

ENGINEERS GEOSCIENTISTS MANITOBA

IN THE MATTER OF: Phillip Dorn, P. Eng., a Professional Engineer in the Province of Manitoba

AND IN THE MATTER OF: *The Engineering and Geoscientific Professions Act, C.C.S.M., c. E120*

REASONS FOR DECISION

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Panel of the Discipline Committee:

R. Janz (Chair)
C. Hewitt, FEC, P. Eng.
R. O'Toole, FEC, P. Eng.

IN THE MATTER OF: Phillip Dorn, P. Eng., a Professional Engineer in the Province of
Manitoba

AND IN THE MATTER OF: *The Engineering and Geoscientific Professions Act,*
C.C.S.M., c. E120

Legal Counsel for the Investigation Committee:

Brent C. Ross
Jennifer Sokal

Legal Counsel for the Member:

Brian Roach

Legal Counsel for This Panel of the Discipline Committee:

Kathleen McCandless

Hearing Date: June 6, 2024

REASONS FOR DECISION

The Charge:

1. The Charge, dated June 30, 2022, alleges that Mr. Dorn committed professional misconduct or unskilled practice of professional engineering in the course of providing engineering services

respecting the structural review and assessment of a building at 20 Burks Way, Springfield, Manitoba (“**20 Burks Way**” or “**the Building**”). It is alleged that Mr. Dorn displayed a lack of knowledge of or lack of skill or judgment in violation of ss. 46(1)(e) of *The Engineering and Geoscientific Professions Act*, C.C.S.M. c. E120 (the “**Act**”). The particulars of the Charge are that:

- a. On or about April 1, 2016, and October 11, 2016, Mr. Dorn sealed and submitted reports respecting his structural review and assessment of 20 Burks Way, and in doing so, Mr. Dorn:
 - i. Demonstrated a lack of knowledge, skill and/or judgment in the practice of professional engineering, by incorrectly utilizing and including factored loads in his assessment of the Building’s pile capacities, which had been designed utilizing working stress design criteria;
 - ii. Demonstrated a lack of knowledge, skill and/or judgment in the practice of professional engineering, by incorrectly utilizing and including theoretical loads that had not, in fact, been realized in his assessment of movement that had occurred at the Building; and
 - iii. Demonstrated a lack of knowledge, skill and/or judgment in the practice of professional engineering, by incorrectly utilizing and including permissible deflection values stated in Table 3.9 of *Canadian Standards Association A23.3-04*, which do not apply to concrete slabs-on-grade designs, in the assessment of movement to the slab-on-grade flooring at the Building.

2. A joint submission on the Charge was heard by this panel on June 6, 2024, at which time counsel for the IC and for Mr. Dorn tendered an Agreed Statement of Facts (“**Agreed Statement**”), which provides as follows:

- a. Mr. Dorn was, at all material times, a registered member of EGM and had been a registered member since April 23, 1998. At all material times, he was an engineer working with Samson

Engineering Inc. (“SEI”), which offers structural and civil engineering services, including structural assessments of pre-existing buildings and their designs.

- b. In or around 2012, Urecoat Inc. (“Urecoat”) retained NDL Construction Ltd. (“NDL”) to construct the Building, which was an industrial shop with an attached office, consisting of a single-storey superstructure of pre-engineered steel, as designed and fabricated by Varco Pruden Buildings (the “Project”).
- c. Julien Lavergne of Lavergne Draward & Associates Inc. was retained to be the structural engineer of record for the Project. Mr. Lavergne designed foundation plans for the Building, consisting of a foundation plan, foundation details, and foundation notes, and sealed them on March 29, 2012.
- d. The Building’s foundation was constructed with cast-in-place concrete piles and a perimeter reinforced concrete grade beam, with the Building floors consisting of reinforced concrete slabs-on-grade. Mr. Lavergne designed the piles using Working Stress Design.
- e. A further shop addition to the Building was constructed in or around 2014.
- f. Ernie Waldner, the owner of Urecoat, advised that soon after the construction of the Building in 2012, he noticed vertical movement of the slab, cracking of the drywall finishes in the office area, and building wall elements buckling in one location. Mr. Waldner advised that Urecoat contacted the developer of the Building, NDL, and Mr. Lavergne, both of whom advised Urecoat that the movement was normal.
- g. Thereafter, Urecoat retained Mr. Dorn and SEI to provide an independent structural analysis and cause of the movement of the Building. Mr. Dorn inspected the site on or about November 17, 2015. On or about April 1, 2016, Mr. Dorn wrote and sealed SEI’s report, entitled “Structural Report for Urecoat Inc.: Existing Building at Urecoat Facility in Springfield, MB” (the “Dorn Report”). The Dorn Report concluded, among other things, that the Building’s

foundations were under-designed and had failed, but the Building was not in danger of collapse. Mr. Dorn used, in part, a Limit States Design methodology to compare the capacity of the Building piles, as designed by Mr. Lavergne, to the loads generated by the Building.

- h. On or about June 21, 2016, Mr. Waldner made a complaint to EGM regarding Mr. Lavergne's design of the Building (the "**Lavergne Complaint**"). Mr. Lavergne responded to Mr. Waldner's complaint and to the Dorn Report by letter dated July 27, 2016 (the "**Lavergne Letter**"). Mr. Walder requested that Mr. Dorn respond to the Lavergne Letter. Mr. Dorn provided his response on or about October 11, 2016 (the "**Dorn Response**").
- i. The Dorn Response indicated, in part, that the movement of the Building's slab on grade exceeded the permissible deflection standards as set out in Table 9.3 of CSA A23.3-04.
- j. The Investigation Committee of EGM ("**IC**") retained David Woodall, P. Eng. to provide an expert opinion regarding Mr. Lavergne's design of the Building. Mr. Woodall reviewed the Dorn Report, the Lavergne Letter, the Dorn Response, and related materials. Mr. Woodall provided his findings in a report dated January 27, 2021 (the "**Woodall Report**").
- k. On or about December 23, 2020, the Chair of the IC registered a complaint against Mr. Dorn with the CEO & Registrar of EGM. On that same date, the CEO & Registrar advised Mr. Dorn that an investigation had been initiated by the IC concerning his involvement with the Building, and requested that Mr. Dorn provide the IC with his file regarding the Building's design. Mr. Dorn provided his file to the IC on or about January 18, 2021.
- l. A subcommittee of the IC (the "**Subcommittee**") retained Jascha Boge, P. Eng. to provide an opinion regarding the Dorn Report and Dorn Response. Mr. Boge issued a preliminary report dated May 26, 2021 to the Subcommittee (the "**Preliminary Boge Report**"), following which the Subcommittee requested Mr. Boge review Mr. Dorn's work further and provide a final report. Mr. Boge submitted his final report on or about August 20, 2021 (the "**Boge Final**").

- Report**”). Mr. Dorn provided a response to the Boge Final Report on or about September 28, 2021.
- m. Mr. Boge provided a supplemental report on or about October 25, 2021 (the “**Boge Supplemental Report**”). The Subcommittee then issued a memorandum setting out its findings arising from the investigation (the “**Findings Memorandum**”).
- n. The IC formulated and issued the Charge, as set out above, on or about June 30, 2022. The Charge was referred to the Discipline Committee of EGM on or about July 5, 2022, and a panel was struck to adjudicate the matter.
- o. The hearing was commenced before this panel on October 7, 2022, at which time Mr. Dorn pled not guilty to the allegations in the Charge, waived the reading of the Charge, and admitted that he is a member of the EGM and this panel has jurisdiction over the matter and that there were no objections to the members of this panel on grounds of conflict of interest, bias, or other known grounds.

Admissions:

3. In the Agreed Statement, Mr. Dorn admitted that he is guilty of professional misconduct pursuant to section 46(1)(e) of the Act by committing the acts as particularized in the Charge, modified to read as follows:
- a. That, in the course of providing engineering services respecting the independent structural analysis of a building foundation at 20 Burks Way, Springfield, Manitoba, Mr. Dorn displayed a lack of judgment in violation of s. 46(1)(e) of *The Engineering and Geoscientific Professions Act*;
- b. That, in the course of sealing and submitting reports dated April 11, 2016 and October 11, 2016 respecting his independent structural analysis of a building foundation at 20 Burks Way, Springfield, Manitoba, Mr. Dorn:

- i. Demonstrated a lack of judgment in the practice of professional engineering during the course of an independent structural analysis of a foundation, by not contemplating that Working Stress Design methodology was used in design of piles in 2012 for the building foundation at 20 Burks Way, Springfield, Manitoba; and
- ii. Demonstrated a lack of understanding by utilizing Table 9.3 of CSA A23.3-04 for deflection limits for a composite slab-on-grade supporting non-structural elements likely to be damaged by large deflections.

Proposed Disposition:

4. Mr. Dorn's disciplinary record with EGM includes three formal cautions (January 7, 2010, January 11, 2013, June 1, 2023), and a reprimand on June 13, 2018 following conviction on a charge of professional misconduct.
5. In the Agreed Statement, the IC and Mr. Dorn, through counsel, agreed jointly to a disposition on penalty in relation of the findings of professional misconduct. The joint submission on penalty is that:
 - a. Mr. Dorn be reprimanded; and
 - b. Mr. Dorn make a \$5,000.00 contribution to EGM's costs in this matter.
6. Mr. Dorn further agrees to the publication of information relating to any finding or Orders made by this panel, in accordance with the EGM's policy on publication.

Submissions of Counsel for the Investigation Committee:

7. The joint submission was heard by this panel on June 6, 2024.

8. Counsel for the IC reviewed the Agreed Statement with the Panel, filed a Book of Legal Authorities with the Panel and spoke to the joint disposition as to penalty. He referred to authorities setting out the test for conduct deserving of sanction, including the following from J.T. Casey, in *Regulation of Professions in Canada* (Toronto: Thomson Reuters, 2019), at para. 13:2:

If it is shown that a professional, in the pursuit of his profession, has done something with respect to it which would be reasonably regarded as improper by his professional brethren, of good repute and competency, then it is open to the professional regulator to decide that he has been guilty of 'improper conduct in professional respect.'

9. Counsel for the IC also referred to *Re: Alireza Bahrami, P. Eng.*, a 2022 a decision of the Association of Professional Engineers and Geoscientists British Columbia, in which a panel of the discipline committee noted that “[p]rofessional misconduct is established when there is a marked departure from the standard to be expected of a competent professional. The definition of unprofessional conduct has been consistently applied in other disciplinary proceedings.”

10. Counsel for the IC submitted that, while we are not bound to accept the joint submission, the law makes clear that we owe a joint submission a high level of deference. He referred to the decision in *Anthony-Cook v. Her Majesty the Queen*, 2016 SCC 43 ("*Anthony-Cook*"), which arose in the context of criminal proceedings but has also been followed by regulators, including EGM in *Re: Daniel Wolfrom, P. Eng.*, a decision of the Discipline Committee dated January 25, 2023. In assessing when a panel should depart from a joint submission on penalty, the question to be asked is:

Does the joint submission on penalty before this discipline panel bring the administration of justice into disrepute or would it otherwise be contrary to the public interest? Is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the criminal justice system?

11. Counsel for the IC pointed the Panel to disciplinary decisions involving similar circumstances where similar sanctions were imposed:

- a. *Re: Michael Staple, P. Eng.*¹: the member was found guilty of professional misconduct and received a reprimand, an order to write a letter of apology, a fine of \$2,500, and publication of the matter, after he had prepared reports for a homeowner that were not based on sound engineering principles.
- b. *Re: Mark Weber, P. Eng.*²: the member was found guilty of professional misconduct and received a reprimand, an order to pay \$2,000 towards costs, repayment to the client of \$750.00, the completion of an online course and publication of the matter. The member had made an incorrect finding in a report issued to a homeowner. The homeowner incurred significant costs for structural modifications undertaken on the basis of the erroneous finding.
- c. *Re: Daniel Wolfrom*³: the member was found guilty of professional misconduct and unskilled practice and received a reprimand, a fine of \$1,500, and publication, in a matter where he had issued a letter containing errors regarding the cause of slab-on-grade settlement.

12. Counsel for the IC submitted that Mr. Dorn had not committed willful misconduct, but that his conduct nevertheless deserves sanction, and the proposed penalty will serve the sentencing principles of specific deterrence and punishment. The publication of the matter will serve as a general deterrent to members of the profession.

Submissions of Counsel for Mr. Dorn:

13. Counsel for Mr. Dorn noted that his client has been a practicing engineer for 26 years, and submitted that Mr. Dorn does not have a significant disciplinary record.

¹ APEGA Recommended Discipline Order, November 16, 2017

² APEGA Recommended Discipline Order, May 25, 2020

³ *Supra*

14. He referred to the test from *Anthony-Cook*, and stressed the importance of giving effect to joint recommendations. He noted that Mr. Dorn is acknowledging responsibility, thereby saving time and expense to the parties and EGM, and that noted that there was no safety risk created by Mr. Dorn's conduct. Counsel for Mr. Dorn argued that the proposed sanction will maintain public confidence in the integrity of members of EGM.

Analysis:

15. As noted in previous decisions of this Discipline Committee, the question to be posed in determining whether to accept the joint submission on penalty is whether it brings the administration of justice into disrepute or would otherwise be contrary to the public interest. In other words: is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the justice system?

16. The Panel agrees that Mr. Dorn committed professional misconduct, and that this conduct was not willful. The Panel notes that Mr. Dorn's actions have potentially tarnished the reputation of Mr. Lavergne. Although the Panel might have imposed a harsher penalty on Mr. Dorn, unless the proposed penalty would bring the administration of justice into disrepute, it is bound to accept the joint submission. The Panel concedes that the agreed penalty is in line with similar offences and penalties rendered in the past.

17. Accordingly, the Panel accepts the joint submission on penalty presented to it.

Decision:


18. This Panel therefore finds that Mr. Dorn is guilty of professional misconduct pursuant to section 46(1)(e) of *The Engineering and Geoscientific Professions Act*, C.C.S.M. c. E120 (the "Act") by committing the following acts:

- a. In the course of providing engineering services respecting the independent structural analysis of a building foundation at 20 Burks Way, Springfield, Manitoba, Mr. Dorn displayed a lack of judgment in violation of s. 46(1)(e) of the Act;
 - b. In the course of sealing and submitting reports dated April 11, 2016 and October 11, 2016 respecting his independent structural analysis of a building foundation at 20 Burks Way, Springfield, Manitoba, Mr. Dorn:
 - i. Demonstrated a lack of judgment in the practice of professional engineering during the course of an independent structural analysis of a foundation, by not contemplating that Working Stress Design methodology was used in design of piles in 2012 for the building foundation at 20 Burks Way, Springfield, Manitoba; and
 - ii. Demonstrated a lack of understanding by utilizing Table 9.3 of CSA A23.3-04 for deflection limits for a composite slab-on-grade supporting non-structural elements likely to be damaged by large deflections.
10. The Panel therefore orders, pursuant to ss. 47 and 48 of the Act, that:
- a. Mr. Dorn is hereby reprimanded;
 - b. Mr. Dorn shall make a contribution of \$5,000.00 towards EGM's costs for the investigation of this matter, to be paid within 30 days of the date of this Panel's order issued concurrently with this decision; and
 - c. The disposition of this matter and any information relating to any finding or order made by this Panel shall be published by EGM in accordance with the Act and EGM's policy on publication.

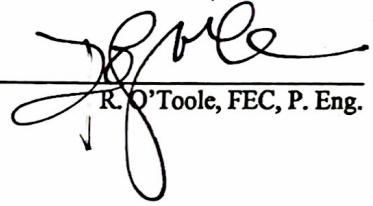
Dated in Winnipeg, Manitoba this 22nd day of August, 2024.



Robert Janz, Chair



C. Hewitt, FGC, P. Eng.



R. O'Toole, FEC, P. Eng.