

SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, c. P.28; and in the matter of a complaint regarding the conduct of A MEMBER and A HOLDER of the Association of Professional Engineers of Ontario.

This matter came before a panel of the Discipline Committee of the Association of Professional Engineers of Ontario (the association) for hearing from July 2014 to March 2015.

ALLEGATIONS

The allegations related to the engineering services provided by the member and the holder for engineering assessment and recommendations relating to the cracked foundation walls and floor slab of a residential property located in southern Ontario (the house). It was alleged that the investigations, analysis and conclusions were deficient and, thus, the member and the holder were guilty of professional misconduct as defined by sections 72(2)(a), (h) and (j) of Regulation 941.

PLEA AGREEMENT AND AGREED FACTS

At the outset of the hearing, the respondents denied the allegations. The parties jointly submitted a Statement of Agreed Facts, followed by viva voce evidence given by a number of witnesses called by the association.

Following completion of the case by the association, the respondents did not present their case. Instead, they entered into a plea agreement with the association. A joint submission from the parties included a Supplementary Statement of Agreed Facts and a submission as to penalty and costs.

EVIDENCE

The association called a total of six witnesses, including three expert witnesses.

The respondents did not call any witnesses.

DECISION AND REASONS

The panel carefully considered the parties' Statement of Agreed Facts and Supplementary Statement of Agreed Facts. As the parties were each represented by competent counsel and the agreements were negotiated by counsel on behalf of the parties, there was nothing to suggest that the parties' agreements should not be respected. The panel accepted the parties' agreed facts as the basis for the decision in this proceeding.

On the basis of the admissions made by the respondents, the panel found that the member is guilty of professional misconduct as defined in subsection 28(2)(b) of the act. In particular, the member:

- i. conducted deficient and insufficient investigations into the causes of the problems at the house, as detailed above, amounting to professional misconduct as defined by subsection 72(2)(a) of Regulation 941 under the act (the regulation);
- ii. carried out deficient and incorrect analyses and came to incorrect conclusions, as detailed above, amounting to professional misconduct as defined by subsection 72(2)(a) of the regulation; and
- iii. giving regard to all circumstances, would reasonably be regarded by the engineering profession as unprofessional, amounting to professional misconduct as defined by subsection 72(2)(j) of the regulation.

The panel also found that the holder was guilty of professional misconduct as defined in subsection 28(2)(b) of the act. In particular, the holder:

- i. conducted deficient and insufficient investigations into the causes of the problems at the house, as detailed above, amounting to professional misconduct as defined by subsection 72(2)(a) of the regulation, and
- ii. carried out deficient and incorrect analyses, and came to incorrect conclusions, as detailed above, amounting to professional misconduct as defined by subsection 72(2)(a) of the regulation.

PENALTY

The panel considered the parties’ joint submission as to penalty and costs.

It is well established that a joint submission as to penalty shall be disregarded only in circumstances where the proposed sentence is contrary to the public interest and would bring the administration of justice into disrepute. This is a very high test to meet.

In this case, again, as stated above, the parties are each represented by very capable counsel, who negotiated the submission as to penalty. In light of the facts as agreed to, the panel finds that the joint submission as to penalty and costs is within the reasonable range and should not be disregarded. While the cost of \$25,000 is a significant number for a discipline hearing, it is reasonable considering the complexity and length of the hearing.

Therefore, as set out in the joint submission, the panel orders the following:

- i. Pursuant to section 28(4)(f) of the act, member and holder shall be reprimanded in writing, and the fact of the reprimand shall be recorded on the register for a period of six (6) months;
- ii. 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; and
- iii. Pursuant to section 28(4)(j) of the act, there shall be an order requiring the sum of \$25,000 in costs to be paid by member or holder within 60 days of the date of pronouncement of penalty by the Discipline Committee. This order for costs shall be a joint and several liability of both the member and holder.

Reprimand letters, signed by the chair, on behalf of the disciplinary panel were sent to the member and the holder on June 25, 2015.

The Decision and Reasons document was signed by Virendra Sahni, P.Eng., as chair on behalf of the other members of the discipline panel: Ishwar Bhatia, P.Eng., Rebecca Huang, LLB, R. Anthony Warner, P.Eng., and Robert Willson, P.Eng.

TORONTO BUILDING DESIGNER DANILO MARASIGAN, OPERATING AS DANMAR DESIGN, FINED \$10,000 FOR ILLEGAL USE OF A PROFESSIONAL ENGINEER'S SEAL

On Thursday, June 25, Justice of the Peace Costa of the Ontario Court of Justice, fined Danilo “Dan” Marasigan, operating under the business name Danmar Design, \$10,000 plus a 25 per cent victim’s surcharge. Marasigan pleaded guilty to three offences under the *Professional Engineers Act* for applying fake professional engineers’ seals to home renovation and new home construction drawings submitted to the City of Toronto’s building department. Danmar Design represents itself as an architectural drafting, design and building services company serving the general public. Its owner and sole designer, Marasigan, has never been licensed as a professional engineer and has never held a Certificate of Authorization to provide professional engineering services.

On Friday, March 6, Marasigan was prohibited, in an order by the Honourable Mr. Justice Whitaker of the Ontario Superior Court of Justice, from either possessing or using the seal of a professional engineer. PEO was awarded \$3,000 for its costs of applying to the court for the stop order.

Marasigan had been under investigation by PEO since 2011. An engineer first reported documents prepared by Marasigan, which bore an engineer’s seal but had not been sealed by that engineer. The engineer became aware of his copied seal when a homeowner for whom the documents were prepared contacted the engineer to ask about their East York home renovation project. During its investigation, PEO received further reports, this time from the City of Toronto and the Town of Richmond Hill, regarding questionable seals the building departments could not authenticate on documents associated with home construction projects by Danmar Design. In all, PEO discovered more than 75 questionable documents ostensibly sealed by four different engineers, one of whom was deceased at the time his seal was used. The seals appeared to have been copied from independent engineering firms Marasigan had hired for other projects.

STRATFORD RESIDENT DAVID KEY FINED \$10,000 FOR VIOLATION OF THE *PROFESSIONAL ENGINEERS ACT*

On April 28, 2015, in the Ontario Court of Justice in Stratford, David Key, a Stratford resident and owner of KTS Engineered Systems, was fined \$10,000 under the *Professional Engineers Act* for the illegal use of a term, title or description that will lead to the belief that he may engage in the practice of professional engineering.

Key has never been licensed by PEO. In the fall of 2010, investigations were commenced by both PEO and the Ontario Provincial Police after they received information that suggested Key had used the credentials of a professional engineer on documents submitted to building departments in southwestern Ontario. The projects involved were generally commercial in nature. PEO received the co-operation of 14 different affected building departments in the region during its investigation.

After fraud charges were laid, Key pleaded guilty before Justice of the Peace Abdul A. Chahbar for using a term, title or description that would lead to the belief that he may engage in the practice of professional engineering.

Please report any person or company you suspect is violating the act. Call the PEO enforcement hotline at 416-224-9528, ext. 1444 or 800-339-3716, ext. 1444. Or email your questions or concerns to enforcement@peo.on.ca.