

Decision and Reasons

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing, with consent of the parties, before a three-person panel of the Discipline Committee on November 19, 2007 at the Association of Professional Engineers of Ontario (the association) in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Mladen Pazin, P.Eng., and The Environment Management Group Ltd. were represented by Gary W. Gibbs of Gibbs & Associates. Christopher Wirth of Stockwoods LLP served as independent legal counsel to the discipline panel.

The allegations

The allegations, as stated in the Notice of Hearing dated February 22, 2007, are summarized as follows:

1. It is alleged that Mladen Pazin, P.Eng., (the member) is guilty of incompetence as defined in section 28(3), and that the member and The Environment Management Group Ltd. (the holder) are guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P28.
2. "Incompetence" is defined in section 28(3)(a) as:
"The member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer."
3. "Professional misconduct" is defined in section 28(2)(b) as:
"The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."

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

Mladen Pazin, P.Eng.

a member of the Association of Professional Engineers of Ontario, and

The Environment Management Group Ltd.

a holder of a Certificate of Authorization.

4. The sections of Regulation 941/90 made under the said Act and relevant to this misconduct are:
 - (a) *Section 72(2)(a)*: negligence as defined at section 72(1): In this section "negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - (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)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
 - (d) *Section 72(2)(i)*: failure to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client, and in particular, without limiting the generality of the foregoing, carrying out any of the following acts without making such a prior disclosure:
 1. Accepting compensation in any form for a particular service from more than one party.
 2. Submitting a tender or acting as a contractor in respect of work upon which the practitioner may be performing as a professional engineer.
 3. Participating in the supply of material or equipment to be used by the employer or client of the practitioner.
 4. Contracting in the practitioner's own right to perform professional engineering services for other than the practitioner's employer.
 5. Expressing opinions or making statements concerning matters within the practice of professional engineering of public interest where the opinions or statements are inspired or paid for by other interests;
 - (e) *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; and

- (f) *Section 72(2)(m)*: permitting, counselling or assisting a person who is not a practitioner to engage in the practice of professional engineering except as provided for in the Act or regulations.

Counsel for the association advised that it was withdrawing the allegation of incompetence against the member, and would not be calling any evidence with respect to professional misconduct allegations relating to sections 72(2)(a), (b), (i) and (m) of Regulation 941.

Agreed Statement of Facts

Counsel for the association and counsel for the member and the holder advised the panel that agreement had been reached on the facts and that the factual allegations, as set out in the Agreed Statement of Facts, were accepted as accurate by the member and the holder.

Counsel for the association then introduced the Agreed Statement of Facts, which read as follows:

1. Mladen Pazin, P.Eng., was, at all material times, a member of the Association of Professional Engineers of Ontario (PEO).
2. The Environment Management Group Ltd. (EMG) was, at all material times, the holder of a Certificate of Authorization to offer and provide to the public services within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure that its employees carried on the practice of professional engineering in a proper and lawful manner. At all material times, Pazin was the professional engineer responsible for the engineering services provided by EMG.
3. In or about July 2004, EMG was retained by G&L Group Ltd. of Concord, Ontario, which is the apparent property owner of 207 New Toronto Street, Etobicoke, Ontario. EMG pro-

duced a document (EMG document) in the style of a project estimate. The EMG document included a review of six environmental reports from various engineering consultants, including Proctor & Redfern Ltd. and Terraprobe Limited, regarding the property. The EMG document contained an element of engineering review in that it critiqued the six other reports, but it was signed and apparently authorized by the director of planning at EMG, who is not a professional engineer. The latter part of the EMG document contained a quotation to provide site remedial services, including material removal, soil drilling, excavation, site engineers, lab testing and environmental report (phase two).

4. The EMG document was not signed or sealed by a professional engineer and contained the following items/information:
 - i. general report reviews;
 - ii. additional historical research;
 - iii. brief historical use;
 - iv. brief history of site physical development; and
 - v. overview of the environmental reports, which included, among other things, engineering comment and critique of the other engineering environmental reports.
5. Also, in 2004, the EMG director of planning, Aaron Levine, issued business cards for non-engineering EMG staff, upon which was captioned "Member of Professional Engineers Ontario." After subsequent consultation with PEO, EMG issued new cards that were in compliance with PEO standards and regulations.
6. By reason of the aforesaid, it is agreed that Mladen Pazin, P.Eng., and EMG:
 - (a) breached section 53 of Regulation 941 under the *Professional Engineers Act* by failing to sign and seal the report;

- (b) submitted a quotation to act as a contractor in respect of work upon which the practitioner may be performing as a professional engineer; and
- (c) acted in an unprofessional manner.

7. By reason of the facts aforesaid, it is alleged that Mladen Pazin, P.Eng., and EMG are guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

8. "Professional misconduct" is defined in section 28(2)(b) as:
 "The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."

9. The sections of Regulation 941/90 made under the said Act and relevant to this misconduct are:

- (a) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics; and
- (b) *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.

Plea by member and holder

The member and the holder admitted the allegations set out in paragraphs 1 to 9 in the Agreed Statement of Facts. The panel then conducted a plea inquiry and was satisfied that both the member's admission and that of the holder were voluntary, informed and unequivocal.

Decision

The panel accepted the member's and holder's pleas and then considered the Agreed Statement of Facts in detail.

The panel deliberated and found that the agreed facts clearly support a finding of professional misconduct and, in particular, found that the member and the holder committed an act of professional

misconduct as defined in section 28(2)(b) of the Act and as supported by the agreed facts (voluntarily admitted by the member and the holder) in paragraphs 1 to 9 of the Agreed Statement of Facts.

Reasons for decision

The panel found that the facts set out in paragraph 3, i.e. a failure to seal and sign; paragraph 4, i.e. reports containing elements related to the practice of professional engineering not signed or sealed by a professional engineer; and, similarly, paragraph 6 of the agreed facts, all support the finding with respect to section 72(2)(g) of the Act. The panel found that the totality of facts set out in paragraphs 3 to 6 supported the finding with respect to section 72(2)(j) of the Act; reflecting conduct that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as unprofessional.

The above findings thereby support the finding of professional misconduct against both the member and the holder. With respect to the panel's finding of professional misconduct against the holder, the panel also found that the fact set out in paragraph 5, relating to issuing misleading business cards, was further evidence of a significant unprofessional act.

Penalty

Counsel for the association advised the panel that the parties to this proceeding had arrived at an agreement and written recommendations on the terms of a Joint Submission as to Penalty. The Joint Submission as to Penalty provided as follows:

1. The member and the holder shall be reprimanded and the fact of the reprimand shall be recorded on the register for a period of 12 months;
2. The holder shall forthwith pay a portion of the costs of this proceeding fixed in the sum of \$2,500; and
3. A summary of the Decision and Reasons of the Discipline Committee shall be published with names in Gazette.

Counsel for the association advised that it was satisfied that the Joint Submission as to Penalty was fair and reasonable,

and appropriate to the facts and plea in the case.

The panel also heard from both the counsel for the association and from independent legal counsel as to the guiding principles in determining penalty, namely:

- (a) protection of the public interest;
- (b) maintenance of the reputation of the profession and its ability to regulate itself and in the eye of the public;
- (c) general deterrence;
- (d) specific deterrence; and
- (e) rehabilitation of member/holder.

Counsel for the member and holder concurred with counsel for the association that the penalty proposed in the joint submission was within the correct range, in view of the agreed facts. He also indicated, specifically, that the rehabilitative aspect was already assured for the member and the holder in that they accepted responsibility, and proper procedural steps were since instituted in the workplace environment by his clients so as to avoid any risk of reoccurrence.

Penalty decision

The panel, while deliberating on their decision as to penalty, took special note of advice from their independent legal counsel to the effect that, based on court precedents, the panel should accept the Joint Submission as to Penalty, unless there was good cause to reject it.

While the panel viewed the allegations and the conduct of the member and holder very seriously, the panel took into account the fact that both the member and the holder had cooperated with the association and, by agreeing to the pertinent facts and proposed penalty, had accepted responsibility for their respective actions and avoided unnecessary further expense to the association.

The panel, having deliberated, concluded that the proposed penalty is both reasonable and in the public interest, and that it also meets the target of general as well as specific deterrence.

The panel, therefore, accepted the Joint Submission as to Penalty and accordingly ordered that:

1. **The member and the holder shall be reprimanded and the fact of the reprimand shall be recorded on the register for a period of 12 months;**
2. **The holder shall forthwith pay a portion of the costs of this proceeding fixed in the sum of \$2,500; and**
3. **A summary of the Decision and Reasons of the Discipline Committee shall be published with names in Gazette.**

Following the hearing, the member and the holder signed a waiver of appeal, which was filed, following which the member and the holder were orally reprimanded by the panel.

The written Decision and Reasons were dated January 21, 2008, and were signed by Kenneth Serdula, P.Eng., as the chair on behalf of the other members of the discipline panel: Jim Lucey, P.Eng., and Derek Wilson, P.Eng.

Gazette email address

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