

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 HECTOR R. VALDEZ, P.ENG., a member of the Association of Professional Engineers of Ontario and VALDEZ ENGINEERING LTD., a holder of a Certificate of Authorization.

This matter came for a hearing before a panel of the Discipline Committee on November 8 and 9, 2012, at the Association of Professional Engineers of Ontario (association) in Toronto. The matter stemmed from a complaint against the actions of an engineer who is a member of the association and those of an engineering company holding a Certificate of Authorization.

CIRCUMSTANCES INITIATING COMPLAINT

A sand storage silo was relocated from an automotive plant in Ohio to an aluminum casting plant in Windsor, Ontario. The capacity of the silo needed to be increased by 25 per cent. The casting plant hired a local equipment installation company to reassemble the silo and expand its capacity. The installation company retained was Valdez Engineering Limited (VEL), a holder of a Certificate of Authorization, to design the construction and insertion of a 4-foot-high ring section into the silo to increase its holding capabilities from 200 tons to 250 tons. When the modifications were made on the silo, it leaked when filled with sand. The leakage led the president of the installation company to lay a formal complaint against Hector R. Valdez, P.Eng. (Valdez or the member), and VEL (the holder).

THE ALLEGATIONS

The association presented allegations against the member and the holder as follows:

That Valdez and Valdez Engineering Ltd. are guilty of professional misconduct as follows:

1. Failing to sign and seal drawings as required by section 53 of Regulation 941 of the *Professional Engineers Act*, amounting to professional misconduct as defined by section 72(2)(g) of Regulation 941.
2. Creating drawings, which were insufficiently detailed or clear, that inaccurately reflected the as-built condition of the project, or that otherwise failed to maintain the standards of a reasonable and prudent practitioner,

amounting to professional misconduct as defined by sections 72(2)(a) and (b) of Regulation 941.

3. Creating a drawing that specified modifications that did not comply with a CSA standard, amounting to professional misconduct as defined by section 72(2)(d) of Regulation 941.
4. Behaving in a manner toward other professionals engaged in a project that would be reasonably regarded by the engineering profession as disgraceful, dishonourable or unprofessional, amounting to misconduct as defined by sections 72(2)(j) of Regulation 941 and amounting to a breach of section 77(6) of the Code of Ethics.

HEARING

A hearing was held to consider the matter on November 8 and 9, 2012. Neither the member and the holder nor their representatives were present at the hearing. The association provided evidence that the member and the holder had been advised of the hearing by registered mail in sufficient time. The member and the holder at no time provided any reason for not appearing. As the member and the holder were not in attendance and did not furnish a response to the allegations, the panel took the view that the member would plead not guilty to all the allegations and the association would have to substantiate the allegations with provable facts.

The association presented three witnesses: the complainant and two expert witnesses, Albert Schepers, P.Eng., and Ted Chapman, P.Eng.

DECISION

After receiving and reviewing the evidence and hearing the testimony of the witnesses, the panel ruled that the member and the holder are guilty of allegations 1 and 2 and not guilty of allegations 3 and 4.

REASONS

Allegation #1

Section 53 of Regulation 941 requires every holder who provides service to the public to sign, date and affix the holder's seal to every final drawing prepared and checked by the holder before it is issued.

The member and the holder prepared and issued an original drawing and two revisions. At no time was any version of this drawing signed and sealed by the member. By not complying with section 53, the member and the holder are guilty of professional misconduct under section 72(2)(g) of Regulation 941.

Allegation #2

The member and the holder produced three drawings that lacked details for bolted and welded connections and for the safe construction of the works. Being negligent and failing to make reasonable provision for the safeguarding of life, health and the property of a person who might be affected by the work for which he was responsible, the member and the holder are guilty of professional misconduct as defined by sections 72(2)(a) and (b) of Regulation 941.

Allegation #3

Section 72(2)(d) of Regulation 941 states that professional misconduct is the "failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under the responsibility of the practitioner." The association was unable to show through clear, convincing evidence that the member and the holder failed to comply with applicable statutes, regulations, standards, codes, bylaws and rules.

Allegation #4

The allegation contains the words "behaving in a manner towards other professionals engaged in a project." The association did not present evidence the member behaved unprofessionally towards other professionals on the project. Had it been proved that the member had behaved unprofessionally towards individuals named in evidence he still would not be guilty, based on the exact wording of the allegation. No evidence

was presented to show that others named in the matter have a professional designation. The member and the holder are not guilty of behaving towards other professionals in a manner that would be reasonably regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

PENALTY SUBMISSIONS

The panel requested the submissions on penalties be in writing.

The association submitted as follows:

- (a) Valdez and VEL shall be reprimanded in writing, and the fact of the reprimand shall be recorded on the register for two years;
- (b) Valdez shall write and pass the professional practice examination (PPE) within 14 months of the date of the penalty decision;
- (c) Valdez or VEL shall pay \$10,000 in costs to PEO within three months of the date of the penalty decision;
- (d) If Valdez fails to write and pass the PPE within the time limit set out above, his licence and the Certificate of Authorization of VEL shall be suspended until such time as he does so;
- (e) If the costs ordered paid to PEO are not paid within the time limit set out above, Valdez's licence and the Certificate of Authorization of VEL shall be suspended until the costs are paid;
- (f) The licence of Valdez and Certificate of Authorization of VEL shall be revoked if:
 - (i) Valdez fails to write and pass the PPE; or
 - (ii) the costs ordered paid to the PEO are not paid within 24 months from the date of the penalty decision; and
- (g) a summary of the Decision and Reasons of the Discipline Committee shall be published, with reference to names.

The member and the holder responded to the request for a penalty submission with three letters. None of the letters addressed the issue of penalty but implied there was additional information pertaining to the matter to be considered by the panel. The panel sought advice from the independent legal counsel (ILC) as to how to react to statements presented by the member and the holder. Based on the advice from the ILC and the association's response to the advice, the panel decided the letters would not alter its decision, particularly as the member and the holder avoided the hearing process without reason.

PENALTY DECISION

The panel had only before it the submission from the association and none from the member and the holder in assessing penalties. The panel balanced the submission against the proven allegations and decided as follows:

- (a) The member and the holder shall be reprimanded in writing, and the fact of the reprimand shall be recorded on the register for two years pursuant to the *Professional Engineers Act*, s. 28(4)(f);
- (b) Revoke the licence of the member and the holder pursuant to the *Professional Engineers Act*, s. 28(4)(a);
- (c) Postpone the revocation of the licence of the member and the holder for a twelve-(12)-month period commencing on the date that this Decision and Reasons is issued to allow the member and the holder to improve their drawings to an expected professional engineering standard and to demonstrate this improvement through the inspection of the member's and the holder's drawings pursuant to the *Professional Engineers Act*, s. 28(4)(k);
- (d) The member and the holder shall provide to the registrar monthly, for the 12-month penalty postponement period stated in (c), a list of projects and drawings completed during each month pursuant to the *Professional Engineers Act*, s. 28(4)(e)(iv). The list shall be submitted within ten (10) days of the end of each month;
- (e) The member and the holder shall accept and pay for the cost of an inspection of the drawings selected from the monthly lists provided by the member and the holder under item (d) pursuant to the *Professional Engineers Act*, s. 28(4)(e)(iii). The responsibility of performing the inspections shall be delegated through the registrar to an engineer to be selected by the registrar. The engineer shall have structural steel and assembly expertise and be knowledgeable and experienced in the area of practice of the member and the holder and shall be acceptable to the member and the holder. For each month of the first three months that drawings are produced in the penalty postponement period, the engineer shall select the drawings from one representative project for technical review to determine if they meet a commonly expected professional engineering standard. After three sets of drawings have been reviewed, the engineer shall select one set of representative drawings every three (3) months, from those produced during the three months, until the end of the 12-month penalty period. The engineer shall advise the member and the holder of the review results after each review. If minor errors are found or minor improvements are considered necessary to be made to the drawings, the engineer shall so inform the member and the holder. The engineer shall notify the registrar within three (3) days of completing an inspection if there are, in the engineer's opinion, major failings in the drawings or if the member and the holder fail to make revisions to eliminate minor errors of which they have been advised. At the end of the penalty suspension period, the engineer shall submit a report on the review findings to the registrar. The engineer in the report shall provide an opinion as to whether or not the member and the holder are producing drawings that meet a commonly expected professional engineering standard;
- (f) Suspend the revocation of the licence of the member and the holder if, at the end of the 12-month period of the penalty postponement, the inspecting engineer reports that the member's and the holder's drawings meet a commonly expected professional engineering standard pursuant to the *Professional Engineers Act*, s. 28(4)(k);
- (g) For the 12-month period following the suspension of the revocation of the licence when the terms of item (f) above are met, a restriction shall be placed upon the licence and Certificate of Authorization of the member and the holder such that the member and holder shall submit to the registrar a list of projects and drawings completed during each month pursuant to the *Professional Engineers Act*, s. 28(4)(e)(iv). The list shall be submitted within 10 days of the end of each month;
- (h) The member and the holder are not to be subjected to costs; and
- (i) A summary of the Decision and Reasons of the Discipline Committee shall be published in summary form with names pursuant to s. 28(4)(i) of the *Professional Engineers Act*.

REASONS FOR PENALTY DECISION

In determining the penalty the panel considered the following:

- (a) protection of the public;
- (b) maintenance of professional standards;
- (c) maintenance of public confidence in the ability of the profession to regulate itself;
- (d) general deterrence; and
- (e) specific deterrence.

These considerations are applied as follows:

- (a) Reprimanding the member and the holder in writing and maintaining the reprimand on the register for two years protects the public and provides a deterrent;
- (b) The association requested that the member and the holder write and pass the professional practice examination (PPE) within 14 months of the date of the penalty decision. The panel believes that since the member and the holder prepared drawings lacking sufficient and clear information, it would be more appropriate to have their drawings reviewed and to receive instruction on the proper preparation of drawings with sufficient and clear details to enable the work to proceed and be completed in a safe and satisfactory manner. Studying for the PPE would not provide knowledge on the mechanics of preparing drawings nor would passing the exam provide proof that the member and the holder can produce satisfactory drawings;
- (c) The association requested that the member and the holder pay \$10,000 in costs to the association within three months of the date of the penalty decision. The panel decided the association did not provide justification for assessing costs against the member and the holder. The member and the holder will have to bear the cost of having their drawings reviewed;
- (d) During the 12-month postponement period of the revocation of the member's and the holder's licence, the public will be protected and public confidence will be maintained in the ability of the profession to regulate itself as their drawings will be under review;
- (e) During the 12-month period following the suspension of the revocation of the member's and the holder's licence, the public will be further protected by the restriction on the licence and Certificate of Authorization of the member and the holder, requiring the monitoring of their projects and drawings;

- (f) Revoking the licence and the Certificate of Authorization of the member and the holder if he fails to demonstrate the production of drawings expected of a professional engineer will maintain public confidence in the ability of the profession to regulate itself and to protect the public; and
- (g) Publishing a summary of the Decision and Reasons with names will protect the public, maintain public confidence in the ability of the profession to regulate itself and provide a general deterrence.

The written summary of the Decision and Reasons was signed by Brian Ross, P.Eng., as chair on behalf of the other members of the discipline panel: Ishwar Bhatia, P.Eng., Colin Cantlie, P.Eng., Martha Stauch, and Michael Wesa, P.Eng.