

## 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 to a hearing before a panel of the Discipline Committee on January 21, 2014, at the Association of Professional Engineers of Ontario (association) in Toronto. All parties were present. The association was represented by Leah Price. The member was represented by James S. Hauraney. David P. Jacobs acted as independent legal counsel.

The Notice of Hearing issued on November 7, 2013 and Amended Statement of Allegations dated September 10, 2013 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 of Professional Engineers of Ontario.

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 negligence as defined under section 72(2)(a) of Regulation 941 and failed to make reasonable provisions for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under their responsibility, pursuant to section 72(2)(d) of Regulation 941 and engaged in unprofessional conduct as defined under section 72(2)(j) of Regulation 941. All of the aforementioned constitute professional misconduct as defined in section 28(2)(b) of the act.

### SUMMARY OF THE MATTER

The member provided engineering services for design and construction of a foundation for and the placement of a portable building. The member provided signed and sealed drawings in support of an application for a building permit that was subsequently issued. The construction took place in the spring of 2010. During construction the member authorized several deviations from the original drawings. Some of these deviations were later found, by the chief building

official, to be out of compliance with the Ontario Building Code. Furthermore, the revised drawings submitted after construction did not provide full and accurate details, including the type and size of beam that was actually installed. The dimensions of the foundation, as originally designed and as constructed, did not match the actual dimensions of the portable building. When the portable building was installed by the respondents, the walls were poorly aligned with the foundation. The member, aware of the discrepancies, failed to take steps to confirm the acceptability of the foundation, as built, to carry the eccentric load of the building.

As a professional engineer providing these services, the member knew or ought to have known that the deviations during construction were not in compliance with the applicable building codes. The member admitted committing an act of professional misconduct in that approving the deviations constituted a failure to make responsible provisions for complying with the applicable codes. The member admitted to negligence in failing to ensure the dimensions of the foundation matched the actual dimensions of the portable building and in approving deviations from the original drawings that were not in compliance with the applicable building codes. The member admitted to unprofessional conduct by failing to provide complete and accurate information on the signed and sealed drawings for the completed project.

### PENALTY SUBMISSION

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

- A. Pursuant to section 28(4)(f) of the act, the respondents shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of one year;
- B. The finding and order of the Discipline Committee shall be published in summary form under section 28(4)(i) of the act, without reference to names;
- C. Pursuant to section 28(4)(d) of the act, it shall be a

term or condition on the member's licence that he shall, within 14 months of the date of pronouncement of the decision of the Discipline Committee, successfully complete the professional practice examination (PPE);

- D. Pursuant to sections 28(4)(b) and (k) of the act, in the event that the member does not successfully complete the PPE within the time set out in C above, his licence shall be suspended for a period of 10 months thereafter, or until he successfully completes the PPE, whichever comes first;
- E. In the event that the member fails to successfully complete the PPE within 24 months of the date of pronouncement of the decision of the Discipline Committee, his licence shall be revoked; and
- F. Pursuant to section 28(4)(j) of the act, the respondents shall pay costs to PEO in the amount of \$2,500, within 30 days of the pronouncement of the decision of the Discipline Committee.

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 joint submission as to penalty was reasonable for three primary reasons: (1) the matter involved a single project instead of a pattern of professional misconduct; (2) there was no concern of public safety arising from the respondent's misconduct in this case; and (3) the joint submission was a result of arm's-length negotiation between counsel for the parties.

The parties jointly submitted that the circumstances of this case justify the withholding of names in the publication of the decision of this proceeding, the primary reason being the member's age. Counsel for the member assured the panel on behalf of his client that his client was regretful for his misconduct and that it was unlikely that such professional misconduct would ever be repeated prior to his retirement. As such, it was submitted that there was no need for publishing the names for the purpose of deterrence.

## 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. In light of the evidence as contained in the Agreed Statement of Facts, the fact that the parties were represented by attorneys who negotiated the submission as to penalty, and the submissions of the parties, the panel finds that the joint submission

as to penalty and costs is within the reasonable range. 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. Accordingly, the panel ordered the penalty in accordance with the Joint Submission on Penalty.

The panel rendered its decision on penalty, including as to publication without the name of the member, orally at the conclusion of the hearing. The member waived his right to appeal. The association advised that it would not appeal.

The oral reprimand was administered at the conclusion of the hearing on January 21, 2014.

The written summary of the Decision and Reasons was signed by John Vieth, P.Eng., as chair on behalf of the other members of the discipline panel: Thomas Chong, P.Eng., Santosh Gupta, P.Eng., Rebecca Huang, LLB, and Rishi Kumar, P.Eng.

### NOTICE OF LICENCE SUSPENSION, GERARD J. VAN ITERSON

On May 3, 2014, Gerard J. Van Iterson's professional engineering licence was suspended pursuant to a May 3, 2013 order of the Discipline Committee. The order was issued following a finding of professional misconduct against Van Iterson at a discipline hearing held on that date. Van Iterson's licence was suspended because he failed to write and pass the professional practice examination within the 12-month timeframe prescribed by the Discipline Committee.