

4. Pursuant to section 28(4)(j) of the Act, Mr. Villa shall pay costs to the Association of \$15,000 within one year of the date of this decision.
5. Mr. Villa immediately cease offering and providing professional engineering services through business names that do not have a corresponding certificate of authorization. It shall be a term or condition of Mr. Villa's licence that he offer and provide professional engineering services to

the public only through a business name that is registered with the Association as a holder of a certificate of authorization.

On October 27, 2020, Glenn Richardson, P.Eng., signed the Penalty Decision and Reasons for the decision as Chair of this Discipline Panel and on behalf of the members of the Discipline panel: Stella Ball, LL.B., Paul Ballantyne, P.Eng., Aubrey Friedman, P.Eng., and Warren Turnbull, P.Eng.

## SUMMARY OF DECISION AND REASONS

On allegations of professional misconduct under the *Professional Engineers Act*, R.S.O. 1990, c. P. 28 (act) regarding the conduct of LUDMILA (LUCY) SHAW, P.ENG. (Shaw), a member of the Association of Professional Engineers of Ontario (PEO or association) and LKS CONSULTING INC. (LKS), a holder of a certificate of authorization (CoA) from PEO.

### AGREED STATEMENT OF FACTS

Shaw, LKS and the Association entered into an Agreed Statement of Facts ("ASF") the relevant parts of which, taken directly therefrom (without attaching referenced Schedules), are as follows:

1. At all material times, Shaw was a professional engineer licensed pursuant to the *Professional Engineers Act* (the "Act").
2. At all material times, LKS Consulting Inc. ("LKS") held a Certificate of Authorization ("CoA") and listed Shaw as the individual taking responsibility for engineering services provided thereunder.
3. In 2017, the complainant Jay Lizzotte ("Lizzotte"), a homeowner in Guelph, Ontario, verbally retained Shaw and LKS to design and prepare drawings for a detached garage in his backyard (the "project").
4. LKS issued six drawings for the garage dated October 17, 2017, which were prepared, signed, and sealed by Shaw (the "Drawings"). On or about October 18, 2017, Lizzotte submitted a building permit application for the project, which included the Drawings, to the City of Guelph. On October 30, 2017, the City of Guelph issued a building permit for the project. Attached as Schedule "A" are copies of the Drawings.
5. In May 2018, construction began on the garage based on the Drawings. Construction of the project continued until around June 1, 2018, at which time the roof of the garage began to fail and noticeably sag.
6. Lizzotte retained Tacoma Engineers to review the Drawings and provide a structural analysis of the garage roof. The firm prepared a structural report (the "Tacoma Report"), which concluded, among other things, that the garage roof system was structurally inadequate, grossly under-designed, posed significant danger to any potential occupants, and was likely to collapse. Attached as Schedule "B" is a copy of the Tacoma Report. [DB 265-272]
7. Tacoma recommended that the garage roof be immediately replaced or reinforced. Lizzotte subsequently retained a construction company to repair the garage roof, which repair was completed in or around August 2018.
8. PEO retained Daria Khachi, P.Eng., to review the actions and conduct of the Respondents. He prepared a report (the "Dialog Report") dated October 12, 2021, which concluded, among other things: that the critical roof members were designed to somewhere between 29%-44% of their required capacity in bending; that the design ignored the large connection requirements of the collar ties to the rafters; that the design did not comply with the Ontario Building Code; and that the Drawings did not provide proper construction details for the

support of the steel beam above the garage doors. The Dialog Report further concluded that the design would have caused roof rafter failure and collar tie connection failure under snow loads, and that the public safety would have been at risk had the Drawings not been reviewed by Tacoma and corrected. Attached as Schedule “C” is a copy of the Dialog Report. [DB 327-334]

9. For the purposes of these proceedings, the Respondents accept as correct the findings, opinions and conclusions contained in the Tacoma and Dialog Reports. The Respondents admit that they failed to make reasonable provision for the safeguarding of the public, that they failed to make responsible provision for complying with applicable standards and codes, and that they failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances.
10. By reason of the aforesaid, the parties agree that the Respondents are guilty of professional misconduct as follows:
  - a. They prepared, signed, sealed and issued inadequate and deficient design drawings for the project, amounting to professional misconduct as defined by sections 72(2)(a), (b), (d) and (j) of Regulation 941 under the Act.

Regarding section 72(2)(j) of Regulation 941 under the Act, noted in paragraph 10 above, PEO was not seeking a finding that Shaw and LKS were guilty of “disgraceful” and “dishonourable” conduct but a finding that Shaw and LKS were guilty of “unprofessional” conduct.

Shaw and LKS pled guilty to the allegations in the ASF. The Panel conducted a plea inquiry and was satisfied that Shaw and LKS’ pleas were unequivocal.

#### JOINT SUBMISSION AS TO PENALTY AND COSTS

The parties submitted a Joint Submission as to Penalty and Costs (“JSP”), the relevant parts of which are as follows:

- a) Pursuant to s. 28(4)(f) of the Act, Shaw and LKS 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, the Member’s licence and the Holder’s Certificate of Authorization shall be suspended for a period of six (6) weeks, commencing on the date of pronouncement of the Discipline Committee’s penalty decision;
- c) The findings and order of the Discipline Committee shall be published in summary form under ss. 28(4)(i) and 28(5) of the Act, together with the names of the Member and the Holder;
- d) Pursuant to s. 28(4)(d) [and] s. 28(4)(e) of the Act, it shall be a term, condition or restriction on Shaw’s licence and LKS’s Certificate of Authorization that they shall be prohibited from providing structural engineering services;
- e) If Shaw demonstrates her competence in structural engineering by successfully passing the following examinations administered by PEO, namely,
  - (i) 07-Str-A4 (Advanced Structural Analysis), and
  - (ii) 07-Str-A5 (Advanced Structural Design), the term, condition or restriction set out in subparagraph d) above shall be lifted; and
- f) There shall be no order as to costs.

The Association provided the panel with relevant caselaw stating that there is a stringent public interest test for rejecting a JSP and that a disciplinary body that rejects a JSP must show why the proposed penalty is so “unhinged” from the circumstances of the case that it must be rejected (*Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 (CanLII); *R. v. Anthony-Cook*, 2016 SCC 43).

In this case, the Panel accepted the JSP and, at the conclusion of the hearing, administered an oral reprimand to Shaw and LKS.

Glenn Richardson, P.Eng., signed the Decision and Reasons for the Decision as Chair of the Panel and on behalf of the other members of the Panel: Alisa Chaplick, LL.B., LL.M. and Jag Mohan, P.Eng.

**HUSSEIN MAKKE’s** professional engineering licence was suspended from Jan. 5, 2023 to April 4, 2023 inclusive, in accordance with an Amended Registrar’s Notice of Proposal issued pursuant to subsection 14(2)(c) of the *Professional Engineers Act* on Dec. 1, 2022. As Mr. Makke did not request a hearing within thirty days after the Notice of Proposal was served upon him, the Deputy Registrar carried out the proposal and suspended his licence.