

## SUMMARY OF 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 actions and conduct of BENHAM TORKAN, P.ENG., a member of the Association of Professional Engineers of Ontario.

This Discipline Committee hearing took place by videoconference on October 19, 2020. The association was represented by Leah Price. Mr. Torkan was self-represented.

### AGREED STATEMENT OF FACTS AND ALLEGATIONS

The parties submitted the following Agreed Statement of Facts:

1. At all material times, Behnam Torkan (Torkan) was a professional engineer licensed pursuant to the *Professional Engineers Act*, whose practice focused on structural engineering.
2. On August 21, 2014, Torkan signed and sealed a structural review for Fairway Building Products L.P. (FBP), an American company that supplies deck and porch railing systems (the Torkan Review). Attached as Schedule “A” is a copy of the Torkan Review.
3. FBP intended to market the railing systems in Canada. The Torkan Review stated that the railing system was “designed to comply with the structural and other requirements of Canadian standards.” The purpose of the Torkan Review was stated therein to be “to describe the loading and analyze the behaviour of the railing under given loads and recommending guidelines in the installation processes of the railing system.”
4. The calculations in the Torkan Review omitted the height of the handrails and overstated the spacing of posts, the combination of which resulted in the potential for overstress as determined in accordance with the National Building Code. As well, the Torkan Review incorrectly relied upon a combined resistance of the steel post and aluminum sleeve, when only the post was connected to the base plate.
5. PEO retained an independent expert to examine the Torkan Review. In two reports, the expert concluded that the Torkan Review contained a number of errors, including the ones identified in paragraph 4 hereof, and that Torkan fell below applicable standards in preparing the Torkan Review. Attached collectively as Schedule “B” are the two expert reports.
6. For the purposes of these proceedings, Torkan accepts as correct the findings, opinions and conclusions contained in the expert reports. Torkan admits that he failed to make reasonable provision for the safeguarding of the public, that he failed to make responsible provision for complying with applicable standards and codes, and that he failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances.
7. On December 6, 2018, a Hearing Panel under the *Engineering and Geoscience Professions Act* of Saskatchewan convicted Torkan of professional misconduct in connection with the same structural review (the Torkan Review), which he had signed and sealed utilizing his seal under the Saskatchewan legislation. Attached as Schedule “C” is a copy of the first page of the Saskatchewan Torkan Review (showing the seal). Attached as Schedule “D” is a copy of the decision of the Hearing Panel.
8. At the time he signed and sealed the Torkan Review, Torkan did not hold a certificate of authorization.
9. By reason of the aforesaid, the parties agree that Torkan is guilty of professional misconduct as follows:
  - a. He signed and sealed an inadequate structural review, amounting to professional misconduct as defined by sections 72(2)(a), (b), (d) and (j) of Regulation 941 under the *Professional Engineers Act*; and
  - b. He provided professional engineering services to the public while not being the holder of a certificate of authorization contrary to s.12(2) of the *Professional Engineers Act*, amounting to professional misconduct as defined by section 72(2)(g) of Regulation 941.

## DECISION

The panel accepted Mr. Torkan's admission of the facts set out in the Agreed Statement of Facts, including the allegations. On that basis, the panel found Mr. Torkan guilty of professional misconduct as set out in paragraph 9 of the Agreed Statement of Facts.

## PENALTY

The parties presented a Joint Submission as to Penalty and Costs, which provided as follows:

- a) Pursuant to s. 28(4)(f) of the act, Torkan shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently;
- b) Pursuant to s. 28(4)(b) of the act, Torkan's licence shall be suspended for a period of seven (7) calendar days, commencing on a date to be agreed, such date to be no later than three (3) weeks after the date of the Discipline Committee's decision;
- c) Pursuant to sections 28(4)(i) and 28(5) of the act, the findings and order of the Discipline Committee shall be published in summary form in PEO's official publication, with reference to names;
- d) Pursuant to s. 28(4)(d) of the act, it shall be a term or condition on Torkan's licence that he shall, within fourteen (14) months of the date of the Discipline Committee's decision, successfully complete PEO's Advanced Structural Analysis (16-CIV-B1) and Advanced Structural Design (16-CIV-B2) examinations;
- e) Pursuant to s. 28(4)(b) and (k) of the act, in the event Torkan does not successfully complete the examinations set out in (d), his licence shall be suspended for a period of ten (10) months, or until he successfully completes the examinations, whichever comes first; and
- f) There shall be no order as to costs.

## LEGAL ISSUES

In the course of the hearing, the Discipline Committee received advice from its independent legal counsel that it did not have jurisdiction to impose a 10-month suspension on the member's licence, should he fail to successfully complete an examination, as contemplated by item (e) of the Joint Submission as to Penalty. Counsel for the association provided submissions to the contrary. The Discipline Committee found that it did have jurisdiction to impose a penalty of this nature.

## SUBSTANTIVE ISSUES REGARDING PENALTY

The member's co-operation with the association and lack of prior disciplinary history were mitigating factors. However, the member was 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. Ultimately, the panel determined that the penalty requested by the parties in the Joint Submission as to Penalty appropriately accounted for these factors, 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.

At conclusion of the hearing, the member waived his right to appeal and the panel administered a reprimand to the member.

D. Germain, JD, chair of the Discipline Panel, signed the Decision and Reasons on March 15, 2021, on behalf of the other panel members: P. Ballantyne, P.Eng., and J. Tyrrell, P.Eng.