

## 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 WILLIAM TESSLER, P.ENG., a member of the Association of Professional Engineers of Ontario, and SONTERLAN CORPORATION, a holder of a certificate of authorization.

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 November 19, 2018, at the offices of the Association of Professional Engineers of Ontario, 40 Sheppard Avenue West, Toronto, Ontario.

### THE ALLEGATIONS

The allegations against William Tessler, P.Eng., and Sonterlan Corporation were set out in the Statement of Allegations attached to the decision of the Complaints Committee, both of which were dated April 4, 2018. The updated allegations are contained in the Agreed Statement of Facts in the next section.

### AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that the parties had an Agreed Statement of Facts, which was signed by the member and the certificate of authorization holder on October 9, 2018, and by the association on October 16, 2018. The agreement was filed at the hearing. None of the parties called any witnesses.

The Agreed Statement of Facts provides as follows (without attachments):

This Agreed Statement of Facts is made between the Association of Professional Engineers of Ontario (PEO) and the respondents, William Tessler, P.Eng. (Tessler) and Sonterlan Corporation (Sonterlan) (collectively, the parties).

1. Tessler is a licensed professional engineer with PEO. At all material times, Sonterlan held a certificate of authorization (C of A) with PEO, and Tessler was the designated individual taking responsibility for engineering services provided under the C of A.
2. In or about August 2015, Sonterlan was retained by Innovative Civil Constructors Inc. (ICCI) to design the cantilevered formwork and falsework to be used for the Remus River Bridge No. 1 Rehabilitation (the project) in New Brunswick. The project was owned by the New Brunswick Department of Transportation and Infrastructure (NBDTI).
3. The complainant, James V. Wood, P.Eng., is a senior structural engineer at Hilcon Limited (Hilcon), the engineering firm that was retained by NBDTI to perform project oversight and design review on the project. Attached as Schedule "A" hereto is a copy of the complaint, without attachments.
4. On or about September 4, 2015, the respondents submitted an initial design signed and sealed by Tessler. Hilcon reviewed the design and advised NBDTI and ICCI that the design was unacceptable and required revision to address the cumulative deflection of the formwork and falsework. Attached as Schedule "B" is a copy of a letter sent to NBDTI by Hilcon dated September 14, 2015 containing Hilcon's comments and concerns relating to the initial design.
5. Between approximately September 16 and 22, 2015, the respondents submitted additional signed and sealed revised drawings and calculations following Hilcon's and NBDTI's requests. Hilcon was not satisfied that the respondents' revisions adequately addressed the shortcomings of the proposed design, and suggested that a conference call be arranged to discuss the unresolved issues relating to the proposed design.
6. On September 22, 2015, Tessler, Hilcon staff, NBDTI and ICCI participated in a conference call, in which Hilcon's concerns were discussed. Tessler defended the design. Among other things, he maintained that the formwork design satisfied deflection requirements. Attached as Schedule "C" hereto is a copy of the minutes of the conference call meeting. Attached as Schedule "D" is a copy of a letter dated September 22, 2015, from Hilcon to NBDTI in which Hilcon recaps its concerns. Attached as Schedule "E" is a copy of a letter dated September 24, 2015, from Hilcon to NBDTI, summarizing its concerns in relation to the respondent's revisions signed and sealed on September 22, 2015.

**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. Following receipt of the letter dated September 24, 2015 (Schedule “E”), NBDTI instructed ICCI not to install the formwork until the issues were resolved. ICCI determined that they could not wait until the design issues were resolved and retained another engineering firm to complete an alternate design. ICCI further advised NBDTI that they would no longer use Sonterlan and Tessler on any further projects in New Brunswick.
8. PEO sought an opinion from an independent expert. The expert confirmed that the respondents’ design work contained serious deficiencies, concluding that:
  - a. The design failed to comply with a number of applicable codes and standards;
  - b. The design was missing critical details;
  - c. The design drawings contained numerous errors and other deficiencies, including the incorrect application of engineering principles; and
  - d. If built according to the respondents’ design, the formwork and falsework structure could have collapsed.

Attached as Schedule “F” is a copy of the expert’s report dated July 13, 2017 (the report).

9. Following receipt of the report, the respondents advised that the reporting letter from Art Engineering Inc. did not include any calculations or computer-generated analysis to support the conclusions documented and elected to perform an in-house design evaluation using SAP 2000 software. As a result of this evaluation, the respondents advised PEO, by email sent on September 6, 2017, that they concurred with the conclusions reached by the independent expert. They acknowledged “that the final design was flawed and would have failed under a full loading condition when the concrete was still in its plastic state.” The respondents explained that, due to time constraints, they had not followed their established protocol, which requires that an independent design review be performed by a member of staff prior to the release of any sealed drawing. The respondents further advised:

“We are fully cognizant of our responsibilities as professional engineers to uphold the requirements of clause 77.2.i of the

Code of Ethics of the association as it related to the welfare of the public.

“An independent engineering review is currently performed by either a member of our staff or third party checking engineer prior to the release of any sealed drawings or documents to ensure that the welfare of the public and our clients is paramount.”

10. The respondents have been previously convicted of professional misconduct. Attached as Schedule “G” hereto is a copy of the Discipline Committee decision in connection with the previous conviction dated October 18, 2004.
11. For the purposes of this proceeding, the respondents accept as correct the findings, opinions and conclusions contained in the report (Schedule “F”). The respondents admit that they failed to meet the minimum acceptable standards for engineering work of this type, and that they failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances. The respondents further admit that, by virtue of the errors in their design, they failed to make reasonable provision for the safeguarding of life, health or property of persons who might have been affected by the work for which they were responsible, and that they failed to make responsible provision for complying with applicable statutes, regulations, standards and codes.
12. By reason of the aforesaid, the parties agree that the respondents are guilty of professional misconduct as follows:
  - a. Acting or omitting to act in carrying out their work in a manner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances, amounting to professional misconduct as defined by section 72(2)(a) of Regulation 941.
  - b. Failing to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which they are responsible, amounting to professional misconduct as defined by section 72(2)(b) of Regulation 941.
  - c. Failing to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under their responsibility, amounting to professional misconduct as defined by section 72(2)(d) of Regulation 941.
  - d. Engaging in 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, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

The respondents have had independent legal advice or have had the opportunity to obtain independent legal advice, with respect to their agreement as to the facts, as set out above.

The panel noted that the complainant and the structure that Tessler and Sonterlan designed were all located in New Brunswick. The panel inquired as to its jurisdiction and was referred to section 28(1) of the *Professional Engineers Act* by counsel for the association. The panel noted that the association also provided a previous discipline panel decision in the matter of *PEO v. Michaels A. Schor P.Eng. and M.A. Steelcon Engineering Limited* that involved the work of a member of the association outside of Ontario. The panel was convinced that it had jurisdiction.

### PLEA BY MEMBER AND BY THE HOLDER

William Tessler, P.Eng., a member of the Association of Professional Engineers of Ontario, and Sonterlan Corporation, a holder of a certificate of authorization, both admitted to the allegations set out in the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that both the member's and the holder's admission was voluntary, informed and unequivocal.

### DECISION AND REASON

The panel considered the Agreed Statement of Facts and finds that the facts set out in paragraph 8 of the agreement and the conclusions in the report (by Art Ivantchouk, P.Eng., dated July 13, 2018) support a finding of professional misconduct. The panel finds that William Tessler, P.Eng., a member of the Association of Professional Engineers of Ontario, and Sonterlan Corporation, a holder of a certificate of authorization, are guilty of professional misconduct as set out in paragraphs 12 a., b., c. and d. of the Agreed Statement of Facts.

### JOINT SUBMISSION ON PENALTY

Counsel for the association advised the panel that she had a Joint Submission as to Penalty and Costs, which was signed by the member and the certificate of authorization holder on October 9, 2018, and by the association on October 16, 2018. The joint submission was filed at the hearing. None of the parties called any witnesses on penalty.

The Joint Submission as to Penalty and Costs provides as follows (paragraphs numbered 1 and 2 are introductory and are not included):

3. The PEO, Tessler and Sonterlan make the following joint submission as to penalty and costs:
  - a) Pursuant to section 28(4)(f) of the act, Tessler and Sonterlan shall be repriman-

ded, and the fact of the reprimand shall be recorded on the register permanently;

- b) Pursuant to section 28(4)(b) of the act, Tessler's licence shall be suspended for a period of three (3) months, commencing on December 1, 2018;
- c) Pursuant to sections 28(4)(d) and 28(4)(e) of the act, it shall be a term, condition and restriction on Tessler's licence that he shall not be the supervising engineer under section 17 of the act and section 47 of Regulation 941 (Supervising Engineer) for any holder of a certificate of authorization;
- d) Pursuant to sections 28(4)(d) and 28(4)(e) of the act, it shall be a term, condition or restriction on Sonterlan's certificate of authorization that every final structural engineering document issued or released by Sonterlan shall bear the signature and seal of Sonterlan's supervising engineer;
- e) Pursuant to section 28(4)(h) of the act, the respondents shall pay a fine in the amount of five thousand dollars (\$5,000) within three (3) months of the date of the Discipline Committee's decision on penalty;
- f) Pursuant to sections 28(4)(i) and 28(5) of the act, the reasons for decision, including the findings and order of the Discipline Committee shall be published in summary form in PEO's official publication, with reference to names; and
- g) There shall be no order as to costs.

Tessler and Sonterlan have had independent legal advice, or have had the opportunity to obtain independent legal advice, with respect to the penalty set out above.

Counsel for the association reminded the panel that the purposes of penalty are the protection of the public, to maintain the reputation of the association in the eyes of the public, for general and for specific deterrence and for rehabilitation. Counsel pointed out that this was Tessler's second offence, which was an aggravating factor to take into account. Counsel proposed that the penalty was a reasonable and appropriate set of penalties under the circumstances.

Counsel for the association put forth that the public would be protected, since Tessler would no longer be able to take responsibility for designs involving the protection of the public, and that another professional engineer would have to take responsibility for designs produced by Sonterlan.

Counsel for the association put forth that the reputation of the association would be maintained by the fine, which demonstrates the seriousness of the association in matters of the protection of the public; and the reprimand and the suspension, which demonstrate that serious misconduct results in serious penalties.

Counsel for the association put forth that the proposed penalty would provide specific deterrence through the combination of a fine, suspension and reprimand for the member, and through the limitation on the certificate of authorization for the holder.

Counsel for the association put forth that the proposed penalty would provide general deterrence by demonstrating to the members of the association that issues of public protection are taken very seriously. This will encourage the members to take the time and to produce correct designs.

Counsel for the association put forth that there is no rehabilitation in the proposed penalty, as none is needed, since Tessler would no longer be able to take responsibility for a design that involves the protection of the public.

Counsel for the association cited *PEO v. Gregory J Saunders P.Eng. and M.R. Wright and Associates Co. Ltd*, *PEO v. Michaels A. Schor P.Eng. and M.A. Steelcon Engineering Limited*, and *PEO v. Michael M. Cook P.Eng.* to show that the proposed penalty falls within the reasonable range of penalties based upon previous decisions of the Discipline Committee.

Counsel for the association said that a mitigating factor was that the member accepted responsibility for his actions during the investigation, and that the two aggravating factors were the serious risk to the public posed by the design by the member and the holder and the fact that this was a second offence for Tessler.

Counsel for the member and the holder noted that Tessler has worked hard to resolve this matter and believes that his design should have been to a higher standard.

In response to questions by the panel, the parties said that the term “documents” in the proposed penalty was intended to be interpreted as broadly as possible.

Independent legal counsel to the panel cited from *R v. Anthony-Cook 1016 SCC 43* as the leading case on accepting joint submissions as follows:

5. ...The test he should have applied is whether the proposed sentence would have brought the administration of justice into disrepute, or work otherwise be contrary to the public interest.

## PENALTY DECISION AND REASONS

The panel accepts the Joint Submission as to Penalty and Costs and makes the following order:

- a) Pursuant to section 28(4)(f) of the act, Tessler and Sonterlan shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently;
- b) Pursuant to section 28(4)(b) of the act, Tessler’s licence shall be suspended for a period of three (3) months, commencing on December 1, 2018;
- c) Pursuant to sections 28(4)(d) and 28(4)(e) of the act, it shall be a term, condition and restriction on Tessler’s licence that he shall not be the supervising engineer under section 17 of the act and section 47 of Regulation

941 (Supervising Engineer) for any holder of a certificate of authorization;

- d) Pursuant to sections 28(4)(d) and 28(4)(e) of the act, it shall be a term, condition or restriction on Sonterlan’s certificate of authorization that every final structural engineering document issued or released by Sonterlan shall bear the signature and seal of Sonterlan’s supervising engineer;
- e) Pursuant to section 28(4)(h) of the act, the respondents shall pay a fine in the amount of five thousand dollars (\$5,000) to the minister of finance within three (3) months of the date of the Discipline Committee’s decision on penalty;
- f) Pursuant to sections 28(4)(i) and 28(5) of the act, the reasons for decision, including the findings and order of the Discipline Committee shall be published in summary form in PEO’s official publication, with reference to names; and
- g) There shall be no order as to costs.

The panel concluded that the proposed penalty is reasonable and in the public interest and, as set out in the legal test, the panel specifically found that the joint submission did not bring the administration of justice into disrepute, or work otherwise contrary to the public interest. William Tessler, P.Eng., 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 panel also took into account that the penalty reflects the aggravating factors of the seriousness of the deficiencies with the design produced by William Tessler, P.Eng., and Sonterlan Corporation, and the fact that this is the second offence for Tessler.

The panel suggests that the Association of Professional Engineers and Geoscientists of New Brunswick be notified of this decision and these reasons.

Jag Mohan, 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: Rishi Kumar, P.Eng., Lew Lederman, QC, Glenn Richardson, P.Eng., and William Walker, P.Eng.