

**THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF
THE PROVINCE OF MANITOBA**

(Now Known As Engineers Geoscientists Manitoba)

**IN THE MATTER OF: Victor Jakob Thielmann P. Eng., of the City of
Winnipeg in Manitoba, a Professional Engineer
registered in the Province of Manitoba.**

**AND IN THE MATTER OF: THE ENGINEERING AND GEOSCIENTIFIC
PROFESSIONS ACT (the “Act”)**

**AND IN THE MATTER OF: CHARGES 2013-01-1 AND 2013-01-2 DATED
FEBRUARY 29, 2016**

NOTICE OF DECISION AND REASONS

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Discipline Panel Members: Ray Hoemsen – M.Sc., P. Eng. – Chair
Kerra Muss – M.Sc., P. Eng.
Robert Janz, Public Representative

Counsel to the Complaints
Investigation Committee Stuart Blake
Anthony Foderaro
Fillmore Riley LLP

Counsel for the Member: Bob Sokalski
Kevin Toyne
Melanie Wire
Hill Sokalski Walsh LLP

Counsel to the Panel: William Haight
Phillips Aiello

INTRODUCTION AND DECISION

1. Pursuant to charges signed by the Chair, Investigation Committee on February 29, 2016, the member is alleged to have engaged in the following unskilled practice while registered as a professional engineer in the Province of Manitoba:
 - sealing drawings in May 2012 for a project at 1210 Chamberlain Avenue, Winnipeg, MB, (1210 Chamberlain) which fell below the expected standard for their intended use of supporting building permit applications; and
 - sealing drawings in September 2012 for a project at 155 Carlton Street, Winnipeg, MB, (155 Carlton) that fell below the expected standard for their intended use of supporting building permit applications.

(collectively “the Charges”)

A copy of the Charges is attached as Appendix A to these reasons.

2. The hearing for these charges originally convened on June 24, 2016, at which time:
 - a) The Charges were tendered as Exhibit 1.
 - b) The parties agreed that the Investigation Committee had satisfied the necessary requirements under the Act and By-laws for the hearing to commence and that the panel had jurisdiction to grant an adjournment.

- c) The member requested an adjournment and counsel for the Investigation Committee did not oppose this request. The reason for the adjournment was the member intended to bring a court application to prohibit the hearing of the Charges from proceeding. The member asserted a lack of jurisdiction for the panel to proceed and an apprehension of bias.
3. The member's application to the Court of Queen's Bench was dismissed on November 16, 2018. The member appealed that decision to the Court of Appeal, which appeal was dismissed on January 21, 2020. In both the Court of Queen's Bench and the Court of Appeal, the member's application was deemed to be premature. The Court of Appeal confirmed that the member is permitted to raise both the bias and jurisdiction issues during his discipline hearing.
4. On November 23, 2020, the hearing of the Charges reconvened. At that time, the member asked the panel to determine the issues of whether the panel had jurisdiction to hear the Charges and whether a reasonable apprehension of bias existed.
5. By a Notice of Decision and Reasons dated January 14, 2021, the panel dismissed the member's application and determined that a hearing of the Charges should proceed.
6. At the hearing of the member's motion on November 23, 2020, a Statement of Agreed Facts was tendered as Exhibit 3 and an Agreed Book of Documents was tendered as Exhibit 4. Attached to these reasons as Appendix B is a copy of the Agreed Statement of Facts.

7. The panel heard from 11 witnesses including the member over the course of seven days (July 5, 6, 7, August 23, 24, 25 and 27, 2021). Two expert witnesses were called by the Investigation Committee and two were called by the member.
8. Voir dires were held. The member contested the admissibility of evidence to be provided by the expert witnesses called on behalf of the Investigation Committee. The Investigation Committee objected to certain portions of a report prepared by one of the experts called by the member and submitted that the expert should not be permitted to provide opinion evidence on the impugned portions. The panel issued oral reasons for all objections. It permitted expert opinion evidence to be called by the Investigation Committee and redacted certain portions of one of the reports provided by the member. The panel further determined that this expert be restricted from testifying to the redacted portions of his report.
9. Final submissions were made by the parties on September 21, 2021, and the panel reserved its decision.
10. For the reasons that follow, the panel finds the Investigation Committee has proven the charges on a balance of probabilities. The panel therefore finds that:
 - a) The member, Victor Jakob Thielmann, P. Eng., displayed unskilled practice when he sealed electrical drawings in May 2012 which fell below the expected standard for their intended use of supporting an electrical permit application for a project at 1210 Chamberlain; and

- b) The member, Victor Jakob Thielmann, P. Eng., displayed unskilled practice when he sealed electrical drawings in September 2012 which fell below the expected standard for their intended use of supporting an electrical permit application for a project at 155 Carlton.
11. The panel notes that the Charges refer to the impugned drawings being provided to support “building permit” applications. Counsel for the member acknowledged that the member was aware the drawings related to electrical permit applications and that no objection was being made to the use of the words “building permit application” in the Charges.

SUMMARY OF EVIDENCE

12. The panel does not intend to summarize all of the evidence provided. It does intend to summarize the key evidence which lead to its decision. In reaching this decision, the panel has considered the evidence in its entirety.
13. The Investigation Committee called three witnesses: Dr. John Woods, P. Eng., Howard Procyshyn, P. Eng. and Shirley Jenken, CET.
14. Both Dr. Woods and Mr. Procyshyn were qualified as experts in electrical engineering and permitted to give opinion evidence regarding the drawings sealed by the member which resulted in the Charges (collectively the “Drawings”). Shirley Jenken is a certified Electrical Engineering Technologist employed by the City of Winnipeg. In 2012, Ms. Jenken was employed as a plan examiner and was a representative of the City of Winnipeg’s Planning and Property Development Department (the “Planning Department”) involved with the review of the Drawings.

15. The member testified and also called five witnesses. Dan Zilinski, P. Eng., an employee of the member's company testified to his involvement with obtaining the permits for the subject properties. Chris Neudorf is the owner of Westpro Electric which carried out the work for the project at 155 Carlton. Geoff Zywina, an employee of the owner of the property at 1210 Chamberlain, provided evidence regarding his involvement with the electrical drawings for this project. The member also called two experts, Hans Boge, P. Eng. and Arkady Tsisserev, P. Eng.
16. The Statement of Agreed Facts (Exhibit 3) indicates that the Drawings pertain to fire alarm system upgrades at 1210 Chamberlain and 155 Carlton.
17. The Drawings were prepared for design build projects. They were issued for construction and the member's seal was affixed to each.
18. The Drawings were presented by the contractors for each project to the Planning Department. They were initially examined by Shirley Jenken (155 Carlton) and Rufino Santos (1210 Chamberlain).
19. For 155 Carlton, Ms. Jenken reviewed a set comprised of 10 specific drawings numbered E-1 to E-10. These drawings were marked as Exhibit 9. She testified to a number of deficiencies with the drawings. An example of the deficiencies she noted was that the Drawings did not have any details of the actual tenant spaces despite the fact that the project related to an upgrade of the building's fire alarm system. The fully developed tenant spaces were not uniform and 155 Carlton was not a sprinklered building. As a result, Ms. Jenken requested, among other things, actual layouts of the tenant spaces.

20. Ms. Jenken indicated that she could not issue a permit based upon the drawings and that further information was required.
21. Exhibit 19 provides details of communications between Ms. Jenken, the member and others, including Mr. Zilinski, regarding the information required for the 155 Carlton drawings. The permit for 155 Carlton would not be issued without this information. Ms. Jenken's opinion regarding the 155 Carlton drawings and her request for further information were reviewed by Brad Loewen, P. Eng. and Edward Sapnu, P. Eng. Mr. Sapnu is a professional electrical engineer. The reviews by Messrs. Loewen and Sapnu occurred as a result of the member's objections to Ms. Jenken's requests. They agreed with Ms. Jenken's position and her request for further information.
22. The information requested by Ms. Jenken was provided. It included 15 revised drawings. After provision of this material, the permit was issued for 155 Carlton.
23. Ms. Jenken testified that from her perspective, it does not matter whether the Drawings were prepared for design build or design tender build. In her view, the Drawings were lacking in significant detail and the application was therefore put on hold pending receipt and review of the required information.
24. Mr. Sapnu was not called to testify on behalf of the Investigation Committee or the member.
25. Two drawings were submitted for 1210 Chamberlain, bearing numbers E-100 and E-101. These drawings were marked as Exhibit 7. They were submitted to the Planning Department and reviewed by plan examiner, Rufino Santos. Mr. Santos

identified eight pieces of missing information from these drawings. The additional information required by Mr. Santos is set out in an email dated April 3, 2013, which is part of Exhibit 20. Examples of the information requested by Mr. Santos include:

- Provide an electrical site plan to indicate the tie-in point of the incoming electrical service and complete details regarding the wiring methods;
- Provide electrical specifications to indicate the size of the CSTE (Customer Service Termination Enclosures) to confirm it is adequately sized to accommodate the proposed loads; and
- Indicate location of FACP (Fire Alarm Control Panel).

26. Ms. Jenken indicated that a permit could not be issued based upon these drawings and that further information was required.
27. Exhibit 20 indicates the further information requested by Mr. Santos to supplement the drawings submitted for 1210 Chamberlain. Eight specific items of additional information were identified. These requests were supported by Mr. Sapnu.
28. Additional information was provided, including revised drawings. After provision of this additional information, the permit was issued for 1210 Chamberlain.
29. For both projects, Ms. Jenken testified the permit was not issued based on the original set of drawings submitted by the member. She testified the permit was only issued based upon the original drawings and the other information provided including the revised drawings submitted at the request of the Planning Department.

30. The member confirmed he sealed the Drawings for both projects and that they were issued for construction. He acknowledged that drawings issued for construction should be substantially complete and he was aware that his seal was required in order for a permit to be issued by the Planning Department. He also acknowledged that his drawings could be relied upon by people other than the contractor, namely sub-trades and the fire department.
31. The member indicated that his role was to review and seal the Drawings for the applicant, being the contractors. He was to ensure there were no glaring errors which would negatively impact the project. Multiple witnesses spoke to a request for further information by the Planning Department in response to a review of drawings. They indicated that a request for more information is a normal occurrence. These witnesses confirmed that “give and take” between the applicant, the engineer and the planning examiner is expected.
32. Mr. Neudorf testified that his company was working as a sub-contractor on the 155 Carlton project and brought the project drawings to the member for his review and seal. Mr. Neudorf testified he was familiar with the fire alarm system at 155 Carlton as a result of conducting repairs and replacements subsequent to annual testing.
33. Mr. Neudorf was involved in the exchange of further information requested by the Planning Department. He testified that the additional information requested and provided resulted in the permit being issued.

34. Mr. Neudorf also testified that he had no issue with the original 155 Carlton drawings sealed by the member but advised there were blanks which required information to be provided.
35. As indicated previously, the panel heard from four experts.
36. Dr. John Woods was called to testify on behalf of the Investigation Committee. He reviewed the Drawings for both 1210 Chamberlain and 155 Carlton. On those Drawings, he made notes of information he believed was missing. Some of these deficiencies were referenced by Ms. Jenken and Mr. Santos. His marked-up copies for both 155 Carlton and 1210 Chamberlain were marked as Exhibits 8 and 10 respectively.
37. Generally, Dr. Woods testified that affixing an engineering seal to drawings is a statement to assure the public that an engineer has reviewed and approved the drawings. Dr. Woods testified and the panel accepts that the engineer takes responsibility for everything that is on or not on sealed drawings.
38. In regard to 155 Carlton, Dr. Woods testified that:
 - a) He noted 35 deficient issues with the sealed Drawings;
 - b) He questioned how the fire alarm system could be designed and built given the deficiencies in the Drawings; and
 - c) Drawings issued under seal for construction indicate they are considered to be complete and ready for the contractor to commence work;

39. In regard to the drawings for 1210 Chamberlain, Dr. Woods testified that he noted 22 deficiencies.
40. Dr. Woods' opinion was that the Drawings should not have been sealed as too much information was missing for construction drawings and they were not complete for their intended purpose;
41. Dr. Woods indicated there is no reason that a plan examiner should have to look for the information that was missing from the Drawings;
42. Howard Procyshyn also provided expert evidence on behalf of the Investigation Committee. He testified the Drawings contained multiple deficiencies, a number of which mirrored the comments from Dr. Woods. He indicated the drawings for 1210 Chamberlain were 33% complete while the drawings for 155 Carlton were 50% complete. Again, some of the deficiencies noted by Mr. Procyshyn were referenced by Ms. Jenken and Mr. Santos.
43. He believed the Drawings should not have been sealed and therefore did not meet industry standards. He believed that sealing the Drawings was passing on the engineer's responsibility to the contractor.
44. Both Dr. Woods and Mr. Procyshyn testified that their opinions were not dependent upon whether the projects were design build or design tender build.
45. The member called two expert witnesses, Hans Boge and Arkady Tsisserev.

46. Mr. Boge is not an electrical engineer; he is a civil engineer with extensive experience in structural engineering issues. Mr. Boge candidly acknowledged that an electrical engineer would be in a better position than he on the issue of whether the Drawings met the required standard.
47. The panel determined that portions of Mr. Boge's report should be redacted as it appeared that Mr. Boge had provided opinion evidence beyond his area of expertise. The redacted version of Mr. Boge's report of August 19, 2021 was tendered as Exhibit 53.
48. Mr. Boge testified to the differences seen in drawings for design build projects versus design tender projects. He testified that the Planning Department's request for further information on sealed drawings was "standard operating procedure". Mr. Boge interpreted APEGM's Practice Guideline For Providing Mechanical And Electrical Engineering Services in Buildings (Exhibit 11) as advisory and not mandatory.
49. Mr. Boge testified that to determine whether sealed drawings contain sufficient information for a project one must consider the following six factors:
 - i. The plans resulted in a building permit being issued;
 - ii. The builder understood and provided what was required;
 - iii. The work was inspected and found to be satisfactory;
 - iv. There were few, if any, questions arising as to what was required during construction;

- v. There were no significant financial disagreements that arose; and
 - vi. The completed work exhibits satisfactory conformance to applicable codes and standards.
50. The panel notes that most of these factors appear to be present in the subject projects.
51. Mr. Boge did not comment directly on the opinions of Dr. Woods and Mr. Procyshyn.
52. Mr. Tsisserev has considerable experience as an electrical engineer as well as prior experience as a plan examiner with the City of Winnipeg. He was the Engineer/Electrical Section Head for the city's inspection division between 1984 and 1993.
53. Mr. Tsisserev also testified to the communication process which occurs when drawings are submitted with insufficient information. He referred to it as a process which occurs frequently.
54. He provided an opinion as to the wording of the charge, however, on cross-examination he acknowledged that this evidence was beyond his area of expertise.
55. The main point made by Mr. Tsisserev in both his evidence and report (Exhibit 54) was the Drawings met the standard, as evidenced by the fact that electrical permits were issued for both of these projects. Mr. Tsisserev said the only person who can withdraw a permit is the plan examiner and this did not occur. The final result, namely the issuance of a permit, indicates the member has met the standard.

56. Mr. Tsisserev acknowledged that, prior to preparing his report, he had not seen the exchange between the Planning Department, the member and others regarding the concerns with the Drawings (Exhibits 19 and 20). However, he indicated that upon seeing this exchange, his opinion did not change. He said it is normal for the Planning Department to ask for more information and that Exhibits 19 and 20 indicate this form of communication. The fact that Ms. Jenken was eventually satisfied, indicated to Mr. Tsisserev that the Drawings met the standard. Like Mr. Boge, Mr. Tsisserev indicated that the guideline is advisory and not mandatory. He indicated that a knowledgeable contractor is required to use an engineer as a “necessary evil” in order to obtain a permit.
57. Mr. Tsisserev reviewed the opinions of Dr. Woods and Mr. Procyshyn and was present when they gave evidence. He testified that neither their reports nor their evidence changed his position. His emphasis was on the result, more so than the Drawings. Mr. Tsisserev did not indicate whether he agreed or disagreed with the specific deficiencies noted by Dr. Woods and Mr. Procyshyn. The fact that the permit was not issued on the strength of the Drawings did not change his opinion.
58. For the purposes of preparing his report, Mr. Tsisserev asked the member nine questions for each project. Details of these questions and the member’s responses were provided in his report.
59. On cross-examination, Mr. Tsisserev acknowledged that the answers provided by the member created assumptions upon which he based his opinion. He further acknowledged that some of the member’s answers were incorrect or incomplete and that had he known of the full answer, the assumptions upon which his opinion

was based may have changed. Mr. Tsisserev further testified under cross-examination that he was not aware that 15 additional drawings had been submitted for 155 Carlton. He acknowledged that this would have been important for him to have known. He was also unaware that two revised drawings were submitted for 1210 Chamberlain. He agreed that if he knew about these additional drawings, that may have impacted upon his opinion.

60. Mr. Tsisserev acknowledged that, from a plan examiner's perspective, it does not matter whether drawings are prepared for design build or design tender build.
61. Mr. Tsisserev testified he knew Shirley Jenken and that she was well qualified and competent. He indicated her requests made on 155 Carlton were reasonable.
62. He acknowledged respect for the expertise of Dr. Woods and Mr. Procyshyn.
63. The panel thanks all witnesses for their attendance and information. The panel is grateful for the assistance provided by the engineering experts.

REASONS FOR DECISION

64. As indicated previously, the panel has decided that the member, Victor Jakob Thielmann, P. Eng., while registered as a professional engineer in the Province of Manitoba, displayed unskilled practice when he sealed the Drawings. The panel finds that the Drawings fell below the expected standard for their intended use of supporting electrical permit applications and should not have been sealed.

65. The panel has reached this decision for the following reasons:

- a) Affixing an engineering seal to drawings is a statement by the engineer to assure the public that:
 - i. an engineer has reviewed and approved of the drawings;
 - ii. that the engineer will take responsibility for everything within those drawings; and
 - iii. the drawings are complete for their intended purpose.

A seal is a statement to the public that an engineer has provided the detailed consideration required to assure conformance with recognized standards for safety and quality.

- b) The applicable standard for the Charges is whether the member's engineering seal should have been applied to the Drawings. If a seal ought not to be affixed to a drawing, an engineer who affixes their seal has not met the standard applicable to the seal.
- c) The panel accepts the evidence of Dr. Woods, Mr. Procyshyn and Ms. Jenken that the Drawings lacked detail and were incomplete. The panel agrees with the opinions of Dr. Woods and Mr. Procyshyn that the Drawings should not have been sealed.
- d) The lack of detail within the Drawings resulted in the member passing responsibility for design to the contractor. This is inconsistent with the purpose of an engineering seal. The sealing of a drawing by a professional

engineer should not be dependant upon which contractor is involved with the project. The fact Mr. Neudorf had no concerns with the Drawings is of no consequence. Mr. Neudorf is not a professional engineer and his emphasis was to obtain permission from the Planning Department to proceed with the 155 Carlton project. The panel is mindful of Mr. Tsisserev's evidence that contractors often view the requirement to deal with an engineer as a "necessary evil".

- e) Both projects involved electrical engineering for fire alarm system upgrades. Public safety is therefore an important concern. The member acknowledged that the Drawings would not only be relied upon by the contractor but also by the fire department. In addition, the member acknowledged that sub-contractors would rely upon the Drawings. The panel accepts the evidence of Shirley Jenken that the deficiencies in the Drawings were beyond the typical deficiencies which the Planning Department would normally see in the electrical permit application process.
- f) The panel believes the opinion evidence of Dr. Woods and Mr. Procyshyn address the Charges more directly than the opinion evidence called by the member. The Charges in substance, refer to the act of sealing drawings which were insufficient to support a permit application. The opinions of Dr. Woods and Mr. Procyshyn directly address this issue.

- g) The emphasis for the opinions of Messrs. Boge and Tsisserev is the final result, namely an issued permit. The panel believes this emphasis overlooks the act of sealing deficient drawings and gives insufficient weight to the further information required for the permits to be issued.
- h) The panel notes the experts retained by the member did not comment on the specific concerns about the Drawings raised by Dr. Woods, Mr. Procyshyn and Ms. Jenken. The fact that permits eventually issued does not, in the circumstances of this case, indicate that the Drawings met the standard for a seal to be applied.
- i) The panel places no emphasis on the fact that the Drawings were for a design build purpose. Regardless of their purpose, the panel accepts that they were incomplete, and ought not to have been sealed.
- j) In his final submission, the member's counsel emphasised the wording in the Charges which referred to the use to be made of the Drawings. It was argued that the panel needs to consider the wording that the Drawings had an "intended use of supporting ... applications". The assertion was made that the Drawings, along with the additional information, did "support" the permit application. Definitions of the word "support" were provided and applied to the facts of this case. The emphasis for this argument was the fact that permits were issued and that the Drawings were a part of this successful process.

- k) The panel feels this argument overlooks the deficiencies in the Drawings and the uncontradicted evidence that they ought not to have been sealed. The member's position does not address the operative part of the Charges which refer to the sealing of the Drawings.

Dated at the City of Winnipeg this 8th day of February, 2022.

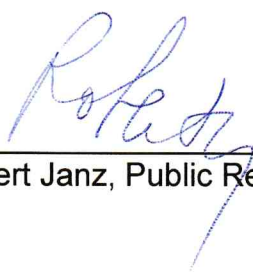
For ease of circulation, these Reasons may be signed in counterpart.

Ray Hoemsen, P.
Eng.

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Ray Hoemsen – M.Sc., P. Eng. – Chair

Kerra Mruss – M.Sc., P. Eng.



Robert Janz, Public Representative

- k) The panel feels this argument overlooks the deficiencies in the Drawings and the uncontradicted evidence that they ought not to have been sealed. The member's position does not address the operative part of the Charges which refer to the sealing of the Drawings.

Dated at the City of Winnipeg this 9th day of February, 2022.

For ease of circulation, these Reasons may be signed in counterpart.

Ray Hoemsen – M.Sc., P. Eng. – Chair

Mruss, Kerra (MrussK)

Digitally signed by Mruss, Kerra (MrussK)
DN: E=Kerra.Mruss@wsp.com, CN="Mruss, Kerra
(MrussK)", OU=Active, OU=Users, OU=CA,
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Robert Janz, Public Representative