

## SUMMARY OF DECISION AND REASONS

### Association of Professional Engineers of Ontario v. MICHAEL M. COOK, P.ENG.

On June 12, 2009, the chief building official of the City of Belleville referred documents accompanying building permit applications to the Association of Professional Engineers of Ontario (association) for the purpose of determining if the *Professional Engineers Act* (act) was contravened by the member. The registrar initiated an investigation pursuant to section 33 of the act. The results of the investigation were reported to the association's Executive Committee, who referred the matter by resolution to the Discipline Committee on August 9, 2011.

An Amended Statement of Allegations dated March 26, 2012, was tabled at the hearing. The panel was advised that both counsel for PEO and for the member had reached an Agreed Statement of Facts, which included an admission of guilt, and that there was a Joint Submission on Penalty. Both documents, dated September 10, 2012, were filed at the hearing.

The member was licensed in 1982 and was the sole practitioner under a Certificate of Authorization issued initially in 2003. The complaint from the chief building official related to errors of omission on five building permit applications, dating from May 19, 2006 to June 1, 2009. The member had made revisions, which were accepted, and permits were issued for two of the applications. The association's investigation identified shortcomings in practice standards, and that there were deficiencies in documentation on four projects during the period from September 2009 through February 2010.

The member pled guilty, and a plea inquiry conducted by the panel chair satisfied the panel that the plea was made willingly, unequivocally and without reservation.

#### DECISION

The panel determined that the member was guilty of professional misconduct, as defined under section 28(2)(a) of the act, as a result of contravening Regulation 941, R.R.O. 1990, as amended, section 53 and section 72(2), subsections (a) negligence; (b) safeguarding life, health or property; (d) compliance with statutes, etc.; (e) signing and sealing documents; (h) competence to do work; and (j) unprofessional conduct.

The panel accepted that the shortcomings and deficiencies were acknowledged in the Agreed Statement of Facts. The facts presented supported the allegations that the applicable sections of Regulation 941 had

been contravened. A finding of "unprofessional" under subsection 72(2)(j) was appropriate as there was no evidence to support the more serious provisions. The member's guilty plea was offered willingly and without reservation.

#### PENALTY

Both counsel argued in support of the Joint Submission on Penalty, which was the outcome of serious negotiations. The member had legal counsel throughout this adversarial process. The penalty addressed concerns related to specific and general deterrence, remediation and public protection. Two precedent decisions of the Discipline Committee were presented in support of the Joint Penalty Submission. The member had been co-operative throughout the process.

The penalty proposed suspensions of the member's licence and Certificate of Authorization, with such suspensions commencing October 1, 2012, thus allowing three weeks to clear up outstanding work. The four-month licence suspension was considered significant, and reinstatement of the Certificate of Authorization was conditional on the member passing two examinations.

The panel accepted the Joint Submission on Penalty, and ordered:

1. Pursuant to section 28(4)(b) of the act, Cook's licence shall be suspended for a period of four months, commencing on October 1, 2012;
2. Pursuant to section 28(4)(b) of the act, Cook's Certificate of Authorization shall be suspended from October 1, 2012, until such time as Cook shall have written and passed both of the following two examinations:

- (a) 07-STR-A2 (formerly 98-CIV-A2)–  
Elementary Structural Design, and
  - (b) 07-STR-A5 (formerly 98-CIV-B2)–  
Advanced Structural Design;
3. Pursuant to section 28(4)(e) of the act, it shall be a term, limitation and condition on Cook’s licence that, in the event Cook fails to pass successfully the examinations referred to in paragraph two hereof within 24 months of the discipline hearing, his licence shall be revoked;
  4. Pursuant to section 28(4)(c) of the act, Cook undertakes that his practice from September 10, 2012, until the commencement of the suspensions referred to above, shall be limited to completing projects currently underway, and that he shall not accept or carry out any new or additional work or projects in this period;
  5. It shall be a further term, limitation and condition on Cook’s licence that, in the event Cook offers engineering services to the public while his Certificate of Authorization is suspended pursuant to paragraph two hereof, or practises professional engineering while his licence is suspended pursuant to paragraph one hereof, his licence shall be revoked;
  6. Pursuant to section 28(4)(i) of the act, the findings and order of the Discipline Committee shall be published in summary form, including Cook’s name, in PEO’s official publication; and
  7. There shall be no order with respect to costs.

### REASONS FOR PENALTY DECISION

The panel accepted that the joint submission was the result of a serious attempt to reach agreement, and that the member’s interest was well represented in the process.

The four-month suspension of the member’s licence is significant, but appropriate in this case. The prerequisites for reinstating the member’s Certificate of Authorization are a reasonable means to address remediation and public safety. Publication, in sum-

mary, should deter the general membership from engaging in similar conduct in the future.

The member acknowledged shortcomings and his responsibility for same. He was co-operative in the investigation and demonstrated respect for the profession in reaching agreement on fact and penalty. As such, an award of costs was not warranted.

The Joint Submission on Penalty is reasonable and would not bring the administration of justice into disrepute. Existing client needs were considered. Public confidence in the association’s ability to be a self-regulator of the profession should be satisfied. The decision and penalty serves and protects the public interest.

The Decision and Reasons was signed by the panel chair, Michael Wesa, P.Eng., on behalf of the panel, which included Ishwar Bhatia, P.Eng., Rebecca Huang, LLB, David Robinson, P.Eng., and Bill Walker, P.Eng.

#### NOTICE OF LICENCE SUSPENSION, HOUSTON T. ENGIO

On January 8, 2013, Houston T. Engio’s professional engineering licence was suspended pursuant to a November 8, 2011 order of the Discipline Committee. The order was issued following a finding of professional misconduct against Engio at a discipline hearing held on that date. Engio’s licence was suspended because he failed to write and pass the professional practice examination within the 14-month timeframe prescribed by the Discipline Committee.