

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 WALDEMAR M. WIDLA, P.ENG., a member of the Association of Professional Engineers of Ontario, and FULTON ENGINEERED SPECIALTIES INC., a holder of a certificate of authorization.

The panel of the Discipline Committee met to hear this matter on the 6th of June 2018 at the offices of the Association of Professional Engineers of Ontario at Toronto.

At the hearing, counsel for the association, the member Waldemar M. Widla (Widla) and FULTON ENGINEERED SPECIALTIES INC (FESI), the holder of the certificate of authorization, submitted an Agreed Statement of Facts, including an admission by Wilda and FESI that they were guilty of professional misconduct under section 28(2)(b) of the act.

The panel conducted a plea enquiry and was satisfied that Wilda's and FESI's admissions were voluntary, informed and unequivocal.

THE ALLEGATIONS

The Statement of Allegations against Widla and FESI, as stated in the Statement of Allegations referred by the Complaints Committee, was dated September 20, 2017.

SUMMARY OF AGREED STATEMENT OF FACTS

- The respondent Widla is a professional engineer licensed pursuant to the *Professional Engineers Act* (the act). Widla has little to no training or experience in the field of structural engineering.
- The respondent FESI is an Ontario corporation. At all material times, FESI held a certificate of authorization (C of A) and Widla was the individual taking responsibility for engineering services provided under the C of A. According to the C of A, FESI's business operations included the design and fabrication of custom pressure vessels and heat exchangers.
- FESI was the tenant/occupant of a building located at 13908 Hurontario, Road in Caledon (the building) from before 2010 to on or about January 5, 2016.
- In or about 2010, Sino-Can Energy (Sino-Can) entered into an agreement with 952496 Ontario Inc. (952), the owner of the building, to install a solar panel array on the roof of the building. At that time, 952 was wholly or partly owned by Widla.
- Under the agreement with 952, Sino-Can obtained a building permit for the solar panel project, hired Arash Niaki & Associates Ltd. to do the structural design, looked after re-roofing the building, and also looked after providing and installing the solar panel racks on the exterior of the roof of the building.
- FESI was responsible for providing and installing the attachment plates for pull-out force that were supposed to be bolted on the underside of the roof from the inside of the building in accordance with the structural design done by Arash Niaki & Associates Ltd.
- The building was sold by 952 in a private sale to Armando Tallarico (Tallarico) in or about May 2014.
- In or about August 2015, Tallarico sold the building to the complainant, Sam Boumitry (Boumitry).
- In or about September 2015, Tallarico notified Widla that the building permit obtained by Sino-Can remained outstanding. The Town of Caledon's inspector, Frank Marra (Marra), advised Widla that the town required a letter from a professional engineer confirming that the work required to be done was done in accordance with the structural drawings.
- Widla signed and sealed a letter from FESI to Marra dated September 14, 2015 (the letter), regarding Permit BA/10/563, stating:

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.

We are the contractor who modified the roof structure at the subject property with respect to the subject Permit #. The details of the work to be performed were specified on engineering drawing SE-1 issued by Niaki & Associates Ltd. dated Aug. 13, 2010.

We hereby confirm that all work was performed by our company in full compliance with the drawing issued.

11. Widla had not inspected the work for which FESI was responsible at the time of construction of the solar panel project, nor did he inspect the inside of the roof to see if the attachment plates were actually installed at any time prior to writing the letter.
12. As a result of receiving the letter, the town closed the building permit and the sale closed.
13. In or about late September or early October 2015, Boumitry advised Widla that the work performed by FESI was not in compliance with the associated structural drawing, contrary to Widla's assertions in the letter. In fact, approximately 50 of the 100 attachment plates required by the drawings had not been installed.
14. Despite being advised that the work had not been completed as required, Widla took no steps to correct, amend or retract the letter, nor to advise the town.
15. PEO retained Daria Khachi, P.Eng., as an independent expert. He prepared a written report dated August 16, 2017 (the report). The report concluded, among other things:

The roof joist reinforcing specified on Arash Niaki & Associates Ltd.'s drawing SE-4 is necessary for the performance of the roof joists. The connecting plate locations specified on drawings SE-2 and SE-3, and the connection details specified on drawing SE-5 are critical to the performance of the W150x14 beams used to support the photovoltaic panels.

The absence of approximately 50 per cent of these connector plates will result in the overstressing of the W150x14 beams in

bending under full uplift wind loads and will also create excessive deflections of the members.

It was noted that approximately 50 per cent of these connector plates had not been installed. It is not clear as to which plates were missing—connector plates at the ends of the W150x14 beam span or in the middle of the beam span, or two missing connector plates adjacent to each other. Missing connector plates at the ends of the W150x14 beams will result in a cantilever length of approximately 19 feet. Under full wind loading conditions, the W150x14 beams with a 19 ft cantilever will be overstressed in bending by over 330 per cent and their deflections will be extreme to a point of damaging the photovoltaic panels. Missing connector plates in the middle span of the W150x14 beams will result in a longer than anticipated span of approximately 38 feet (assuming no two adjacent connectors are missing, thus increasing the span even further). Under full wind loading conditions, the W150x14 beams with a 38 ft span will be overstressed in bending by 100 per cent and their deflections will exceed the recommended allowable deflections by over 280 per cent.

The missing connection plates noted above will not distribute the wind uplift reactions to the supporting roof joists below. Instead, the adjacent connection points will receive greater reaction forces, which affects the design of the supporting roof joists. Depending on the location of the missing connection plates, the supporting roof joists may or may not be overstressed.

Based on my review of the details noted on Arash Niaki & Associates Ltd.'s drawings, failure to provide these details are critical and a potential risk to public safety. As these deficiencies are a building code violation and a potential risk to public safety, a proper installation review would be expected of a reasonable and prudent practitioner.

16. Widla and FESI accepted as correct the findings, opinions and conclusions contained in the report. Widla and FESI admitted that they failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances.
17. By reason of the aforesaid, the parties agreed that the respondents, Widla, and FESI, are guilty of professional misconduct under section 28(2)(b) of the act, by reason of:
 - a. Signing and sealing a letter to a building official that failed to meet the standard of a reasonable and prudent practitioner, amounting to professional misconduct as defined by section 72(2)(a) of Regulation 941;
 - b. Signing and sealing a letter to a building official that failed to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work, amounting to professional misconduct as defined by section 72(2)(b) of Regulation 941;

- c. Failing to correct an incorrect certification of the completeness of structural work that he knew or ought to have known was not complete, thereby endangering the welfare of the public, amounting to professional misconduct as defined by section 72(2)(c) of Regulation 941; and
- d. Signing and sealing a letter to a building official that was prepared in an unprofessional manner, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

The respondents had independent legal advice, or had the opportunity to obtain independent legal advice, with respect to their agreement as to the facts, as set out above.

PENALTY

The parties submitted a written Joint Submission as to Penalty and association counsel provided oral submissions as to the appropriateness of the Joint Submission as to Penalty. In support of the penalty agreement, counsel for the association referred to two previous decisions: *Association of Professional Engineers of Ontario v. Bruce D. Crozier, P.Eng.* and *Association of Professional Engineers of Ontario v. Jiri Krupka, P.Eng.*

In both cases, the penalties were similar to the penalty agreement before this panel, except the previous penalties had

invoked a two-month suspension of licence, rather than the one month proposed here. However, in both previous cases, the members had denied guilt and hearings took place. In the present case, the member has admitted guilt, avoiding the cost of a full hearing.

The panel was concerned whether the attachment plate deficiencies have been corrected, given the potential for impact on public safety. It was advised that corrections have been made by the current owner of the building and that public safety is now protected.

The panel accepted the Joint Submission as to Penalty and accordingly, ordered:

- a) Pursuant to s. 28(4)(f) of the act, Widla and FESI 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, Widla's licence and FESI's certificate of authorization shall be suspended for a period of one (1) month, commencing on June 7, 2018;
- c) 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;
- d) Pursuant to s. 28(4)(d) of the act, it shall be a term or condition on Widla's licence that he shall, within fourteen (14) months of the date of the Discipline Committee's decision, successfully complete PEO's professional practice examination (PPE);
- e) Pursuant to s. 28(4)(b) and (k) of the act, in the event Widla does not successfully complete the PPE within the time set out above, his licence shall be suspended pending successful completion of the examination; and
- f) There shall be no order as to costs.

The panel concluded that the proposed penalty is reasonable and in the public interest. Widla has co-operated with the association and, by agreeing to the facts and proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association. There was no apprehension that Widla intended to practice structural engineering in future and thus no reason to place a limitation on his professional licence in this regard. The panel considered that the two previous DIC decisions referred by counsel for the association were similar to the current matter and provide reasonable guidance with respect to penalty. In the present case, a suspension of one month rather than two is reasonable given the cooperation given by the member in this case.

The Decision and Reasons was signed on July 5, 2018, by the panel chair, Albert Sweetnam, P.Eng., on behalf of the panel, which included Michael Chan, P.Eng., Robert Willson, P.Eng., Lew Lederman, QC, and William Walker, P.Eng.