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The Discipline Committee of the Association of Professional Engineers of Ontario

In the matter of a hearing under the Professional Engineers Act, R.S.O, 1990,
Chapter P.28

And in the matter of a complaint regarding the conduct of

Christopher J. Campbell, P.Eng.

a member of the Association of Professional Engineers of Ontario

B E T W E E N:

The Association of Professional Engineers of Ontario and

Christopher J. Campbell, P. Eng.

Decision and Reasons

A Panel of the Discipline Committee of the Association of Professional Engineers of Ontario met in the offices of the association on December 17, 2001 to hear allegations of incompetence and professional misconduct against Christopher J. Campbell.

Michael Royce of Lezner Slaght Royce Smith appeared as legal counsel for the association.

Christopher J. Campbell was not represented at the hearing by legal counsel.

Nancy Spies, of Stockwood Spies, appeared as independent legal counsel to the discipline panel.

The hearing arose as a result of Campbell's involvement in the rehabilitation of the Kashabowie River Bridge in northern Ontario.

The allegations of professional misconduct and incompetence are set out in Appendix "A" to the Notice of Hearing filed as an exhibit and summarized as follows:

Appendix A

1. Campbell was at all material times a member of the Association of Professional Engineers of Ontario. Campbell was employed in the capacity of a professional engineer by USL.
2. In the summer of 2000, Thunder Bay Testing and Engineering Limited (TBTE) was retained by USL to perform on-site and laboratory quality control testing in support of the Ontario Ministry of Transportation (MTO) for the bridge rehabilitation. The TBTE involvement in the project consisted of performing compaction testing of the granular material at the site, before the pouring of concrete. USL had a duty to ensure the granular material was of the proper compaction in accordance with the contractor's Quality Control Plan and

applicable MTO specifications before the pouring of concrete.

3. A TBTE report on the compaction showed it was insufficient and re-compaction was necessary before the pouring of concrete. Notwithstanding, the concrete was poured.
4. A falsified compaction test report was submitted to the MTO contract administrator, Cook Engineering (CE), by Campbell. When confronted by the contract administrator with the falsified document, Campbell denied falsification of the document.

Campbell admitted to the falsification of the document. Matters to be determined by the Panel included whether or not Campbell did request TBTE to falsify the data to show a positive granular compaction report and whether or not Campbell did pour concrete on the granular base, with full knowledge of the failed granular compaction report.

It is alleged that Campbell is guilty of incompetence as defined in Section 28(3)(a) and professional misconduct as defined in Section 28(2)(b) of the Professional Engineers Act, R.S.O. 1990, Chapter P.28, in that during the year 2000, while employed as a professional engineer by Underground Services (1983) Limited (USL), in the province of Ontario, Campbell did:

- a) solicit TBTE to provide a false granular compaction test report;
- b) intentionally misrepresent the status of the construction project to TBTE personnel;
- c) alter the granular compaction test report provided by TBTE to falsely show a passing condition;
- d) submit a granular compaction test report to the contract administrator for the project which Campbell knew, or ought to have known, was falsified;
- e) allow work to continue and concrete to be poured on a site where Campbell knew, or ought to have known, that the granular compaction had been tested and had failed to meet the specification;

f) breach his fiduciary responsibility to his client; and

- g) under the circumstances above, act in the manner that, with reference to the practice of professional engineering having regard to all the circumstances, would reasonably be regarded by the engineering profession as unprofessional, disgraceful or dishonourable.

Campbell admitted to falsifying the compaction test report, but denied other allegations set out in the Notice of Hearing.

The association called three witnesses, Kevin Edison (Edison) of TBTE, Rob Frenette, P.Eng. (Frenette) of TBTE, and Cary Roy of CE (Roy).

Evidence of Kevin Edison

Edison is a technician who performs field and laboratory testing services for TBTE. Edison testified that he was involved with the bridge rehabilitation in question in the capacity of performing compaction testing. He testified that on August 24, 2000, he attended the site to measure the density of the compacted granular material in the area of the bridge approach slab and take a sample back to their laboratory for analysis.

Edison testified that he advised Campbell that he should not go ahead with the pouring of concrete on the bridge until it was confirmed by a telephone call that the compaction results were sufficient to meet the specifications. Edison testified that on the morning of August 25, 2000, the testing was completed and he contacted Campbell by telephone at approximately 9:30 a.m. At that time, Campbell was informed that the compaction had failed and that re-compaction would be necessary before the pouring of concrete.

Edison further testified that Campbell indicated that would be a problem, as the pouring of concrete had already begun. Further, Edison testified that Campbell asked Edison to change the results so the compaction tests would be a pass. Edison replied he could not do that and instead would fax the test results to Campbell. He faxed Campbell a copy of the field compaction report, which was marked as Exhibit 4.

Edison arrived at the site at 1:20 p.m. that same day and found that the concrete

pouring was just starting. This contradicted Campbell's earlier comment in the morning telephone call.

Edison testified that on August 28, 2000, he had indicated to Brian Dietrich of CE, the contract administrator for MTO, that Dietrich should check the compaction results from August 24, 2000, for the Kashabowie River Bridge approach slab. Subsequent to this conversation, Roy of CE contacted Edison asking him to fax a copy directly of the compaction results as no results had come in yet from USL. Roy also indicated he wanted a copy so that he could compare it to the one that Chris Campbell had yet to submit. Edison faxed to Roy the compaction results that day.

Edison testified that on August 31, 2000, Roy informed him that Campbell had submitted the compaction results for August 24, 2000. The results stated the compaction had passed. Edison indicated that Roy advised him to talk to Frenette, President of TBTE and inform him that a client had changed one of the TBTE compaction test results. Edison confirmed that the field compaction report, which was altered from Exhibit 4 (which report was marked as Exhibit 6), was not the report that he had prepared.

Lastly, Edison testified that on September 5, 2000, Frenette had a meeting with Frank Adams of CE, which eventually resulted in TBTE withdrawing from the testing contract with USL.

Evidence of Cary Roy

Roy is the project contract administrator and an employee of CE. Roy has been an employee of CE since 1995, and has many years of road and bridge construction experience. Roy was responsible to ensure that the work for the project adhered to the written specification. Roy also kept a daily diary of events related to his projects.

A photocopy of Roy's diary notes was submitted as Exhibit #7. Roy testified that he first became aware of the falsification of the test results on August 28, 2000, when he was approached by Edison of TBTE.

Roy indicated that for a failed test result, re-compaction of the granular material should have been carried out. Roy further indicated that there was a quality control plan in effect. This plan is set before the commencement of the project and indi-

cates what courses of action would be taken if a problem arose. In the event a problem arose, Roy testified that the contractor should promptly disclose things such as a compaction failure test to CE.

During cross-examination by Campbell, Roy testified that the west slab at the bridge was poured at 10:30 a.m., on August 25, 2000. This conflicted with the evidence provided by Edison that, when he arrived on site at 1:20 p.m., on the 25th, the pouring of the west slab was just starting.

During questions from the Panel, Roy indicated that it was conceivable that the granular material could have been re-compacted before the pouring of concrete. Further, Roy testified from the Panel questions that there were avenues USL had, by virtue of the contract, to deal with the concrete being poured on the granular, even though it failed a compaction test.

Roy testified that USL could have written a letter warranting their work and that would have met the requirements of the contract.

Roy further testified that he had approached Campbell on August 28, 2000, and asked for the compaction test results. Campbell indicated at that time that he had not received them from TBTE. Further, Roy testified that on August 31, 2000, Campbell submitted the missing compaction test results at the end of the day. Roy then compared these test results delivered previously directly from TBTE and indicated there was a noticeable difference in the results.

Roy testified that he approached Campbell within 15 minutes of receiving the data and informed him that it conflicted with the data sent directly from TBTE. Campbell maintained that the report he just submitted was what he had received by fax from TBTE and that he would contact TBTE directly to find out what was wrong.

Evidence of Rob Frenette

Frenette is a professional engineer, president, and owner of TBTE. This company was founded in 1995. The company performs material testing in the laboratory and in the field for civil engineering projects. The company also performs civil engineering design for highways and other structures. Frenette has extensive experience, having worked with the MTO before

the formation of his own company.

Frenette testified that Kevin Edison of his firm indicated there may be a problem with this project on September 1 or 2 of 2000. Once notified of the potential for a problem, Frenette instructed Kevin to write a summary of events. This was done on September 5, 2000. In light of the circumstances, Frenette testified he met with Frank Adams of CE to disclose their findings and ultimately to withdraw from working with USL.

Under questioning from the Panel, Frenette testified as follows:

- ◆ He had worked in the industry starting in 1984 with the MTO.
- ◆ He left the MTO in 1995 to start TBTE.
- ◆ The seriousness or implication of a low compaction test result is that it may cause premature settlement or cracking of the concrete slab at the approach to the bridge.
- ◆ His firm did not do the concrete testing for this project.
- ◆ When asked who made the decision to pour the concrete, Frenette replied that he did not know but that it should be the contractor's site supervisor's responsibility.

Frenette was surprised that the concrete had proceeded to be poured in light of the failed test results. When asked if someone from TBTE might have indicated it was okay to pour the concrete, Frenette testified that this was not possible, as their role is not to give advice with respect to the construction of the bridge, but rather to write independent test reports. He further testified that while TBTE is hired by the contractor to perform the testing services, their firm is in no way involved with the actual construction of the approaches to the bridge.

Evidence of Chris Campbell

Campbell testified that he was the site supervisor for the contractor as well as the plan administrator and sometimes acted as a labourer for the project in question.

Campbell testified that he was involved in two other bridge projects under the same contract. Campbell indicated that he was not on site on the day of the testing, August 24, 2000. However, a colleague from his firm was there and was orally given the results of the on-site tests. As the results from the on-site tests were similar to the previous two bridges, which had passing compaction results, Campbell was confident that the laboratory analysis to follow would provide similar test results.

Campbell testified that he did have experience in compaction and Proctor tests as he had previously conducted similar tests while in the employ of a different firm.

Campbell testified that he was personally involved with many aspects of construction at the site and that the pouring of the concrete started between 9:00 and 10:00 a.m., on the morning of August 25, 2000. This was consistent with the evidence provided by Roy, but contradicted the evidence provided by Edison. Campbell further indicated he had requested documents from his firm to show specifically when the pouring was carried out, but could not get this evidence released to him. He further indicated that the west ramp was poured in the morning and that pouring of concrete for the east ramp began around noon the same day.

Campbell indicated that the concrete pours were done without the knowledge of a failed test result. He indicated that the test results were not made known to him until the evening of August 25 when he spoke on the phone to Edison.

Campbell denied asking Edison to change the results, but testified that he asked Edison to re-run the test to ensure the first test was accurate. Campbell further testified that he was under extreme pressure at this time. He was working on a project, which was under-bid and that his actions were a result of panic.

Campbell admitted altering the original compaction report and forwarding it to Roy. He was aware his actions could be detrimental to USL, but was not aware at the time of the impact his actions would have on TBTE. Under cross-examination from PEO counsel, Campbell indicated that he had sent a letter dated May 8, 2001, to Professional Engineers Ontario asking for assistance in getting notes from USL. He felt these notes were vital to substantiate his claims

of when the concrete was poured and when he became aware of the failed test results.

Under cross-examination Campbell admitted falsifying the compaction report on August 31, 2000. He indicated that he was aware there was a penalty for delay of project completion in the order of \$3,000 per day. The owner of USL had indicated that they had under-bid for the project and was under financial stress as a result.

PEO's counsel put to Campbell that since the falsification of the document occurred six days after his knowledge of the failure of the test results, he could not have done so in panic as he had testified. Campbell did not respond.

Campbell further admitted to lying to Roy about TBTE sending the falsified report to him on August 31, 2000. When Campbell discussed the matter with his company, he was instructed not to say anything. The owner of USL was reportedly on holidays when this occurred. Campbell indicated that although he was told not to discuss this with anyone, he did speak with Frenette on September 4, 2000, to reveal what he had done.

Campbell also indicated that the total amount of concrete, which had been poured on top of the granular material, was approximately 12 cubic metres with a material value of approximately \$2,400. Campbell also testified that the firm he worked for employs in excess of 200 people, and has sales of approximately \$50 million annually.

Under questioning from the Panel, Campbell testified to the following:

- a) He first discussed the failed test results with his supervisor at his firm on August 31, 2000. At that time, he was instructed not to say anything and they would do something about it.
- b) Campbell did not have a performance bonus associated with the completion of this project.
- c) Campbell was paid a salary, not an hourly wage. During the time in question he was working approximately 70 hours per week.
- d) Campbell indicated that his company did not carry out testing on granular material, but that he was aware

that the specifications for this project were that the average of all samples had to be greater than 97 per cent compaction with no one sample less than 95 per cent compaction.

- e) Under cross-examination from PEO counsel, Campbell testified that nobody at USL authorized the falsification of the report and that when USL was informed of the report falsification, they were shocked.

The association bears the onus of proving the allegations in accordance with the standard of proof with which the Panel is familiar, set out in *Re: Bernstein and College of Physicians and Surgeons of Ontario (1977)*, 15 O.R. (2d) 477. The standard of proof applied by the Panel, in accordance with the Bernstein decision, was a balance of probabilities with the qualification that the proof must be clear and convincing and based on cogent evidence accepted by the Panel. The Panel also recognizes that the more serious the allegation to be proved, the more cogent must be the evidence.

In this case, the Panel considered the allegations and their possible consequences to be very serious.

Having considered the evidence and the onus and standard of proof, the Panel finds that Campbell is not guilty of incompetence as defined in Section 28(3)(a) and is guilty of professional misconduct as defined in Section 28(2)(b) of the Professional Engineers Act, R.S.O. 1990, Chapter P.28.

In particular, the Panel finds that Campbell did:

- ◆ **alter the granular compaction test report provided by TBTE to falsely show a passing condition;**
- ◆ **submit a soil compaction test report to the contract administrator for the project that he knew or ought to have known was falsified;**
- ◆ **breach his fiduciary responsibility to his client; and**
- ◆ **act in a manner that, with reference to the practice of professional engi-**

neering, was unprofessional, disgraceful and dishonourable.

Accordingly, the Panel finds that Campbell is guilty of professional misconduct; Campbell was negligent, as set out in sections 72(1) and 72(2)(a) of Regulation 941. Campbell failed to make reasonable provision for the safeguarding of property of persons who may be affected by work for which he was responsible pursuant to section 72(2)(b) of the Regulation. Campbell failed to act to correct or report a situation that he believed might endanger the safety or welfare of the public, contrary to section 72(2)(c) of the Regulation. Campbell failed to make responsible provision for complying with applicable standards and rules in connection with work for which he was responsible contrary to section 72(2)(d) of the Regulation; and that his conduct, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional, pursuant to section 72(2)(j) of Regulation 941.

Reasons for Decision

It is uncontested that TBTE was retained by USL to perform on-site and laboratory quality control testing services in support of a bridge rehabilitation contract for the MTO. Campbell admitted that he was directly involved in this project in his capacity as an employee of USL and was in contact with Kevin Edison, a technician at TBTE. Whether Edison had advised Campbell that USL must not begin pouring concrete until he was phoned with the test results is not relevant, as Campbell should have been aware of this when carrying out his duties as a professional engineer and in his capacity as an employee of USL.

Edison's evidence that he phoned Campbell on the morning of August 25, 2000, and advised him that the compaction of soil failed to meet specifications is accepted by the Panel. Under the circumstances of a failed test, it was imperative that the results be given immediately to the contractor. The Panel accepts that Edison would also have advised Campbell

at that time that the soil should be re-compacted and that another test should follow to verify the results. This stands to reason, in light of the relationship between TBTE and USL.

The Panel further accepts the evidence of Edison that the results of the failed compaction test were faxed to USL on the morning of August 25, as the faxed falsified test results sent by Campbell to CE has a facsimile transmittal date of August 25, 2000 with a time stamp of 11:24 a.m., on it. This falsified test result report was filed as Exhibit #6.

However, Edison's evidence that the concrete pouring had not yet commenced until 1:20 p.m., when he arrived on the site on August 25, 2000, is in conflict with the evidence presented by Campbell and Roy. The Panel finds that the pouring of concrete did begin in the morning of August 25, 2000, and therefore, Campbell did not intentionally misrepresent the status of the construction project to TBTE personnel as alleged in paragraph 9 (ii) in the Notice of Hearing.

The evidence supplied by Edison regarding this circumstance is not accepted, as both the evidence of Campbell and Roy conflicts with this. Roy is seen as being distant from the accused engineer and the testing firm directly involved with the case and, thus, is most credible in terms of not having any personal interest in the outcome of this hearing.

The Panel concluded that Campbell did ask Edison to falsify the test results to show that the compaction had passed. As it was determined that the pouring of concrete did commence on the morning of August 25, 2000, as submitted by Campbell and Roy, Campbell was aware that the concrete was mixed and was in the process of being poured and, therefore, the compaction test results could not be verified without removal of the concrete or losing the concrete that had already been mixed. Also, in the light of Campbell admitting that he had falsified test results and lied to the contract administrator, it is considered most likely that he would have asked Edison to falsify the test results.

There is no question that Campbell did falsify the test results and submit them to CE. This was freely admitted by Campbell. Further, there is no question that Campbell lied to Cary Roy of CE when confronted with the falsified test results. This was admitted by Campbell. It is clear

to the Panel that he did breach his fiduciary responsibility to his client.

The Panel finds that Campbell's falsification of the test results from TBTE submission of these test results to the contract administrator and then lying when confronted with doing so would reasonably be regarded by the engineering profession as disgraceful, dishonourable and unprofessional.

The Panel did not find Campbell guilty of incompetence, as by his actions he did not show a lack of knowledge, skill or judgment in carrying out the technical aspects of engineering work.

The remorse exhibited by Campbell is accepted as evidence that his disregard for the welfare of the public is not of a nature or to an extent that he is unfit to carry out the responsibilities of a professional engineer.

Penalty

It was shown during the hearing that Campbell altered a granular compaction report. Campbell's actions were intended to mislead people about the status of the contract. The decision to change the report and then lie when confronted by it, occurred over the course of several days. This was an intentional act undertaken by Campbell.

Counsel for PEO regards this as a serious case that goes to the root of the meaning of integrity. There was a complete disregard for duty to the public in this case.

Further, the public should assume that an engineer would not lie. It is paramount that there be a relationship of trust between the public and engineers.

Campbell falsified the report and then lied when confronted by the contract administrator.

It was the position of PEO that there must be a long suspension in the range of 18 to 24 months, during which Campbell write and pass the ethics exam; that Campbell receive a recorded reprimand, and pay costs to the association of \$10,000, which represented only a fraction of the actual costs.

The Panel recognized two factors that must be considered. They are:

- ◆ Campbell is relatively young and has potential for change.

- ◆ Campbell shows remorse for his actions and has apologized repeatedly to the affected parties.

Campbell addressed the Panel, and showed regret, sorrow and apologized. Campbell indicated he was hoping to minimize the costs of this action by admitting guilt to falsifying the test reports.

Campbell further requested leniency on the monetary penalty, as he is near bankruptcy. He indicated that he is currently employed with an engineering firm as a project manager. He does not do design engineering work in this position, but is surrounded by engineers who are good mentors for him.

The Panel makes the following order as to penalty:

- ◆ **In accordance with section 28(4)(b) of the Professional Engineers Act, R.S.O. 1990, Chapter P.28, Campbell's licence be suspended for a period of 24 months.**
- ◆ **In accordance with section 28(4)(d) of the Professional Engineers Act, R.S.O. 1990, Chapter P.28, that Campbell successfully complete and pass the Professional Practice exam within 24 months. If the exam is not completed and passed within that period, the Member's licence be revoked.**
- ◆ **In accordance with section 28(4)(f) of the Professional Engineers Act, R.S.O. 1990, Chapter P.28, Campbell receive an oral reprimand from the Panel. The reprimand is to remain on the record of Campbell for a period of 24 months.**
- ◆ **In accordance with section 28(4)(j) of the Professional Engineers Act, R.S.O. 1990, Chapter P.28, Campbell reimburse the association for costs in the amount of \$5,000. This amount is to be paid within a 24-month period.**
- ◆ **In accordance with section 28(5) of the Professional Engineers Act, R.S.O. 1990, Chapter P.28, the**

findings of this Panel with reasons be published with names in the official publication of the association.

Reasons for Penalty Decision

The Panel regarded the actions of Campbell as unprofessional, disgraceful and dishonourable. The Panel agreed with the assertions of counsel for the association that this was a very serious case and went to the very root of the profession.

For a professional engineer to alter a test result and lie to a client is totally unacceptable.

Thus, the licence suspension for the maximum period of 24 months was necessary, in the opinion of the Panel, to send

a clear message that this type of conduct is not acceptable under any circumstances.

The requirement to successfully complete and pass the PEO Professional Practice Exam was seen as a necessary requirement in light of the unethical behaviour of Campbell. Although the Panel feels Campbell can pass the exam, as Campbell must have recently done so, it was felt this type of review is essential to reinforce the need for ethical behaviour.

The Panel determined that an assessment of \$5,000 in costs to be paid to the association was in order given the serious nature of the complaint. Further, the time given for payment is intended to minimize the risk of default.

Publication of the findings with names in the association publication is a requirement under Section 28(5) of the Act.

The oral reprimand from the Panel was felt to be necessary in order that Campbell fully understands how the Panel regarded his actions and the reasons for the Panel's penalty decision. The Panel concluded that Campbell is fully aware that his actions were unacceptable and Campbell also showed sincere remorse for those actions.

Dated at Toronto, this 2nd day of April, 2002.

William A. Rutherford, P.Eng. (Chair)

(for and on behalf of the Panel of the Discipline Committee)

Walter Bilanski, P.Eng.

Nick Monsour, P.Eng.

John Wilkes, P.Eng.

Richard Weldon, P.Eng.

Council approves designation and redesignation of consulting engineers

At the 404th and 406th Meetings of Council held on November 15-16, 2001 and February 28, March 1, 2002, the following members were designated or redesignated as Consulting Engineers pursuant to Ontario Regulation 941 of the Professional Engineers Act. Also listed are firms to which Council has granted permission to use the title "Consulting Engineers."

Designation as a Consulting Engineer is for a period of five years; at the end of that time, the member must be redesignated. Anyone wishing information on the Consulting Engineer Designation Program, may consult Angela Gallant, C of A Coordinator, Department of Professional Affairs, at (800) 339-3716 or (416) 224-1100, ext. 491; email: agallant@peo.on.ca.

404th Meeting of Council

Newly designated Consulting Engineers

Jeffrey Chambers, P.Eng.
Geomatrix Consultants
Waterloo, ON

Khalid Dinno, P.Eng.
KSD Engineering
Mississauga, ON

Renato Pasqualoni, P.Eng.
Inspec-Sol Inc.
Mississauga, ON

Redesignated Consulting Engineers

Stephen Blaney, P.Eng.

Noel Board, P.Eng.

Leon Bryck, P.Eng.

Robert DeAngelis, P.Eng.

Leon Demaiter, P.Eng.

Niranjan Devani, P.Eng.

Paramjit Dhillon, P.Eng.

Gerard Egberts, P.Eng.

Gordon Firth, P.Eng.

Donald Gorber, P.Eng.

Hans Groh, P.Eng.

David Henselwood, P.Eng.

Joseph Heyninck, P.Eng.

Remigio Iamonaco, P.Eng.

Terrance Jamieson, P.Eng.

Joseph Janota, P.Eng.

Matthew Kazdan, P.Eng.

Larry Kelterborn, P.Eng.

John Kwan, P.Eng.

Richard Lapas, P.Eng.

Paul Lim, P.Eng.

Robert McCowan, P.Eng.

John Miles, P.Eng.

Bruce Mitchell, P.Eng.

Nickolas Poulos, P.Eng.

Allan Quaille, P.Eng.

Robert Rook, P.Eng.

Andrew A. Rottman, P.Eng.

Michael Shifflett, P.Eng.

J. Derek Sims, P.Eng.

Peter Sorenson, P.Eng.

Philip C. Sun, P.Eng.

Nicola Tassone, P.Eng.

James Thompson, P.Eng.

Michael Visocchi, P.Eng.

Raymond Wong, P.Eng.

Jaroslav Yaremovich, P.Eng.