

failed to record the alterations on paper. *PEO v. Campbell* can easily be distinguished as there is no sufficient evidence in the Agreed Statement of Facts to suggest that Perera intended to mislead the MTO or others.

The association also urged the panel to consider *PEO v. Crozier*, one of the many sample cases summarized by independent legal counsel. In that case, according to the Agreed Statement of Facts therein and the evidence introduced during the hearing, Crozier was found to engage in professional misconduct for failing to maintain the standards expected of a reasonable and prudent practitioner and using the title “consulting engineers” without permission from PEO. Crozier’s conduct was described as a lapse of judgment. The panel in *PEO v. Crozier* accepted the parties’ Joint Submission on Penalty that included a two-month licence suspension.

In the result, the panel accepted the argument that *PEO v. Crozier* is relevant for the determination of the reasonable range of penalty in this case. Both cases deal with misconduct that resulted from a lapse of judgment and was found to be unprofessional, but not disgraceful or dishonourable. In light of *PEO v. Crozier*, the panel concluded that a two-month licence suspension falls within the reasonable range of penalties in this case, even though, arguably, it may represent the upper end of the range. Accordingly, the panel accepted the proposed penalty as agreed to between the parties.

Colin Cantlie, P.Eng., signed this Decision and Reasons for the decision as chair of the discipline panel on behalf of the members of the discipline panel: Santosh Gupta, P.Eng., Rebecca Huang, LLB, Phil Maka, P.Eng., and Patrick Quinn, P.Eng.

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 PETER J. FAMIGLIETTI, a former member of the Association of Professional Engineers of Ontario.

This matter came on for hearing before a panel of the Discipline Committee on August 27, 2012, at the Association of Professional Engineers of Ontario in Toronto, to hear and determine allegations against Peter J. Famiglietti (Famiglietti).

The panel waited until 10:00 a.m. before commencing the hearing in the event that Famiglietti was delayed. However, Famiglietti did not attend the hearing, nor was he represented by counsel. Counsel for the association presented an Affidavit of Service, indicating that Famiglietti was served with the Complaints Committee decision and the Statement of Allegations, by forwarding a signed copy of the said documents by ordinary mail on March 28, 2012, to his home address on record. Counsel advised that no response was received from Famiglietti.

Counsel for the association also presented a registrar’s certificate, indicating that Famiglietti was licensed as a professional engineer under the provisions of the *Professional Engineers Act* from December 12, 2005 to April 13, 2010. His licence was lapsed due to non-payment of annual fees. Further, Famiglietti never held a Certificate of Authorization (C of A) under the provisions of the *Professional Engineers Act*, and he has never been the professional engineer responsible for, or who supervised, the services provided that are within the practice of professional engineering on behalf of a Certificate of Authorization holder.

THE ALLEGATIONS

The Statement of Allegations presented by the counsel for the Association of Professional Engineers of Ontario (the association) included the following.

It is alleged that Peter J. Famiglietti is guilty of professional misconduct as defined in the *Professional Engineers Act* and Regulation 941, the particulars of which are as follows:

1. Famiglietti was a professional engineer licensed pursuant to the *Professional Engineers Act* from December 2005 until his licence was cancelled for non-payment of fees on April 13, 2010. The association has never issued Famiglietti a Certificate of Authorization.
2. The complainant was, at all material times, a plans examiner (plans examiner) for a city near Toronto, Ontario (the city).
3. In or about 2008, a home owner (the owner) retained a contractor to build a set of stairs for his house. The contractor advised that the owner did not need a building permit.

4. On July 18, 2008, a city building inspector (the inspector) discovered the stairs and advised the owner that he required a permit.
 5. At some point prior to March 2010, the owner applied for a building permit by submitting to the city a hand-drawn diagram of the stairs. The diagram was rejected by the city clerk. A second submission was also rejected.
 6. On or about March 16, 2010, the city issued the owner an Order to Comply, requiring him to obtain a building permit for the stairs.
 7. On March 26, 2010, the owner submitted a diagram of the stairs dated December 18, 2009, which was signed and sealed by Famiglietti. The diagram contained measurements of certain areas of the structure, but substantially failed to provide the information necessary to assess the structure's compliance with the building code. Specifically, the diagram did not specify:
 - (a) foundation sizes for the landing;
 - (b) framing sizes for the landing;
 - (c) stair rise and run values;
 - (d) guardrail attachment information;
 - (e) post-attachment information for the guardrails;
 - (f) height of the guardrails;
 - (g) wood stair stringer attachment information; and
 - (h) size of the pickets.
 8. In or about April 2010, the plans examiner called the owner to advise him of his concerns with the diagram.
 9. In or about July 2010, the owner resubmitted Famiglietti's December 18, 2009 diagram with handwritten alterations to certain numerical measurements. The diagram was still unsatisfactory to the plans examiner, who then attempted to contact Famiglietti about his concerns. Despite leaving several messages for Famiglietti at his home telephone number, Famiglietti never returned the plan examiner's call.
 10. On August 25, 2010, the plan examiner filed a complaint with the association.
- Based on these facts, it is alleged that Famiglietti is guilty of professional misconduct as follows:
1. creating a drawing of a structure that substantially failed to provide the information necessary to assess the structure's compliance with the building code, amounting to professional misconduct as defined by sections 72(2)(a), (d) and (j) of Regulation 941;
 2. providing engineering services to the public while not holding a C of A, contrary to section 12(2) of the *Professional Engineers Act*, amounting to professional misconduct as defined by section 72(2)(g) of Regulation 941;
 3. undertaking work in civil engineering, a discipline in which Famiglietti has little or no training or experience, amounting to professional misconduct as defined by section 72(2)(h) of Regulation 941; and
 4. failing to respond to reasonable enquiries about his work by the city plans examiner, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

PLEA BY MEMBER

The hearing proceeded in his absence and without representation from counsel on his behalf. There was no plea from, or on behalf of, Famiglietti.

PANEL JURISDICTION

Although Famiglietti is not currently licensed as a professional engineer in Ontario, the events in question occurred during the period he was licensed as an engineer. Section 22(1) of the *Professional Engineers Act* states that a member's licence may be cancelled for non-payment of fees, subject to the continuing jurisdiction of the association in certain circumstances:

- 22.(1) The Registrar may cancel a licence, certificate of authorization temporary licence, provisional licence or limited licence for non-payment of any fee prescribed by the regulations or the by-laws after giving the member or the holder of the certificate of authorization, temporary licence, provisional licence or limited licence at least two months' notice of the default and intention to cancel, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of the person's professional conduct while a member or holder.

Accordingly, this panel had jurisdiction to consider the matter and proceed with the hearing.

THE WITNESSES

Counsel for the association presented the inspector and the plans examiner, both employees of the city, as witnesses for the prosecution.

The inspector, while inspecting the adjacent property in July 2008, discovered the stairs and landing providing access to a deck on the second floor on the subject property. Further investigations confirmed that, whereas there was a permit for the decks, the stairs and landings had been built without a permit. The owner was requested to obtain a permit. An Order to Comply was issued on March 16, 2010, following rejection of the hand-drawn diagram submitted by the owner in support of the building permit.

On March 26, 2010, the owner submitted a diagram of the stairs dated December 18, 2009, which was signed and sealed by Famiglietti. The diagram contained measurements of certain areas of the structure, but substantially failed to provide the information necessary to assess the structure's compliance with the building code. This diagram was rejected by the city due to numerous deficiencies.

Subsequently, in July 2010, Famiglietti resubmitted the drawing with handwritten alterations to the dimensions of the stairs. Some of these alterations were fairly significant. The plans examiner tried to contact Famiglietti to seek clarification, but these calls were not returned.

DECISION

The panel, after having considered all of the information and evidence presented to it during the hearing, determines that the facts support a finding that Peter J. Famiglietti is guilty of professional misconduct due to the following:

1. creating a drawing of a structure that substantially failed to provide the information necessary to assess the structure's compliance with the building code, amounting to professional misconduct as defined by sections 72(2)(a), (d) and (j) of Regulation 941;
2. providing engineering services to the public while not holding a Certificate of Authorization, contrary to section 12(2) of the *Professional Engineers Act*, amounting to professional misconduct as defined by section 72(2)(g) of Regulation 941;
3. undertaking work in civil engineering, a discipline in which Famiglietti has little or no training or experience, amounting to professional misconduct as defined by section 72(2)(h) of Regulation 941; and
4. failing to respond to reasonable enquiries about his work by the plans examiner, amounting to professional misconduct as defined by section 72(2)(j) of Regulation 941.

REASONS FOR DECISION

The panel had serious concerns in relation to Famiglietti's conduct relating to his involvement in this matter.

The panel is also concerned about significant variations in the dimensions in two diagrams bearing his seal and signature for the same set of existing stairs. He either measured these incorrectly, or deliberately altered them to show compliance with the building code, after he had been advised of the deficiencies. This raises ethical questions.

Also, Famiglietti provided professional services to the general public without a valid Certificate of Authorization in contravention of the *Professional Engineers Act*.

From the evidence presented, it was clear that Famiglietti did not take responsibility for his actions by neglecting to respond to a legitimate request for information from building officials.

PENALTY DECISION

The panel has considered the submission from the counsel of the association, and orders as follows:

1. Whereas Famiglietti is not currently a member of the association and is entitled to seek reinstatement of his licence to practise as a professional engineer upon payment of outstanding fees, pursuant to section 22(2) of the *Professional Engineers Act*, upon compliance with the requirements of Article 51.1 of Regulation 941, there shall be an additional condition imposed requiring him to successfully complete the professional practice examination within two months of compliance of the requirements under Article 51.1 of Regulation 941, failing which his licence will be suspended for a further six months.
2. Pursuant to subsection 28(4)(k) of the *Professional Engineers Act* that the imposition of the penalty set out in Item 1 above shall be postponed until the reinstatement, if any, of Famiglietti's licence, at which time the penalty set out in Item 1 above shall be automatically imposed, such that it shall be a condition of the reinstated licence; and
3. Pursuant to subsection 28(4)(1) of the *Professional Engineers Act* that the findings and the order of the Discipline Committee shall be published in detail, including Famiglietti's name, in the official publication of the association.

REASONS FOR PENALTY

In consideration of the penalty relating to the conduct of Famiglietti, the panel considered the following:

- (a) protection of the public;
- (b) maintenance of professional standards;
- (c) maintenance of public confidence in the ability of the profession to regulate itself;
- (d) general deterrence; and
- (e) specific deterrence.

The panel viewed the conduct of Famiglietti as irresponsible, reprehensible and unprofessional, by providing services in a discipline in which he was not competent, which put the public's welfare and safety at risk.

The provision of engineering services without a valid Certificate of Authorization is a serious contravention of the *Professional Engineers Act* and cannot be taken lightly. It does not matter if these services are provided on an informal basis to a friend or without cost. A licensed engineer is still obligated to adhere to the professional standards expected by the profession and the public at large.

The penalty imposed herein is also intended to serve as a warning to licensed professional engineers who may be inclined to such misconduct, and also as a reminder of their obligations as licensed professional engineers.

The penalty imposed by the panel is also intended to serve as a reminder to Famiglietti of his professional and ethical responsibilities and obligations should he choose to return to the profession by seeking reinstatement of licence.

Under similar circumstances, an active member would have received a reprimand, which would have been registered. As Famiglietti is not currently a member of the engineering profession, a reprimand is not practical at this time.

Virendra Sahni, P.Eng., signed this Decision and Reasons as chair on behalf of the members of the discipline panel: Robert Dony, P.Eng., Nick Monsour, P.Eng., Sharon Reid, C.Tech, and Rakesh Shreewastav, P.Eng.

Note: This document has been revised from the original document to protect the identity of the witnesses.

NOTICE OF LICENCE REVOCATION ROBERT G. WOOD

On November 16, 2012, the professional engineering licence of Robert G. Wood was revoked pursuant to a November 15, 2010 order of the Discipline Committee. The order was issued following a finding of professional misconduct against Wood at a discipline hearing held on November 17, 2008 and March 3-5, 2009. Wood's licence was revoked because he failed to write and pass the professional practice examination and two technical examinations within the 24-month time frame prescribed by the Discipline Committee. Wood's licence had been suspended since November 16, 2011, pursuant to the same order of the Discipline Committee.