

SUMMARY OF THE DECISIONS AND REASONS

In the matter of the Association of Professional Engineers v. an Engineer and Engineering Company

A matter came for a hearing before a panel of the Discipline Committee on September 14, 2011, at the offices of the Association of Professional Engineers of Ontario. The matter stemmed from a complaint against the actions of an engineer, who is a member of the Association of Professional Engineers of Ontario, and against the actions of an engineering company that is a holder of a Certificate of Authorization.

STATEMENT OF ALLEGATIONS AND AGREED STATEMENT OF FACTS

The association provided a Statement of Allegations and an Agreed Statement of Facts that were entered into evidence.

The Statement of Allegations included allegations of professional misconduct against the member and the holder. Counsel for the association provided the panel with the Agreed Statement of Facts, which included the following:

1. At all material times, the engineer was a licensed professional engineer and a member of PEO.
2. At all material times, the engineering company held a Certificate of Authorization issued by PEO, allowing it to offer and provide to the public services that are within the practice of professional engineering and was responsible for supervising its employees and taking all reasonable steps to ensure that its employees carried on the practice of engineering in a proper manner.
3. At all material times, another engineer (herein designated the testing engineer), who was responsible for coordinating, reporting and signing of test result reports of concrete air void system (AVS) testing at the engineering company was a licensed professional engineer and member of PEO. The testing engineer does not have laboratory testing certification with Canadian Council of Independent Laboratories (CCIL) or other organization. In practice, the testing engineer had some knowledge of quality testing of construction material, including AVS testing of concrete.
4. A contractor engaged the engineering company as the quality control laboratory to perform quality control testing on high-performance concrete samples from structures under construction. The quality control testing was required by the contractor under the terms of a contract for highway construction between the contractor and the Ministry of Transportation (MTO) for a construction period from July 2007 to October 2009.
5. Included in the engagement from the contractor was that the engineering company was responsible for AVS testing on concrete samples that came from concrete bridge structures under construction. AVS testing is required to establish the long-term durability of the hardened concrete in concrete bridge structures.
6. The actual AVS testing at the engineering firm was undertaken by a technician, whereas the testing engineer who managed the AVS testing process calculated the required pass/fail AVS results and signed the AVS reports.
7. In July 2008, the contract administrator (CA) submitted a summary of AVS results to the MTO that indicated some samples tested by the CA failed the minimum allowable parameters of concrete durability, contrary to the positive pass results provided by the AVS test results obtained from the engineering firm.
8. The MTO investigated further and, ultimately, it was determined that certain of the AVS reports submitted by the engineering company to the CA that showed acceptable results were, in fact, unacceptable on the original AVS reports in the files of the engineering company. The testing engineer at the engineering company denied, but then subsequently admitted, to an MTO forensic investigation team that the AVS test results were altered prior to submission to the CA.
9. Subsequently, the testing engineer admitted to PEO that the AVS data was altered because the testing engineer believed the concrete samples had been inadequately "polished," which can potentially negatively

affect AVS testing results. The testing engineer altered the test results, with no clear indication on worksheets of said alteration, to purportedly compensate for the inadequate polishing of the concrete samples.

10. As a result, the MTO removed the engineering firm from its list of qualified laboratories for concrete testing on MTO contracts. As well, the MTO filed a formal complaint of professional misconduct against the engineering firm with the CCIL and the firm resigned its membership in the CCIL while under investigation.

ADMISSIONS OF PROFESSIONAL MISCONDUCT AND PLEA OF THE MEMBER AND/OR HOLDER

The engineering company admitted that its actions and conduct in this matter constituted professional misconduct as defined by the *Professional Engineers Act*, s. 28(2)(b), and Regulation 941, s. 72(2)(d), which provides as follows:

“...that it failed to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under its responsibility.”

The panel conducted a plea inquiry and was satisfied that the engineering company’s admission was voluntary, informed and unequivocal, and that the engineering company had the benefit of independent legal advice.

The engineer denied knowledge of the testing engineer’s alteration of the AVS test results in advance of the government initiated investigation of the AVS tests. The engineer denied allegations of professional misconduct and, in the absence of any presented evidence, requested a dismissal of charges.

In light of the engineer’s undertaking to supervise the testing engineer for one year (or lesser period if the testing engineer is no longer employed by the engineering company), PEO leads no evidence in support of allegations against the engineer. Hence, the parties seek no finding of professional misconduct against the engineer.

DECISION AND REASONS

The panel considered the Agreed Statement of Facts and finds that the actions and conduct of

the engineering company support a finding of professional misconduct by the engineering company as defined by the *Professional Engineers Act*, s. 28(2)(b) and Regulation 941, s. 72(2)(d).

The panel dismissed the charges of professional misconduct against the engineer, since there was no evidence presented by PEO to support the allegations.

PENALTY DECISION

Counsel for the association provided the panel with a Joint Submission as to Penalty. The panel considered and accepted the submission and ordered the following:

1. The engineering company is to prove, to the satisfaction of the PEO registrar and within three months of the hearing, a comprehensive policy and procedure document for the engineering company’s staff regarding the conduct, documentation and reporting of laboratory testing results and analyses;
2. Pursuant to section 28(4)(i) of the *Professional Engineers Act*, the finding and the order of the Discipline Committee will be published in summary form, without names; and
3. There shall be no order with respect to costs.

In conjunction with the joint submission on penalty, the engineer voluntarily provided to the association an undertaking to supervise all engineering work performed by the testing engineer for one year from the date of PEO’s order (or lesser period if the testing engineer is no longer employed by the engineering company).

The panel concluded that the proposed penalty is reasonable and in the public interest. The engineering company has co-operated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for its actions, and has avoided unnecessary expense to the association.