

SUMMARY OF DECISION AND REASONS

On allegations of professional misconduct under the *Professional Engineers Act* regarding the conduct of BRIAN P.M. RIGGS, P.ENG. (Riggs), a member of the Association of Professional Engineers of Ontario (PEO), and Riggs Engineering Ltd. (REL), a holder of a certificate of authorization (C of A) from PEO.

HEARING ON THE MERITS

A panel of the Discipline Committee of PEO held a hearing on the merits in this matter remotely on July 12, 13 and 14, 2021, via Zoom. Riggs and REL were not present and not represented, but the panel found that they were given appropriate notice of the hearing.

Riggs was the licence holder responsible for the services provided under REL's C of A. Overholt Excavating Services Ltd. (Overholt) hired REL to design a retaining wall on the complainant's property (the Property). Riggs prepared a drawing for the retaining wall, which he signed and sealed in 2011. Overholt constructed the retaining wall based on Riggs's design. In 2014, the complainant noticed that the wall was failing, and in 2015 the complainant submitted a complaint to PEO. Riggs was uncooperative with the PEO investigator.

The PEO investigation concluded that Riggs's drawing failed to meet the standard of a reasonable and prudent practitioner. The panel found that Riggs and REL:

- (a) prepared inadequate design drawings amounting to professional misconduct as defined by sections 72(2)(a), (b), (d) and (j) of Regulation 941: General under the *Professional Engineers Act, R.S.O. 1990, c. P.28*; and
- (b) failed to cooperate with the Complaints Committee's investigation, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

The panel's reasons for its decision included the following: an Expert Report stated that, among other things, the retaining wall lacked adequate support and stiffness and that it was entirely possible that the retaining wall could be a safety concern for the occupant. The evidence was that stones at the Property were sunken down, a staircase was destroyed and the retaining wall was falling and moving. Although prior to the design of the retaining wall, other professionals recommended that

Riggs design a system using helical pier tie-backs, he instead designed a Steel Sheet Pile anchor system, which was deficient in this case. Riggs's drawing was also deficient as it did not contain enough information to perform a peer review.

Riggs failed to cooperate with PEO Complaints Committee's investigation. In particular, PEO's investigator made approximately 18 attempts to contact Riggs throughout the course of the investigation. Despite this, Riggs only provided one document to PEO's investigator—the design drawing. He also made commitments to PEO's investigator that were often unfulfilled.

As a result, the panel ordered the following:

1. Revocation of Riggs's licence and REL's C of A pursuant to section 28(4)(a) of the act;
2. A summary of the findings and order of the Discipline Committee regarding both the hearing on the merits and the penalty hearing shall be published with names pursuant to sections 28(4)(i) and 28(5) of the act; and
3. Costs in the amount of \$25,000 shall be paid jointly and severally by Riggs and REL pursuant to section 28(4)(j) of the act.

Charles McDermott, P.Eng., chair of the Discipline Panel, signed the Decision and Reasons in the hearing on the merits on September 7, 2021, on behalf of the other panel members: Alisa Chaplick, LLB, LLM, and Gary Thompson, P.Eng. In addition, McDermott signed the Decision and Reasons in the penalty hearing on December 13, 2021, on behalf of Chaplick and Thompson.