

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 ROBERT A. PASSMORE, P.ENG., a member of the Association of Professional Engineers of Ontario, and FIELDSTONE ENGINEERING INC., a holder of a certificate of authorization.

This panel of the Discipline Committee (the panel) of the Association of Professional Engineers of Ontario (the association or PEO) convened a hearing remotely via Zoom to hear this matter on June 8, 2021.

THE ALLEGATIONS AND THE AGREED STATEMENT OF FACTS

Robert Passmore, P.Eng. (Passmore), and Fieldstone Engineering Inc. (Fieldstone) (collectively Passmore and Fieldstone or the defendants) and the association entered into an Agreed Statement of Facts dated May 26, 2021 (ASF). The relevant parts of the ASF, taken directly therefrom, are as follows:

1. “The respondent Robert A. Passmore, P.Eng., is, and was, at all material times, a professional engineer licensed in good standing pursuant to the *Professional Engineers Act*.
2. At all material times, the respondent Fieldstone Engineering Inc. held a certificate of authorization and Passmore was the individual accepting professional responsibility for engineering services provided under the certificate of authorization.
3. At all material times, the complainant Michel Richer owned the house at 1364 River Road in Manotick, Ontario (the House).
4. In December 2016, Richer retained Passmore to design and obtain a permit for the installation of a replacement sewage system for the House, with an intention to complete the installation of the replacement system in April 2017 (the Project). As part of the Project, Passmore agreed to complete the design, permit drawings, the application for a permit, project coordination and all inspections.
5. Passmore offered to and agreed to submit a permit application to the Ottawa Septic System Office (OSSO) before the end of 2016 but did not provide a draft design to Richer until on or about February 2, 2017. Passmore did not complete a full visual inspection of the existing septic system. Passmore recommended that Richer use his existing septic tank as a pre-treatment unit and install an Ecoflo treatment unit. He also recommended the use of shallow bed trenches (SBTs). Richer then approved the design and instructed Passmore to file the permit application. Passmore did not submit the permit application to the OSSO, dated February 10, 2017, until he was reminded to do so on February 22, 2017. Passmore had forgotten to submit the permit application.
6. The permit application indicated Passmore was Richer’s authorized representative and was responsible for the design of the Project. With the application, Passmore submitted a Replacement Sewage System Layout Plan, which he signed and sealed. The permit application indicated that the existing septic tank was +/-4500L and would be used as the pre-treatment unit. He indicated that the existing septic tank would be pumped and assessed for structural integrity and capacity for suitability for reuse. Passmore indicated that the treatment unit would be a Waterloo-Biofilter.
7. Before submitting the permit application, Passmore did not advise Richer that his design was conditional on the existing septic tank being a minimum size; that if the existing septic tank did not meet that minimum size, there would be impacts on the design and installation of the Project; and that he had selected the Waterloo-Biofilter (not the Ecflo [sic]) as the treatment unit.
8. On February 23, 2017, the OSSO declined to process or approve the permit application and required Passmore to make revisions to comply with the *Conservation Authorities Act*; to reflect the certification requirements of the Waterloo-Biofilter; and to include proper SBT and biomat specifications.
9. Between February 23 and April 20, 2017, Passmore did not adequately explain the OSSO’s requirements to Richer and did not adequately communicate with Richer about the status of and next steps for the permit application. Passmore did not undertake any further inspections of the House’s existing septic system.

10. On April 20, 2017, Passmore advised Richer that he had submitted revised plans, which he had not, and scheduled a meeting with Richer, which he then failed to attend. Passmore did not submit an application under the *Conservation Authorities Act* and a revised Replacement Sewage System Layout Plan to the OSSO until April 27, 2017. Passmore advised the OSSO that the existing septic tank was 4750L but no reference was made to reviewing the structural integrity and capacity of the existing tank.
11. On April 28, 2017, the OSSO advised Passmore that the revised plan did not meet Waterloo-Biofilter specifications. On or about May 13, 2017, Passmore advised Richer that he had submitted a further revised plan, which he had not. Passmore did not submit a further revised application and plan until to the OSSO until May 30, 2017. Passmore indicated that the existing septic tank was 4500L and would be inspected and reused as a pretreatment tank. Passmore also indicated that the treatment unit would be an Ecoflo model.
12. On June 1, 2017, the OSSO reviewed the further revised plan and noted biomat and contaminated material beneath the SBTs had to be removed. On June 6, 2017, the OSSO conditionally approved the application, including verification of the adequacy of the existing tank.
13. Passmore did not prepare tenders or provide information for the preparation of tenders to Richer. Richer tendered the Project and retained an installer for the Project. Richer prepared the site for installation in the summer of 2017. The installer commenced work in October 2017. In November 2017, Richer made numerous attempts to contact Passmore to inspect the installation work. Passmore came to the site on or about November 21, 2017, but did not inspect the site thoroughly.
14. On or about November 23, 2017, the OSSO visited the site for an installation inspection. The OSSO did not approve the installation, because, among other things, the existing septic tank did not meet the minimum required size. It was only 3500L where the minimum required size was 4300L. Further, the OSSO noted that all biomat and contaminated material had not been removed from the existing sewage system beneath the SBTs. Before it would approve the installation, the OSSO required the remediation of these issues, among others, and required Passmore to provide a letter verifying same.
15. To obtain regulatory approval, Passmore recommended and Richer agreed to purchase a secondary pretreatment tank with a 1100L volume, which was then installed in November 2017. The OSSO later noted that the secondary tank was under-sized. When OSSO directed Passmore to put in writing the suitability of the tanks, he advised that the 3500L tank plus the 1100L tank, met the intent of the Ontario Building Code, although not its strict wording. Passmore did not provide guidance to the installer on how much biomat to remove, resulting in the installer clearing more than was necessary. Ultimately, Passmore did not provide the letter OSSO required until December 10, 2017. By this time, the system had been exposed to the cold weather.
16. The OSSO agreed to permit Richer to cover the exposed system and agreed to approve the installation, subject to the removal of a baffle. The installer unearthed the Project and removed the baffle in May 2018. Passmore did not attend at the House to inspect the Project or the removal of the baffle. The OSSO did not provide a certification of completion for the installation of the sewage system until June 1, 2018.
17. The association and Passmore agree that, based on the preceding facts, Passmore and Fieldstone are guilty of professional misconduct under section 72(2)(j) of Regulation 941, as follows:
 - (a) 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, when they:
 - i. failed to complete contracted services, including completing inspections and

- tenders and supervising the installer between December 2016 and June 2018;
- ii. failed to submit the permit application and plan and revisions thereto in a timely manner between December 2016 and May 2017; and
 - iii. failed to adequately explain the requirements and process of installing the replacement sewage system between December 2016 and May 2017, including:
 1. failing to advise Richer that the Project design was conditional on the existing tank being of an appropriate size,
 2. failing to advise Richer that, if the existing tank was not an appropriate size, a secondary pretreatment tank could be required, and
 3. failing to advise Richer that the February and April 2017 Plans submitted to the authority called for a Waterloo-Biofilter treatment unit, and not an Ecoflo unit; and
 - iv. advised Richer on April 20, 2017, and on May 13, 2017, that they had submitted applications or plans to the OSSO when they had not.

The defendants have had independent legal advice or have had the opportunity to obtain independent legal advice, with respect to the penalty [sic] set out above.”

PLEA BY PASSMORE AND FIELDSTONE

As noted, Passmore and Fieldstone admitted to the facts set out above in the ASF. The panel conducted a plea inquiry and was satisfied that Passmore’s and Fieldstone’s admissions were voluntary, informed and unequivocal.

DECISION

The panel considered the ASF and finds that the facts support findings of professional misconduct as set out and, in particular, finds that the defen-

dants committed acts of professional misconduct enumerated.

PENALTY

Counsel for the association advised the panel that a Joint Submission as to Penalty (JSP) had been agreed upon. The relevant parts of the JSP, taken directly therefrom, are as follows:

- (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 for a period of two years;
- (b) Pursuant to s. 28(4)(d) of the *Professional Engineers Act*, it shall be a term or condition on Passmore’s licence that he shall, within fourteen (14) months of the date of pronouncement of the decision of the Discipline Committee, successfully complete the National Professional Practice Examination;
- (c) Pursuant to s. 28(4)(i) 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 PEO; and
- (d) There shall be no order as to costs.

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.”

Counsel for the association advised that the penalty should be accepted due to the importance and seriousness of this matter. Counsel for the association also read into the record comments from the affected homeowner, Michel Richer, regarding the impact that this matter has had on him. Passmore, on the other hand, noted the challenges of owning a small engineering firm. He specifically cited the challenges of adapting when changes are made to the Ontario Building Code. He also stated that he accepts responsibility for his actions and that he has tried to make amends.

In addition, independent legal counsel to the panel advised the panel that there is a high bar for a panel to meet to depart from a JSP and that

he was of the view that the penalty is within the panel's jurisdiction.

PENALTY DECISION

The panel accepts the JSP and accordingly orders:

- (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 for a period of two years.
- (b) Pursuant to s. 28(4)(d) of the *Professional Engineers Act*, it shall be a term or condition on Passmore's licence that he shall, within fourteen (14) months of the date of pronouncement of the decision of the Discipline Committee, successfully complete the National Professional Practice Examination.
- (c) Pursuant to s. 28(4)(i) 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 PEO; and
- (d) There shall be no order as to costs.

The panel concluded that the proposed penalty is reasonable and in the public interest. Passmore and Fieldstone have co-operated with the association and, by agreeing to the facts and a proposed penalty, have accepted responsibility for their actions and have avoided unnecessary expense to the association.

REPRIMAND

Passmore and Fieldstone waived their rights to an appeal and the panel administered an oral reprimand immediately after the hearing.

Charles McDermott, 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: James Amson, P.Eng., and Alisa Chaplick, LLB.