

PENALTY

The parties made a joint submission as to penalty. The panel considered the joint submission and decided the proposed penalty would protect the public, maintain public confidence, provide a general deterrence to actions by other members, provide specific deterrence against similar actions by the members in this matter, and rehabilitate the members in this matter. The panel adopts the joint submission.

In coming to this decision, the panel noted that, in respect of Wood, an aggravating factor was that he had a number of opportunities to reconsider the elements of his design and failed to do so, and his conduct created avoidable work for the MNR. The panel considered the fact that the members admitted to the bulk of the allegations, that the submission as to penalty was agreed to by the parties, and that the penalty would not impose a burden on the other employees of MRW, as mitigating factors in its decision.

The panel found that the joint submission as to penalty proposed sanctions that were within the reasonable range for contraventions of the *Professional Engineers Act* and Regulation 941. The penalty is not contrary to the public interest.

Therefore the panel orders the following:

- (a) that Wood be reprimanded and that the fact of the reprimand be recorded on the register of the association;
- (b) that Saunders be reprimanded and that the fact of the reprimand be recorded on the register of the association;
- (c) that MRW be reprimanded and that the fact of the reprimand be recorded on the register of the association;
- (d) that Wood's licence be suspended for two months from December 1, 2010 to January 31, 2011;
- (e) that Wood and Saunders must each write and pass the association's professional practice examination between March 3, 2009 and 12 months after the date of this decision;
- (f) that the licence of Saunders be suspended for 12 months on the day after 12 months from the date of this decision if Saunders does not pass the association's professional practice examination between March 3, 2009 and 12 months after the date of this decision;
- (g) that the licence of Saunders be revoked on the day after 24 months from the date of this decision if Saunders

does not pass the association's professional practice examination between March 3, 2009 and 24 months after the date of this decision;

- (h) that Wood must write and pass the following technical examinations set by the association between March 3, 2009 and 12 months after the date of this decision: 98 CIV V1 and V2, advanced structural analysis and design;
- (i) that the licence of Wood be suspended for 12 months on the day after 12 months from the date of this decision if Wood does not pass the association's professional practice examination and the technical examinations 98 CIV V1 and V2 and advanced structural analysis and design, between March 3, 2009 and 12 months after the date of this decision;
- (j) that the licence of Wood be revoked on the day after 24 months from the date of this decision if Wood does not pass the association's professional practice examination and the technical examinations 98 CIV V1 and V2 and advanced structural analysis and design, between March 3, 2009 and 24 months after the date of this decision;
- (k) that the panel's Decision and Reasons will be published with the names of the members and the holder with reasons in the official publication of the association, and that the association may edit the Decision and Reasons to fit the publishing standards and available space in the publication;
- (l) that Wood, Saunders and MRW pay \$10,000 in total to the association immediately in costs, if this amount has not already been paid; and
- (m) that the association will make reasonable efforts to accommodate and facilitate the members in complying with this order, including providing the members with the ability to write the examinations ordered at a location near the members' locations.

The written Decision and Reasons was signed on November 15, 2010, by Glenn Richardson, P.Eng., as chair on behalf of the other members of the discipline panel: Santosh Gupta, P.Eng., Daniela Iliescu, P.Eng., Len King, P.Eng., and Henry Tang, P.Eng.

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 ABRAHAM BUECKERT, P.ENG., a member of the Association of Professional Engineers of Ontario, and AB ENGINEERING INC., a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on September 27, 2010, at the Association of Professional Engineers of Ontario (association) in Toronto. All parties were present. The association and Bueckert were represented by legal counsel. David Fine acted as independent legal counsel to the panel.

THE ALLEGATIONS

It is alleged that Abraham Bueckert, P.Eng. (Bueckert), is guilty of incompetence and/or professional misconduct as defined in the *Professional Engineers Act*.

It is alleged that AB Engineering Inc. is guilty of incompetence and/or professional misconduct as defined in the *Professional Engineers Act*.

OVERVIEW

At all material times, Bueckert was licensed as a professional engineer pursuant to the *Professional Engineers Act*. At the time of completing the reports at issue, as set out in the allegations, Bueckert was a holder of a Certificate of Authorization (C of A) in the name of Abe Bueckert Engineering.

AB Engineering Inc. was issued a C of A on or about February 2, 2007. At all material times, Bueckert was the engineer responsible for the C of A.

On or about January 2007, Bueckert was retained by Nagata Auto Parts Canada Co. Ltd. (Nagata) to conduct three pre-start health and safety inspections. The following reports were prepared subsequent to each review:

- (a) Report No. 2006A-038-01, dated January 26, 2007—Review of Robot Welder identified as GMT193—Back Pillar;
- (b) Report No. 2006A-039-01, dated January 26, 2007—Review of Robot Welder identified as GMT193 W/H 2nd process; and
- (c) Report No. 2006A-040-01, dated January 26, 2007—Review of Robot Welder identified as GMT193 W/H 1st process.

Each of these reports was signed and sealed by Bueckert.

On or about March 20, 2007, the Ministry of Labour inspected the guarding of the welding robot cells at Nagata and issued an order to comply. The inspection revealed that the guarding, as installed, did not comply with section 24 of the *Occupational Health and Safety Act* (OHSA), R.S.O. 1990, Regulation 851.

A subsequent review by an independent expert revealed possible errors, omissions and discrepancies with respect to the safety issues identified in the aforementioned three reports signed and sealed by Bueckert.

The association alleges that Bueckert and AB Engineering:

- (a) conducted a pre-start health and safety review of the robot welding cells that contained errors, omissions and discrepancies;
- (b) failed to make reasonable provision for safeguarding of life and health of a person who may be affected by the work for which the practitioner was responsible by conducting an inadequate and incomplete pre-start health and safety review;

- (c) conducted safety inspections and provided safety review reports with errors, omissions and discrepancies that would not be expected of an engineering practitioner experienced in conducting pre-start health and safety reviews; and
- (d) failed to make responsible provisions for complying with applicable regulations and standards in connection with the guarding of the welding robot cells.

PLEA BY MEMBER AND HOLDER

Bueckert and AB Engineering pled not guilty to the allegations as presented by the association in the Statement of Allegations.

AGREED STATEMENT OF FACTS

Bueckert, AB Engineering and the association presented an Agreed Statement of Facts. It is agreed that:

At all material times, Bueckert was licensed as a professional engineer pursuant to the *Professional Engineers Act*. At the time of completing the reports at issue, as set out in the allegations, Bueckert was a holder of a C of A in the name of Abe Bueckert Engineering.

AB Engineering was issued a C of A on or about February 2, 2007. At all material times, Bueckert was the engineer responsible for the C of A.

On or about January 2007, Bueckert was retained by Nagata to conduct three pre-start health and safety inspections. The following reports were prepared subsequent to each review:

- (a) Report No. 2006A-038-01, dated January 26, 2007—Review of Robot Welder identified as GMT193—Back Pillar;
- (b) Report No. 2006A-039-01, dated January 26, 2007—Review of Robot Welder identified as GMT193 W/H 2nd process; and
- (c) Report No. 2006A-040-01, dated January 26, 2007—Review of Robot Welder identified as GMT193 W/H 1st process.

Each of these reports was signed and sealed by Bueckert.

On or about March 20, 2007, the Ministry of Labour inspected the guarding of the welding robot cells in Nagata and issued an order to comply.

A subsequent review by an independent expert revealed possible errors, omissions and discrepancies with respect to the safety issues identified in the reports 2006A-038-01, 2006A-039-01, and 2006A-040-01 as follows:

- (a) Spot welder: The hazard and recommendation for improvement of the spot welder circuitry description was not presented clearly. The report explicitly indicated that there was no deficiency when prior information was documented as being indeterminate;

- (b) Guard at light curtains: Why deficiencies exist with respect to the guarding and why specific recommendations were made were not presented clearly;
- (c) Guarding between RH and LH load stations: Which aspect of the guard was deficient was not presented clearly;
- (d) E-stops: Whether the e-stop device on the robot will cause the external e-stop MCR circuit to fault and thus deactivate all hazards was not presented clearly;
- (e) Light curtains: The function/interaction of the light curtain circuitry was not presented clearly; and
- (f) Guard door lock: Lockout procedures were not discussed.

Bueckert agreed that he:

- (a) conducted a pre-start health and safety review of the robot welding cells that contained errors, omissions and discrepancies;
- (b) conducted safety inspections and provided safety review reports with errors, omissions and discrepancies that would not be expected of an engineering practitioner experienced in conducting pre-start health and safety reviews; and
- (c) failed to make responsible provisions for complying with applicable regulations and standards in connection with the guarding of the welding robot cells.

The panel requested an explanation of the extent and severity of the errors, omissions and discrepancies that were admitted. Counsel for the association stated that the reports prepared by Bueckert did not present clear statements that corrective measures must be taken to comply with the OHSA regulations. There were no errors or discrepancies cited. Rather, there were only omissions cited by the expert in assessment of the reports prepared by Bueckert.

DECISION OF THE PANEL

Bueckert admitted to stated facts that support the allegation of professional misconduct. The panel finds such admission to have been made freely, voluntarily and unequivocally, with full understanding that the discipline panel has discretion in the ordering of a penalty.

Having considered the agreed facts and the submissions of counsel, the panel decided that Bueckert, a member of the Association of Professional Engineers of Ontario, committed an act of professional misconduct as defined by section 72(2)(d) of Regulation 941/90.

REASONS FOR DECISION

In the Agreed Statement of Facts, the member admitted he failed to make responsible provisions for complying with applicable regulations and standards in connection with the guarding of the welding robot cells. His omissions constitute professional misconduct as defined in section 72(2)(d) of Regulation 941/90.

SUBMISSIONS ON PENALTY

The parties' joint submissions as to penalty were as follows:

- (a) Bueckert shall be reprimanded and the fact of the reprimand be recorded on the register for two years;
- (b) Bueckert shall, within 12 months of the date of today's date (September 27, 2010), successfully complete a CSA standards approved course or workshop in the area of pre-start health and safety reviews, and shall provide written confirmation of same to the registrar within five days of successful completion of the course;
- (c) There shall be publication, with names, of the Decision and Reasons of the panel; and
- (d) There shall be no order with respect to costs.

The panel is satisfied the member has had independent legal advice with respect to his agreement to this penalty.

DECISION AND REASONS ON PENALTY

Counsel for the member stated that Bueckert had not been in trouble before and had learned from this experience. He also indicated that the process of this complaint and this discipline hearing has cost Bueckert significant time and money.

The panel agreed with the penalty as submitted. It is reasonable and in the public interest.

The oral reprimand provided the opportunity for the panel to reinforce the positive lessons that the member could gain from having his work reviewed through the discipline process.

Recording the fact of the reprimand on the record for two years and the publication of the Decision and Reasons, with names, would serve as a message to professional engineers that they need to make reasonable provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in their practice. However, the two-year record and the publication are not anticipated to have an overly severe effect on Bueckert's business.

The panel believes that Bueckert is genuinely interested in improving the quality of his pre-start health and safety reviews and would have undertaken at least one course or workshop on the practice on his own volition. Providing evidence of this to the registrar within 12 months is not a burden for Bueckert, while adding a measure of accountability that strengthens the regard of our association on members' continuing education.

A Notice of Waiver of appeal was obtained from the member and the oral reprimand was delivered by the panel on September 27, 2010, immediately after the conclusion of the hearing.

The written Decision and Reasons was signed November 15, 2010, by John Vieth, P.Eng., as chair on behalf of the other members of the discipline panel: Ishwar Bhatia, P.Eng., Ken Lopez, P.Eng., Phil Maka, P.Eng., and Brian Ross, P.Eng.