

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

Alfred R. Kettle, P.Eng.,

a member of the Association of Professional Engineers of Ontario

BETWEEN:

The Association of Professional Engineers of Ontario and

Alfred R. Kettle, P.Eng.

Agreed Statement of Facts and Order of the Discipline Committee

A Panel of the Discipline Committee of the Association of Professional Engineers of Ontario (PEO) met in the offices of the association on October 1, 2001, to hear allegations of professional misconduct and a breach of the provisions of the Code of Ethics of the association contained in Section 77 under Regulation 941 of the *Professional Engineers Act*, R.S.O. 1990, c.P28 against Alfred R. Kettle, P.Eng. (hereinafter referred to as “Kettle”).

Mr. Kettle was found guilty of professional misconduct as defined in Section 28(2)(b) of the *Professional Engineers Act*. Particularly, he breached the following sections of Ontario Regulation 941: 72(2)(a); 72(2)(b); 72(2)(d); and 72(2)(j).

Allegations with respect to 72(2)(g) were withdrawn, along with the allegations that he breached the Code of Ethics contained in section 77 of the Regulation.

In addition, he was found not guilty of the breach of section 72(2)(i) of Regulation 941. As part of the penalty, the Committee ordered that the Summary of the Agreed Statement of Facts of the matter, together with its Order be published in the official publication of the PEO.

The Agreed Statement of Facts and the Committee’s Order appear below.

1. “Kettle was first licensed as a professional engineer in the Province of Ontario in July 1965.

2. In July 1995, Dr. G.D. Ravi (“Dr. Ravi”) retained Mr. Don Wright (“Wright”) of Don Wright Designs (“DWD”) to design additions and renovations to Dr. Ravi’s home located in Sudbury, Ontario.
3. DWD applied for a building permit on August 18, 1995 and the Regional Municipality of Sudbury issued the permit on September 7, 1995. Five drawings were included with the building permit application. These were prepared by DWD and dated between July 30, 1995, and August 18, 1995. Two of the drawings, Nos. 2 and 4, included the engineering stamp of Kettle along with his signature and a date of August 17, 1995. Kettle provided these services on behalf of Spriet Associates. Drawing No. 2 showed the general structure of two exterior raised decks at the back of the home.
4. Drawing No. 2 did not, however, include:
 - a) timber specifications stating what species of wood was to be used;
 - b) detail regarding the connection between the beams and columns;
 - c) detail regarding the connection between the columns and foundations;
 - d) indication of a requirement for cross-bridging or blocking of the joists at midspan; and
 - e) detail regarding the method of anchorage of the ledger beam to the side of the house.
5. The renovations were built by Wright and Kettle acting together as contractors operating under the business name of DNA Enterprises. Their work progressed with numerous modifications and changes agreed to between September 30, 1995, to November 8, 1995. The as-built version of the two exterior decks differed from the design drawings.
6. On November 28, 1995, Kettle, in his capacity as general manager of Spriet Associates Sudbury Limited, signed and certified a letter in the form of a Certificate of Substantial Performance addressed to Wright at DNA Enterprises. The letter stated that Kettle had carried out a general review of the construction of the renovation and that he certified that the

- project was substantially complete, ready for occupancy, and that “the construction, workmanship and quality of materials used in the completed renovations are in conformity with the municipally approved plans and with the intent of applicable codes and by-laws governing building construction” for the Regional Municipality of Sudbury. Kettle closed the letter by stating that his letter had been prepared to confirm compliance with Ontario Building Code (“OBC”) requirements. Kettle states that he wrote the letter with a view to assisting the Ravi’s, but acknowledges in retrospect that the letter was inappropriate, and constitutes professional misconduct.
7. Some months later, a handyman working for Dr. Ravi observed and pointed out that the rear decks constructed by DNA Enterprises were not built in accordance with OBC requirements. Dr. Ravi contacted the Regional Municipality of Sudbury Building Department and learned that the certifying engineer had been Kettle.
 8. In the circumstances, Dr. Ravi requested an inspection by the Regional Municipality of Sudbury Building Department. This inspection, carried out on August 16, 1996, confirmed the observations of Dr. Ravi’s handyman and identified several other instances where the renovations and additions did not conform to the approved plans or the OBC requirements. The Building Department issued four Orders to Comply to DNA Enterprises, Kettle and Wright on March 6, 1997.
 9. Apart from two requests for extensions of time made by Kettle (and granted by the Building Department), there was no action taken by any of DNA, Kettle or Wright with respect to these Orders to Comply. Kettle does not recall having requested extensions of time, but acknowledges that these requests are recorded in the file of the Building Department.
 10. In the meantime, Dr. Ravi became concerned about the safety of the deck when it shifted as he and a friend stood at the railing. The deck had pulled away from the house by up to an inch and would visibly move under the weight of a single individual walking on the surface of the deck.
 11. In those circumstances, in June 1997, Dr. Ravi engaged Mr. Earl Mumford, P.Eng., of J.L. Richards & Associates Limited, Consulting Engineers and Planners, to inspect the two decks. In a report dated August 1, 1997, Mumford identified several deficiencies and code violations in the as-built design of the decks, including:
 - a) anchors used to anchor the deck to the masonry wall were substandard and not suitable for that application;
 - b) use of the brick veneer wall as a load bearing element in contravention of CSA standard CAN 3-S304, which requires a minimum thickness of 190 mm for a load bearing masonry wall;
 - c) the 2 x 8 floor joists with a 4’6” cantilever were stressed in excess of the allowable amount by a factor of 1.15;
 - d) the two 2 x 12 beams supporting the floor joists did not have adequate bearing or fastener supports; and
 - e) the foundations for the deck were questionable in that the 4 x 4 wood posts in 8” diameter concrete piers would cause the pier to crack over time as the wood swells from wetness.
 12. An independent expert reviewed this matter on behalf of PEO. Having reviewed the matter in detail, the expert reached a number of conclusions, including the following:
 - a) that the sealing and signing of the two design drawings and the preparation and submission of the November 28, 1995 letter to the Regional Municipality of Sudbury constitute the practice of professional engineering;
 - b) that the deck design as shown in the drawing complies with applicable building codes to the extent that member sizes shown on Drawing No. 2 are adequate for anticipated loadings. However, the drawings do not include several key specifications and details that should have been provided in order to meet the objectives of CSA 086.1-94 Engineering Design in Wood;
 - c) that Kettle should have advised Dr. Ravi that as engineer of record on a portion of the project, being the deck, he would have to provide field review letters to the local municipality commenting upon the construction work that he was about to complete for a separate fee or alternatively Kettle should have asked another professional engineer with suitable experience to complete the field review;
 - d) that it does not appear that Kettle advised the municipality that he, as certifying engineer, had an interest in DNA Enterprises and that there may have been an intent to mislead the Sudbury Chief Building Official and his department. The expert notes that in any case the certification letter was apparently self-serving and was later shown not to be accurate;
 - e) that there is information confirming that the work that Kettle was supervising and had certified was not in accordance with his Certificate and his responsibility to the public (Dr. Ravi), that the deck that he apparently designed and stamped in 1995 was actually constructed differently from that shown on the approved plans and not in compliance with the *Ontario Building Code* and that Kettle’s actions may have exhibited professional misconduct in that he failed to make responsible provisions for complying with applicable statutes, regulations, standards, codes and by-laws in connection with work undertaken by or under the responsibility of the practitioner;

f) that it appears that Kettle was less than responsive to concerns expressed by the Building Department and the Chief Building Official; and

g) that one of the most significant concerns with this project is the fact that the as-built design of the elevated wood decks did not meet the OBC requirements and was not in accordance with the approved drawing and yet was certified by Kettle as being in compliance. The expert concluded that this is not in keeping with professional engineering standards or practice.

By reason of the facts set out above, it is agreed by PEO and Kettle that Kettle is guilty of professional misconduct as defined in Section 28(2)(b) of the Act. Specifically it is agreed that Kettle's conduct constitutes professional misconduct pursuant to the definitions under Regulation 941, paragraphs 72(2)(a), 72(2)(b), 72(2)(d), 72(2)(g), 72(2)(i) and 72(2)(j).

Sections of O. Reg. 941 relevant to this matter: Section 72(2). For the purposes of the Act and this Regulation, "professional misconduct" means:

- (a) negligence,
- (b) failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible,
- (d) failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner,
- (j) conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Kettle has been diagnosed as suffer-

ing from a medical problem which has caused him not to engage in the practice of professional engineering for a period of several months.

Kettle receives disability payments relative to the medical problem and has no intention of returning to the practice of professional engineering at any point in the future.

In retrospect, Kettle believes that the medical problem, which currently prevents him from practising professional engineering, was in substantial part responsible for the conduct described above in the circumstances of this case.

The Panel ordered that:

- 1. Kettle's licence shall be and is hereby suspended for a period of 24 months.**
- 2. In connection with the suspension of his licence, Kettle shall deliver to PEO, immediately, his seal, his licence, and any documentation, including business cards, setting out his designation as a professional engineer.**
- 3. After the period of suspension specified in paragraph 1 above, it shall be a term of and restriction on Kettle's licence that until he provides medical information establishing to the satisfaction of PEO that he is medically fit to resume practice on an unsupervised basis, Kettle may only undertake acts of professional engineering under the direct supervision of a licensed member of PEO in good standing, which member takes professional responsibility for any work undertaken by Kettle, by signing and sealing as required.**
- 4. A summary of the Agreed Statement of Facts and of this order shall be published in the official publication of the PEO.**
- 5. In view of Kettle's cooperation and his medical condition, there shall**

be no order as to costs.

Comments of the Panel

The Panel found in this case that there was no clear and cogent evidence of non-disclosure of a potential conflict of interest. However, in the opinion of the Panel, this case demonstrates the responsibility of engineers to clearly disclose their interest, in a timely manner, to clients and authorities. Especially in smaller communities, it is not uncommon for an engineer to play several roles during a project. When this is the case, it is important that the engineer is both clear and prompt in disclosing any potential conflict, and that the client understands and accepts that position. When this is done it is our opinion that the requirements of Section 72(2)(i) of Regulation 941 of the Act have been fully met.

This case also illustrates the importance of professional engineers acknowledging complaints of design deficiencies from clients or regulatory bodies in a timely and professional manner and taking steps to resolve them.

Dated at Toronto this 22nd day of February, 2002

J.E.(Tim) Benson, P. Eng. (Chair)

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

Daniela Iliescu, P.Eng.
Nick Monsour, P.Eng.
Glenn Richardson, P.Eng.
Ed Rohacek, P.Eng.

Note from the Department of Legal and Professional Affairs

Mr. Kettle did not appeal the Committee's decision and as a result the two-year suspension commenced October 1, 2001.