



Gazette

Volume 23, No. 3
May/June 2004

REGULATORY COMPLIANCE DEPARTMENT, PEO

Published by
the Association of
Professional Engineers
of Ontario

25 Sheppard Avenue W.
Suite 1000
Toronto, Ontario
M2N 6S9
Tel: (416) 224-1100
(800) 339-3716
Enforcement Hotline:
(416) 224-9528, ext.444

Editor: Bruce Matthews, P.Eng.
Staff Contributors:
Kim Allen, P.Eng.
Roger Barker, P.Eng.

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

Scot S. McCavour, P.Eng.

a member of the Association of Professional Engineers of Ontario and

McCavour Engineering Limited

a holder of a Certificate of Authorization

BETWEEN

The Association of Professional Engineers of Ontario and

Scot S. McCavour, P.Eng., and McCavour Engineering Limited

Summary of Decision and Reasons

This matter came for hearing before a panel of the Discipline Committee on May 20, 2003, at the Association of Professional Engineers of Ontario (PEO) in Toronto. PEO was represented by Michael Royce of Lenczner Slaght Royce Smith Griffin, and Scot S. McCavour, P.Eng. (McCavour) and McCavour Engineering Limited (MEL) were represented by Gary Gibbs of Stieber Berlach Gibbs.

Overview

The matter involved a structural design using a proprietary building system produced by Mega Building Systems Limited (Mega) for a superstructure forming part of a retirement complex in the Town of Markham. The owner was the

Renaissance Community Corporation (owner), the builder was Daniels Lifestyle Communities Ltd. The architect was A. Robert Murphy Architect Inc. Structural engineers for the substructure, including foundations, parking garage, and the ground floor were Daniel C. Connolly, P.Eng., and Kazmar Associates Limited.

The owner retained Mega. Mega retained McCavour and MEL to be the engineers for the superstructure.

John Stephenson Consultants Ltd. (JSCL) was retained by the owner to ensure that all final structural drawings met with the approval of the Town of Markham Building Department.

Following modifications to the drawings and certification from JSCL, the drawings were approved by the Town of

Markham Building Department. The owner subsequently decided not to use the Mega proprietary system and the contract between Mega and McCavour and MEL was terminated.

During the approval process, McCavour and MEL submitted stamped drawings to the Town of Markham Building Department for approval. Many of the details shown were not acceptable to the Town of Markham or to JSCL. McCavour and MEL cooperated by making changes until a building permit was issued by the Town of Markham.

There was considerable pressure on McCavour and MEL to quickly obtain approval from the building department. McCavour felt that he and MEL would be involved in the project from start to finish, and would therefore have ample opportunity to make changes on shop drawings to ensure that the details complied with the *Ontario Building Code* (OBC) and requirements from the Town of Markham Building Department.

Although the final drawings were approved, McCavour and MEL acknowledged that stamped drawings had been submitted to the Town of Markham Building Department with the knowledge that the drawings were preliminary in nature and would require further engineering detailing and design.

The Allegations

The allegations against McCavour and MEL in the Fresh Notice of Hearing dated May 28, 2001, are summarized as follows:

It is alleged that McCavour and MEL are guilty of professional misconduct, the particulars of which are as follows:

1. McCavour was at all material times a member of the Association of Professional Engineers of Ontario.
2. MEL was at all material times the holder of a Certificate of Authorization to offer and provide to the public services within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all

reasonable steps to ensure that its employees, including McCavour, carried on the practice of professional engineering in a proper and lawful manner. McCavour was the professional engineer responsible for the services provided by MEL.

3. McCavour and MEL:
 - (a) provided an incomplete structural design and drawing submissions for permit application for a retirement building;
 - (b) provided permit drawings which contained errors, omissions, and deficiencies, and which reflected a design that did not comply with the requirements of the OBC;
 - (c) on more than one occasion, failed to address and/or correct design errors, omissions, and deficiencies in the permit drawing submission for the retirement building that were identified by other engineers and building officials; and
 - (d) demonstrated a standard of care that was less than that reasonably expected of a licensed professional engineer, given the number and nature of the structural design deficiencies in permit drawing submission for the retirement building.
4. By reason of the facts aforesaid, it is alleged that McCavour and MEL are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter 28.

Plea by the Member and Holder

McCavour and MEL admitted the allegations of professional misconduct set out in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the admission by McCavour and MEL was voluntary, informed and unequivocal.

Agreed Facts

Counsel for the association and counsel for McCavour and MEL advised the panel that agreement had been reached

on the facts and that the factual allegations as set out in the Fresh Notice of Hearing were accepted as accurate by McCavour and MEL.

Decision

The panel considered the agreed facts and finds that the facts support a finding of professional misconduct and, in particular, finds that McCavour and MEL committed an act of professional misconduct as alleged in the Fresh Notice of Hearing and as defined in s. 28(2)(b) of the *Professional Engineers Act* (Act). The sections of Regulation 941 made under the said Act and relevant to this misconduct are:

- ◆ **Section 72(2)(a): negligence as defined at Section 72(1): In this section “negligence” means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;**
- ◆ **Section 72(2)(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 a practitioner;**
- ◆ **Section 72(2)(g): breach of the Act or regulations, other than an action that is solely a breach of the code of ethics; and**
- ◆ **Section 72(2)(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 unprofessional.**

Reasons for Decision

The panel accepted the agreed facts on the basis that there was no difference of opinion between counsel, and that McCavour and MEL had agreed to the facts.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. Royce advised that the association was satisfied that the Joint Submission was fair and reasonable. He noted that it was necessary for the association to get a message out to all members that the association must ensure that there is no danger to the public at any time. Royce stated that members must always take adequate steps in their procedures and checking practices to ensure that engineering works are designed to comply with all applicable codes in order to ensure public safety.

Counsel for McCavour and MEL acknowledged that the Joint Submission was fair and that McCavour and MEL had already initiated appropriate steps to avoid a reoccurrence. Gibbs noted that McCavour and MEL accepted full responsibility and did not blame junior staff. Gibbs advised that McCavour and MEL had a demanding client who wanted fast results. As a result, McCavour and MEL tried to get ahead. Gibbs noted that McCavour and MEL in hindsight were aware that they should have ceased work for Mega.

A majority of the panel accepted the Joint Submission as to Penalty and accordingly ordered:

1. **That the licence of McCavour be suspended for a period of two months effective June 1, 2003;**
2. **That McCavour be reprimanded and the fact of the reprimand be recorded on the register of the association;**
3. **That MEL be reprimanded and the fact of the reprimand be recorded on the register of the association for a period of 12 months;**
4. **That McCavour write and pass the Professional Practice Examination (PPE) within the next 12 months, failing which his licence again be suspended until such time as the PPE has been written and passed, or for a period of 18 months, whichever is less. If the PPE has not been written and passed at the**

end of 18 months of additional suspension, then McCavour's licence is to be revoked;

5. **That it shall henceforth be a term, condition and limitation on the licence of McCavour and the Certificate of Authorization of MEL that they not engage in the practice of professional engineering with respect to multi-storey, axial, load-bearing, steel stud structures, with the exception of structures listed in Part 9 of the OBC that are less than three storeys in height;**
6. **That within 60 days of the date of the hearing, McCavour and MEL shall file with the Registrar a written corporate policy/procedure acceptable to the Registrar, with respect to the completeness of drawings submitted for permit application, so as to ensure that problems of the kind in this case would not recur, together with evidence that the policy/procedure has been submitted to all professional engineers employed by MEL;**
7. **That costs in the amount of \$2,500 in total be paid by McCavour and MEL to the association within six months of the date of the hearing;**

8. **Because of the suspension noted in item 1 above, publication with names is required under s. 28(5) of the Act.**

Reasons for Penalty

The panel concluded that the proposed penalty is reasonable and in the public interest. McCavour and MEL have cooperated with the association and, by agreeing to the facts and a proposed penalty, have accepted full responsibility for their actions.

The panel determined that had it not been for the diligence primarily of the Town of Markham Building Department, there could have been a potential danger to the public. The fact that this particular superstructure design was not built did not influence the panel's deliberations.

The panel notes that McCavour and MEL have the right to apply to the association for the removal of the term, condition and limitation specified in paragraph 5 of the panel's order.

The written Decision and Reasons in this matter were dated July 18, 2003, and were signed by the Chair of the panel, Ken Lopez, P.Eng., on behalf of the other members of the Discipline Panel: Tom Ellerbusch, P.Eng., Daniela Iliescu, P.Eng., Jim Lucey, P.Eng., and Derek Wilson, P.Eng.

Note from the Regulatory Compliance Department

McCavour and MEL waived their right of appeal in this matter and the Discipline Panel administered the reprimand at the conclusion of the hearing. The fact of the reprimand and the term, condition and limitation on the licence and Certificate of Authorization have been recorded on the Register of the association. McCavour and MEL submitted the required policies/procedures on June 24, 2003, and these were found to be acceptable to the Registrar. McCavour and MEL paid the \$2,500 cost award in November 2003. McCavour wrote and passed the Professional Practice Examination in December 2003.