

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 actions and conduct of STEPHEN R.H. SELF, P.ENG., a member of the Association of Professional Engineers of Ontario, and SELF, STEPHEN ROBERT HARWIN, a holder of a certificate of authorization.

The panel of the Discipline Committee heard this matter on October 24, 2022, by means of an online video conference platform, which was simultaneously broadcast in a publicly accessible format over the internet. All participants in the proceedings, including counsel for the Association of Professional Engineers of Ontario (the association or PEO) and the member, Stephen Self (the member or Self), represented by Shawn Stewart, attended via videoconference. The member represented the holder, Self, Stephen Robert Harwin (SSE or the holder).

The parties provided the panel with an Agreed Statement of Facts (ASF) that contained the Statement of Allegations against the member. The ASF was signed by the member on August 24, 2022, and by the association on October 3, 2022. The ASF provided as follows (references to the attached schedules are omitted):

1. At all material times, Self was a professional engineer licensed pursuant to the *Professional Engineers Act* (act). Self holds a bachelor's degree in applied science from Waterloo University. Self's focus is on structural engineering, and he and SSE have no academic training and no experience or expertise in environmental engineering or in septic system design.
2. At all material times SSE was the holder of a certificate of authorization. Self was listed as the responsible engineer for the purposes of section 17 of the act in connection with the professional engineering services provided by SSE.
3. The complainant, Allen Sadler (Sadler) was, at all material times, the owner of an undeveloped parcel of land less than one acre in area, located at 7560 Cornell Trail in the Municipality of Lambton Shores, Ontario (the property). In or about November 2019, Sadler engaged Self and SSE without a written contract, to design and obtain the permits required to construct an onsite septic system for a new seasonal dwelling on the property.
4. Between March and July 2020, Self and SSE prepared two sets of designs for a conventional septic system (the designs), which were signed and sealed on May 4 and July 13, 2020, respectively. At least one of the designs was submitted to the County of Lambton (the county), which had jurisdiction over the approval of designs and the issuance of permits for the construction of a septic system on the property.
5. The designs did not comply with the requirements of Part 8 of the Ontario Building Code (the code or OBC) governing such structures. In particular, the designs failed to comply, or to demonstrate compliance, with at least the following provisions of the code:
 - a. Sentence 8.2.1.2 and Appendix "A" Section A-8.2.1.2(1)—failure to include a Site Evaluation;
 - b. Sentence 8.7.3.2(1)(e)—elevation of absorption trenches;
 - c. Section 8.7.4.1—loading requirements; and
 - d. Section 8.2.1.6.B—minimum clearance distances.
6. The county refused to issue the permits applied for because Self and SSE's designs did not comply with the code and also because they did not take proper account of the small lot size, its location on a flood plain, the presence of a high groundwater table and other considerations, which resulted in the Ausable Bayfield Conservation Authority (ABCA) concluding that the property should be considered "hazardous." ABCA's approval of the location of the septic system was required, in addition to the county's approval of the design, before a permit would be issued, and ABCA also refused its approval.
7. PEO retained an independent expert to review the work done by Self and SSE. The independent expert prepared a report dated June 25, 2021, as well as an Addendum dated March 23, 2022 (collectively, the expert reports).
8. The independent expert's comments included that (i) the designs by Self and SSE did not meet the minimum requirements of the OBC, and that (ii) they suggest a lack of expertise and understanding in the field of onsite sewage treatment system design and the application of Part 8 of the OBC. If the sewage system had been constructed as originally designed by Self, then in independent expert's opinion it would not have provided a sewage system of adequate size, nor would the required

vertical separation from the high groundwater table have been provided. An undersized sewage system constructed in close proximity to the water table would not have provided adequate treatment of the wastewater, and this would have presented a potential risk to the environment and public health.

9. For the purposes of these proceedings, the respondents accept as correct the findings, opinions and conclusions contained in the expert 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 Self and SSE are guilty of professional misconduct under section 72(2) of R.R.O 1990, Reg. 941 (Regulation 941), as follows:
 - a. They prepared, signed and sealed inadequate and deficient designs for a septic system, which designs also failed to meet applicable code requirements, amounting to professional misconduct as defined in section 72(2)(a), (b) and (d) of Regulation 941;
 - b. They undertook work they were not competent to perform by virtue of their training and experience, amounting to professional misconduct as defined in section 72(2)(h) of Regulation 941; and
 - c. The conduct of Self and SSE described herein was unprofessional, and therefore also amounted to professional misconduct as defined in section 72(2)(j) of Regulation 941.

The member admitted to allegations set out in paragraph 10 (a), (b) and (c) of the ASF. The panel conducted a plea inquiry and was satisfied that the member's admission was voluntary, informed and unequivocal.

DECISION

The panel accepted the facts in the ASF and the plea and found that the acts admitted to in paragraphs 10 (a), (b) and (c) of the ASF were of professional misconduct. The panel made no finding with respect to s. 72(2)(f) of Regulation 941 as alleged at paragraph 10(c) of the Statement of Allegations as Mr. Self and SSE did not admit to the allegation and no evidence was presented to support a finding under this section.

The parties made a Joint Submission as to Penalty and Costs (JSP) signed by the member on August 24, 2022, and by the association on October 3, 2023.

The association provided the panel with previous cases including *Bradley v. Ontario College of Teachers, 2021 ONSC 2303 (Bradley)*. This decision by the Divisional Court emphasized the stringent nature of the public interest test set out in *R. v. Anthony-Cook, 2016 SCC 43, [2016] 2 S.C.R. 204* and confirmed that it applies to disciplinary bodies such as this panel. The court noted in its decision that any disciplinary body that rejects a joint submission on penalty must apply the public interest test and must show why the proposed penalty is so “unhinged” from the circumstances of the case that it must be rejected. In that case, the court found that the Discipline Committee clearly misunderstood the stringent public interest test, and impermissibly replaced the proposed penalty with its own view of a more fit penalty.

This element of *Bradley* is provided here as it is an important development in Common Law for discipline hearings.

The panel accepted the JSP for the member and the holder and orders as follows:

1. Pursuant to s. 28(4)(f) of the act, Self and SSE shall be reprimanded, and the fact of the reprimand shall be recorded on the register permanently.
2. 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 three (3) weeks, commencing on the date of pronouncement of the Discipline Committee's penalty decision.
3. The finding 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 holder.
4. Pursuant to s.28(4)(d) and/or s. 28(4)(c) of the act, it shall be a term, condition or restriction on Self's licence and SSE's certificate of authorization that they shall be prohibited from providing environmental engineering services.
5. If Self demonstrates this competence in environmental engineering by successfully passing the following examinations administered by PEO, namely,
 - i) 18-ENV-A1—Principles of Environmental Engineering,

- ii) 18-ENV-A4—Waste and Wastewater Engineering, and
- iii) 18-ENV-B2—Water Resources, the term, condition or restriction set out in paragraph 4. above shall be lifted; and

6. There shall be no order as to costs.

The panel pronounced its determinations as to conviction and penalty at the conclusion of the hearing on October 24, 2022, and advised that these written reasons were to follow. At the hearing, after the pronouncement of the penalty the member

waived his right to appeal and thus the effective date of the decision is October 24, 2022.

At the conclusion of the hearing, the panel administered a reprimand to the member and holder.

On November 17, 2022, Glenn Richardson, P.Eng., signed the Decision and Reasons for the decision as chair of this discipline panel and on behalf of the members of the discipline panel: David Germain, JD, and John Tyrrell, P.Eng.

HARJINDER SINGH's professional engineering licence was suspended from June 13, 2022, to June 26, 2022, inclusive, in accordance with a registrar's Notice of Proposal issued pursuant to subsection 14(2)(c) of the *Professional Engineers Act* on June 2, 2022. As Mr. Singh did not request a hearing within 30 days after the Notice of Proposal was served upon him, the deputy registrar carried out the proposal and suspended his licence.

ZHI QIANG CAO's professional engineering licence was suspended on July 8, 2022, in accordance with a registrar's Notice of Proposal issued pursuant to subsection 14(2)(c) of the *Professional Engineers Act* on May 24, 2022. As Mr. Cao did not request a hearing within 30 days after the Notice of Proposal was served upon him, the deputy registrar carried out the proposal and suspended his licence. Mr. Cao's licence shall remain suspended for six months, or until he passes PEO's National Professional Practice Examination, whichever comes first.