

DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the actions and conduct of BRUCE E. CLARKE, P.ENG., a member of the Association of Professional Engineers of Ontario, and HIGH-POINT ENGINEERING LTD., a holder of a Certificate of Authorization issued by the Association of Professional Engineers of Ontario.

This matter came on for hearing before a panel of the Discipline Committee on April 27, 2010, at the Association of Professional Engineers of Ontario in Toronto. The association was represented by Aviva R. Harari. The member and holder were represented by Ronald B. Moldaver. Zirka Jakibchuk acted as independent legal counsel.

THE ALLEGATIONS

The allegations against Bruce E. Clarke, P.Eng. (Clarke or member), and High-Point Engineering Ltd. (High-Point) in the Statement of Allegations dated January 27, 2009, are as follows:

1. Clarke was, at all material times, a member of the Association of Professional Engineers of Ontario (association).
2. High-Point was, at all material times, the holder of a Certificate of Authorization to offer and provide to the public services that are within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure its employees, including Clarke, carried on the practice of professional engineering in a proper and lawful manner.
3. The owner of a sewage pumping station building located at 29 John Street, in the Town of Penetanguishene, Ontario, was involved in a project to enclose the sewage pumping station. The registered owner of the property was Sherco Properties Inc. The builder was The Sherk Group of Companies (a parent company of High-Point). It appears that Sherco Properties Inc. was also a part of The Sherk Group of Companies (hereinafter collectively referred to as Sherk).
4. Trow Associates Inc. (Trow) was the consulting engineer on the project. Trow's involvement included structural design and general review during construction. Trow was contracted by Sherk to complete the structural design of the building to enclose the sewage pumping station. The building was to be constructed with masonry block walls and pre-engineered roof trusses for the roof construction. Trow completed the design of the foundations and walls for the building (drawing 19A), but noted on the drawings that the engineered roof trusses were to be stamped and approved by the roof truss manufacturer.
5. In or about November/December 2006, Clarke and High-Point were each identified to the Town of Penetanguishene as a consultant to provide the structural review of the project.
6. The applicant for the building permit of the sewage pumping station was High-Point as the authorized agent for the property owner.

7. The Town of Penetanguishene received the original permit application on November 30, 2006. Subsequently, more documents were submitted, including documents on December 6 and December 7, 2006. While reviewing the submitted documents, the building department noted the following non-compliance and abnormalities:
- (a) The first two submissions were incomplete;
 - (b) The second submission (December 6, 2006) included a modified copy of the November 30, 2006 submission of “Commitment to General Review” and “Schedule 1,” originally signed by Jeff Price, P.Eng. (Price), of Trow. The modification included: the signature of Clarke was added and the original signature of Price was traced over in blue ink;
 - (c) The second submission (December 6, 2006) also included a number of excerpted photocopies (letter size) of Trow’s drawing 19A and engineered roof truss drawings that were signed by Clarke, to which Clarke had affixed High-Point’s corporate seal, but not his engineering seal. The engineered roof truss drawings appear to be produced by the truss manufacturer, Mitek Canada Inc., but no manufacturer engineer’s seal and signature was provided; and
 - (d) The third submission (December 7, 2006) included the engineered roof truss drawing with affixed BCIN numbers for Price and Trow, and with a falsified signature of Price. It was confirmed by Price that Trow did not approve the submitted drawing 19A, did not authorize the use of his or Trow’s BCIN number on the submitted drawing 19A, nor did he sign the submitted drawing 19A.
8. It is alleged that Clarke and High-Point:
- (a) submitted a document, on or about December 7, 2006, for building permit with affixed BCIN numbers of Price and Trow without their authorization with a falsified signature of Price;
 - (b) on or about December 6, 2006, submitted for the building permit two modified submissions (modified copies of the original November 30, 2006 submissions) where the previous signature of Price had been traced over in blue ink;
 - (c) submitted for the building permit a number of excerpted photocopies (letter size) of Trow’s drawing 19A and engineered roof truss drawings that were signed by Clarke and affixed High-Point’s corporate seal, but contained no engineering seal;
 - (d) submitted for the building permit incomplete documents; and
 - (e) acted in a disgraceful, dishonourable and unprofessional manner.
9. It is alleged that Clarke is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act* and that Clarke and High-Point are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

SUBMISSIONS AND PLEA BY MEMBER AND HOLDER

Counsel for the association advised the panel that the association was not calling any evidence with respect to any allegations against the member. The member denied the allegations in the Statement of Allegations and pleaded not guilty to the charges against him.

Counsel for the association and counsel for the holder of the Certificate of Authorization, High-Point, advised the panel that agreement on facts had been reached and that the holder admitted to the allegations in the Agreed Statement of Facts. On that basis, the holder pleaded no contest to the charges against it.

The panel then conducted a plea inquiry and was satisfied that the admissions were voluntary, informed and unequivocal.

AGREED STATEMENT OF FACTS

Counsel for the association and counsel for the member and the holder orally presented the panel with the Agreed Statement of Facts, which is as follows:

1. High-Point was, at all material times, the holder of a Certificate of Authorization to offer and provide to the public services that are within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure its employees

carried on the practice of professional engineering in a proper and lawful manner.

2. The owner of a sewage pumping station building located at 29 John Street in the Town of Penetanguishene, Ontario, was involved in a project to enclose the sewage pumping station. The registered owner of the property was Sherco Properties Inc. The builder was The Sherk Group of Companies (a parent company of High-Point). It appears that Sherco Properties Inc. was also a part of The Sherk Group of Companies (hereinafter collectively referred to as Sherk).
3. Trow Associates Inc. (Trow) was retained as the consulting engineer on the project. Trow's involvement included structural design and general review during construction. Trow was contracted by Sherk to complete the structural design of the building to enclose the sewage pumping station. The building was to be constructed with masonry block walls and pre-engineered roof trusses for the roof construction. Trow completed the design of the foundations and walls for the building (drawing 19A), but noted on the drawings that the engineered roof trusses were to be stamped and approved by the roof truss manufacturer.
4. The applicant for the building permit of the sewage pumping station was High-Point as the authorized agent for the property owner.
5. The Town of Penetanguishene received the original permit application on November 30, 2006. Subsequently, more documents were submitted, including documents on December 6 and December 7, 2006. While reviewing the submitted documents, the building department noted the following non-compliance and abnormalities:
 - (a) The first two submissions were incomplete;
 - (b) The second submission (December 6, 2006) included a modified copy of the November 30, 2006 submission of "Commitment to General Review" and "Schedule 1," originally signed by Price of Trow. The modification included: the name of Clarke being added, and the original signature of Price was traced over in blue ink;
 - (c) The second submission (December 6, 2006) also included a number of excerpted photocopies (letter size) of Trow's drawing 19A and engineered roof truss drawings to which High-Point had affixed High-Point's corporate seal, but there was no engineering seal on the drawings. The engineered roof truss drawings appear to be produced by the truss manufacturer, Mitek Canada Inc., but no manufacturer engineer's seal or signature was provided; and
 - (d) The third submission (December 7, 2006) included the engineered roof truss drawing with affixed BCIN numbers for Price and Trow, and with the name of Price added to the document. The name and BCIN number were added without the authorization of Price. It was confirmed by Price that Trow did not approve the submitted drawing 19A and did not authorize the use of his or Trow's BCIN number on the submitted drawing 19A.
6. It is alleged that High-Point is guilty of professional misconduct under section 28(2)(b) of the *Professional Engineers Act*.

DECISION

The panel, having orally received and considered the submissions from the parties' counsel and the pleas by the member and the holder finds:

- (a) that the member is not guilty of professional misconduct and dismisses all charges against the member on the basis that there was no supporting factual evidence presented by the association in support of any of the allegations made against him; and
- (b) that the holder is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act* and under section 72(2)(j) of Regulation 941/90 made under the act.

REASON FOR DECISION

The panel finds that the totality of facts set out in paragraphs 1 to 5 of the Agreed Statement of Facts (as voluntarily admitted by the holder) clearly support a finding of professional misconduct against the holder, reflecting conduct that,

having regard to all the circumstances, would reasonably be regarded by the engineering profession as unprofessional.

PENALTY

The panel was advised by counsel for the association and counsel for High-Point that they had arrived at an agreement with respect to recommendations on the terms of a Joint Submission as to Penalty. The joint submission was presented orally to the panel as follows:

1. that the Certificate of Authorization of the holder, High-Point, be revoked effective immediately;
2. that there was no evidence to offer against the member and that, accordingly, the charges/complaints against said member be dismissed; and
3. that the written Decision and Reasons of the Discipline Committee hearing be published in Gazette, including the names of both the member, Clarke (acquitted), and High-Point, the holder of the Certificate of Authorization.

Counsel for the association advised the panel that the association was satisfied that the Joint Submission as to Penalty was fair and reasonable and appropriate considering the admitted facts in the case and the guilty plea by High-Point, the holder of the Certificate of Authorization.

PENALTY DECISION

The panel, while deliberating on their decision as to penalty, was aware of the fact that they are entitled to accept or reject any Joint Submission as to Penalty, but that such submission should not be rejected lightly unless there is substantive cause to do so.

The panel viewed the allegations seriously, but took into account the fact that the holder, by agreeing to the pertinent facts and proposed penalty, had accepted full responsibility for its actions and, in doing so, avoided unnecessary further expense to the association.

The panel concluded that the proposed penalty is not only reasonable and in the public interest,

but that it also meets the target of general as well as specific deterrence.

The panel, therefore, accepts the Joint Submission as to Penalty and, accordingly, orders:

1. that the Certificate of Authorization of High-Point be revoked effective immediately;
2. that the charges/complaints against the member, Clarke, be dismissed; and
3. that the written Decision and Reasons of the Discipline Committee hearing be published in Gazette, including the names of both the member, Clarke (acquitted), and High-Point, the holder of the Certificate of Authorization.

The written Decision and Reasons was signed by Anne Poschmann, P.Eng., as chair on behalf of the members of the discipline panel: Allen Jones, P.Eng., Jim Lucey, P.Eng., Virendra (Vinni) Sahni, P.Eng., and Rakesh Shreeswastav, P.Eng.

DISCIPLINE HEARING SCHEDULE

NOVEMBER 30-DECEMBER 2, 2010

PAUL D. REW, P.ENG., and RUBICON ENVIRONMENTAL INC.

JANUARY 5-7, 2011

STEVEN D. HENWOOD, P.ENG., MICHAEL R. ROCHON, P.ENG., and ROCHON ENGINEERING INCORPORATED