

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 conduct of SERGIO A.R. PANETTA, P.ENG., a member of the Association of Professional Engineers of Ontario.

A panel of the Discipline Committee met at the Association of Professional Engineers of Ontario in Toronto, on October 17, 2019, to hear and determine allegations of professional misconduct against Sergio A.R. Panetta, P.Eng. The hearing proceeded on an uncontested basis because the parties had an Agreed Statement of Facts and a Joint Submission on Penalty.

The Agreed Statement of Facts, dated October 15, 2019, stated:

1. At all material times, the Respondent, Sergio Panetta, P.Eng. (Panetta), was a professional engineer licensed pursuant to the *Professional Engineers Act*. Panetta holds both a bachelor's degree and a master's degree in electrical engineering.
2. On or about April 11, 2017, a fire prevention officer with the City of Brampton's Fire and Emergency Services (Brampton Fire) performed a routine inspection at a multi-unit rental property owned by Panetta in Brampton, Ontario (the Rental Property).
3. During the inspection, Brampton Fire discovered that two of the windows of the Rental Property were within 3 metres of a fire escape and were not adequately protected as required by Division B of Ontario Regulation 213/07 (the Fire Code). Attached [to the Agreed Statement of Facts] as Schedule "A" is a photograph showing the Rental Property and the unprotected openings.
4. Brampton Fire issued a Fire Safety Inspection Order dated April 11, 2017, for the contraventions. The Order required Panetta to install approved protection, such as wired glass screens, on the affected openings. Attached as Schedule "B" [to the Agreed Statement of Facts] is a copy of the Order.
5. Under section 1.3.2 of Division C of the Fire Code, an "alternative solution" may be permitted in certain circumstances. An "alternative solution" is a permitted design that will achieve the same level of performance as that provided by an "acceptable solution" under the Fire Code. An "alternative solution" must be submitted to and approved by the Chief Fire Official in advance of construction and must bear the signature and seal of a professional engineer or architect, or both.
6. In response to the Fire Safety Inspection Order, Panetta installed sprinklers in the two affected dwelling units. Panetta completed the work without obtaining the required approval of the Chief Fire Official, and at the time the work was completed, no signed and sealed "alternative solution" proposal had been submitted to Brampton Fire.
7. Brampton Fire conducted a re-inspection of the Property on November 21, 2017, and, at that time, observed that Panetta had installed sprinklers near the relevant windows in question. As a result, Brampton Fire advised Panetta that he was required to submit appropriate documentation by December 15, 2017, failing which he could be subject to prosecution.
8. Panetta signed and affixed his seal to a purported "alternative solution" for the Rental Property dated December 15, 2017, which he submitted to Brampton Fire. The document proposed the sprinklers that had already been installed. Attached as Schedule "C" [to the Agreed Statement of Facts] is a copy of this document. Panetta's training and experience, primarily in the field of electrical engineering, did not make him sufficiently competent to prepare the "alternative solution."
9. Brampton Fire rejected Panetta's purported "alternative solution" because it was incomplete. Panetta was charged with an offence under section 28(1)(c) of the *Fire Protection and Prevention Act* as a result of his failure to comply with the Fire Safety Inspection Order referred to above.
10. Panetta thereafter undertook to install fire shutters with a fusible link that would close in the event of a fire. However, the shutters initially proposed by Panetta were not accepted by Brampton Fire, because the Fire Code required compliance of the fusible link with an Underwriter's Laboratory Canada standard. It took Panetta

several months to locate and install fire shutters which were acceptable to Brampton Fire.

11. On July 16, 2018, Panetta pleaded guilty to the charge referred to above, and was convicted. He was required to pay a fine in the amount of \$2,500. Attached as Schedule “D” [to the Agreed Statement of Facts] is a copy of the transcript of the hearing in Provincial Court. As can be seen from the attached transcript, by the time of the court hearing, Panetta had installed the required protection over the affected openings.
12. Based on these facts, it is agreed that Panetta is guilty of professional misconduct as follows:
 - a. He undertook work he was not competent to perform by virtue of his training and experience, contrary to section 72(2)(h) of Regulation 941 under the *Professional Engineers Act*; and
 - b. He has been found guilty of an offense relevant to suitability to practise, contrary to section 28(2)(a) of the *Professional Engineers Act*.

PLEA OF THE MEMBER

Mr. Panetta admitted the allegations set out in the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that Mr. Panetta’s admission was voluntary, informed and unequivocal.

REASONS FOR DECISION

The panel accepted Mr. Panetta’s plea and the facts as set out in the Agreed Statement of Facts. The panel found Mr. Panetta guilty of professional misconduct under section 28(2)(a) of the *Professional Engineers Act* and under section 72(2)(h) of Regulation 941 of the *Professional Engineers Act*.

PENALTY AND COSTS

The parties’ Joint Submission as to Penalty and Costs, also dated October 15, 2019, stated:

1. Sergio A. R. Panetta (Panetta) was at all material times a member of the Association of Professional Engineers of Ontario (PEO).
2. Panetta is 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 Panetta make the following joint submission on penalty and costs:
 - a) Pursuant to s. 28(4)(f) of the *Professional Engineers Act*, Panetta shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of one year;
 - b) The findings and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) of the *Professional Engineers Act*, with names;
 - c) Pursuant to s. 28(4)(b), (d) and (k) of the *Professional Engineers Act*, Panetta shall successfully complete PEO’s Professional Practice Examination (PPE) within eighteen (18) months of the decision of the Discipline Committee, failing which his licence shall be suspended until such time as he successfully passes the PPE;
 - d) Pursuant to s. 28(4)(b), (h) and (k) of the *Professional Engineers Act*, Panetta shall be required to pay a fine in the amount of twenty-five hundred dollars (\$2,500) within thirty (30) days of the decision of the Discipline Committee, failing which his licence shall be suspended until such time as he pays the fine; and
 - e) There shall be no order with respect to costs

Counsel for the association, Ms. Leah Price, reviewed the elements of the penalty and how they addressed the five objectives of penalty: the protection of the public, the maintenance of the reputation of the profession in the eyes of the public, general deterrence, specific deterrence and rehabilitation. Ms. Price noted that the Joint Submission was the product of settlement negotiations and compromise by the parties, and she submitted that the panel should accept it as agreed upon by the parties. Ms. Price argued that the panel should not modify the agreed-to penalty unless the panel thought that the penalty would bring the administration of justice into disrepute or was otherwise contrary to the public interest. Ms. Price also cited three previous decisions of the Discipline Committee in support of her submissions that the agreed-to penalty was within the range of appropriate penalties.

The panel accepted that the elements of penalty were appropriate. However, it had jurisdictional concerns regarding its power to order paragraphs 3(c) and (d) of the penalty, which sought to impose a suspension under section 28(4)(k) in the event that Mr. Panetta did not complete the PPE within 18 months (paragraph 3(c)) or pay the \$2,500 fine within 30 days (paragraph 3(d)). The panel’s concern was twofold: first, that section 28(4)(k) does not permit the panel to impose a future suspension on a member as an additional penalty for the pos-

sible failure of the member to satisfy an imposed penalty when that suspension was not imposed as a penalty based on the merits of the matter; and second, that the panel was not empowered to impose an indeterminate suspension since section 28(4)(b) of the *Professional Engineers Act* stipulates that a suspension imposed by the Discipline Committee cannot exceed 24 months.

The panel sought advice from independent legal counsel on the jurisdictional issue and the parties were given an opportunity to respond to that advice. The parties then agreed to review the penalty provisions in paragraphs 3(c) and (d) with a view to concluding this matter on consent as planned. The parties ultimately provided two revised versions of the Joint Submission as to Penalty and Costs as alternatives for the panel to consider. The first version was the version the parties preferred as the simpler of the two. It contained the following new paragraphs 3(c) and (d):

- c) Pursuant to s. 28(4)(b), (d), and (k) of the *Professional Engineers Act*, it shall be a term or condition on his licence that Panetta successfully complete PEO's Professional Practice Examination (PPE) within eighteen (18) months of the decision of the Discipline Committee, failing which his licence shall be suspended for a period of ten (10) months, or until such time as he successfully passes the PPE, whichever comes first;
- d) Pursuant to s. 28(4)(d) and (h) of the *Professional Engineers Act*, it shall be a term or condition on Panetta's licence that he shall pay a fine in the amount of twenty-five hundred dollars (\$2,500) within thirty (30) days of the decision of the Discipline Committee[.]

In considering the first version, the panel remained concerned that it did not have the power under section 28(4)(k) to impose a future suspension on Mr. Panetta in the event that he did not satisfy the imposed penalty of successful completion of the course within 18 months. Accordingly, the panel accepted the second version of the Joint Submission as to Penalty and Costs. The second version contained provisions that the panel believed it was empowered to order under section 28 of the *Profes-*

sional Engineers Act. The second version contained the following provisions starting at paragraph 3(c):

- c) Pursuant to s. 28(4)(b) of the *Professional Engineers Act*, Panetta's licence shall be suspended for a period of ten (10) months;
- d) Pursuant to s. 28(4)(k) of the *Professional Engineers Act*, the suspension referred to above shall be suspended, pending compliance by Panetta with the term and condition set out in paragraph (e) below, within the time set out below—thereafter, the suspension shall take effect, but shall be again suspended if and when Panetta passes the examination referred to below;
- e) Pursuant to s. 28(4)(d) of the *Professional Engineers Act*, it shall be a term and condition on Panetta's licence that he shall successfully complete PEO's Professional Practice Examination (PPE) within eighteen (18) months of the decision of the Discipline Committee;
- f) Pursuant to s. 28(4)(d) and (h) of the *Professional Engineers Act*, it shall be a term and condition on Panetta's licence that he shall pay a fine in the amount of twenty-five hundred dollars (\$2,500) within thirty (30) days of the decision of the Discipline Committee; and
- g) There shall be no order with respect to costs

PENALTY AND COSTS DECISION

The panel approved the second revised version of the Joint Submission as to Penalty and Costs that was agreed to by the parties. In accordance with that Joint Submission as to Penalty and Costs, the panel orders that:

- a) Pursuant to s. 28(4)(f) of the *Professional Engineers Act*, Mr. Panetta shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of one year;
- b) The findings and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) of the *Professional Engineers Act*, with names;
- c) Pursuant to s. 28(4)(b) of the *Professional Engineers Act*, Mr. Panetta's licence shall be suspended for a period of ten (10) months;
- d) Pursuant to s. 28(4)(k) of the *Professional Engineers Act*, the suspension referred to above shall be suspended, pending compliance by Mr. Panetta with the term and condition set out in

paragraph (e) below, within the time set out below—thereafter, the suspension shall take effect, but shall be again suspended if and when Mr. Panetta passes the examination referred to below;

- e) Pursuant to s. 28(4)(d) of the *Professional Engineers Act*, it shall be a term and condition on Mr. Panetta's licence that he shall successfully complete PEO's Professional Practice Examination (PPE) within eighteen (18) months of the decision of the Discipline Committee;
- f) Pursuant to s. 28(4) (d) and (h) of the *Professional Engineers Act*, it shall be a term and condition on Mr. Panetta's licence that he shall pay a fine in the amount of twenty-five hundred dollars (\$2,500) within thirty (30) days of the decision of the Discipline Committee; and
- g) There shall be no order with respect to costs.

REASONS FOR PENALTY AND COSTS DECISION

The panel was satisfied that the agreed-to penalty satisfied the objectives of penalty as submitted by Ms. Price for the parties. Professionalism was a primary concern in Mr. Panetta's unprofessional use of his seal. The imposition of the PPE will address this concern and satisfy the

important objective of remediation. Completion of the PPE as a term or condition of Mr. Panetta's licence will also satisfy the objectives of specific and general deterrence. Ordering publication of Mr. Panetta's name and recording the fact of his reprimand on the register also satisfy the objectives of specific and general deterrence. The imposition of a considerable fine and a reprimand shows that the association takes seriously the proper use of an engineer's seal and serves the objective of maintaining the reputation of the profession in the eyes of the public, as well as the objective of deterrence. Finally, the panel accepted that it was appropriate not to order costs in this matter, which was uncontested and straightforward, as agreed between the parties.

W. Turnbull, P.Eng., chair of the discipline panel, signed the Decision and Reasons on November 12, 2019, on behalf of the other panel members: S. Ball, LLB, T. Kirkby, P.Eng., V. Sahni, P.Eng., and G. Thompson, P.Eng.

NOTICE OF LICENCE SUSPENSION, ALI D. TAHA

Ali D. Taha's professional engineering licence was suspended on June 22, 2021, in accordance with a Registrar's Notice of Proposal issued pursuant to subsection 14(2)(c) of the *Professional Engineers Act* on April 9, 2021. Mr. Taha's licence shall remain suspended for six months or until he writes and passes PEO's National Professional Practice Exam, whichever comes first.

NOTICE OF LICENCE SUSPENSION, SERGIO PANETTA

Sergio Panetta's professional engineering licence was suspended on April 18, 2021, pursuant to the terms of a penalty order made by the Discipline Committee on October 17, 2019. Mr. Panetta's licence shall remain suspended for 10 months, or until he passes PEO's National Professional Practice Examination, whichever comes first.