

SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, c. P.28, of a complaint regarding the conduct of JAMES C. HUM, P.ENG., a member of the Association of Professional Engineers of Ontario.

This matter came to a hearing before a panel of the Discipline Committee on January 27, 2020, at the Association of Professional Engineers of Ontario (the association). Counsel for the association was Nick Hambleton. The member (Hum) was self-represented and participated by teleconference from British Columbia. Independent legal advice to the panel was provided by J. David Watson.

AGREED FACTS AND ALLEGATIONS

The original allegations against the member were set out in a Statement of Allegations dated August 1, 2019. Subsequently the parties reached agreement on the facts and entered into an Agreed Statement of Facts, signed by Hum on January 21, 2020. In this, Hum admitted the facts and the allegations of professional misconduct as set out in the Agreed Statement of Facts, as follows:

1. At all material times, Hum was a professional engineer licensed pursuant to the *Professional Engineers Act* (the act). Hum was continually licensed by the association since February 9, 1996.
2. Hum was the sole owner and sole officer of an engineering firm, KNH Engineering, Inc., based in British Columbia. Neither Hum nor KNH have ever held a certificate of authorization (C of A) issued by PEO.
3. Hum was engaged by Backyard Greenhouses to design a greenhouse space to be constructed at Hotel Dieu Grace Healthcare facility in Windsor, ON, a therapeutic and educational centre for children. Subsequently, he signed and sealed drawings and provided correspondence to his client and to BC Greenhouse Builders Ltd., the manufacturer of the component parts of the greenhouse.
4. According to independent expert Albert Schepers, P.Eng., who reviewed the drawings and correspondence on behalf of the association, the initial and subsequent drawings were deficient with respect to:
 - a. Lack of reference to the applicable design codes and standards;
 - b. Providing only partial information on product materials;
 - c. Poorly referencing design loads on drawings;
 - d. Failing to include design loads and support reactions on the original drawings;
 - e. Lack of sufficient detail and design assumptions for the foundation so that another engineer could prepare a site-specific design.
5. In Schepers' opinion, Hum failed to comply with codes, standards and industry norms by failing to recognize that the structure could not be designed to the National Farm Building Code of Canada and by failing to employ appropriate climate data for the intended location of the structure.
6. In response to repeated questions, Hum advised the manufacturer of the greenhouse components that he had taken steps to obtain his C of A, including speaking to PEO and sending a cheque. In fact, he had not done so.
7. Hum was the subject of professional disciplinary findings in two other jurisdictions (British Columbia and Saskatchewan), leading to the revocation or suspension of his licence to practise engineering in those jurisdictions.
8. Based on the agreed facts, Hum is guilty of professional misconduct as follows:
 - a. Signing and sealing structural drawings that failed to meet the standard of a reasonable and prudent practitioner, amounting to professional misconduct as defined in section 72(2)(a) of Regulation 941;

- b. Signing and sealing structural drawings that failed to responsibly provide for compliance with applicable standards and codes, amounting to professional misconduct as defined in section 72(2)(d) of Regulation 941;
- c. Offering and providing engineering services without a C of A, amounting to professional misconduct as defined in section 72(2)(g) of Regulation 941;
- d. Providing engineering services in a dishonourable or unprofessional manner, amounting to professional misconduct as defined in section 72(2)(j) of Regulation 941.

PLEA BY MEMBER

Hum admitted the allegations contained in the Agreed Statement of Facts. The panel conducted a plea inquiry, and was satisfied that the admissions were voluntary, informed and unequivocal.

DECISION AND REASONS

The panel accepted that the agreed facts supported findings of professional misconduct as set out in the Agreed Statement of Facts. Hum's conduct was both unprofessional, in regard to providing deficient drawings and engineering services without a C of A; and dishonourable, by falsely maintaining that he had taken steps to obtain his C of A when he had not done so.

PENALTY DECISION AND REASONS

The penalty was based on a Joint Submission on Penalty signed by the member on January 21, 2020, and by the association on January 22, 2020. Counsel for the association submitted that the proposed penalty appropriately served the principles of sentencing, including the protection of the public, maintenance of the public's confidence in the profession and general deterrence. He noted that, given that it was proposed that the member's licence would be revoked, the principles of individual deterrence and rehabilitation were not applicable.

The panel accepted that the proposed penalty was reasonable and in the public interest. As provided in the Joint Submission, the panel accordingly ordered:

1. That the member's licence be revoked pursuant to s. 28(4)(a) of the *Professional Engineers Act*;
2. That the findings and order of the panel be published in summary form with reference to names pursuant to s. 28(4)(i) and 28(5) of the *Professional Engineers Act*; and
3. That there shall be no order with respect to costs.

The panel noted that relevant factors included the significant and repeated deficiencies in the member's drawings; the potential risk to users of the structure had the drawings been relied upon, the member's disciplinary history in other jurisdictions and his dishonesty regarding his C of A. The panel found the member's co-operation with the association's investigation and his acceptance of responsibility to be mitigating factors, reflected in the absence of a costs award and reprimand.

The panel accepted that the penalty serves to protect the public by preventing the member from offering engineering services in Ontario and provides general deterrence to members of the profession via publication of the finding and order.

Robert Willson, P.Eng., chair of the Discipline panel, signed the Decision and Reasons on June 2, 2020, on behalf of the other panel members: James Amson, P.Eng., Ishwar Bhatia, P.Eng., Eric Bruce, JD, and Michael Wesa, P.Eng.