

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 ASHRAF H.H. ELGENDUI, P.ENG., a member of the Association of Professional Engineers of Ontario, and TRINUS ENGINEERING INC., a holder of a certificate of authorization.

The panel of the Discipline Committee convened to hear and determine allegations of professional misconduct on the part of the respondents, Mr. Ashraf H.H. Elgendui (the member), a member of the Association of Professional Engineers of Ontario (the association or PEO) and Trinus Engineering Inc. (the holder or Trinus), a holder of a certificate of authorization from the association, which had been properly referred to us by the decision of the Complaints Committee dated March 1, 2018. The panel heard this matter on May 25 and 26, 2021, by means of an online video conference platform that was simultaneously broadcast in a publicly accessible format over the internet. All participants in the proceedings, including the member, counsel for the member and holder, counsel for the association and independent legal counsel (ILC) attended via videoconference.

AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that the association and the member and holder had reached agreement on the facts. Counsel for the association introduced an Agreed Statement of Facts signed by the member and holder on May 19, 2021, and by the association on May 20, 2021, with a correction agreed to by the parties on May 25, 2021.

The Agreed Statement of Facts, as revised on May 25, 2021 (the Revised Statement of Facts), provided as follows (although we reproduce the Revised Agreed Statement of Facts in whole below, including the references to schedules that were attached, the schedules themselves are not included here):

1. The respondent Ashraf H.H. Elgendui, P.Eng. (Elgendui), is a professional engineer licensed pursuant to the *Professional Engineers Act*. Elgendui's training and practice are primarily in the field of mechanical engineering. At all material times, Elgendui was licensed as a professional engineer with PEO.
2. The respondent Trinus Engineering Inc. (Trinus) is an Ontario corporation. At all material times, Trinus held a certificate of authorization (C of A) and Elgendui was the individual accepting professional responsibility for engineering services provided under the C of A.
3. The complainant, Ryan Verschuere, P.Eng., was at all material times a professional engineer employed as the project manager for Wescast Industries Inc., an automotive parts maker (Wescast).
4. In or about 2015, Wescast retained C&R Engineered Solutions Inc. to complete pre-start health and safety reviews (PHSRs or PSRs) on four Mazak machines Wescast had recently installed. C&R found that the Mazak IVS 400II machine did not have sufficient safeguards in place (the 2015 C&R Report). Attached hereto as Schedule "A" is a copy of the 2015 C&R Report.
5. Darren Scholl, who was Wescast's project manager at the time, raised the apparent safety issues with Mazak and was assured by Mazak that their machines complied with the relevant safety regulations in Ontario. Specifically, Mazak wrote to Scholl: "[Trinus'] take on this is that your inspector [C&R] is reviewing the requirements with much more detail that is above and beyond the requirements to pass. As it stands your machines do conform to the PSR regulations in Ontario."

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. 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.

6. In 2017, a minor safety issue occurred (an operator had her finger pinched by a machine) at Wescast, triggering an investigation by Verschuere, who was Scholl's successor as Wescast's project manager. In the course of his investigation, Verschuere reviewed the 2015 C&R Report, as well as the assurances Mazak and the respondents had provided to Scholl in 2015 regarding the safety of the Mazak machines.
7. In January 2018, Wescast commissioned a new Mazak IVS 400II machine (serial number 289232) (the Machine). Wescast retained ZCS AKIA Engineers Inc. to complete a PHSR on the Machine. ZCS AKIA Engineers Inc. came to similar conclusions as had C&R, finding that the Machine did not have sufficient safeguards in place and that it had PHSR deficiencies under sections 24, 25 and 26 of Regulation 851 under the *Occupational Health and Safety Act* (Report ZCS3016). Attached as Schedule "B" is a copy of Report ZCS3016.
8. When Verschuere approached Mazak about the apparent deficiencies, Mazak sent the respondents to complete a second PHSR of the Machine. On February 12, 2018, Elgendui on behalf of Trinus signed and sealed PHSR report that stated the Machine satisfied sections 24 and 25 of Regulation 851, and that it met CSA requirements (Report TR07290). Trinus included with its report, a "Letter of Safety Compliance." Attached as Schedule "C" is a copy of Report TR07290.
9. On March 12, 2018, Verschuere filed a formal complaint with PEO, which alleged that the respondents had inappropriately downgraded the risk category when they reviewed the Mazak machines based on "previous experience" (incident history) and "familiarity" with the machines rather than any safeguard built into the machines (the complaint). The crux of the complaint is that the Mazak machines do not have sufficient safeguards, but the respondents nevertheless passed them as being compliant with the applicable safety standards. On this basis, Verschuere alleged the respondents were negligent and had disregarded the safety and welfare of the public. Of particular concern to Verschuere was the fact that the respondents claimed to have performed "hundreds" of PHSRs for Mazak, potentially based on the same (allegedly) flawed methodology.
10. The applicable standard is CSA Z432, published by the Canadian Standards Association. Attached as Schedule "D" is a copy of the relevant portions of this standard. Also applicable, depending on the circumstances, are other standards, such as those published by the American National Standards Institute, and guidelines published by the Ministry of Labour, as further explained and referred to in the reports referred to in paragraphs 4, 7, 11 and 13 of this ASF.
11. PEO retained Jim Van Kessel, P.Eng. (Van Kessel), to prepare an independent expert report. He prepared a report dated July 17, 2018, a copy of which is attached as Schedule "E" hereto (the Expert Report). The Expert Report concluded in part as follows:

"Elgendui and Trinus Engineering failed to reference the appropriate type C standard for this type of machine and as such they have not correctly identified the severity of the risks associated with these machines.

...

Elgendui and Trinus Engineering has failed to meet the expectations of a reasonable and prudent practitioner in the circumstances. They have not followed the guidelines published by the Ministry of Labour, and they have not used the correct standards when they performed the reviews of this machinery. The information presented in the various reports is not consistent even though the machines are all very similar."
12. Elgendui responded to the Expert Report. A copy of his response, dated November 15, 2018, is attached as Schedule "F."
13. Van Kessel replied. A copy of this Reply Report, dated December 27, 2018, is attached as Schedule "G." The Reply Report concludes as follows:

"I have reviewed the information presented along with the reports, and I have not seen anything to change my mind, so I stand by my original report.

"Elgendui and Trinus Engineering has failed to meet the expectations of a reasonable and prudent practitioner in the circumstances. They have not followed the guidelines published by the Ministry of Labour, and they have not used the correct standards when they performed the reviews of this machinery. They have not assessed the risks associated with this equipment properly. The information presented in the various reports is not consistent, even though the machines are all very similar."

14. Van Kessel subsequently attended at Wescast's premises to examine the Machine, and thereafter issued a further report dated September 21, 2020, a copy of which is attached as Schedule "H." Mr. Elgendui later provided a report by Len Cicero, who is not a professional engineer. Section 7 of the *Occupational Health and Safety Act* requires that PHSRs be carried out by professional engineers. A copy of Cicero's report is attached as Schedule "I." Van Kessel responded by a further report dated February 23, 2021, a copy of which is attached as Schedule "J."
15. Van Kessel also provided a document entitled "Safety Systems," a copy of which is attached as Schedule "K," which the parties agree correctly sets out the step-by-step process involved in evaluating machine safety systems.
16. The respondents admit that they failed to properly assess certain important risks associated with the Machine. Among other errors, Elgendui and Trinus:
- failed to reference any machine specific type C standards available for the Machine in their PHSR report;
 - concluded that the risks associated with the equipment could be controlled by a single channel safety circuit with monitoring;
 - approved the control system of the Machine, even though it does not meet the requirements specified by the applicable standards;
 - failed to include in the PHSR report an assessment of the risks associated with loading and unloading parts; and
 - failed to include in the PHSR report an assessment of the possible failure modes of the equipment.
17. For the purposes of this proceeding, the respondents accept as correct the findings, opinions and conclusions contained in the 2015 C&R Report (except for the page entitled guarding review at page 131 of the Disclosure Book) and in the "Findings" section of the Expert Report and in the Reply Report. The respondents admit that they failed to meet the minimum acceptable standard for engineering work of this type, and that they failed to make responsible provision for complying with applicable regulations, standards and codes. The respondents further admit that they failed to make reasonable provision for the safeguarding of life, health or property of persons who may be affected by the work for which they were responsible.
18. By reason of the aforesaid, the parties agree that Elgendui and Trinus are guilty of professional misconduct as follows:
- signing and sealing a PHSR report that failed to meet the standard of a reasonable and prudent practitioner in the circumstances, amounting to professional misconduct as defined by section 72(2)(a) of Regulation 941;
 - signing and sealing a PHSR report 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 section 72(2)(b) of Regulation 941;
 - signing and sealing a PHSR report that failed to make responsible provision for complying with applicable statutes, regulations, standards and codes, amounting to professional misconduct as defined by section 72(2)(d) of Regulation 941; and
 - performing professional engineering services in an unprofessional manner, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

PLEA BY MEMBER AND HOLDER

The member and holder admitted the allegations set out in paragraphs 18 a. to d. of the Revised Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the admissions were voluntary, informed and unequivocal.

DECISION

The panel considered the Revised Agreed Statement of Facts. It finds that the facts, as admitted, support findings of professional misconduct against the member and holder. In particular, the panel finds that the member and holder committed acts of professional misconduct as follows:

- signed and sealed a PHSR report that failed to meet the standard of a reasonable and prudent practitioner in the circumstances, amounting to professional misconduct as defined by subsection 72(2)(a) of Regulation 941 under the act;
- signed and sealed a PHSR report 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 subsection 72(2)(b) of Regulation 941 under the act;
- signed and sealed a PHSR report that failed to make responsible provision for complying with applicable statutes, regulations, standards and codes, amounting to professional misconduct as defined

by subsection 72(2)(d) of Regulation 941 under the act; and

- d) performing professional engineering services in an unprofessional manner, amounting to professional misconduct under subsection 72(2)(j) of Regulation 941 under the act.

REASONS FOR DECISION

Member

The panel is of the view that the conduct admitted in paragraphs 1 to 18 of the Agreed Statement of Facts constitutes professional misconduct under subsections 72(2)(a), (b), (d) and (j) of Regulation 941 under the act. That the member committed such acts is confirmed by the facts as agreed to by the parties in the Agreed Statement of Facts, admitted by the member and accepted by the panel.

Holder

With respect to Trinus, counsel for the association submitted that facts contained and admitted by the holder in the Agreed Statement of Facts concerning the conduct of Trinus were sufficient evidence of professional misconduct by Trinus. Counsel for the association noted that, at the relevant times, Trinus held a certificate of authorization issued by the association that listed the member as a responsible engineer for the purposes of section 17 of the act.

The panel accepts that the aforesaid evidence inculcating Trinus supports a finding of professional misconduct against Trinus, which employed the member and for which the member served as a responsible engineer at the relevant times. Accordingly, for reasons analogous to those outlined above with respect to the member, the panel finds the holder, Trinus, guilty of professional misconduct in the same manner.

PENALTY

The panel received a Joint Submission as to Penalty and Costs signed by the member and holder on May 19, 2021, and by the association on May 20, 2021. The Joint Submission as to Penalty included the following language that raised an issue of the jurisdiction of the Discipline Committee:

.....

- 3. PEO and the defendants make the following joint submission on penalty and costs:

.....

- b) Pursuant to s. 28(4)(d) of the *Professional Engineers Act*, it shall be a term or condition on Elgendui’s licence that he shall, within sixteen (16) months of the date of pronouncement of the decision of the Discipline Committee, successfully complete the course offered at automate.org entitled “Robot Safety and Risk Assessment Training.”
- c) Pursuant to s. 28(4)(b), (d) and (k) of the *Professional Engineers Act*, in the event that Elgendui does not successfully complete the course referred to above within the time set out in (b) above, his licence shall be suspended for a period of ten (10) months thereafter, or until he successfully completes it, whichever comes first.

.....

Counsel for the association submitted that the Joint Submission as to Penalty and Costs fell within a reasonable range of penalties imposed in previous cases and appropriately served the principles of sentencing, including the protection of the public and maintenance of the public’s confidence in the profession.

Upon being asked by the panel, ILC advised that, in his view, the panel did not have the jurisdiction under the act to issue a penalty as described in subparagraph 3(c) of the Joint Submission as to Penalty and Costs. Specifically, ILC advised that the panel does not have the jurisdiction to issue a 10-month licence suspension for failing to complete the course referred to in subparagraph 3(b) of the Joint Submission as to Penalty and Costs.

Counsel for the association objected to the advice of ILC and requested an adjournment so as to provide the parties and ILC an opportunity to submit written opinions on the issue. The panel granted the request, ordered ILC to submit a written submission detailing his advice to the panel by June 2, 2021, and ordered counsel for the association (and counsel for the member and holder if they so wish) to submit written response to the panel by June 9, 2021.

PENALTY

The panel carefully considered the written submissions of ILC, attached as Appendix “1” to this Decision and Reasons, and by counsel for the association, attached as Appendix “2” to this Decision and Reasons. Counsel for the member and holder submitted a letter dated June 9, 2021, stating that the member and holder did not intend to make any further submission in response to the advice from ILC, and that the member and holder “are in agreement with the position articulated in the written submissions filed by counsel to the PEO dated June 9, 2021.” A copy of that June 9, 2021, letter sent on behalf of the member and holder is attached as Appendix “3” to this Decision and Reasons.

This jurisdictional issue appears to have arisen in another four relatively recent decisions of this Discipline Committee: *Association of*

Professional Engineers of Ontario v. Taha and Gad Technology Inc., Discipline Committee, November 4, 2019 (*Taha*); *Association of Professional Engineers of Ontario v. Panetta*, Discipline Committee, November 12, 2019 (*Panetta*); *Association of Professional Engineers of Ontario v. Singh and Mem Engineering Inc.*, Discipline Committee, October 22, 2020 (*Singh*); and *Association of Professional Engineers of Ontario v. Torkan*, Discipline Committee, March 15, 2021 (*Torkan*). Of these four decisions, three panels determined that the Discipline Committee was without jurisdiction to impose such penalty, whereas in *Torkan* the panel determined that it did have the jurisdiction to impose a suspension of the member’s licence for failure to take a course. This was also consistent with a long history of decisions, a list of which was provided to the panel, where the Discipline Committee has imposed such a penalty. See, for example, the list of cases at Schedule A to the written submissions of counsel for the association (Appendix 2 to this Decision and Reasons).

It is a well-established principle of law that a disciplinary panel should not interfere with a joint submission on penalty except where the panel is of the view that to accept the joint submission would bring the administration of the disciplinary process into disrepute or would be contrary to the public interest. A panel also cannot accept a joint submission on penalty where it does not have the necessary jurisdiction to do so under the act.

JURISDICTION

In this case, subparagraph 3(c) of the joint submission on penalty imposes a condition on the member’s licence related to the course he is required to complete within a timeframe or be suspended, as follows:

Pursuant to s. 28(4)(b), (d) and (k) of the *Professional Engineers Act*, in the event that Elgendui does not successfully complete the course referred to above within the time set out in (b) above, his licence shall be suspended for a period of ten (10) months thereafter, or until he successfully completes it, whichever comes first.

Counsel for the association submits that the panel has the jurisdiction to impose such a penalty based on subsection 28(4) of the act:

- 28(4) Where the Discipline Committee finds a member...guilty of professional misconduct or to be incompetent it may, by order,
- ...
- (b) suspend the licence of the member...for a stated period, not exceeding 24 months;
- ...
- (d) impose terms, conditions or limitations on the licence... including but not limited to the successful completion of a particular course or courses of study, as are specified by the Discipline Committee;
- ...
- (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, including but not limited to,
- (i) the successful completion by the member...of a particular course or courses of study,
- ...
- or any combination of them.

In this case, the jurisdictional question turns primarily on the interpretation of subsection 28(4)(k) of the act. Counsel for the association submits, on the one hand, that the words “or any combination of them” at the conclusion of s. 28(4) gives the panel sufficient jurisdiction to impose a suspended penalty as a licence condition. ILC, on the other hand, submits that the panel has no authority under the act to impose a future licence suspension for an act that is not based on the merits of the matter. Notably, in determining the panel did have jurisdiction to impose a future licence suspension for failure to take a course in *Torkan*, the panel interpreted the proposed suspension to be a “condition” of licence pursuant to subsection 28(4)(d), whereas 28(4)(d) was not relied on in any of *Taha*, *Panetta* or *Singh*, which were all instead determined primarily on the basis of 28(4)(k) alone.

Specifically, *Taha* determined that subsection 28(4)(k) does not allow for the suspension or postponement of an imposed penalty provision pending the future completion of a course. This, it reasoned, was because the words of subsection 28(4)(k) required there to be a penalty in place that could be suspended. *Panetta* expressed a concern “that it did not have the power under section 28(4)(k) to impose a future suspension.” Instead, it imposed a 10-month (suspended) suspension in the event the member did not complete the examination, upon the parties agreeing to amend the joint submission on penalty to provide for this. *Singh* concluded that a similar penalty was “beyond the Discipline Committee’s jurisdiction.”

In this case, ILC submits that no penalty is proposed to be suspended or postponed. Rather, it is proposed that an alternative penalty should be conditionally imposed: if the member does not successfully complete the course referred to above within the prescribed time, then

his licence shall be suspended for a period of 10 months thereafter, or until he successfully completes it, whichever comes first. If the parties had agreed, and they did not, that the misconduct merited a 10-month suspension, independent legal counsel submits that it would be lawful within the meaning of subsection 28(4)(k) to suspend or postpone the imposition of that penalty pending the successful completion of the course. But that is not what is proposed.

PENALTY DECISION

The panel accepts the submissions of ILC in that, as in *Taha*, the proposed 10-month licence suspension is not an existing penalty sought to address the panel’s findings of professional misconduct. Rather, it is an *additional* penalty sought for a *future* failure to act by the member. In the panel’s view, subsection 28(4) does not give it the authority to impose additional penalties based on a possible future act (or failure thereof) by the member. It is also the panel’s view that imposing a condition pursuant to subsection 28(4)(d) of the act, including but not limited to the successful completion of a particular course or courses of study, is limited to immediate licence suspensions and does not extend to potential future licence suspensions.

Notwithstanding, the panel accepts that the intent of subsection 3(c) of the Joint Submission as to Penalty and Costs is to ensure that the member does in fact complete the course. The panel also accepts the association’s position that without the “teeth” of a conditional licence suspension, the member may not be sufficiently motivated to complete the course, in which case the panel’s statutory mandate to protect the public interest may not be met.

As such, the chair of the panel wrote to the parties on June 12, 2021, advising as follows:

“We are in receipt of an opinion from the ILC dated June 2, 2021, and written submissions from PEO and the defendants dated June 9, 2021.

After review of these submissions and deliberations by the panel on June 11, 2021, the panel finds that it is not empowered to impose a licence suspension as a condition of not completing a required course.

.....

In this instance, PEO and the defendants have not asked for the imposition of a penalty (10-month suspension) and as such the panel cannot under the act suspend a penalty that has not been imposed. The panel understands the intent of the PEO and the defendants that was submitted as part of the Joint Submission on Penalties. The panel agrees on the intended penalty but is unable to impose it under the act.”

The panel accordingly invited the parties to revise and resubmit an amended Joint Submission as to Penalty and Costs by June 21, 2021, as follows:

“The panel invites PEO and the defendants to revise and resubmit the Joint Submission on Penalty (JSP) so that it is worded in a manner that is enforceable by the act. If the intent of the initial JSP remains unchanged then the new submission could impose a penalty that is then suspended for a fixed period of time or until the course is completed, pursuant to s.28(4)(k) (i)....”

The parties accordingly submitted an Amended Joint Submission as to Penalty and Costs signed by the member and on behalf of the holder on June 29, 2021, and on behalf of the association on June 30, 2021, as follows:

1. Ashraf H. H. Elgendui, P.Eng. (Elgendui), and Trinus Engineering Inc. (Trinus) are the defendants in this matter. Elgendui was at all material times a member of the Association of Professional Engineers of Ontario (PEO). Trinus was at all material times the holder of a certificate of authorization issued by PEO.
2. The defendants are the subject of a proceeding before a panel of the Discipline Committee of PEO pursuant to section 28 of the *Professional Engineers Act*.
3. PEO and the defendants make the following joint submission on penalty and costs:
 - a) Pursuant to s. 28(4)(f) of the *Professional Engineers Act*, the defendants shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently;
 - b) Pursuant to s. 28(4)(d) of the *Professional Engineers Act*, there shall be a term and condition on Elgendui’s requiring him to successfully complete the course offered at automate.org entitled “Robot Safety and Risk Assessment Training” (the Course), within 16 months from the date of pronouncement of the decision of the Discipline Panel (the Date);
 - c) Pursuant to s. 28(4)(e) and (k) of the *Professional Engineers Act*, a restriction shall be imposed upon Elgendui’s licence prohibiting him from practising professional engineering except under the direct

- supervision of another professional engineer who shall take professional responsibility for the work by affixing his or her signature and seal on every final drawing, report or other document prepared by Elgendui, which restriction shall be suspended for a period of 16 months from the Date. If Elgendui successfully completes the Course at any time before or after the 16-month period referred to above, this restriction shall be suspended indefinitely;
- d) Pursuant to subsection 28(4)(e)(iii) of the act, a restriction shall be placed upon Elgendui's licence and Trinus' certificate of authorization, requiring them to accept a practice inspection on the following terms:
- (i) the practice inspection will be carried out by an independent expert (to be named by the deputy registrar, regulatory compliance), who will provide a report to the deputy registrar, the chair of Discipline Panel and Trinus at the conclusion of the inspection,
 - (ii) the practice inspector shall provide written notice to the defendants at least two weeks before attending at the defendants' premises to carry out his or her inspection,
 - (iii) the practice inspection will be limited to not less than 10 and not more than 20 projects carried out in or after the year 2017, of a scope or nature similar to that which was the subject of this hearing (as identified by the independent expert named by PEO),
 - (iv) the practice inspection shall be completed, and the report submitted, within eight months from the date of pronouncement of the penalty decision,
 - (v) after review of the independent expert's inspection report, the deputy registrar, regulatory compliance, may, if he or she determines that the inspection report evidences incompetence or additional professional misconduct on the part of Elgendui and/or Trinus, after providing the defendants an opportunity to respond to this determination, request that the Discipline Panel order additional penalty action against the defendants,
 - (vi) if the independent expert concludes that one or more machines included in the inspection report are unsafe, he or she shall so advise the deputy registrar and the defendants, and the deputy registrar may take appropriate action, in accordance with section 78.1 of Regulation 941 under the act, to serve or protect the public interest,
 - (vii) the Discipline Panel shall make the determination noted in (v) no later than three months after the receipt of the request by the deputy registrar, and
 - (viii) PEO and the defendants shall each pay one-half of the costs associated with the practice inspection and the report;
- e) Pursuant to s. 28(5) of the *Professional Engineers Act*, the findings and order of the Discipline Committee shall be published, with the reasons therefor, together with the names of the defendants, in the official publication of the PEO; and
- f) There shall be no order as to costs beyond those in subparagraph (d)(vii) above.
- The defendants have had independent legal advice or have had the opportunity to obtain independent legal advice, with respect to the penalty set out above.
- The panel considered the Amended Joint Submission as to Penalty and Costs and decided it falls within a reasonable range of penalties.
- In the circumstances of this case, the panel is of the view that a reprimand, the fact of which is to be recorded permanently on the register; a requirement prohibiting the member from practising professional engineering except under the direct supervision of another professional engineer who shall take professional responsibility for the work, unless and until the member completes the Course (as defined in the Amended Joint Submission as to Penalty and Costs); a requirement for the member and holder to accept a practice inspection; and, publication of the panel's findings and order with reference to the names of the member and holder, is a reasonable outcome in this matter. A lesser penalty would fail to appropriately serve the aims of specific and general deterrence, protecting the public, and maintaining the public's confidence in the regulation of the profession.
- The panel acknowledges the member's co-operation with the association through the Agreed Statement of Facts and Amended Joint Submission as to Penalty and Costs. These considerations, combined with his lack of a prior disciplinary history, are mitigating factors in determining an appropriate penalty. It is the panel's view, however, that these mitigating factors do not completely detract from the aggravating factors, given the seriousness of the misconduct in question.

The panel has been made aware of the significant and troubling shortcomings in the member's practice in this case. The panel reiterates that the member has been found guilty of negligence and of failing to take reasonable precautions to safeguard the life and health of those who were affected by and relied on his work.

Public trust is at the core of what it means to be a professional. Members of the public must have confidence that professionals are held to high standards of conduct and that serious breaches of those standards are dealt with appropriately. Failing to take a proportionate response to protect the public in the face of professional misconduct undermines that trust and harms both the reputation of the profession and the legitimacy of professional regulation.

In the circumstances of this case, the panel is of the view that a reprimand, the fact of which is to be recorded permanently on the register, together with the requirements and licence restrictions specified above, will maintain public confidence in the regulation of the profession and adequately provide for protection of the public and general deterrence to the profession at large.

Additionally, the panel notes that the fact of a reprimand to be permanently recorded on the register and publication of the panel's findings and reasons with names serves to promote both specific and general deterrence and reinforce the public confidence in the regulation of the profession. Publication demonstrates, both to the profession and to the public, the seriousness with which the Discipline Committee regards lapses of professional standards, and the penalties for engaging in such misconduct.

Accordingly, the panel accepts the Amended Joint Submission as to Penalty and Costs for the member and Trinus and orders as follows:

- a) Pursuant to subsection 28(4)(f) of the *Professional Engineers Act*, Elgendui and Trinus shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently;
- b) Pursuant to subsection 28(4)(d) of the *Professional Engineers Act*, there shall be a term and condition on Elgendui's requiring him to successfully complete the course offered at automate.org entitled "Robot Safety and Risk Assessment Training" (the Course), within 16 months from the date of this Decision and Reasons;
- c) Pursuant to s. 28(4)(e) and (k) of the *Professional Engineers Act*, a restriction shall be imposed upon Elgendui's licence prohibiting him from practising professional engineering except under the direct supervision of another professional engineer who shall take professional responsibility for the work by affixing his or her signature and seal on every final drawing, report or other document prepared by Elgendui, which restriction shall be suspended for a period of 16 months from the date of this Decision and Reasons. If Elgendui successfully completes the Course at any time before or after the 16-month period referred to above, this restriction shall be suspended indefinitely;
- d) Pursuant to subsection 28(4)(e)(iii) of the act, a restriction shall be placed upon Elgendui's licence and Trinus' certificate of authorization, requiring them to accept a practice inspection on the following terms:
 - (i) the practice inspection will be carried out by an independent expert (to be named by the deputy registrar, regulatory compliance), who will provide a report to the deputy registrar, the chair of Discipline Panel and Trinus at the conclusion of the inspection,
 - (ii) the practice inspector shall provide written notice to the defendants at least two weeks before attending at the defendants' premises to carry out his or her inspection,
 - (iii) the practice inspection will be limited to not less than 10 and not more than 20 projects carried out in or after the year 2017, of a scope or nature similar to that which was the subject of this hearing (as identified by the independent expert named by PEO),
 - (iv) the practice inspection shall be completed, and the report submitted, within eight months from the date of pronouncement of the penalty decision,
 - (v) after review of the independent expert's inspection report, the deputy registrar, regulatory compliance, may, if he or she determines that the inspection report evidences incompetence or additional professional misconduct on the part of Elgendui and/or Trinus, after provid-

ing the defendants an opportunity to respond to this determination, request that the Discipline Panel order additional penalty action against the defendants,

- (vii) if the independent expert concludes that one or more machines included in the inspection report are unsafe, he or she shall so advise the deputy registrar and the defendants, and the deputy registrar may take appropriate action, in accordance with section 78.1 of Regulation 941 under the act, to serve or protect the public interest,
 - (vi) the Discipline Panel shall make the determination noted in (v) no later than three months after the receipt of the request by the deputy registrar, and
 - (vii) PEO and the defendants shall each pay one-half of the costs associated with the practice inspection and the report.
- e) Pursuant to s. 28(5) of the *Professional Engineers Act*, the findings and order of the Discipline Committee shall be published, with the reasons therefor, together with the names of the member and holder, in the official publication of PEO; and
- f) There shall be no order as to costs beyond those in subparagraph (d)(vii) above.

The panel will reconvene with the member and holder for the purpose of administering the reprimand, on a date to be determined on consultation with the member and holder.

Albert Sweetnam, 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: Reena Goyal, JD, and Glenn Richardson, P.Eng.

Appendix “1” (written submissions of ILC, dated June 2, 2021), Appendix “2” (written submissions by counsel for the association, dated June 9, 2021) and Appendix “3” (letter sent on behalf of the member and holder, dated June 9, 2021) can be found on PEO’s website: [https://secure.peo.on.ca/HearingDownload/90339896-877-Elgendui%20et%20al%20-%20Decision%20and%20Reasons%20\(with%20Appendices\).pdf](https://secure.peo.on.ca/HearingDownload/90339896-877-Elgendui%20et%20al%20-%20Decision%20and%20Reasons%20(with%20Appendices).pdf).