

ENGINEERS GEOSCIENTISTS MANITOBA

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

AND IN THE MATTER OF: Robert A. McDonald, P. Eng., a Professional Engineer in the Province of
Manitoba

REASONS FOR DECISION

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Panel of the Discipline Committee:

A. Ball, P. Eng., FEC (Chair)
D. Spangelo, P. Eng., FEC
R. Janz (Lay Member)

IN THE MATTER OF: Robert A. McDonald, 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
Robert E. Prokopanko

Legal Counsel for the Member:

Levi A. Taylor

Legal Counsel for This Panel of the Discipline Committee:

Stuart J. Blake, K.C.

Hearing Dates:

February 14, 2023 and February 5, 2024

REASONS FOR DECISION

The Charge:

The Charge dated November 29, 2022 ("Charge"), alleges that Mr. McDonald displayed conduct which constitutes professional misconduct or unskilled practice, in that: The course of providing engineering services as engineer of record for structural renovations to the Crown Auto Body building at 1717 Waverley Street in the City of Winnipeg, Province of Manitoba, Mr. McDonald displayed conduct that was detrimental to the public interest in violation of s. 46(1)(a) The Engineering and Geoscientific Professions Act (the "Act") and/or conduct that displayed a lack of knowledge of or lack of skill or judgment in the practice of professional engineering in violation of s. 46(1)(e) of the Act.

The Particulars of which are:

On or about July 3, 2020, August 27, 2020, September 1, 2020, and September 4, 2020 (collectively, the "Drawings"), Mr. McDonald, in association with RAM Engineering Inc., sealed and submitted structural Drawings for an addition to the Crown Auto Body Building at 1717 Waverley St. in the City of Winnipeg, Province of Manitoba. In doing so, Mr. McDonald:

- 1) failed to adequately supervise junior staff during the preparation of the Drawings;
- 2) sealed the Drawings for construction that were not complete or appropriate for construction use, and failed to properly review the Drawings prior to sealing same to ensure they were complete and appropriate;
- 3) issued the Drawings for construction use when the Drawings were deficient, contained numerous design errors, contravened provisions of the Manitoba Building Code (the "Code") and/or generally fell below the standard expected of a competent professional engineer, including:
 - a. with respect to the July 3, 2020, Drawings:
 - i. piling specifications and design criteria were not included in the design notes, contrary to the requirements of the Code;
 - ii. the existing beam grid line 2a between grids E and F on the roofing plan contained a mid-span splice between two existing beams which, if not corrected, could have led to the collapse of the structure;
 - iii. beam B3, grid line E between 4 and 5 on the roofing plan was incorrectly designed in terms of tributary load area and lacked details in terms of connections, elevation and lateral bracing of the beam's top flange, which, if not corrected, could have led to the collapse of the structure;
 - iv. as regards the foundation plan and roof framing plans:

- (1) general details were missing throughout;
- (2) the spacing of two new piles did not comply with the geotechnical requirements for minimum spacing;
- (3) the roof framing plan lacked connection details, shoring details and verification of structural checks regarding new snow and mechanical loading;
- (4) new beam R5 was shown in the wrong direction;
 - (i) framing elevation details were missing for column baseplates, crossbracing connections and girt connections; and
 - (ii) improper - or lack of - other typical details in the Drawings.

b) with respect to the August 27, 2020 Drawings:

- i. piling specifications and design criteria were not included;
- ii. as regards the roof framing plan:
 - (1) required bracing for beam B5 had been deleted;
 - (2) details showing connections to existing beams, in order to remove existing beams and replace them with new beams, were not provided;
 - (3) a new beam B3 was added on grid line E, between 4a and 5, and the Drawings relied upon shop Drawings from the steel fabricator to complete the design;
 - (4) details were missing regarding beam B3 including the elevation of the beam, connection details, stiffeners and lateral bracing of the top flange, which, if not corrected, could have led to the collapse of the structure;
- iii) elevation 6/S1.0 was missing details of connection or design forces for the cross-bracing, girts, and column connections; and
- iv) Improper - or lack of - other typical details in the Drawings.

c) with respect to the September 1, 2020, Drawings:

- i. pile design criteria were not specified;
- ii. the mechanical unit at E and 2a was shown in a new location without the design first being re-checked for associated loads at the new location;

- iii. overhead framing details were revised to include 4 new girts, but were not explained or detailed; and
 - iv. beam B3 was structurally deficient.
- d. with respect to the September 4, 2020, Drawings:
- i. the mechanical unit at E and 2a was once again shown in a new location without the design first being re-checked for associated loads at the new location.
- 4) relied on the steel fabricator for the construction project to correct or complete design deficiencies in the Drawings by way of shop Drawings prepared for fabrication purposes.

The Charge was referred to the Discipline Committee on or about December 2, 2022.

Admissions by Mr. McDonald:

At the initial commencement hearing on February 14, 2023, counsel for the Investigation Committee ("IC") satisfied the Discipline Panel (the "Panel") has jurisdiction to hear this matter, and that all procedural steps required by the Act and the EngGeoMB By-Laws regarding the commencement of hearings and notice thereof were fulfilled.

At the commencement hearing, through counsel Mr. McDonald pled not guilty to the Charge and the matter was adjourned.

The hearing of this matter was continued on February 5, 2024. At that time, an agreed statement of facts ("**Agreed Statement**") in support of a joint submission on penalty, executed by counsel for the IC and counsel for Mr. McDonald, dated February 5, 2024, was entered as an exhibit. In summary, the Agreed Statement provides that:

1. At all material times hereto, Robert A. McDonald, P. Eng., was a registered member of the Association of Professional Engineers and Geoscientist of Manitoba (the "**Association**"). He became a member of the Association on or about October 30, 2013.
2. At all material times hereto, Mr. McDonald was the principal of RAM Engineering Inc. ("**RAM Engineering**"). RAM Engineering offers, amongst other things, structural and civil engineering services.
3. In 2020, RAM Engineering was retained to provide structural engineering services for renovations (the "**Project**") being undertaken by an autobody shop, Crown Autobody & Glass, located at 800-1717 Waverley Street in Winnipeg, Manitoba.
4. Mr. McDonald was the engineer of record for the Project and provided engineering services including the design and preparation of structural Drawings.
5. On or about July 3, 2020, Mr. McDonald sealed a set of structural Drawings (the "**July 3, 2020, Drawings**") for the Project and submitted them to the City of Winnipeg for the purpose of obtaining a construction permit.

6. On or about August 21, 2020, Munawar Khan, a plan examiner for the City of Winnipeg, contacted Mr. McDonald via email and indicated that the review of the July 3, 2020, Drawings was on hold. Mr. Khan requested additional information from Mr. McDonald to proceed with the plan review.
7. On or about August 27, 2020, Mr. McDonald sealed a revised set of structural Drawings (the “**August 27, 2020, Drawings**”) for the Project and submitted them to the City of Winnipeg.
8. On or about August 31, 2020, Mr. Khan again emailed Mr. McDonald and requested additional information pertaining to the August 27, 2020, Drawings in order to continue with the plan examination.
9. On or about September 1, 2020, Mr. McDonald sealed a further revised set of structural Drawings (the “**September 1, 2020, Drawings**”) for the Project and submitted them to the City of Winnipeg.
10. On or about September 2, 2020, Mr. Khan again emailed Mr. McDonald and requested additional information from Mr. McDonald pertaining to the design of a pile.
11. On or about September 4, 2020, Mr. McDonald sealed a further revised set of structural Drawings (the “**September 4, 2020, Drawings**”) and together with the July 3, 2020 Drawings, the August 27, 2020, Drawings and the September 1, 2020, Drawings (the “**Drawings**”) for the renovations and submitted them to the City of Winnipeg.
12. On or about September 11, 2020, the City of Winnipeg lodged a complaint with the Association against Mr. McDonald (the “**Complaint**”). The Complaint alleged that Mr. McDonald sealed the Drawings which contained insufficient information to complete a review. The Complaint also alleged that the pile under an interior column was not designed for appropriate factored loads. The Association’s Investigation Committee opened an investigation into the Complaint and appointed a subcommittee (the “**Subcommittee**”) for that purpose.
13. On or about September 30, 2020, the Association provided a copy of the Complaint to Mr. McDonald. and asked for Mr. McDonald’s response.
14. On or about October 15, 2020, Mr. McDonald submitted a response to the Complaint to the Association (the “**McDonald Response**”).
15. After receiving the McDonald Response, the Investigation Committee engaged a third-party professional engineer, David Woodall of Woodall Structural Engineering Ltd., to conduct a review of the Drawings.
16. On or about June 22, 2021, Mr. Woodall issued a report (the “**Woodall Report**”) to the Investigation Committee regarding his review of the Drawings.
17. After reviewing the Woodall Report, the Subcommittee posed some additional questions to Mr. Woodall to clarify certain points within the Woodall Report. On or about August 30, 2021, Mr. Woodall issued an addendum to the Woodall Report (the “**Woodall Addendum**”) to the Subcommittee.

18. Copies of the Woodall Report and the Woodall Addendum were provided to Mr. McDonald for his review and comment. On or about September 28, 2021, Mr. McDonald issued a letter to the Investigation Committee in response to the Woodall Report and Woodall Addendum (the “**McDonald Letter**”).
19. The Investigation Committee then provided the McDonald Letter to Mr. Woodall for his review and comment. On or about November 10, 2021, Mr. Woodall issued a report in response to the McDonald Letter (the “**Woodall Response**”).
20. Following receipt of the Woodall Response, the Subcommittee considered all the information obtained during its investigation, and on April 5, 2022, issued a memorandum for consideration by the Investigation Committee, setting out its findings based on the investigation (the “**Findings Memorandum**”).
21. Following its receipt of the Findings Memorandum, the Investigation Committee and Mr. McDonald engaged in discussions respecting the registration of a conviction on consent pursuant to s. 25(1)(f) of *The Engineering and Geoscientific Professions Act, C.C.S.M., c. E120* (the “**Act**”).
22. The parties were ultimately unable to agree to the registration of a conviction on consent, and the Investigation Committee issued a charge. On or about November 29, 2022, the charge (the “**Charge**”) was signed by the chair of the Investigation Committee. On or about December 2, 2022, the Charge was referred to the Association’s Discipline Committee, and a panel was struck to adjudicate the matter (the “**Panel**”).
23. On or about February 14, 2023, the hearing was commenced.
24. On or about January 31, 2024, Mr. McDonald’s legal counsel served counsel for the Investigation Committee with an expert report from Talin Gregory of Lavergne Draward & Associates (the “**LDA Report**”).
25. Mr. McDonald now pleads guilty and admits that he committed professional misconduct and unskilled practice of engineering contrary to ss. 46(1)(a) and 46(1)(e) of the Act, as a consequence of committing the following acts as particularized in the Charge (as modified below):

That in connection with the preparation and issuance of Drawings, Mr. McDonald:

- a) Sealed the Drawings for construction when they were not complete, fully checked or appropriate for construction use (Charge Particular 2);
- b) Issued Drawings which contained design errors, including:
 - i. Piling specifications and design criteria were not included in the design notes on some of the Drawings (Charge Particulars 3(a)(i), 3(b)(i) and 3(c)(i));
 - ii. In the July 3 Drawings, the beam that was to replace the existing beam at grid line 2a between grids E and F on the roofing plan, as shown on that drawing, did not contain the necessary beam labels (Charge Particulars 3(a)(ii));

- iii. In the July 3 Drawings, beam B3 at grid line E between 4 and 5 on the roofing plan, as shown on that drawing, lacked details in terms of lateral bracing of the beam's top flange which, if not addressed, posed a risk of failure (Charge Particulars 3(a)(iii); and
- c) Relied on the steel fabricator to complete the design by way of shop Drawings (Charge Particular 4).

In the Agreed Statement, the IC and Mr. McDonald, through counsel, agreed jointly to a disposition on penalty in relation to the findings of professional misconduct and unskilled practice of engineering. The joint submission on penalty is that:

- 1) Mr. McDonald be and is hereby reprimanded;
- 2) Mr. McDonald undergo a general practice review (the "**Practice Review**") conducted by a reviewer (the "**Reviewer**") appointed by the Investigation Committee, on the following terms:
 - a. the Practice Review shall occur within 60 days from the appointment of the Reviewer;
 - b. the Practice Review shall include at least one visit to Mr. McDonald's workplace and shall involve the following items:
 - i. an evaluation of the process by which work is produced;
 - ii. an examination for adherence to the Act and the Association's Bylaws, Code of Ethics, and applicable practice guidelines and practice notes;
 - iii. an evaluation of competence in Mr. McDonald's discipline or field of practice as determined by the Reviewer;
 - iv. examination of a product of Mr. McDonald's work on no less than two projects for compliance with established technical codes and standards, with access to such work product to be reasonably made available by Mr. McDonald;
 - v. an evaluation of Mr. McDonald's access to resources; and
 - vi. an evaluation of Mr. McDonald's record management.
 - c. Mr. McDonald shall reasonably co-operate in all aspects of the Practice Review; and
 - d. following completion of the Practice Review, the Reviewer shall, within 30 days, issue to the Investigation Committee a written report of the Practice Review for assessment by the Investigation Committee
- 3) Mr. McDonald shall make a contribution to the Association's costs as follows:

- a. a contribution of \$7,500.00 towards the Association's costs for the investigation of this matter, to be paid within 30 days from the date of this order; and
 - b. 50% of the cost of the Practice Review, to be paid within 30 days from the issuance of the Reviewers written report; and
- 4) The disposition of this matter and any information relating to any finding or order made by this Panel shall be published by the Association in accordance with the Act and the Association's policy on publication.

Submissions of Counsel for the Investigation Committee

Counsel for the IC reviewed the Agreed Statement with the Panel, filed a Book of Authorities (Joint Submission) with the Panel and spoke to the joint disposition as to penalty.

Counsel for the IC pointed the Panel to case law and text references, along with several previous recent decisions of a panel of the DC dealing with joint submissions. These were highlighted in the Book of Authorities and included:

1. Casey, James T., *Regulation of Professions in Canada*, (Toronto: Thomson Reuters, 2019) at 13:2
2. Re: Alireza Bahraini, P. Eng. — Association of Professional Engineers and Geoscientists British Columbia Discipline Decision dated May 2, 2022
3. Casey, James T., *Regulation of Professions in Canada*, (Toronto: Thomson Reuters, 2019) at 14:3
4. Re: Phillip M. Dorn, P. Eng. (EngGeoMB Discipline Decision dated May 1, 2012)
5. Re: Daniel Wolfrom, P. Eng. (EngGeoMB Discipline Decision dated January 25, 2023)
6. Re: Julien F. Lavergne, P. Eng. (EngGeoMB Discipline Decision dated February 28, 2022)

In the above References 1 and 3, council for the IC highlighted the factors to be considered in determining an appropriate sanction as set out by James T. Casey, in *Regulation of Professions in Canada*. In his texts, Mr. Casey states that:

- 1) *The fundamental purpose of sentencing for professional misconduct is to ensure that the public is protected from acts of professional misconduct.*
- 2) *A number of factors are taken into account in determining how the public might best be protected, including specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of*

its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases.

Counsel for the IC also pointed out that while this Panel is not bound to accept the joint submission, the authorities make clear that the Panel owes a joint submission a high level of deference, noting a previous DC decision in *Engineers Geoscientists Manitoba v. Wolfrom* (Reference 5, above), in which the DC panel adopted the questions set out in *Anthony-Cook v. Her Majesty the Queen*, 2016 SCC 43 ("*Anthony-Cook*") in assessing when a Panel should depart from a joint submission on penalty:

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?

Counsel therefore submitted that the proposed penalty in Mr. McDonald's case is appropriate and congruent with prior similar cases and should be accepted by the Panel.

Submissions of Counsel for Mr. McDonald:

Counsel for Mr. McDonald stated that IC counsel provided a fair overview of the facts and the law.

Analysis:

As set out above, the question before the Panel is whether the joint submission on penalty brings the administration of justice into disrepute or would otherwise be contrary to the public interest. Stated otherwise, 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?

To consider the above question, the Panel first deliberated on how fitting the proposed penalty was, given Mr. McDonald's very recent disciplinary history, as well as the repetitive nature of drawing errors and the re-authenticating of Drawings still containing errors for submission to the City of Winnipeg Permit Office. The Panel felt that the recent disciplinary action was an unrelated issue, but had major concerns about Mr. McDonald's engineering workflows, design reviews, and quality control processes. However, it was considered that Mr. McDonald has accepted a practice review by his peers and the Panel believes that should the practice review (undertaken under the auspices of the IC) uncover any issues, that the IC will address it in such a way as to protect the public. The Panel further considered Mr. McDonald's admission of guilt to the Charges in arriving at its decision regarding the joint submission.

The Panel finds that the joint submission does not bring the administration of justice into disrepute, nor would it otherwise be contrary to the public interest. Nor, for that matter, would acceptance of the joint submission be 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 of the proper functioning of the professional regulation system.

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

Decision:

The Panel therefore finds that Mr. McDonald did commit professional misconduct or unskilled practice of professional engineering contrary to s. 46(1)(a) and 46(1)(e) of the Act; and as particularized in the Charge (as modified below).

That in connection with the preparation and issuance of the Drawings, Mr. McDonald:

- a. sealed the Drawings for construction when they were not complete, fully checked or appropriate for construction use;
- b. issued Drawings which contained design errors, including:
 - i. piling specifications and design criteria were not included in the design notes on some of the Drawings;
 - ii. in the July 3, 2020 Drawings, the beam that was to replace the existing beam at grid line 2a between grids E and F on the roofing plan, as shown on that drawing, did not contain the necessary beam labels;
 - iii. in the July 3, 2020 Drawings, beam B3 at grid line E between 4 and 5 on the roofing plan, as shown on that drawing, lacked details in terms of lateral bracing of the beam's top flange which, if not addressed, posed a risk of failure; and
- c. relied on the steel fabricator to complete the design by way of shop Drawings.

Now therefore, this panel orders that pursuant to ss. 47 and 48 of the Act:

1. Mr. McDonald be and is hereby reprimanded;
2. Mr. McDonald undergo a general practice review (the "Practice Review") conducted by a reviewer (the "Reviewer") appointed by the Investigation Committee, on the following terms:
 - a. the Practice Review shall occur within 60 days from the appointment of the Reviewer;

- b. the Practice Review shall include at least one visit to Mr. McDonald's workplace and shall involve the following items:
 - i. an evaluation of the process by which work is produced;
 - ii. an examination for adherence to the Act and the Association's Bylaws, Code of Ethics, and applicable practice guidelines and practice notes;
 - iii. an evaluation of competence in Mr. McDonald's discipline or field of practice as determined by the Reviewer;
 - iv. examination of a product of Mr. McDonald's work on no less than two projects for compliance with established technical codes and standards, with access to such work product to be reasonably made available by Mr. McDonald;
 - v. an evaluation of Mr. McDonald's access to resources; and
 - vi. an evaluation of Mr. McDonald's record management.
 - c. Mr. McDonald shall reasonably co-operate in all aspects of the Practice Review; and
 - d. following completion of the Practice Review, the Reviewer shall, within 30 days, issue to the Investigation Committee a written report of the Practice Review for assessment by the Investigation Committee
3. Mr. McDonald shall make a contribution to the Association's costs as follows:
- a. a contribution of \$7,500.00 towards the Association's costs for the investigation of this matter, to be paid within 30 days from the date of this order; and
 - b. 50% of the cost of the Practice Review, to be paid within 30 days from the issuance of the Reviewers written report; and
4. The disposition of this matter and any information relating to any finding or order made by this Panel shall be published by the Association in accordance with the Act and the Association's policy on publication.

Dated in Winnipeg, Manitoba this 23 day of April 2024.

Allan Ball, P.Eng., FEC, Chair

Don Spangelo, P. Eng., FEC

Robert Janz, Lay Member