

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 HOUSTON T. ENGIO, P.ENG., a member of the Association of Professional Engineers of Ontario, and HOUSTON ENGINEERING & DRAFTING INC., a holder of a Certificate of Authorization.

1. This matter came before a panel of the Discipline Committee of the Association of Professional Engineers of Ontario (the association or PEO) for hearing on April 30, May 1, 8 and 9, 2013.

THE COMPLAINTS COMMITTEE'S REFERRAL DECISION AND THE ASSOCIATION'S ALLEGATIONS

2. Mr. Engio was licensed as a professional engineer under the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28 (the act). Houston Engineering & Drafting Inc. (Houston) held a Certificate of Authorization issued under the act. Mr. Engio and Houston are collectively referred to as the "respondents."
3. In a decision dated March 1, 2010, the Complaints Committee referred the following matter to the Discipline Committee: "The CTBD (City of Toronto building department) was concerned regarding the lack of calculations and support for the shoring plan that was submitted by Engio. All communications and correspondence generated by Engio were very difficult to understand. It appeared that Engio withheld an appropriate response to the CTBD concerns due to a payment dispute and scope of work issues with SPH (SkyPoint Hi-Rise Ltd.). Reportedly, some of Engio's drawings were "shop drawings" and not intended for submission to the CTBD. There were concerns about the quality of Engio's work and significant safety issues regarding the shoring plan."
4. The association alleged that the respondents were guilty of professional misconduct as defined in section 28(2)(b) of the act and Regulation 941, in that:
 - 1) They failed to comply with two guidelines issued by the association:
 - (i) *Professional Engineers Providing General Review of Construction as Required by the Ontario Building Code*; and
 - (ii) *Guideline for Professional Engineers—Temporary Works*.
 - 2) They committed negligence, contrary to section 72(2)(a) of Regulation 941;
 - 3) They failed to make reasonable provision for the safeguarding of the life, health or property of the persons affected by their work, contrary to section 72(2)(b) of Regulation 941;

- 4) They failed to make reasonable provision for complying with applicable statutes, regulations, standards, codes and bylaws contrary to section 72(2)(d) of Regulation 941;
- 5) They undertook work they were not competent to perform, contrary to section 72(2)(h) of Regulation 941; and
- 6) They were guilty of 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 unprofessional, contrary to section 72(2)(j) of Regulation 941.

SUMMARY OF THE PANEL'S FINDINGS

5. For reasons set out in detail below, the panel concluded that the respondents:
 - 1) Failed to comply with the two guidelines, as alleged by the association;
 - 2) Engaged in professional misconduct by being negligent, contrary to section 72(2)(a) of Regulation 941;
 - 3) As a designer and site reviewer, engaged in professional misconduct by failing to make reasonable provision for the safeguarding of the life, health or property of others, contrary to section 72(2)(b) of Regulation 941;
 - 4) Engaged in professional misconduct by failing to make responsible provision for complying with application laws and rules, contrary to section 72(2)(d) of Regulation 941; and

- 5) Engaged in unprofessional conduct, contrary to section 72(2)(j) of Regulation 941.

SUMMARY OF THE EVIDENCE

6. This proceeding relates to the construction at the sites of 799 and 801 College Street, Toronto.
7. Before the commencement of the hearing on May 1, 2013, Mr. Engio had asked for, and was granted, adjournment twice: the first time for medical reasons, and the second time for retaining new legal counsel. The second adjournment request was made on December 17, 2012, the first day of the four-day hearing. It was made without any advance notice. Furthermore, Mr. Engio's new counsel did not appear before the panel to make the adjournment request. The panel's independent legal counsel reached Mr. Engio's new counsel to confirm that he was recently retained by Mr. Engio. The last-minute adjournment request was very inconvenient for the five members on the panel, some of whom had travelled from out of Toronto to attend the hearing. In any event, the panel agreed to adjourn the hearing for the second time, and ordered that no further adjournment would be granted, barring "extraordinary circumstances, supported by admissible and sufficient evidence." The hearing was rescheduled to May 1, 8 and 9, 2013.
8. The hearing commenced, as scheduled, on May 1, 2013. The panel was advised on the day of the hearing that Mr. Engio would be self-represented. Mr. Engio attended the hearing on May 1, 2013, and conducted cross-examination of the two fact witnesses produced by the association. At the end of May 1, 2013, Mr. Engio suddenly appeared to collapse from his chair and was lying on the floor. A call was made to 911, and a medical team arrived on site to take Mr. Engio to a Toronto hospital for check-up. On May 8, 2013, Mr. Engio did not show up for the hearing. Instead, he requested another adjournment relying on a "medical note" dated May 3, 2013, which purported to be from a walk-in clinic in Kitchener and stated that he should be "off work" for three weeks for "job related stress." The note made no mention of the discipline hearing; neither did it indicate that he was medically unfit to attend the hearing. Even though Mr. Engio was taken by the medical emergency response team to a nearby hospital on May 1, 2013, Mr. Engio did not produce any medical note or check-out report from that hospital. After reviewing and considering the note from the walk-in clinic, the panel was satisfied that there was no sufficient basis to adjourn the hearing the third time, and that it was appropriate to continue the hearing in his absence. The chair of the panel advised Mr. Engio's friend, Mr. Bob Balog, who had been present throughout the hearing, of the decision to proceed with the hearing and asked him to advise Mr. Engio accordingly.
9. The association produced four witnesses: John Neilas, Bob McKeown, Tim Orpwood and Mr. Daria Khanchi (expert witness).
10. Mr. Neilas is vice president for SkyPoint Hi-Rise Ltd. (SkyPoint). SkyPoint acquired the property at 799 College Street in 2007 for the development of a condominium building. This was SkyPoint's first development project, and it had hoped that the construction would be completed within two years. For reasons that gave rise to this discipline proceeding, at the time of the hearing in 2013, the construction was not yet completed or ready for occupancy.
11. SkyPoint hired Isherwood and Associates, which prepared shoring drawings based on which, on August 7, 2008, the City of Toronto issued a partial permit for foundations and shoring at 799 College Street.
12. At some point, SkyPoint discovered that the property at 799 College Street shared a single wall with 801 College Street. For cost reasons, SkyPoint also changed the building material from steel to concrete, which effectively changed the structure of the building.
13. SkyPoint retained Houston around November 2008 as a contractor for the demolition of the old structure at 799 College Street. He was subsequently retained for the shoring work of the construction project. Mr. Engio prepared two drawings, SK7 and SK8, and submitted them to the City of Toronto on March 9, 2009 in an application for a revision to the partial permit.
14. Mr. McKeown was the deputy building officer for the City of Toronto and had been a professional engineer for 27 years in Ontario. At all material times, his primary responsibility was to review plans to ensure they were in compliance with the Ontario Building Code and other applicable rules and regulations. At any given time, he dealt with 30-50 active applications for building permits. The panel accepted that Mr. McKeown was very experienced with assessing plans against the Ontario Building Code.

15. Mr. McKeown testified that, as a building officer, he found the two drawings SK7 and SK8 deficient in every regard. His complaint was that the drawings were incomplete and the design could not resist applied loads. He advised SkyPoint's representative that the substandard submission made by Mr. Engio would not be reviewed.
16. On April 29, 2009, Mr. Engio submitted two new drawings, SK1 and SK2, to the city. On April 30, 2009, Mr. McKeown issued an examiner's notice identifying deficiencies in SK1 and SK2, as well as an order to comply. Mr. Engio responded with two letters dated May 3 and 5, 2009, which did not address any of the itemized deficiencies. In the meantime, he allowed the shoring work and the construction to be continued without a permit.
17. On March 25, 2009, the City of Toronto building office received a permit application to reconstruct the west exterior wall at 797 College Street, which was necessary due to the construction project at 799 College Street. Mr. Engio submitted unsealed and inadequate drawings. It was most unusual that he also provided a General Review Commitment Certificate by signing off on all disciplines, including architectural, mechanical, structural, electrical, fire protection and plumbing (even though no single engineer could cover all of these disciplines), and Existing Life Safety Systems for Building forms (even though he did not have sketches of the building).
18. On May 4, 2009, Mr. McKeown issued another examiner's notice itemizing the deficiencies on the permit application with respect to 797 College Street, and a stop-work order. The responses from Mr. Engio were stamped with his engineering seal, but completely unresponsive and incoherent.
19. Mr. McKeown testified that, as a building officer with more than 25 years of review experience, he had never seen an engineering design for a commercial shoring project that was as inadequate as the ones submitted by Mr. Engio.
20. Mr. Orpwood had been a licensed professional engineer since 1979. He received a bachelor of geological engineering from the University of Toronto. He had been a principal of an engineering firm called Terraprobe Design Ltd., and ran the division in charge of shoring designs. He was retained by SkyPoint in May 2009 with respect to the construction project at 797 College Street. Mr. Orpwood visited the site, reviewed the work and the drawings authored by Mr. Engio and concluded that the system, as designed and partially constructed under Mr. Engio's supervision, was unsafe, lacked structural integrity, failed to provide for the real form of the wall, and precluded the placing of the drainage necessary for the condominium building.
21. Mr. Khachi was presented by the association as an expert witness. He received a bachelor of civil engineering from McMaster University in 1985, and a master of engineering at the University of British Columbia in 1989. He had been a licensed engineer since 1990. Mr. Khachi had over 20 years of experience in the structural design and rehabilitation of buildings. He is a principal at an engineering firm called Dialog, and had performed structural analysis and design of many commercial buildings.
22. The panel accepted Mr. Khachi's qualifications as an expert to testify about Mr. Engio's engineering work in this proceeding. Mr. Khachi identified at least 17 errors, omissions and deficiencies in Mr. Engio's drawings that would present a significant risk to public safety and encroach upon neighbouring public properties. Mr. Khachi testified that all of Mr. Engio's drawings failed to identify the applicable codes and standards, geotechnical parameters or design loads. Mr. Engio's drawings lacked the necessary details, such as connection and foundation details. In Mr. Khachi's opinion, the soldier piles and its base connection, as designed by Mr. Engio, were significantly overstressed and could result in catastrophic failure. It is not necessary to set out in detail all of the engineering deficiencies identified by Mr. Khachi. It suffices to say that, in his opinion, Mr. Engio's designs were unworkable and dangerous.

REASONS FOR THE PANEL'S FINDINGS

23. As the regulator for professional engineers in Ontario, in order to fulfill its statutory mandate to protect the public interest, the association produces guidelines to educate both members and licence holders about standards of practice.

24. The association alleged that two guidelines are applicable in this proceeding and have not been complied with by the respondents: *Guideline for Professional Engineers–Temporary Works* (guideline for temporary works); and *Guideline for Professional Engineers Providing General Review of Construction as Required by the Ontario Building Code* (guideline for building code).
25. The guideline for temporary works sets out the basic requirements, procedures and duties professional engineers shall consider in order to achieve the proper design and construction of temporary works until the permanent works have been completed. Pursuant to section 2, drawings for temporary works must clearly communicate design requirements and installation details to temporary works contractors, and include a list of enumerated details. None of those details were included in Mr. Engio’s drawings.
26. According to the guideline for building code, a professional engineer must refuse to review work where construction of a building is proceeding without building permits. The guideline sets out a number of steps that an engineer must take when he is hired to review a building project, and finds that no building permit has been issued for the work. In this case, Mr. Engio allowed the construction to proceed without a proper permit and, worse, in the face of a stop-work order issued by the city’s building officer. This is a clear violation of the guideline for building code.
27. As such, the panel finds that the respondents engaged in professional misconduct by failing to comply with the two guidelines and were negligent, contrary to section 72(2)(a) of Regulation 941.
28. Section 72(2)(b), (d) and (j) of Regulation 941 provides that the following conduct constitutes “professional misconduct.”
- (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...
29. In light of the evidence summarized above, the panel finds that the respondents failed to comply with the Ontario Building Code, and irresponsibly produced drawings that had no engineering details or provisions for public safety, contrary to section 72(2)(b) and (d) of Regulation 941. The respondents’ conduct would reasonably be regarded by the engineering profession as unprofessional, contrary to section 72(2)(j) of Regulation 941.
30. The association alleged that the respondents undertook work that they were not competent to perform, contrary to section 72(2)(h) of Regulation 941. However, no evidence was introduced at the hearing about Mr. Engio’s education, prior experience or competence (or lack thereof). As such, the panel finds that the association has not made out its case against the respondents with respect to section 72(2)(h).
31. This matter shall be relisted for hearing to hear submissions from the parties with respect to the appropriate penalty arising from the panel’s findings in this matter.

Michael Wesa, P.Eng., signed this Decision and Reasons for the decision as chair of this discipline panel and on behalf of the members of the discipline panel: Ishwar Bhatia, P.Eng., Rebecca Huang, LLB, Virendra Sahni, P.Eng., and Henry Tang, P.Eng.