- a) Provide protection to the public;
- b) Maintain the reputation of the profession; and
- c) Provide general deterrence to others in the profession, deterring them from engaging in similar misconduct.

With respect to the disputed issue of whether publication should occur with or without names, counsel for the association submitted that the Discipline Committee's finding and order should be published with the name of the member and IIA. Association counsel noted that paragraph 1 of the Joint Submission as to Penalty provides for revocation and reminded the panel that subsection 28(5) of the act states that licence revocation **requires** publication with names. In particular, subsection 28(5) provides as follows:

28(5) The Discipline Committee **shall** cause an order of the committee revoking or suspending a licence or certificate of authorization, temporary licence, provisional licence or limited licence to be published, with or without the reasons therefor, in the official publication of the association **together with the name of the member or holder of the revoked or suspended licence or certificate of authorization**, temporary licence, provisional licence or limited licence. (*emphasis added*)

In response, counsel for the member submitted that subsection 28(4) of the act applies in this case and noted that the provisions of that subsection are permissive with respect to whether the name of the member must be included. Subsection 28(4) provides (in part) as follows:

28(4) Where the Discipline Committee finds a member of the association or a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence guilty of professional misconduct or to be incompetent it **may**, by order,

- (a) **revoke** the licence of the member or the certificate of authorization, temporary licence, provisional licence or limited licence of the holder;
- (b) suspend the licence of the member or the certificate of authorization, temporary licence, provisional licence or limited licence of the holder for a stated period, not exceeding 24 months;
- (c) **accept the undertaking of the member or holder** to limit the professional work of the member or holder in the practice of professional engineering to the extent specified in the undertaking;
  - (i) **subject to subsection (5) in respect of orders of revocation or suspension, direct that the finding and the order** of the Discipline Committee be published in detail or in summary and either **with or without including the name of the member or holder** in the official publication of the association and in such other manner or medium as the Disci-

pline Committee considers appropriate in the particular case;

- (k) **direct that the imposition of a penalty be suspended** or postponed for such period and upon such terms or for such purpose as the Discipline Committee may specify...

The member's counsel submitted that the Joint Submission on Penalty allows for the member's resignation and the surrendering of the certificate of authorization and provides for the suspension of the revocation of the member's licence and certificate of authorization on the terms set out in paragraph 2 of the Joint Submission as to Penalty. The member's counsel argued that since the imposition of the penalty of revocation was suspended on that basis, subsection 24(5) does not apply and the panel has discretion under subsection 28(4)(i) and (k) regarding whether publication must include the name of the member and/or IIA.

The panel received advice from the independent legal counsel (ILC) on this matter. ILC focused the panel on paragraph 4 of the Joint Submission on Penalty and the issue created by paragraphs 1 (providing that the member's licence and certificate of authorization shall be revoked) and 2 (providing that the revocation shall be suspended on the terms and conditions being fulfilled). The panel notes that both paragraphs use the word "shall," which is a word reflecting events that are to take place in the future. It is unclear whether acceptance of the Joint Submission as to Penalty means that the revocation contemplated by paragraph 1 would immediately come into effect, subject to being suspended if the terms set out in paragraph 2 are fulfilled, or whether the combined effect of the paragraphs is that the revocation does not take effect. ILC advised that even if the panel finds that publication of names is discretionary in this case, rather than mandatory, the panel should still consider how to exercise that discretion. In considering whether to order publication with or without the member's name, ILC advised that the panel should take into account the purpose served by the publication of the member's name (and by the requirement of such publication under section 28(5) where an order of revocation or suspension is made). In particular, ILC advised that the panel should take into account the role of publication (including publication with the member's

name) in maintaining confidence that the public interest is being served.

## PENALTY DECISION

The panel concluded that the proposed penalty is reasonable and in the public interest and accepts the Joint Submission as to Penalty. Sirajul B. M. Iqbal co-operated with the association and by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association. The sole issue in dispute is whether the publication of the panel's order and finding should be with or without the names of the member and/or IIA.

In relation to the issue of whether to publish with or without names, counsel for the association referred the panel to a previous decision of the PEO Discipline Committee: *Member v. Professional Engineers Ontario, July 3, 2008* (see *Engineering Dimensions*, Sept/Oct 2008, p. 39–42 if the reader wishes to appreciate what "compelling reasons" implies), and a decision of the Ontario College of Teachers, *Elizabeth Marie Von Eppinghoven v. Ontario College of Teachers*.

The first case, *Member v. Professional Engineers Ontario, July 3, 2008*, is a previous decision by the PEO Discipline Committee, which was published without names. However, in the Reasons for Decision, the panel stated that:

Publication is a general deterrent in that it may assist other professional engineers should they encounter like situations. Publication also serves to protect the public interest. The panel confirmed that, as a general principle, it is in the public interest that the names be published. The rare exceptions should have compelling reasons.

In the second case referenced, *Elizabeth Marie Von Eppinghoven v. Ontario College of Teachers*, the Discipline Committee of the Ontario College of Teachers made the following comments regarding publication with names:

Publication with the name of the member identifies to the profession the serious nature of the member's misconduct and the consequences of such behaviour. Publication with name acts as a specific deterrent to the member as it holds her accountable for her actions. It also serves as a general deterrent by reminding the profession

that such behaviour is not tolerated. Moreover, publishing the member's name ensures the transparency of the discipline process and reassures the public that the college acts decisively and does not shield its members when matters of this nature are brought to its attention.

Counsel for the member and holder submitted that the member is surrendering his licence voluntarily (rather than being revoked). Counsel argued that the member has co-operated fully with PEO in this matter, has accepted responsibility for his actions and has always acted professionally.

The panel has decided that this Decision and Reasons will be published in summary form, with names, because the penalty imposed (in accordance with the Joint Submission as to Penalty) includes revocation of the member's licence and the certificate of authorization. In the panel's view, the fact that the revocation will be suspended upon the fulfillment of terms and conditions (which allow the member to resign, surrender his certificate of authorization and never reapply for reinstatement) does not change the fact that the penalty includes a revocation provision. Therefore, s. 28(5) applies to require publication with the names of the member and IIA included. The panel also finds that publication with names is appropriate in this case because it involves a repeat offence of a serious nature. As noted in *Member v. Professional Engineers Ontario, July 3, 2008*, "as a general principle, it is in the public interest that the names be published. The rare exceptions should have compelling reasons." There was no evidence or compelling reason to support publication without names in the present case.

The panel therefore orders as follows:

1. Pursuant to subsection 28(4)(a) of the *Professional Engineers Act* (the act), Iqbal's licence and certificate of authorization shall both be revoked.
2. Pursuant to subsection 28(4)(k) of the act, the imposition of the penalty set out in paragraph 1 above shall be suspended upon the following terms and conditions:
  - a. within seven (7) days of the date of pronouncement of the Discipline Committee's

decision on penalty, Iqbal shall file with the registrar a resignation in writing, pursuant to subsection 5(2) of the act;

- b. within seven (7) days of the date of pronouncement of the Discipline Committee's decision, Iqbal shall surrender his certificate of authorization; and
  - c. Neither Iqbal nor IIA will ever apply for reinstatement.
3. If any of the terms and conditions set out in paragraph 2 above are breached, the suspension of the revocation referred to above will be lifted, and the revocation shall take effect immediately thereafter.
  4. The findings and order of the Discipline Committee shall be published in summary form in the official publication of the PEO with names; and
  5. There shall be no order with respect to costs.

The written Decision and Reasons were signed by Michael Wesa, P.Eng., on November 16, 2018, as chair on behalf of the other members of the Discipline Panel: Thomas Chong, P.Eng., Tim Kirkby, P.Eng., David Robinson, P.Eng., and Nadine Rush, C.E.T.