

SUMMARY OF DECISION AND REASONS

In the matter of a complaint regarding the conduct of MICHAEL A. SCHOR, P.ENG., a member of the Association of Professional Engineers of Ontario, and M.A. STEELCON ENGINEERING LIMITED, a holder of a certificate of authorization.

This Discipline Committee hearing took place on May 18, 2018, and the panel issued its Decision and Reasons on August 15, 2018. Counsel for the association was Leah Price, and counsel for Mr. Schor, and Steelcon was Larry J. Levine.

AGREED STATEMENT OF FACTS

The parties submitted the following Agreed Statement of Facts:

1. Schor is a professional engineer licensed pursuant to the *Professional Engineers Act*. Schor's training and experience are primarily in the field of structural engineering.
2. Steelcon was incorporated in Ontario in or about 1981. At all material times, Steelcon held a certificate of authorization (C of A), and Schor was the individual taking responsibility for the engineering services provided under the C of A. Steelcon's business operations included structural engineering services.
3. Schor and Steelcon have been previously convicted of professional misconduct. Attached as Schedule "A" is a copy of the decision of the Discipline Committee dated December 13, 2004, as published in the Gazette. As part of the penalty in that case, Schor and Steelcon were required to submit a written undertaking to ensure "that all documents and drawings be appropriately complete and detailed."
4. The complainant, Paul Wohlgemuth, P.Eng., was, at all material times, a professional engineer licensed in Alberta and employed by Syncrude Canada Limited in Fort McMurray, Alberta.
5. In or about March 2010, CHEP Equipment Pooling Systems retained Stelfab Niagara Limited (Stelfab) to fabricate a Bin Lift System (the device) for its customer, Syncrude Canada Limited.
6. The device was intended to be used to hold loaded bins. The intention was to have an overhead crane lift the device (together with the loaded bin) about 150–200 feet. Attached as Schedule "B" is a concept drawing of the device.
7. Stelfab retained Steelcon and Schor to create engineering drawings for the device. Schor signed and sealed a drawing dated April 2010, a copy of which is attached as Schedule "C". This drawing was revised by a signed and sealed drawing dated May 26, 2011, and again revised by a signed and sealed drawing dated June 30, 2011 (the drawing). Attached as Schedule "D" is the drawing. Attached as Schedule "E" is a memorandum setting out the design weight (7700 lbs.), and a description of the drawing revisions, their purposes and dates.
8. Fabrication of the device was completed by Stelfab on or about July 18, 2011. Attached as Schedule "F" is a copy of the Stelfab Work Order Checklist showing the dates of the drawing revisions (May 26, 2011 and June 30, 2011) and the job completion date (July 18, 2011). Attached as Schedule "G" is a copy of Stelfab's certification dated July 18, 2011, certifying that the device "has been manufactured according to supplied drawings," and that it "is ready for use." Attached as Schedule "H" are two photographs of the completed device.
9. The device was delivered to Syncrude in or about September 2011. However, it was never put into use. Concerns were raised by Syncrude employees in the field about whether the device met the applicable code and the Syncrude site specific lifting standards. Syncrude's engineers subsequently did their own assessment and concluded that the device was not safe for use. Accordingly, it was rejected, and was eventually picked up by, or returned to, CHEP. Wohlgemuth filed his complaint in February 2012.

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. 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.

10. The association retained Attila Barbacsy, P.Eng. (Barbacsy), as an independent expert to review the respondents' work. Barbacsy provided a report in January 2017 (the first report), a copy of which is attached as Schedule "I," which concluded, among other things, that the drawing was deficient in several ways, including:
- it failed to adequately account for the design of certain welded connections;
 - it failed to provide adequate detail for the construction of a connection between vertical and inclined members;
 - it failed to provide for a nameplate to indicate the device's maximum capacity;
 - it improperly called for the use of a ratchet strap intended to assist in securing loads; and
 - it failed to indicate and/or apply the appropriate structural engineering standard applicable to the design of a "below the hook" lifting device.
11. Schor provided a response to the first report. Among other things, he claimed that the drawing was only a draft or preliminary drawing, and further claimed that he was not responsible for the design of the welded connections. However, the drawing included details of weld type and size and contained no qualifying or limiting language. Further, as can be seen from the foregoing, Stelfab's documents confirm that it fabricated the device in accordance with the drawing.
12. Barbacsy provided a supplementary report in April 2017, a copy of which is attached as Schedule "J," which concluded, among other things, that the respondents' work fell short of "code requirements, standards of care, and has errors, omissions and deficiencies" and that the design "is less than what would be expected of a reasonable and prudent professional engineer."
13. For the purposes of these proceedings, Schor and Steelcon accept as correct the findings, opinions and conclusions contained in the supplementary report. Schor and Steelcon admit that they failed to meet the minimum acceptable standard 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.
14. By reason of the aforesaid, the parties agree that the respondents, Schor and Steelcon, are guilty of professional misconduct as follows:
- Signing and sealing a drawing for an industrial lifting device that failed to adequately account for the design of certain welded connections, amounting to professional misconduct pursuant to ss.72(2)(a), (b) and (j) of Regulation 941.
 - Signing and sealing a drawing for an industrial lifting device that failed to provide adequate detail for the construction of a connection between vertical and inclined members, amounting to professional misconduct pursuant to ss.72(2)(a), (b), and (j) of Regulation 941.
 - Signing and sealing a drawing for an industrial lifting device that failed to provide for a nameplate to indicate maximum capacity, amounting to professional misconduct pursuant to ss.72(2)(a), (b), and (j) of Regulation 941.
 - Signing and sealing a drawing for an industrial lifting device that improperly called for the use of a ratchet strap intended to assist in securing loads, amounting to professional misconduct pursuant to ss.72(2)(a), (b), and (j) of Regulation 941.
 - Failing to apply the appropriate structural engineering standard to the design of an industrial lifting device, amounting to professional misconduct pursuant to ss.72(2)(a), (b), (d) and (j) of Regulation 941.

DECISION

The panel accepted Schor and Steelcon's admissions of the allegations set out in paragraph 14 of the Agreed Statement of Facts and their guilty pleas. The panel found Schor and Steelcon guilty of professional misconduct as set out in paragraph 14 of the Agreed Statement of Facts.

PENALTY

The parties presented a Joint Submission as to Penalty and Costs, which they amended, for clarity, during the course of the hearing. The Amended Joint Submission as to Penalty and Costs provided as follows:

- a) Pursuant to s. 28(4)(f) of the act, Schor and Steelcon 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, Schor's licence shall be suspended for a period of six (6) weeks, commencing on the date of the Discipline Committee's decision;
- c) Pursuant to s. 28(4)(d) and 28(4)(e) of the act, there shall be a condition and restriction on the licence and certificate of the respondents, prohibiting them from practising professional engineering except under the direct supervision of another professional engineer who shall take responsibility for the work; and that other professional engineer shall: (i) sign and affix his or her seal to every final drawing, specification, plan or other document sealed by Schor ("document(s)"); or (ii) sign and affix his or her seal to a letter that shall be attached to, and shall be referred to in, all document(s), which letter shall confirm that the other professional engineer has directly supervised and takes responsibility for the document(s);
- d) Pursuant to sections 28(4)(i) and 28(5) of the act, the finding and order of the Discipline Committee shall be published in summary form in PEO's official publication, with reference to names; and
- e) There shall be no order as to costs.

The parties also confirmed that if the panel were to accept their penalty submission, upon issuance of the panel's decision, Schor would no longer be the responsible P.Eng. for Steelcon's C of A.

The panel determined that the penalty set out in the parties' amended joint submission was appropriate as it fell within a reasonable range of acceptability, taking into account the purposes of penalty. The panel also accepted that the penalty accounted for the aggravating factor—that Schor was disciplined for a similar offence 15 years earlier—and the mitigating factors—the absence of any other issues of concern; Schor's willingness to accept responsibility for his actions; his co-operation with the association in resolving this matter on an uncontested basis; and his having avoided unnecessary expense to the association. Having concluded that the proposed penalty was reasonable and in the public interest, the panel ordered the penalty set out in the Amended Joint Submission as to Penalty and Costs.

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

Discipline Committee panel: S. Ball, LLB (panel chair), A. Friedman, P.Eng., R. Kumar, P.Eng., J. Amson, P.Eng., and E. Rohacek, P.Eng.