

DECISION

The panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and found that George Mikhael, P.Eng., committed an act of professional misconduct.

JOINT SUBMISSION ON PENALTY

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. The association put forward that the penalty would:

- (a) provide sufficient protection to the public by ensuring that the member had the necessary technical knowledge to undertake structural engineering, noting that the member is a sole practitioner and failure to pass the required exams would mean that he would be unable to practise for 10 months, which would be a severe penalty;
- (b) maintain the reputation of the profession by publishing this decision with the member’s name;
- (c) provide general deterrence to others in the profession to be careful in all their dealings, including on relatively small jobs;
- (d) provide specific deterrence to the member to be more careful in the future to ensure that his work does not give rise to a complaint; and
- (e) rehabilitate the member, which was demonstrated by his willingness to co-operate with the association in its investigation and with the association’s engineer, the member’s admission of guilt and his willingness to write two difficult exams on his technical knowledge.

The association cited two previous decisions of the Discipline Committee, demonstrating that the proposed penalty in the current matter was within the acceptable range of penalties. The association submitted that the penalty would be fair and appropriate in this matter.

Counsel for the member noted that the matter involved an isolated incident, that it was the member’s first and only complaint, that the member has great remorse, and that he recognizes what he should have done in the circumstances.

PENALTY DECISION

The panel concluded that the proposed penalty is reasonable and in the public interest and accepted the Joint Submission as to Penalty. George Mikhael, P.Eng., co-operated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association.

The panel ordered:

- (a) Pursuant to s. 28(4)(f) of the *Professional Engineers Act*, George Mikhael, P.Eng., shall be reprimanded orally, and the fact of the reprimand shall be recorded on the register for a period of three (3) months from January 12, 2016;
- (b) The finding and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) of the *Professional Engineers Act* and include George Mikhael’s name;
- (c) Pursuant to s. 28(4)(d) of the *Professional Engineers Act*, it shall be a term or condition on George Mikhael’s licence that he shall,

within fourteen (14) months from January 12, 2016, successfully complete the following two technical examinations administered by the association: 98 Civ-B1 (Advanced Structural Analysis) and 98-Civ-B2 (Advanced Structural Design);

- (d) Pursuant to s. 28(4)(b) and (k) of the *Professional Engineers Act*, in the event that George Mikhael, P.Eng., does not successfully complete the two examinations within the time set out in (c) above, his licence shall be suspended for a period of ten (10) months thereafter, or until he successfully completed the examinations, whichever comes first.

George Mikhael, P.Eng., waived his right to appeal and the oral reprimand was delivered following the hearing.

Patrick Quinn, P.Eng., signed the Decision and Reasons on January 19, 2016 on behalf of the discipline panel: Santosh Gupta, P.Eng., Rishi Kumar, P.Eng., Sharon Reid, C.Tech., and Glenn Richardson, P.Eng.

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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 **JAMES R. McGERRIGLE, P.ENG.**, a member of the Association of Professional Engineers of Ontario and **EFCO CANADA CO.**, a holder of a Certificate of Authorization.

James R. McGerrigle, P.Eng. (the member), and EFCO Canada Co. (EFCO), a holder of a Certificate of Authorization, pled guilty to allegations of professional misconduct as defined in the *Profes-*

sional Engineers Act (the act) and Regulation 941 thereunder as follows:

- (a) The member and the certificate holder designed a falsework structure containing clip connections without making responsible provisions for complying with the applicable CSA standard, amounting to professional misconduct under subsection 72(2)(d) of Regulation 941; and
- (b) The member and the certificate holder designed a falsework structure without taking any or adequate steps to determine whether its clip connections could withstand the loads to which the falsework would be subjected, amounting to professional misconduct under subsections 72(2)(a), (b) and (j) of Regulation 941.

In respect of subsection 72(2)(j) of the Regulation, “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 disgraceful, dishonourable or unprofessional,” the parties agreed that the conduct in question was “unprofessional,” not disgraceful or dishonourable.

The actions giving rise to the allegations relate to a bridge being constructed with rebar reinforced concrete by GBL Construction across the 18 Mile River near Lucknow, Ontario. The bridge required a falsework structure to provide temporary support for the bridge formwork while the concrete was being poured and had sufficient time to set.

The member and EFCO designed and supplied the materials for the bridge falsework structure. On or about November 5, 2007, the member sealed and signed a letter that certified that EFCO’s falsework installation conformed to EFCO’s erection drawings. On November 10, 2007, the partially-built bridge collapsed while workers were pouring concrete. Several workers were injured as a result of the collapse. It was agreed that the member and EFCO had not conducted any or sufficient testing to determine whether the clip connections were an adequate substitute for the bolts called for in the original design, including whether they could withstand the loads to which the false work would be subjected. It was also agreed that the member and EFCO had not taken steps to ensure that the clip connections complied with Canadian Standards Association Standard 5269.1–1975.

At the time of the hearing, McGerrigle was a retired member of the association who had no record of past disciplinary proceedings.

The member and EFCO were found guilty of professional misconduct under section 28(2)(b) of the

act as a result of having committed acts of professional misconduct as set out in subsections 72(2)(a)(b) and (d) and (j) of Regulation 941 under the act.

In respect of the finding under subsection 72(2)(j) the panel found that the conduct in question was unprofessional, but not disgraceful or dishonourable, in accord with the Agreed Statement of Facts from the parties.

PENALTY DECISION

The parties submitted a Joint Submission as to Penalty, which the panel imposed with one minor modification. In the original joint submission it was proposed that the member maintain his status as a retired member and required him not to resume the practice of professional engineering. The panel was concerned, among other things, about its authority to order a member to maintain his membership status. The parties thus agreed to the wording in paragraph (d) below in place of the original wording. The panel thus ordered:

- (a) Pursuant to paragraph 28(4)(f) of the *Professional Engineers Act*, McGerrigle and EFCO Canada Co. shall both be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of two (2) years;
- (b) The finding and order of the Discipline Committee shall be published in Gazette in summary form under paragraph 28(4)(i) of the *Professional Engineers Act*, with reference to names; and
- (c) Pursuant to paragraph 28(4)(h) of the *Professional Engineers Act*, either EFCO Canada Co. or McGerrigle shall pay a fine in the amount of \$5,000 (five thousand dollars) to the Minister of Finance (for payment to the consolidated revenue fund) within 45 days of the date of pronouncement of the penalty decision of the Discipline Committee;
- (d) Pursuant to paragraph 28(4)(c) of the *Professional Engineers Act*, McGerrigle shall provide a written undertaking to the Association of Professional Engineers of Ontario that he will not resume the practice of professional engineering; and
- (e) There shall be no order with respect to costs.

The reprimand was delivered by the panel immediately following the hearing on April 13, 2015.

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: Charles Kidd, P.Eng., Rishi Kumar, P.Eng., Kathleen Robichaud, LLB, and Edward Rohacek, P.Eng.