

SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the conduct of A MEMBER of the Association of Professional Engineers of Ontario.

This matter came on for hearing before a panel of the Discipline Committee on November 5, 2012, at the Association of Professional Engineers of Ontario (PEO or association) in Toronto. All parties were present. The association was represented by Leah Price. The member was represented by Donald G. Kidd. David P. Jacobs acted as independent legal counsel.

The Notice of Hearing issued on June 21, 2012, and Statement of Allegations dated March 27, 2012, were filed with the panel. There was no issue as to the panel's jurisdiction to determine this matter, which had been referred to the Discipline Committee for disposition. The parties filed an Agreed Statement of Facts signed by the member and counsel for the association.

The member, through his counsel, admitted the conduct alleged as set out in the Agreed Statement of Facts. The panel then conducted a plea inquiry and was satisfied that the member's admissions were voluntary, informed and unequivocal. The parties submitted that the agreed-upon facts as presented supported the allegations that the member had committed acts of professional misconduct as defined under section 28(2)(a) of the *Professional Engineers Act* (act), and sections 72(2) (a), (b), (c), (d), (g) and, in part, (j) of Regulation 941 and in consequence of his contravention of section 53 of the regulation and section 12 of the act.

SUMMARY OF THE MATTER

The member offered an opinion in writing over his signature as a P.Eng. on a matter of public safety that he knew was not substantiated by proper inspection or investigation, and that he ought to have anticipated would be used in a dispute between a relative and a municipal building department.

While he issued the letter without compensation as a personal favour to his relative, in so doing he placed the interest of his family ahead of his professional duty to protect the public and to uphold the integrity of the profession. For this, he was found guilty of professional misconduct by a discipline panel of his peers, and was reprimanded. In recognition of (i) the member's previously unblemished record, (ii) his retirement from the practice of professional engineering, (iii) his co-operation with PEO in presenting an agreed statement of facts and a joint submission on penalty, (iv) his genuine remorse, and (v) the embarrassment and stress he has already experienced in being brought to discipline, the panel agreed to publish its decision and reasons without the member's name and other identifying detail.

PENALTY SUBMISSIONS

The parties filed a Joint Submission on Penalty, which read as follows:

1. Pursuant to s. 28(4)(f) of the act, the member shall be orally reprimanded and the fact of the reprimand shall be recorded on the register for a period of one year;
2. The member shall provide an undertaking to the Discipline Committee, in accordance with subsection 28(4)(c) of the act, not to carry out any work in the practice of professional engineering;
3. There shall be no order with respect to costs;
4. Pursuant to s. 28(4)(i) of the act, the findings and order of the Discipline Committee shall be published in summary form in the official publication of PEO; and

5. The issue of whether such publication shall be with or without the member's name shall be determined by the panel at the hearing of this matter.

The Joint Submission on Penalty stated that the member had independent legal advice with respect to his agreement to the penalty.

The association submitted that the admitted misconduct was serious; the member should have recognized that in using his professional engineer designation he shouldered responsibility to ensure public safety, among other things. The building, which he purported to inspect, is occupied by tenants and thus the member should have either refused to write a report for this property, or should have prepared a thorough and professional engineering report. The association argued that although there was no report of harm resulting, the conditions on the site could have resulted in harm and therefore raised concerns for public safety.

On the only issue that the parties raised on whether to publish the summary with or without the member's name, the association submitted that the summary should be published with the name. The association reasoned, among other things, that protection of the public, general deterrence and transparency considerations would all be met by publication with names. Further, it was urged that there should be compelling reasons to order publication without names.

The member's counsel argued that there were a number of factors mitigating against publication of the member's name (or details that could identify him), including: his age; his history and record as a professional engineer; the nature of his practice; and the facts in this case. Counsel pointed out that the member is over 70 years of age, is not now a practising engineer and admitted his guilt right away. It was submitted that the member was not aware that the document at issue—a letter that he signed directed to the counsel dealing with property belonging to his relative's corporation—would be used as an engineering report to present to the municipality, although he did know that his relative and the municipality were engaged in a dispute.

It was further submitted on behalf of the member that he was not paid for the letter, was not retained, was not involved in a project such as design services, and that he did use the words "visual report." It was submitted that the member made an error in judgment for which he was remorseful, and which had already caused him considerable embarrassment, anxiety and stress. The member has co-operated in all matters, and acknowledged his wrongdoings.

It was submitted that in balancing the public interest and the interest in fairness to the member, the panel should weigh the considerations in all the circumstances, against the publication of his name in the summary. It was further urged that the conduct in question was at the lower end of the scale of seriousness: publication was not necessary for general deterrence or protection of the public interest. The member was not likely to reoffend and was not practising or planning to practise given his undertaking and age. He was aware of the inappropriate

nature of his conduct. No actual harm had befallen anyone as a result of the misconduct. The conduct was not motivated by personal commercial gain. A publication of the summary without names would be sufficient to protect the public interest and deter potential wrongdoers. The summary itself shows that the association is prepared to deal aggressively with complaints and notify the profession of the need to be scrupulous in adhering to professional standards even when providing "off the cuff" opinions.

Counsel for the association replied that the breaches of the act and regulation in question were not merely technical breaches and the cumulative effect of the sanctions jointly submitted were not disproportionate to the culpability of the member, even including the publication of his name. Further, it was argued by the association that transparency was necessary to fulfil the objectives of the sentencing regime, including public protection and maintaining the integrity of the profession, among other considerations. The profession has expectations in respect of the drafting of such reports, as were at issue in this case. The association sought a ruling in which the panel exercised its discretion to order publication of the summary with the member's name.

PENALTY DECISION

The panel deliberated and rendered its decision. The panel chair noted that the panel had found the member guilty of the misconduct described in the Agreed Statement of Facts. Accordingly, the panel ordered the penalty in accordance with the Joint Submission on Penalty, deciding that the member will not be named in the official publication.

The panel concluded that the proposed penalty is reasonable and in the public interest. It is neither disproportionate nor does it bring the administration of justice into disrepute. The member is over 70 years of age, is not practising professional engineering, does not hold a Certificate of Authorization, has not been the subject of a complaint prior to this one, and his name will still be on the register for 12 months. The member acknowledged his shortcomings and his responsibility for same, has been co-operative and remorseful and has demonstrated respect for the profession in reaching agreement on fact and penalty with alacrity.

The parties left the determination as to whether to publish with the member's name to the discre-