

APPEAL COMMITTEE DECISION

APPEAL AGAINST A DISCIPLINARY DECISION: COMPLAINT ABOUT PAVOL CSIBA MENGNZ

In accordance with:

Institution of Professional Engineers Rules
Institution of Professional Engineers Disciplinary Regulations

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BACKGROUND

COMPLAINT

1. On 2 February 2017 the Complainant complained to Engineering New Zealand about Pavol Csiba MEngNZ.¹ Mr Csiba was employed as a Senior Engineer from 2014 to February 2017. Mr Csiba is, and was, a Member of Engineering New Zealand at the time he performed the engineering services complained of.²
2. The Complainant complained about a Structural Reinstatement Report (the Report) issued by Mr Csiba on 6 May 2015 in respect of a Property in Christchurch. The complaint also relates to Mr Csiba's actions while acting as an expert witness for the Property owner in a High Court claim.
3. The Complainant was concerned that:
 - a. Mr Csiba's Report said he had visited the Property when he had not, and
 - b. Mr Csiba signed the Report and later said he had not read the Report.

DISCIPLINARY COMMITTEE

4. The Disciplinary Committee issued their decision on 31 August 2018. The Committee upheld the first aspect of the complaint and dismissed the second aspect of the complaint.
5. In respect of the first aspect of the complaint, the Disciplinary Committee found that Mr Csiba breached clause 3 of the IPENZ Code of Ethics and that this breach required a disciplinary response.
6. On 28 November 2018, the Disciplinary Committee ordered Mr Csiba:
 - a. pay a fine of \$1,000;
 - b. pay \$6,000 towards the costs incurred by Engineering New Zealand in inquiring into Mr Csiba's conduct (approximately 40% of Engineering New Zealand's total costs);
 - c. undertake further professional development in being an expert witness by 1 July 2019.³ If Mr Csiba did not do this, then his membership would be suspended for six months.
7. In addition, the Disciplinary Committee ordered their final decision to be published on Engineering New Zealand's website, and lifted Mr Csiba's interim name suppression.

APPEAL

8. On 21 December 2018 counsel for Mr Csiba, appealed the decision of the Disciplinary Committee on the grounds that:
 - a. it was incorrect in its finding that Mr Csiba's conduct was in breach of the IPENZ Code of Ethics; and
 - b. the penalty imposed is unjust and outweighs the seriousness of the breach.
9. The members of the Appeal Committee are:

¹ Then the Institution of Professional Engineers New Zealand Incorporated (IPENZ).

² On 1 October 2017 the Institution of Professional Engineers New Zealand Incorporated changed its trading name to Engineering New Zealand. As the Rules that applied at the time of these events were the IPENZ Rules, this document refers to the IPENZ Rules and Disciplinary Regulations rather than the Engineering New Zealand Rules and Disciplinary Regulations.

³ IPENZ Rules, r 11.5(d)

- Dean Kimpton, current President of the Engineering New Zealand Governing Board;⁴
- Craig Price, immediate past President of the Engineering New Zealand Governing Board;⁵
- Theodora Baker, Barrister and Solicitor of the High Court of New Zealand.

10. We have set out the Disciplinary Committee’s findings and decision in paragraphs 11 to 63 below. Our decision on Mr Csiba’s appeal begins at paragraph 64.

DISCIPLINARY COMMITTEE DECISION

ENGAGEMENT

11. The Property was reportedly damaged in the Christchurch Earthquakes.
12. As a result of the Christchurch Earthquakes, the Property owners raised a claim with their insurer. The Property owner’s lawyers engaged Mr Csiba to conduct a visual inspection and to issue a report detailing the structural damage caused by the earthquakes (“the Report”).
13. The Report was issued on 7 May 2015, and it detailed damage sustained to the Property as well as recommended a repair strategy.

SITE VISIT

14. In May 2016, the Property owners initiated High Court proceedings in respect of their insurance claim for damage the Property sustained in the Christchurch Earthquakes.
15. On 11 October 2016, at the direction of the Court, an onsite meeting was held between the insurer’s expert witnesses, and the Property owners’ expert witness, Mr Csiba. At the onsite meeting, Mr Csiba reportedly said that he had not had a chance to read the Report and had never been to site before.
16. On 14 March 2017, Mr Csiba confirmed with Engineering New Zealand that he had not visited the site prior to the onsite meeting of 11 October 2016.

SIGNING THE REPORT

17. On 7 May 2015, Mr Csiba signed and issued the Report. The Report stated:

[a law firm has] engaged me: Pavol Csiba, to: (a) complete a visual inspection (dated 13.01.2015) and prepare an Engineer’s Report to determine the damage.

18. Below Mr Csiba’s signature on the Report was the declaration that he agreed to “comply with the Code of Conduct for Expert Witnesses, Schedule 4 of the High Court Rule[s]”.
19. In his initial response to the complaint of 14 March 2017, Mr Csiba stated that his name was put on the Report when it should have been the company he worked for. He said that he did not see the mistake and acknowledged that he should have been more careful. He also noted that in his new company, he has implemented a peer review process to prevent such issues from arising.
20. On 9 November 2017, Mr Csiba confirmed that he signed the Report on behalf of his employer. He also attached submissions to the High Court made by counsel for the Property owners. These submissions stated:

⁴ At the time of appointment. Now the immediate past president.

⁵ At the time of appointment.

Mr Csiba has signed off the original report on behalf of [his employer] as opposed to as the direct writer of that report.

21. However, on 7 May 2017, Mr Csiba advised Engineering New Zealand that he had written the Report and signed it. Mr Csiba stressed that it should have been attributed to his employer. When asked why he signed the Report if it should have been attributed to his employer, Mr Csiba said he did not see the mistake before he signed the Report. This statement was followed up with a confirmation email to Mr Csiba, to which there was no response.

HIGH COURT MINUTE

22. On 12 December 2016, the High Court issued a minute noting that the Report implicitly confirmed that Mr Csiba had undertaken a visual inspection when, in fact, he had not. As such, the Report was misleading.
23. The Judge said:

It is the responsibility of those persons [Mr Csiba and principals of his employer] to ensure that the reports that are issued are not misleading, either expressly or implicitly.

THE DISCIPLINARY COMMITTEE HEARING

24. The Disciplinary Committee hearing was held on 25 June 2018. Mr Csiba appeared in person at the hearing and the Complainant was not present.

The Report

25. Mr Csiba accepted that he never visited site prior to issuing the report. He noted that he advised the Complainant's expert witness at the outset of their meeting on 11 October 2016 that he had not been to site before. Mr Csiba said he had never tried to hide the fact that he had not visited site prior to 11 October 2016.
26. However, Mr Csiba said the Complainant's expert witness comment that Mr Csiba said he had never read the Report was not accurate. Mr Csiba stated that he meant he had not had the chance to re-read the Report before the on-site meeting on 11 October 2016.
27. Mr Csiba told the Disciplinary Committee that in preparing reports for his employer, a junior engineer would visit the site and summarise the damage and details of the brief, then Mr Csiba would review this summary and recommend a repair strategy.
28. In response to questions from the Disciplinary Committee, Mr Csiba said that while he takes responsibility for this Report, the junior who wrote the initial part of the Report mistakenly put Mr Csiba's name in the engagement rather than his employer's name. Mr Csiba says that in other reports produced by other engineers at his company, it was always the company who was engaged and not Mr Csiba personally. Mr Csiba says that the misleading nature of the report came from the fact that he was mistakenly reported as being engaged to conduct a site visit personally.

Systems and processes

29. Mr Csiba said it is widespread practice in engineering companies for a junior member of staff to inspect the site whereas a senior engineer would sign the report.
30. Mr Csiba said his employer was a poorly managed company which did not organise their high workload well. Mr Csiba attributes the mistake on the Report to his employer's poor management. Mr Csiba stated

that he tried to make suggestions to improve the management of his employer, including appointing a CPEng to review reports, but these suggestions were ignored.

31. Mr Csiba established the company that he was employed by and signed the Report as a “principal”. The Disciplinary Committee asked Mr Csiba whether this meant he had a high degree of control over his employer’s management. Mr Csiba noted that while he had established the company, he sold all his shares three months after its establishment. He also said that by “principal” he meant “senior engineer” as he was the most senior engineer on his employer’s staff at the time the Report was issued.
32. Mr Csiba said he stands by the substance of the Report and that the statement, while misleading, did not adversely affect the homeowner’s case in the High Court.
33. Mr Csiba said he has taken steps at his new company to ensure this does not happen again. He says he keeps clear communications with his clients, has weekly meetings with his staff and engages an associated CPEng to review complex reports. Mr Csiba said he understands the seriousness of the issue and he has made more than enough changes to prevent any similar issues arising in the future.

SUBMISSIONS TO THE DISCIPLINARY COMMITTEE

The Complainant

34. The Complainant made no additional submissions to the Disciplinary Committee. Their only submissions were those given to Engineering New Zealand when they made their complaint and are incorporated into the information gathered section above, where relevant.

Mr Csiba

35. Mr Csiba’s lawyer made further written submissions on behalf of Mr Csiba after the hearing.
36. Mr Csiba’s lawyer reiterated that Mr Csiba was not part of his employer’s management and had very little, if any, influence over the operation of it. Mr Csiba’s role was very narrow. He produced engineering assessments and provided whatever ongoing services were required by the clients or their lawyers for the insurance claims.
37. Mr Csiba’s lawyer noted that Mr Csiba was never engaged personally to provide engineering services on any file. The actual engagement was between his employer and a company who provides litigation funding and advocacy services to property owners pursuing earthquake claims against their insurers.
38. Mr Csiba’s lawyer noted that Mr Csiba’s name was on the top of a standard template used at the time the report was issued. Mr Csiba’s lawyer said that, at the Hearing, when Mr Csiba said his name appeared on the report “in error”, he meant that his name being on the standard template was incorrect, rather than being a one-off mistake made on this particular report.
39. Mr Csiba’s lawyer reiterated that the Report is a truthful representation of Mr Csiba’s professional opinion at the time and the statement did not adversely affect the homeowner’s case.
40. Mr Csiba’s lawyer submitted that in order to find Mr Csiba breached his obligations under clause 3 of the IPENZ Code of Ethics,⁶ Mr Csiba must have intended to act dishonestly or without integrity. In Mr Csiba’s lawyer’s opinion, dishonesty requires a knowledge of what is right or appropriate and a deliberate

⁶ Clause 3 of the IPENZ Code of Ethics (2005) says that “a member must act honestly and with objectivity and integrity in the course of his or her engineering activities”.

abrogation of that. Mr Csiba's lawyer submitted that just because the statement was misleading, does not make it dishonest.

DECISION OF THE DISCIPLINARY COMMITTEE

41. The Disciplinary Committee cited *Robinson v RA* and described the legal test for determining whether there had been a breach of the Code of Ethics as being "whether Mr Csiba acted reasonably and in accordance with accepted standards".
42. The Disciplinary Committee considered that the obligations in the Code of Ethics had to be read objectively. The Disciplinary Committee noted that the absence of intention did not prevent a decision maker from finding an engineer's conduct in breach of the Code of Ethics but it may be relevant in considering penalties.
43. The Disciplinary Committee considered the two aspects of the complaint.

FIRST ASPECT

44. The first aspect of the complaint is that Mr Csiba signed a report which said he had visited the Property when he had not.
45. The Disciplinary Committee held that the Report was misleading as a reasonable observer would read the Report and assume that he had visited site and based his recommendations on that site visit.
46. They also noted that as a Member of Engineering New Zealand, the public places trust in Mr Csiba and the care he uses when signing documents should reflect this trust.
47. While the Disciplinary Committee accepted that mistakes are inevitable, as Mr Csiba had multiple opportunities to correct the mistake and did not, his conduct crossed the threshold of minor human error and warranted a disciplinary response.
48. The Disciplinary Committee noted that their findings on this point were consistent with High Court's comments that it was Mr Csiba's responsibility to "ensure that the reports that are issued are not misleading, either expressly or implicitly".

SECOND ASPECT

49. The second aspect of the complaint is that Mr Csiba signed the Report and later said he had not read it.
50. The Disciplinary Committee noted the lack of consistency in Mr Csiba's written evidence on this point. However, they accepted the oral evidence given at the hearing by Mr Csiba that he wrote a portion of the Report and a junior engineer working under his supervision wrote the other portion.
51. The Disciplinary Committee also accepted that when Mr Csiba told the Complainant's expert witness he had not read the Report, he did not mean he had never read the Report, but rather that he had not had a chance to reread the Report.
52. Accordingly, the Disciplinary Committee dismissed this aspect of the complaint but encouraged Mr Csiba to reflect on his decision not to reread the Report before a joint expert conference. The Disciplinary Committee noted that, had he reread the Report, he may have noticed the error in it and been able to clarify that he had not visited site before the meeting.

ORDERS

53. Having upheld the first aspect of the complaint, the Disciplinary Committee issued their decision on orders.
54. Mr Csiba's lawyer issued submissions on behalf of Mr Csiba on orders. Mr Csiba's lawyer cited a number of mitigating factors, such as that Mr Csiba was a Graduate Member⁷ and was experiencing a high workload at the time.
55. The Disciplinary Committee noted that Graduate Membership does not necessarily equate to junior status and Mr Csiba's lawyer had previously described Mr Csiba as the "only senior engineer" at his firm.
56. In addition, the Disciplinary Committee noted that it is an engineer's responsibility to ensure that they can manage their workload and not take on work which they cannot adequately complete.
57. The Disciplinary Committee considered that Mr Csiba's conduct was serious and, if condoned, would undermine the public's trust in the engineering profession.

Fine

58. The Disciplinary Committee considered a case with similar facts and found that the appropriate penalty was a fine of \$1,000.

Costs

59. The starting point for costs was 50%.
60. The Disciplinary Committee considered that Mr Csiba was entitled to a 20% reduction for the second aspect being dismissed. However, as he was not entirely cooperative with the Disciplinary Committee's process and gave inconsistent responses, the costs increased by 10%.
61. Mr Csiba was ordered to pay 40% of costs incurred.

Naming and Education

62. The Disciplinary Committee noted Engineering New Zealand's focus on education and quality improvement and ordered that Mr Csiba undertake further professional development in acting as an expert witness.
63. The Disciplinary Committee also ordered that the decision be published, and interim name suppression lifted. The Disciplinary Committee noted that public protection is at the heart of disciplinary processes and Mr Csiba often acts as an expert witness in Christchurch. In order to protect the public, naming Mr Csiba was held to be necessary and outweigh Mr Csiba's right to privacy.

APPEAL

REQUEST FOR APPEAL

64. On 21 December 2018, Mr Csiba's lawyer appealed the decision of the Disciplinary Committee on the grounds that:

⁷ Refer to footnote 2.

- a. The Disciplinary Committee was incorrect in its finding that the conduct was in breach of clause 3 of the IPENZ Code of Ethics. In particular:
 - i. Mr Csiba’s conduct was not negligent as required by the test; and
 - ii. The Disciplinary Committee mischaracterised both the seriousness of Mr Csiba’s conduct, and comments made by the High Court which significantly influenced the decision on breach; and/or
- b. The penalty imposed by the Disciplinary Committee is unjust and outweighs the seriousness of any breach. In particular:
 - i. The fine and costs are excessive in light of the findings on breach, lack a principled basis, and are inconsistent with precedent; and
 - ii. The decision to lift interim name suppression and publish the Disciplinary Committee’s final decision is manifestly unjust in light of the conduct – Mr Csiba’s privacy and professional reputation significantly outweighs any public interest in having the decision published.

PREHEARING MATTERS

Decision to hear appeal

65. On 28 January 2019 Engineering New Zealand established the Appeal Committee to consider the appeal in accordance with the IPENZ Disciplinary Regulations.⁸
66. We first decided whether grounds existed to hear the appeal. An appeal committee must grant a request to hear an appeal against a Disciplinary Committee decision if it considers that a ground for hearing the appeal exists. Those grounds include (but are not limited to) where it is alleged that:
- a. the decision reached by the Disciplinary Committee is manifestly at odds with the evidence presented at the hearing; and⁹
 - b. the penalty imposed by the Disciplinary Committee is unfair in light of the gravity of the breach concerned.¹⁰
67. We considered that Disciplinary Regulations 24(c) and (d) were triggered by Mr Csiba’s request for appeal, and on 4 March 2019 we advised Mr Csiba’s lawyer and the Complainant of our decision.

Submissions

68. On 4 March 2019 we issued the following timetabling directions to the parties:¹¹
- 1 April 2019 – Mr Csiba to provide any submissions in support of his appeal
 - 15 April 2019 – the Complainant to provide any submissions
 - 29 April 2019 – Mr Csiba to provide any submissions in reply

The Complainant

69. The Complainant advised that they did not wish to make submissions on the appeal.

⁸ IPENZ Disciplinary Regulations, reg 22.

⁹ Ibid, reg 24(d).

¹⁰ Ibid, reg 24(c).

¹¹ Ibid, reg 27(b).

Mr Csiba

70. Mr Csiba did not make any submissions by the 1 April 2019 deadline.
71. On 2 April 2019 Engineering New Zealand contacted Mr Csiba's lawyer who advised that he was not able to meet the submissions deadline, and he would contact Engineering New Zealand with a date that he was able to provide submissions by. Mr Csiba's lawyer did not contact Engineering New Zealand with this date.
72. On 30 April 2019 the Appeal Committee wrote to Mr Csiba's lawyer and advised that the new deadline for Mr Csiba's submissions was 15 May 2019.
73. On 16 May 2019 Mr Csiba advised Engineering New Zealand that his lawyer was no longer acting for him, he did not wish to withdraw the appeal and requested a two-week extension to find new counsel.
74. On 24 May 2019 Engineering New Zealand advised Mr Csiba that the hearing had been set down for 19 June 2019.¹² It further advised him that if he wanted to be heard on this matter, in person or in writing, he must notify the Appeal Committee by filing submissions or indicating his desire to be heard in person by 7 June 2019.¹³
75. Mr Csiba did not respond to this email and did not provide any submissions to the Appeal Committee.

HEARING

76. The appeal was considered on the papers by teleconference on 28 June 2019.¹⁴

DISCUSSION

The decision reached by the Disciplinary Committee is manifestly at odds with the evidence

77. The first ground of appeal by Mr Csiba is that the Disciplinary Committee was incorrect in its finding that the conduct was in breach of clause 3 of the IPENZ Code of Ethics.
78. Mr Csiba's notice of request for appeal stated that his conduct was not negligent as required by the test, and the Disciplinary Committee mischaracterised the seriousness of his conduct, and comments made by the High Court which led to, or significantly influenced the decision on the breach.
79. We have not been provided with any submissions by Mr Csiba to substantiate this ground of appeal.
80. In our view, the Disciplinary Committee did not mischaracterise the seriousness of Mr Csiba's conduct and we agree with its decision set out in paragraphs 44 to 48 above. We note that in order to find that Mr Csiba did not act in accordance with the IPENZ Code of Ethics requires a finding of a departure from accepted standards, it does not necessitate a finding of negligence. We are also of the view that it was reasonable for the Disciplinary Committee to consider the adverse comments made by the High Court.
81. This ground of appeal is dismissed, and the Disciplinary Committee's decision is confirmed.

¹² Ibid, reg 28(a).

¹³ Ibid, reg 28(b).

¹⁴ The hearing date was changed due to scheduling.

The penalty imposed by the Disciplinary Committee is unfair in light of the gravity of the breach concerned

82. The second ground of appeal by Mr Csiba is that the penalty imposed by the Disciplinary Committee is unjust and that it outweighs the seriousness of the breach.
83. Mr Csiba's notice of appeal states that the fine and costs are excessive in light of the finding on the breach, lack and principled basis, and are inconsistent with precedent. Additionally, the decision to lift interim name suppression is manifestly unjust.
84. We have not been provided with any submissions by Mr Csiba to substantiate this ground of appeal.
85. The Disciplinary Committee considers precedent in paragraph 41 of its decision. We note that disciplinary committees are not bound by precedent.
86. We are of the view that the fine and costs ordered by the Disciplinary Committee are in line with its finding on the breach of the Code of Ethical Conduct and are made on a principled basis, and the decision to lift interim name suppression on this basis is just.
87. This ground of appeal is dismissed and the Disciplinary Committee's decision on penalty is confirmed.

Orders

88. An appeal committee may confirm, vary, or reverse the decision or any order of a disciplinary committee and may, in addition, make any decision or order that a disciplinary committee is empowered to make, as well as such order for the payment of costs of the appeal as it thinks fit.¹⁵

Disciplinary Committee

89. We have dismissed both aspects of the appeal and confirmed the decision of the Disciplinary Committee. We confirm the Disciplinary Committee's orders in respect of fine and costs payable by Mr Csiba.
90. We vary the order in respect of the professional development Mr Csiba has to undertake by extending the timeframe by six months, as the 1 July 2019 deadline has now passed. Although Mr Csiba has a right to appeal a disciplinary decision, the failure to comply with timetabling directions and provide any argument to advance the appeal is viewed with some disapproval.
91. We confirm the latter part of the Disciplinary Committee's order, that is if Mr Csiba does not complete the professional development within the six-month extension, his Engineering New Zealand membership will be suspended for six months.
92. We confirm the Disciplinary Committee's order to publish their decision and lift Mr Csiba's interim name suppression.

Appeal Committee

93. It is unfortunate that we have not had the benefit of submissions from Mr Csiba, especially considering that he was represented when submissions were asked for, Mr Csiba was granted an extension to file submissions, and he was granted an extension to instruct new counsel.
94. In our view, there is an expectation that as a Member of Engineering New Zealand, Mr Csiba will comply with timetabling directions and communicate with Engineering New Zealand. An Appeal Committee was convened to give Mr Csiba the hearing that he was entitled to. His failure to either


¹⁵ Ibid, reg 26.

pursue or withdraw his appeal puts Engineering New Zealand to some inconvenience and expense. It might be seen at best a lack of courtesy and at worst as unprofessional.

95. Aside from the filing of the appeal, Mr Csiba has not been involved in the appeal process. We have no powers to dismiss an appeal after deciding that the appeal should be heard. An appeal hearing had to be held, despite not receiving any submissions.
96. Engineering New Zealand should not have to bear the whole cost of hearing the appeal. The starting point for ordering costs is 50%. We think an uplift of 10% is warranted in this case, and therefore order Mr Csiba to pay 60% of our costs.

SUMMARY OF ORDERS

97. In exercising our delegated authority, we:
- a. Confirm the decision of the Disciplinary Committee.
 - b. Confirm the following orders of the Disciplinary Committee:
 - i. Mr Csiba is to pay a fine of \$1,000;
 - ii. Mr Csiba is to pay \$6,000 towards the costs incurred by Engineering New Zealand in inquiring into Mr Csiba's conduct; and
 - iii. Mr Csiba's name suppression is lifted.
 - c. Vary the following order of the Disciplinary Committee:
 - i. by extending the timeframe Mr Csiba has to undertake further professional development in being an expert witness from 1 July 2019 to 6 January 2020. We confirm that if Mr Csiba does not do this, then his membership will be suspended for six months; and
 - ii. by publishing the Appeal Committee's decision on this complaint on the Engineering New Zealand website, in a public press release and in any other communication it considers appropriate.
 - d. Order Mr Csiba is to pay an additional \$2,010.00 plus GST towards the costs incurred by Engineering New Zealand in inquiring into his appeal (approximately 60% of Engineering New Zealand's total costs in hearing the appeal).



Dean Kimpton
Chair of Appeal Committee