

Decision and Reasons

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on Monday, December 4, 2006 at the Association of Professional Engineers of Ontario (the “association”) in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. James B. Molnar, P.Eng., was not present and was not represented.

The allegations

The allegations against James B. Molnar, P.Eng. (“Molnar” or “the member”), in the Notice of Hearing dated September 18, 2006, were as follows:

It is alleged that James B. Molnar, P.Eng., is guilty of professional misconduct, the particulars of which are as follows:

1. On March 8, 2006 at the Ontario Court of Justice in Bradford, Ontario, Molnar pleaded guilty and was convicted of the following offences under the *Criminal Code of Canada*:
 - (a) On or about August 16, 2005 in the town of Innisfil, Molnar intentionally or recklessly caused damage by fire to a house and property of Michael and Sherry Reece located at 1030 Corner Avenue, contrary to section 434 of the *Criminal Code of Canada*;
 - (b) On or about August 26, 2005 in the town of Innisfil, Molnar intentionally or recklessly caused damage by fire to the garage and property of Michael and Sherry Reece located at 1030 Corner Avenue, contrary to section 434 of the *Criminal Code of Canada*;
 - (c) On or about September 1, 2005 in the town of Innisfil, Molnar possessed an incendiary device, namely three homemade wax and sawdust incendiary devices contained in plastic containers, for the purpose of committing the offence of arson, contrary to section 436.1 of the *Criminal Code of Canada*;

In the matter of a discipline hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the conduct of:

James B. Molnar, P.Eng.

a member of the Association of Professional Engineers of Ontario.

- (d) On or about September 1, 2005 in the town of Innisfil, Molnar possessed a prohibited weapon, namely a spring-loaded switchblade knife, without being the holder of a licence under which he may possess it, contrary to section 91(2) of the *Criminal Code of Canada*;
 - (e) On or about September 2, 2005 in the city of Toronto and elsewhere, Molnar possessed incendiary material, namely wax, sawdust and lighter fluid, for the purpose of committing the offence of arson, contrary to section 436.1 of the *Criminal Code of Canada*;
 - (f) Between July 1 and September 2, 2005 in the town of Innisfil, Molnar engaged in threatening conduct towards Michael and Sherry Reece, causing them reasonably in the circumstances to fear for their safety, contrary to section 264(2) of the *Criminal Code of Canada*;
 - (g) Between July 1 and September 2, 2005 in the town of Maple, Molnar engaged in threatening conduct towards Angelo Caravaggio, causing him reasonably in the circumstances to fear for his safety, contrary to section 264(2) of the *Criminal Code of Canada*; and
 - (h) Between July 1 and September 2, 2005 in the city of Barrie, Molnar engaged in threatening conduct towards David Waddle and Donna Trakalo, causing them reasonably in the circumstances to fear for their safety, contrary to section 264(2) of the *Criminal Code of Canada*.
2. A synopsis of the facts relevant to these charges, agreed between the Crown counsel and Molnar (through his legal counsel), revealed that Molnar planned and executed a campaign of harassment and arson against the individuals and their property named above, plus others named on a “hit list” found in Molnar’s home.
 3. By reason of the facts aforesaid, it is alleged that James B. Molnar, P.Eng., has been convicted of eight criminal offences, which are relevant to his suitability to practise professional engineering.
 4. By reason of the facts aforesaid, it is alleged that James B. Molnar, P.Eng., is guilty of professional misconduct as defined in section 28(2)(a) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
 5. “Professional misconduct” is defined in section 28(2)(a) as: “the member or holder has been found guilty of an offence relevant to suitability to practise, upon proof of such conviction.”
- Counsel for the association, Neil Perrier (“Perrier”), advised that as the

member was not present, the association wished to file the Affidavit of Service. Perrier then filed the Affidavit of Service (Exhibit 2) of Wayne Byron, dated September 25, 2006, stating that on September 22, 2006 at 1:55 p.m., he served the member with the Notice of Hearing and the disclosure of this matter by leaving a copy with him at Millhaven Institution in Bath, Ontario.

Plea by member

The member was not present or represented by counsel. The panel Chair entered a plea of not guilty on behalf of the member.

The evidence

Perrier called one witness, Bruce Matthews, P.Eng. (“Matthews”), manager, complaints and discipline, on behalf of the association.

Matthews told the panel that the association became aware of the matter through a media release issued by the South Simcoe Police Service, which related to the arrest of the member on suspicion of being involved in arson and with respect to possession of an incendiary device. Matthews said that on March 8, 2006, he attended the court appearance of the member in Bradford, where the member pleaded guilty to a total of eight different criminal charges.

Perrier then filed a Certificate of Conviction (Exhibit 3).

Matthews told the panel that the member had been sentenced to a total of seven years and three months and ordered to pay restitution of \$108,472. He said he had obtained a certified copy of the 40-page Ontario Court of Justice transcript of the member’s criminal proceedings, held before the Honourable Justice G.E. Krelove on March 8, 2006 in Bradford, Ontario. Perrier entered the transcript into evidence as Exhibit 4.

Prior to making his comments on the transcript, Perrier asked Matthews some further questions.

Matthews said Molnar was a member of the association, having obtained his

licence on April 3, 1997. He told the panel that the association had received a letter of resignation from the member on August 30, 2006, which was after the date the Complaints Committee had decided to refer the matter to Discipline.

In answer to questions from the panel, Matthews said that the member did not have a Certificate of Authorization, was a civil engineer and at the time worked in a quasi engineering capacity for the Department of National Defence. Matthews explained that the only information the association had on record related to the member’s original application for licensure, which was received by the association on February 12, 1996. At that time, the information included on the member’s background indicated that he was a graduate in civil engineering from the Royal Military College in Kingston and was employed with the Department of National Defence.

Perrier, in reviewing the pertinent points in the transcript of the Ontario Court of Justice dated March 8, 2006 (Exhibit 4), referred the panel to page 7, where the member had pleaded guilty with respect to counts 1, 2, 3, 4, 5, 6, 7, 11 and 13. He noted that from page 8 to page 30 of the transcript there is a review of each act the member engaged in, which resulted in a guilty plea.

Perrier pointed out that in the transcript the member takes a different position than what the evidence would suggest, but the Crown very fairly pointed that out.

Perrier told the panel that unless there is annotation by the Crown that the member takes a different position, the panel can accept that those are the facts upon which the guilty plea was accepted and the conviction was entered.

The panel inquired if the member was a sick man. Perrier pointed out that the Ontario Court of Justice, on page 3 of the transcript, had raised this matter and received the reply that the member had been fit to stand trial. J. Charles Syme, legal counsel for the member at the trial,

said the member was in a position to accept criminal responsibility for his actions.

Perrier told the panel that it would have been open to the association to refer an allegation that the member was incompetent by virtue of a mental disorder. However, the Ontario Court of Justice evidence supports the fact that the member knew what he was doing. What the panel needed to decide, based on what the member has done and accepting that he understood the consequences of his actions, was whether those actions constitute professional misconduct.

Perrier pointed out that the onus is on the association to prove that Molnar has been convicted of an offence. He also added that the facts that were accepted by both parties at the criminal proceedings may have some relevance with respect to whether the offence the member has been convicted of is relevant to his suitability to practise. Perrier suggested that in any case where an arson has been deliberately committed by a member, that in itself is enough proof to meet the test of relevance to suitability to practise.

The panel’s independent legal counsel, Christopher Wirth (“Wirth”), advised that the evidence before the panel, along with the certified copy of the Certificate of Conviction (Exhibit 3) of the member, and the certified copy of the transcript of the proceedings before the Ontario Court of Justice under the *Canada Evidence Act* may be relied upon by the panel.

Perrier was in agreement with the advice to the panel given by Wirth.

Decision

Upon reviewing the alleged facts as set out in the Notice of Hearing paragraphs 1, 2 and 3, and the Certificate of Conviction (Exhibit 3), together with the pertinent facts from the Ontario Court of Justice transcript set out by Perrier, the panel accepts that the allegations contained in the Notice of Hearing have been proven and finds the member guilty of professional misconduct as defined in section 28(2)(a) of the *Professional Engineers Act*.

Discipline Hearing Schedule

This schedule is subject to change without public notice. For further information contact PEO at 416-840-1072; toll free 800-339-3716, extension 1072.

Any person wishing to attend a hearing should contact the complaints and discipline coordinator at extension 1072.

All hearings commence at 9:30 a.m.

NOTE: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference regarding the status, qualifications or character of the licence or Certificate of Authorization holder should be made based on the allegations listed herein.

September 24-28, 2007

William L. Haas, P.Eng., and William Haas Consultants Inc. (WHCI)

It is alleged that Haas is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Haas and WHCI are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
- (c) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
- (d) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
- (e) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (f) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
- (g) *Section 72(2)(j)*: 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.

Reasons for the penalty decision

The panel felt that the nature of the criminal acts for which the member was convicted as set out in the Notice of Hearing paragraphs 1 to 3 justified revocation of his licence to practise.

In reaching its decision, the panel considered the advice from Wirth, who asked the panel to bear in mind that the penalty decision is not to punish the member and exact retribution but rather to protect the public, to maintain high professional standards, and to preserve public confidence in the profession.

In reaching the penalty decision, the panel had before them the Certificate of Conviction listing the criminal charges laid against the member and a letter from the member to Perrier, dated November 6, 2006, in which he had agreed to the revocation of his licence, stated that he had no funds to pay the penalty and that publication with names would add further burden to his liabilities.

The panel felt the licence of the member should be revoked as the evidence presented clearly showed that the criminal charges laid out by the province justified revocation and that the member was in agreement.

The reason for publication is set out in section 28(5) of the *Professional Engineers Act*, which states that publication with names is required in the event of revocation of a member's licence.

Although the member had stressed his lack of funds and the panel felt that recovery of funds would probably never occur, the panel took into account the comments by Perrier, who stated that a message must be made to all current members of the association that it cannot bear all costs for a hearing in every instance and that the association's Council has directed the prosecution to seek costs in cases where there has been a finding made against the member.

The written Decision and Reasons were dated January 29, 2007, and were signed by Nick Monsour, P.Eng., as the Chair of the panel on behalf of the other panel members Kam El Guindi, P.Eng., Daniela Iliescu, P.Eng., Rakesh Shreevastav, P.Eng., and Derek Wilson, P.Eng.

The panel accepted the facts as set out in the Notice of Hearing paragraphs 1, 2 and 3 on the basis of the evidence in the Certificate of Conviction (Exhibit 3) that stated the criminal charges for which the member had been found guilty by the Ontario Court of Justice, which clearly indicate that the member had contravened section 28(2)(a) of the *Professional Engineers Act*. Section 28(2)(1) defines professional misconduct as: "the member or holder has been found guilty of an offence relevant to suitability to practise, upon proof of such conviction."

Penalty

Counsel for the association submitted a penalty which provides as follows:

1. The licence of the member be revoked.
2. The member shall forthwith pay costs of the discipline proceedings to the association in the sum of \$2,500.
3. The Decision and Reasons shall be published with names in Gazette with reference to the member.

Perrier advised that the association was satisfied that the penalty submitted by the association was reasonable and that due to the seriousness of the matter the association felt that nothing short of revocation of the licence would be acceptable.

Penalty decision

Following deliberation, the panel made the following order:

1. **The licence of the member be revoked.**
2. **The member shall forthwith pay costs of the discipline proceedings to the association in the sum of \$2,500.**
3. **The Decision and Reasons shall be published with names in Gazette with reference to the member.**