

future. The association noted the principles of penalty and emphasized that a fine of \$5,000, which is the maximum permitted under the act, would signal the seriousness with which the association takes MRW's professional misconduct, thus upholding the association's reputation in protecting the public interest.

**REASONS FOR DECISION AND PENALTY REGARDING MRW**

The panel considered all of the evidence before it, including the ASF and the schedules to it. The panel accepted the ASF between the member and the association as evidence of MRW's professional misconduct in allowing Wood, who did not hold a licence as a professional engineer at the time, to attend the mall and perform an inadequate engineering inspection. The panel found MRW guilty of professional misconduct contrary to sections 72(2)(a), (b), (d), (g) and (j) of Regulation 941.

The panel also accepted the penalty sought by the association as appropriate in the circumstances. The panel was satisfied that MRW does not currently pose a risk to the public since it no longer holds a Certificate of Authorization. The panel was also

satisfied that the imposition of a \$5,000 fine and the publication of this penalty would demonstrate to the public that the association is capably protecting the public interest. Accordingly, the panel ordered MRW to pay a fine in the amount of \$5,000 to the Minister of Finance for payment into the Consolidated Revenue Fund, pursuant to section 28(4)(h) of the act, if and when MRW seeks reinstatement as a holder of the Certificate of Authorization to provide engineering services in Ontario. The panel also directed that its findings and order with respect to MRW be published in *Engineering Dimensions* in full with reference to MRW by name, pursuant to section 28(4)(i) of the act.

Glenn Richardson, P.Eng., signed this Decision and Reasons for the decision as chair of this discipline panel and on behalf of the members of the discipline panel: Stella Ball, LLB, Ishwar Bhatia, P.Eng., and Anne Poschmann, P.Eng.

**END NOTES**

1. RRO 1990, Reg 941 (Regulation 941).
2. The Elliot Lake Commission of Inquiry was established on July 19, 2012, by the Government of Ontario to inquire into and report on events surrounding the mall collapse. The results of the inquiry were released in a report published October 15, 2014, at: [www.attorneygeneral.jus.gov.on.ca/inquiries/elliottlake/report/index.html](http://www.attorneygeneral.jus.gov.on.ca/inquiries/elliottlake/report/index.html).
3. See part one, chapter 12 of the report, at paragraph 2, page 573 and footnote 138 citing the testimony of Wood on June 7, 2013 (at pages 13467-9) and Saunders on June 6, 2013 (at page 13089).
4. Published in the September/October 2010 issue of *Engineering Dimensions*.
5. Published in the January/February 2002 issue of *Engineering Dimensions*.
6. Published in the July/August 2005 issue of *Engineering Dimensions*.
7. Published in the March/April 2015 issue of *Engineering Dimensions*.

**SUMMARY OF DECISION AND REASONS**

In the matter of a hearing under the *Professional Engineers Act, R.S.O. 1990, c. P.28*, of a complaint regarding the conduct of **GEORGE MIKHAEL, P.ENG.**, a member of the Association of Professional Engineers of Ontario.

The panel of the Discipline Committee met to hear this matter on January 12, 2016 at the Association of Professional Engineers of Ontario in Toronto.

**THE ALLEGATIONS**

This case arose from a complaint filed by Albert Bastien concerning a solar panel system installed on the roof of his house. The Statement of Allegations dated April 24, 2015 against George Mikhael, P.Eng. (the member), alleged that he was guilty of professional misconduct.

**AGREED STATEMENT OF FACTS**

Counsel for the association advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts summarized as follows:

In 2011, the complainant, Albert Bastien, retained Powerserve/Neighbourhood Electric Company (Neighbourhood Electric) to install a solar panel system on the roof of his residence located in Amherstburg, Ontario. Neighbourhood Electric applied for a building permit from the Town of Amherstburg on April 1, 2011 for the project.

Bastien and/or Neighbourhood Electric retained the member to analyze the impact of the solar panel system on the structural integrity of the roof. There was no written contract between the member in respect to the scope of his retainer.

As part of the permit application, the member prepared a letter of conformance for Bastien dated March 25, 2011 addressed “to whom it may concern.” He described his analysis of the existing roof trusses to sustain an additional load of the solar panel system. The member stated that, “The existing structure will sustain the additional load of 5 pounds per square foot (PSF), imposed from the solar system.”

This letter was signed, dated and sealed by the member.

On March 30, 2011, the member revised his March 25, 2011 letter as follows:

“I certify that the anchors have the required strength to withstand any uplift caused by the wind.”

The March 30, 2011 letter was signed and sealed by the member. The member also dated, signed and sealed a construction drawing bearing the title block of Mitek, as supplier of roof trusses.

On or about March 31, 2011, the town issued a building permit for the installation of a solar panel system at Bastien’s home. The permit was issued to Bastien.

Neighbourhood Electric installed the solar panel system. The member was not involved with the installation of the solar panel system.

During the installation, Bastien was concerned about the security of the framing on the roof. As a result, Neighbourhood Electric added numerous additional anchors that attached the frame to the roof.

After installation, at Bastien’s request, Neighbourhood Electric inspected and photographed his attic area to confirm that the anchorage points were sufficient and properly installed. Neighbourhood Electric noted that one anchorage in the garage was protruding through the side of the roof truss. Neighbourhood Electric offered to fix it, but Bastien declined.

On October 25, 2011, the building department of the town requested a General Review Certificate or Letter of Conformance from the design engineer in accordance with Division C, section 1.2 and division A, section 1.3.1.1 of the Ontario Building Code. The building department required confirmation that the member had inspected and reviewed the site installation and that the installation was compliant with his design.

The member reviewed information forwarded to him by Neighbourhood Electric, which consisted of: installation specifications, anchor drawings (showing location and number), and photographs of Neighbourhood Electric’s inspection of Bastien’s attic. He did not physically attend Bastien’s home or inspect the solar panel system.

On October 26, 2011, the member prepared a Letter of Conformance, to Bastien’s attention, in which he stated that he had reviewed the solar system installation. The member stated that “after reviewing the installation of the solar panels on your roof” and the technical data, he confirmed that the solar system was installed according to the manufacturing recommendations, and with two bolts where only one bolt was required. The member gave the structure a safety factor of 3, and stated that there “will be no danger that the rack solar system will be blown in the future.” He confirmed that the installation was acceptable and “structurally safe, sound and capable to sustain the wind loads.”

The association obtained an independent engineer’s report dated January 30, 2015. The independent engineer’s report concluded that:

- (a) The member failed to comply with the Ontario Building Code in his review and analysis of the trusses as set out in his March 25, 2011 and March 30, 2011 letters. He did not consider the possible load conditions or the actual load conditions, nor did he apply the design requirements of the Ontario Building Code, including the assessment of the dead loads, snow loads, downward wind loading, and concentrated loads, or any loading caused by wind uplift. The loads imposed on the trusses are in excess of their original design load. As a result, his opinion set out in his March 25, 2011 and March 30, 2011 letters was incomplete, inaccurate and not in compliance with sections 4.1.5.1 and 4.1.5.9 of the Ontario Building Code. In the circumstances, he failed to maintain the minimum standards that a reasonable and prudent practitioner would maintain in the circumstances; and
- (b) The member failed to comply with the Ontario Building Code in his review and analysis of the trusses as set out in his October 26, 2011 Letter of Conformance. He did not consider the possible load conditions or the actual load conditions, nor did he apply the design requirements of the Ontario Building Code, including the assessment of the dead loads, snow loads, downward wind loading, and concentrated loads, or any loading caused by wind uplift. The member also failed to properly consider the installation variances to assess the anchor capacity. He provided his opinion that there would be no danger of the solar rack being “blown in the future” without adequate information to come to such a conclusion. As a result, his opinion set out in this October 26, 2011 Letter of Conformance was incomplete, inaccurate and not in compliance with the Ontario Building Code. In the circumstances, he failed to maintain the minimum standards that a reasonable and prudent practitioner would maintain in the circumstances.

The member admitted that the work carried out by him, as set out in the Agreed Statement of Facts, was deficient, and fell below the expected standard of practice for engineering work of this type, and that he failed to comply with the applicable standards and codes, as set out in the independent engineer’s report.

#### **PLEA BY MEMBER**

The member admitted to the allegations as set out in the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the member’s admission was voluntary, informed and unequivocal.

**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-*