

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 WOJCIECH STANISLAW REMISZ, P.ENG., a member of the Association of Professional Engineers of Ontario, and REMISZ CONSULTING ENGINEERS LTD., a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on May 14, 15 and 16, 2007, at the Association of Professional Engineers of Ontario in Toronto (the association). All parties were present. The association was represented by legal counsel. Wojciech Stanislaw Remisz, P.Eng. (Remisz), and Remisz Consulting Engineers Ltd. (RCEL) chose not to be represented by legal counsel or agents.

THE ALLEGATIONS

The allegations against Remisz and RCEL were as follows:

1. Remisz was, at all material times, a member of the Association of Professional Engineers of Ontario and RCEL 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. Remisz was one of the professional engineers responsible for the services provided by RCEL.
2. On or about May 17, 2001, the Ministry of Transportation (MTO) had a project to construct a bridge over the Mississippi River (the project) and identified a non-compliance of bridge seals and expansion joints and, consequently, the joints were rejected.
3. On or about February 26, 2002, Remisz was hired as a quality verification engineer (QVE) for the project by the contractor.
4. By memorandum to MTO dated May 17, 2002, Remisz expressed concerns about the bridge design and questioned calculations by the MTO designer, Nicolas C. Theodor, P.Eng. (Theodor).
5. By email dated May 22, 2002, Theodor responded to the Remisz concerns and referred to applicable Ontario Highway Bridge Design Code (code) and commentary clauses and the MTO structural design manual (structural manual).
6. In a memorandum to MTO dated May 25, 2002, Remisz continued to promote his concerns and insisted there was design error and code misrepresentation.
7. In a memorandum dated May 31, 2002 to Theodor's superior, Iqbal Husain, P.Eng. (Husain), head of the design section at MTO, Remisz restated his concerns and contentions regarding the project design. By facsimile transmission dated June 3, 2002, Felipe Mendoza, project contract control officer (Mendoza or project CCO), provided a copy of the memorandum to Theodor.
8. In a memorandum to Mendoza dated June 4, 2002, Husain addressed the concerns and contentions of Remisz and clarified the codes and manual requirements.

9. By memorandum dated June 15, 2002 to Mendoza, Remisz accused Theodor of acts of negligence, misconduct and malpractice, among other things.
10. By memorandum dated June 20, 2002 from Remisz to the minister of transportation, the Honourable Norman W. Sterling (minister), Remisz alleged the following:
 - (a) Theodor committed an act of malpractice and professional negligence as per the *Professional Engineers Act* and endangered the safety or welfare of the public;
 - (b) Theodor showed a substantial lack of understanding of engineering principles; and
 - (c) He located a substantial logic error in the MTO structural design manual.
11. By email dated June 26, 2002, the project CCO informed Theodor that a number of components of the project, including those certified by Remisz, the QVE, did not meet the requirements of the QVE's role.
12. By letter dated July 30, 2002, the project CCO informed the contractor that, among other things, the deck length that was certified by Remisz, the QVE, was outside the specified tolerance.
13. By letter dated August 14, 2002, Bala Tharmabala, P.Eng. (Tharmabala), manager of the bridge office of MTO, responded to Remisz's concerns stating that, after a review, no errors with the structural manual were found.
14. In a letter to Tharmabala dated August 21, 2002, Remisz continued his contention and his argument of design error.
15. By letter dated August 27, 2002, Tharmabala responded to Remisz stating that all of Remisz's concerns and questions had been addressed. Tharmabala advised Remisz that MTO would not be able to provide any further explanations regarding the matter.
16. By letter dated September 4, 2002, Remisz again wrote to Tharmabala repeating his contentions and arguments.
17. By letter dated September 17, 2002, Tharmabala responded to the latest Remisz letter and informed him that MTO had not found any errors in the code or the structural manual and that the matter was closed.
18. By letter dated March 20, 2003, Theodor, Husain and Tharmabala received notice from Professional Engineers Ontario (PEO) that a complaint investigation had been initiated regarding the project.
19. By letter dated September 2, 2003, Remisz again wrote to Tharmabala, continuing his concerns, criticisms and further accusations regarding the design of the project.
20. By letter dated September 9, 2003, Tharmabala responded to Remisz, stating that further comment would be inappropriate considering an investigation regarding the issues was in progress at PEO.
21. By letter to Theodor dated November 26, 2003, Remisz continued his concerns and criticisms and stated that he had reviewed another bridge project and found it had similar issues.
22. On or about December 5, 2003, MTO retained Professor M.P. Collins, P.Eng., to review the code compliance issues and the concerns Remisz had with the project.
23. By letter dated December 15, 2003, Theodor responded to the Remisz letter dated November 26, 2003, and stated that Remisz's past and present accusations were unjustified, slanderous and intended to maliciously damage his (Theodor's) professional reputation.
24. In a letter to Husain dated January 19, 2004, Remisz stated that Theodor had misread, misused and misinterpreted the code in the design of the project. He stated that this was an act of professional negligence, lack of skill and prudent engineering judgment. He threatened a public relations disaster for MTO in relation to the opening of the bridge.
25. By letter dated January 27, 2004, Husain responded to Remisz stating that MTO had responded to his concerns and that there was nothing further to address.
26. By reason of the aforesaid, it is alleged that Wojciech Stanislaw Remisz, P.Eng., and RCEL:
 - (a) made repeated criticisms regarding the work of fellow engineers that he knew, or reasonably ought to have known, were incorrect, unprofessional and without foundation;
 - (b) made repeated incorrect and unprofessional accusations toward fellow engineers;

- (c) engaged in a course of vexatious comment or conduct that he knew, or reasonably ought to have known, were unwelcome to fellow engineers Theodor, Husain and Tharmabala regarding the design of a bridge project; and
- (d) acted in a disgraceful, dishonourable and unprofessional manner.

27. “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.”

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

- (a) 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
- (b) SECTION 72(2)(N): harassment defined at section 72(1): In this section “harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known as unwelcome and that might reasonably be regarded as interfering in a professional engineering relationship.

PLEA BY MEMBER AND HOLDER

Remisz and RCEL denied the allegations set out in the Fresh Notice of Hearing.

EVIDENCE

Counsel for the association presented as evidence a joint document brief containing copies of the documents cited in the allegations. The association did not call any witnesses.

Remisz, having chosen not to be represented by counsel, took the stand as a witness to present evidence in defence of the allegations.

Remisz introduced a binder of correspondence as Exhibit 3. Counsel for the association objected to this as it had not been disclosed prior to the hearing and he had not had an opportunity to review the contents. The panel asked him to review the binder and provide an opinion on its admissibility later in the proceeding so that the defence could proceed in the meantime. Having reviewed the binder, counsel for the association agreed that Exhibit 3 could be regarded as evidence of communication between the parties, but not as proof of its contents. Remisz agreed with this.

In his testimony, Remisz explained that his motivation for the correspondence was his duty in his role as quality verification engineer for the construction contractor and his duty as a professional engineer to protect public safety.

Remisz proceeded with his chronology of the events, adding the following information pertinent to understanding the context of the facts already introduced by the association.

The contractual implications of a problem with the bridge design by MTO may have been a concern for MTO and its staff.

1. MTO questioned whether the QVE and/or the contractor could have caused the problem with the joints.
2. MTO wanted the contractor to bear the cost of reconstruction and remediation for the non-compliant bridge seals and expansion joints.

There may have been pressure on the QVE and the contractor to approve compliance of the bridge seals and expansion joints.

1. Pressure was exerted on the contractor and the QVE by MTO to proceed toward contract completion.
2. There was at least one warning by MTO that the contractor would be liable for non-compliance and delays.

There may have been provocation by both parties in discussing the bridge design.

Theodor showed animosity and contempt toward Remisz in at least one reply.

An MTO reply to Remisz dismissed his design concerns as misrepresentation and misstatement.

The member provided photographs of the bridge (Exhibit 4) showing evidence of the non-compliance; for example, wood crushed by expansion of the bridge.

Remisz did raise a complaint with the association, expecting help in resolving the matter with the bridge design that gave rise to the non-compliance of the bridge seals and expansion joints. In his opinion, the bridge was unsafe. This complaint had not been brought forward to a discipline hearing by the association as of the date of this hearing.

On cross-examination, Remisz and RCEL did not deny the contents of the documents presented as evidence by the association. Remisz admitted writing the criticisms and accusations contained in the documents presented as evidence by the association. He denied any malice, and reiterated his duty as a professional engineer to protect public safety as his motive for the continued correspondence.

DECISION

Having considered the evidence and the onus and standard of proof, the panel finds that Remisz and RCEL committed acts of professional misconduct as alleged in paragraph 28 of the Notice of Hearing under Regulation 941/90, section 72(2)(j). In particular, Remisz and RCEL:

- (a) made repeated criticisms regarding the work of fellow engineers that he knew, or reasonably ought to have known, were unprofessional;
- (b) made repeated unprofessional accusations about fellow engineers; and
- (c) acted in an unprofessional manner.

The panel finds that the member and holder did not commit an act of professional misconduct involving “harassment,” as alleged in paragraph 28 of the Notice of Hearing under Regulation 941/90, section 72(2)(n).

REASONS FOR DECISION

The allegations state that Remisz knew, or reasonably ought to have known, that his criticisms and accusations were incorrect, unprofessional and without foundation. Counsel for the association advised the panel that the unresolved concerns of RECL with the bridge design giving rise to the non-compliance of the bridge seals and expansion joints may or may not be valid. As such, the panel could not consider that Remisz knew, or reasonably ought to have known, that his criticisms and accusations were incorrect and without foundation. The decision of the panel is, therefore, limited to whether Remisz knew, or reasonably ought to have known, that his criticisms and accusations were unprofessional.

The correspondence in evidence clearly showed many occasions where Remisz questioned the skill and competence of the MTO engineers and accused them of negligence, malpractice and/or misconduct. These are not part of open and constructive discussion that needs to occur to solve problems and resolve issues in the practice of professional engineering.

The first evidence of unprofessional conduct by Remisz is in his letter dated June 15, 2002, stating, “This is an act of malpractice, professional misconduct, and negligence caused by MTO designers.” The letter to the minister dated June 20, 2002 alleged Theodor had committed an “act of malpractice and professional negligence” and “showed substantial lack of understanding of engineering principles.”

Unprofessional criticisms and accusations are repeated in a letter from Remisz dated September 2, 2003 accusing MTO designers of “constant confusion” and “unacceptable reckless manipulation.” Remisz also criticized a presentation given by Theodor, stating, “It contains many misrepresentations of the

code requirements, mixes up load with movements and contains logical mistakes that it is frightening and outright dangerous to follow it.” A letter dated November 26, 2003 from Remisz to MTO engineer Theodor restated the unanswered concerns as well as the criticism of his presentation previously cited to Tharmabala. Finally, in a letter dated January 19, 2004, Remisz accused Theodor of having “totally misread, misused and misinterpreted the MTO structural design code” and that “this is an act of sheer professional negligence, lack of skill and prudent engineering judgement.” He went on to accuse MTO employees of “covering their lack of qualifications and engineering experience” in his attempt to get MTO to participate in resolving concerns of RCEL with the bridge design related to the non-compliance of the bridge seals and expansion joints.

Remisz did not deny writing the letters or memos submitted into evidence by the prosecutor. In fact, the evidence submitted by Remisz contained the very same correspondence. The evidence supports the finding by the panel that the act of sending those letters and memoranda containing the accusations and criticisms constitutes unprofessional conduct on the part of Remisz and RCEL relevant to the practice of engineering, which members of the profession would reasonably regard as unprofessional.

Regarding the allegation that the actions of Remisz and RCEL constituted professional misconduct in the form of harassment, the panel found that the evidence presented did not fulfill the burden of proof. To constitute harassment, the conduct must be vexatious, the perpetrator ought to have known the conduct was unwelcome, and the conduct might be regarded as interfering with a professional relationship.

In the evidence presented, it is certain that MTO engineers made it obvious to Remisz that his conduct was unwelcome. In particular, Theodor explicitly stated that fact in his December 15, 2003 letter to Remisz. The evidence shows that Remisz was persistent in seeking a valid response from the MTO engineers to the concerns of RCEL with the bridge design that gave rise to the non-compliance of the bridge seals and expansion joints, through correspondence spanning two years. Considered in isolation, the panel would consider such conduct annoying, causing irritation, i.e. vexatious. However, a professional relationship must exist between the parties and be interfered with to constitute harassment. There was no evidence of a professional relationship between Remisz and either Theodor or Tharmabala, or that this was somehow interfered with by the member’s conduct. The panel concluded that Theodor, Tharmabala and MTO, in general, sought not to engage in a professional relationship with Remisz and RCEL. A fax from Mendoza on June 17, 2002

stated the QVE should not have direct contact with MTO engineers. The memo dated June 4, 2002, MTO's response to the concerns raised by RCEL, is not even addressed to RCEL. Rather, the information is transmitted through two other parties, neither of whom are professional engineers. In three separate letters dated August 14 and 27, 2002, and January 27, 2004, MTO tells RCEL and Remisz they do not wish to discuss the concerns with the bridge design giving rise to the non-compliance of the bridge seals and expansion joints. There is clear evidence the MTO engineers were unwilling to enter into a professional engineering relationship with RCEL and Remisz. Their unwillingness predates the first evidence of unprofessional conduct by Remisz on June 15, 2002.

Apart from the allegations brought against RCEL and Remisz, in reviewing the evidence, the panel holds that the process of professional engineering is not served when members avoid or refuse open and objective technical discourse and review toward the resolution of an identified problem. Differences of opinion on technical matters do occur and engineers are not infallible. Our work is subject to peer review and, at times, review may uncover mistakes or omissions that, if left uncorrected, could endanger lives.

The panel concluded that Remisz and RCEL were acting in good faith in their obligation toward public safety under the *Professional Engineers Act* and were exercising due diligence in seeking a resolution to the non-compliance of the bridge seals and expansion joints. It is the opinion of the panel that Remisz and RCEL may have been impeded in their obligations by the actions of other engineers involved with the project. MTO issued directives to proceed with installation, in effect disregarding the professional engineering opinion of the QVE having responsibility.

Remisz and RCEL appealed to the association for assistance to resolve their differences with the MTO engineers as early as March 20, 2003. It is unfortunate and disappointing the association did not facilitate a timely resolution of the interference with the practice of professional engineering that gave rise to the circumstances that precipitated the complaint against Remisz and RCEL.

PENALTY

Counsel for the association summarized that RCEL criticized other engineers and accused them of misconduct and incompetence over a two-year period in a forum visible to their peers and supervisors, as shown in the correspondence presented in evidence.

The association proposed a penalty that would achieve general and specific deterrence and rehabilitation:

- Remisz is required to appear before the panel to be reprimanded and the fact of the reprimand is to be recorded on the register;
- The Decision and Reasons of the discipline panel shall be published in summary in Gazette, with names; and
- Costs in the amount of \$7,500 shall be paid by Remisz to the association.

Counsel for the association indicated this penalty is consistent with the portions of the penalty upheld by the divisional court in the recent decision, *White v. Association of Professional Engineers of Ontario, 2006, CanLII 17320 (ON S.C.D.C.)*.

In response to the proposed penalty, Remisz stated that he and RCEL suffered significant hardship in terms of delayed payment for services, lost business and emotional stress throughout the time when the misconduct occurred and leading up to the hearing. Remisz asked that there be a time limit imposed on the fact of the reprimand on the register in consideration of the hardship already suffered. They did not dispute the quantum of costs, but requested a period of time over which to make the payment.

The panel recognized that Remisz, choosing not to be represented by legal counsel, was co-operative during the course of this hearing.

The panel made the following order as to penalty:

1. **Remisz is required to appear before the panel to be reprimanded;**
2. **The fact of the reprimand is to be recorded on the register for a period of one year;**
3. **The Decision and Reasons of the discipline panel shall be published in summary in Gazette, with names. The text of the summary will be provided by the panel for publication; and**
4. **Costs in the amount of \$7,500 shall be paid by Remisz to the association within 12 months of the conclusion of this hearing.**

REASONS FOR PENALTY

The panel regarded the unprofessional conduct of Remisz and RCEL as an impediment to sound engineering practice, having the potential to erode public confidence in the profession of engineering.

The panel chose to orally reprimand the member, with the objective of rehabilitation. In the reprimand, the panel could clearly identify the inappropriateness of the tone and language used by the member in the correspondence. The panel could emphasize the negative impact that his choice of language and

tone had on achieving his objectives and on the profession as a whole. The panel would aim to convince the member that, in future, his practice of engineering would be better served by avoiding the emotion, language and tone in his communications that is aggressive and personal. Given the co-operative nature of the member during the hearing and his acceptance of the findings of the panel, the panel believes that a reprimand would have a rehabilitative effect and that the member would be unlikely to re-offend.

The panel chose to have the reprimand recorded on the register as a deterrent to the member and other members. By limiting the term of the recorded reprimand to one year, the panel took note that the member recognized his offence and was unlikely to repeat it. The one-year term would not create undue hardship for the member, but would show other members that such acts do carry a perceivable penalty.

The panel chose to have its Decision and Reasons published as a general deterrent so that other members of the profession will understand the need for appropriate professional conduct. The

panel chose to include the name of the member in the publication because of the findings in the case. Since the more serious of the allegations against the member was found to be unsubstantiated, publication of the decision with the name of the member serves to set the public record straight. Furthermore, the panel elected to write this summary for publication.

The panel chose to assign the partial cost of these proceedings because Remisz's conduct caused these costs. The assignment of costs is not a punishment of the member. It is unfair to burden all members of the profession with the entire cost that arises when members choose to act improperly and must be dealt with in the disciplinary process. Remisz agreed that the amount of \$7,500 to be paid to the association over a 12-month period did not represent an undue hardship.

The written Decision and Reasons were dated May 12, 2008, and were signed by John Vieth, P.Eng., as the chair on behalf of the other members of the discipline panel: J.E. (Tim) Benson, P.Eng., Ravi Gupta, P.Eng., Richard Hilton, P.Eng., and Nick Monsour, 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 BRADLEY J. KALUS, a holder of a limited licence issued by the Association of Professional Engineers of Ontario.

This matter came on for hearing before a three-member panel of the Discipline Committee on Thursday, November 23, 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. Bradley J. Kalus was represented by Jeffery Lanctot of Cassels Brock & Blackwell LLP.

THE ALLEGATIONS

In the Fresh Notice of Hearing dated November 16, 2006 (Exhibit 1), it was alleged that Bradley

J. Kalus (Kalus) is guilty of professional misconduct. The particulars of the allegations against the practitioner are summarized as follows:

1. On February 19, 2001, Kalus was issued a limited licence by Professional Engineers Ontario that entitled him to engage in the practice of professional engineering with respect to geometric design of highway and road improvement projects, functional planning, preliminary and detailed designs, but specifically excluded engaging in the practice in relation to structural, geotechnical and electrical