

DISCIPLINARY COMMITTEE DECISION COMPLAINT ABOUT PETER WASTNEY 484

Confidential to parties

In accordance with:

Chartered Professional Engineers of New Zealand Act 2002

Chartered Professional Engineers of New Zealand Act and Rules (No 2) 2002

Prepared by

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Hamish Wilson, nominated by Consumer New Zealand

Dr Cordelia Thomas, Barrister and Solicitor of the High Court of New Zealand

Members of the Disciplinary Committee

31 May 2021



**engineering
new zealand**
Institute of Engineering Professionals

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EXECUTIVE SUMMARY

1. In 2016, Peter Wastney CPEng¹ was engaged by a client to provide a design and certification for a truck trailer draw-beam towing connection (**draw-beam**) to comply with New Zealand Standard 5446:2007 Heavy vehicle towing connections - Drawbeams and drawbars (**the Standard**).² At the time of this engagement, he was also a Waka Kotahi NZ Transport Agency (**Waka Kotahi**) appointed Heavy Vehicle Specialist Certifier (**HVSC**).³
2. On 27 August 2017 the truck and trailer were travelling at speed on a highway when the draw-beam separated from the truck, causing the trailer to collide with the bank on the side of the road. No one was hurt during the incident. Waka Kotahi suspended Mr Wastney's HVSC appointment.
3. Waka Kotahi raised concerns with Engineering New Zealand regarding Mr Wastney in February 2019; namely that he had acted incompetently and/or negligently when he certified the draw-beam as compliant with the Standard.
4. After an initial investigation, the complaint was referred to an Investigating Committee, who referred the complaint to a Disciplinary Committee to hear and decide.
5. Waka Kotahi and Mr Wastney (**the parties**) accepted the Investigating Committee's finding of facts and requested the complaint proceed straight to penalty, without the need for an in-person hearing.
6. We accepted that request.

DECISION

7. Having considered the reasons given by the Investigating Committee and deliberating the matter in November and December 2020, we have found the engineering services provided by Mr Wastney in designing and subsequently certifying the draw-beam as compliant with the Standard did not meet the standard to be reasonably expected from a Chartered Professional Engineer.
8. The complaint is upheld.

¹ Mr Wastney was suspended as a Chartered Professional Engineer on 13 May 2019, in accordance with section 11(2)(b) of the Chartered Professional Engineers of New Zealand Act 2002, because he did not submit a complete portfolio of reassessment evidence to demonstrate current competence necessary for registration renewal.

² The Standard establishes design, manufacture, installation, testing, maintenance, repair, and certification criteria necessary to ensure that a secure connection can be maintained between towing vehicles and drawbar trailers. Although primarily covering applications incorporating pin or hook type couplings, this Standard also applies to other types of couplings covering both rigid and hinged drawbars. Available at: <https://shop.standards.govt.nz/catalog/5446%3A2007%28NZS%29/view>

³ Mr Wastney was originally appointed as HVSC between 1 September 2013 and 28 February 2018, but subsequently suspended on 18 September 2017.

BACKGROUND

COMPLAINT

9. Waka Kotahi first spoke to Engineering New Zealand about its intention to raise concerns in April 2018.
10. In February 2019, Waka Kotahi formally raised concerns with Engineering New Zealand about Mr Wastney. The complaint relates to a draw-beam which separated when the truck-trailer it connected was travelling along the Kohatu-Kawatiri Highway to Nelson. Before the incident, the draw-beam was certified by Mr Wastney as road-safe.
11. Waka Kotahi is concerned Mr Wastney acted incompetently and/or negligently when he designed and later certified the draw-beam towing connection as compliant with the Standard.
12. On 13 May 2019 Mr Wastney's registration as a Chartered Professional Engineer was suspended. As he was a Chartered Professional Engineer when he certified the draw-beam, Engineering New Zealand, in its capacity as the Registration Authority for Chartered Professional Engineers, has jurisdiction to investigate this matter.⁴

INVESTIGATING COMMITTEE'S DECISION

13. Following an initial investigation, the complaint was referred to an Investigating Committee for formal investigation. The Investigating Committee found that:
 - the draw-beam failed because of metal fatigue, under-design, and construction according to that design;
 - the draw-beam was deficient and under-designed to the degree that it was only able to deliver a very minor portion of the required fatigue design life before it failed; and
 - the design of the draw-beam was inadequate and should not have been certified that it met the requirements of the Standard.
14. The Investigating Committee did not consider there were any grounds to dismiss the complaint, and, on 6 July 2020, determined that the matter should be referred to a disciplinary committee for determination.

DISCIPLINARY COMMITTEE

15. The members of the Disciplinary Committee are:

Deane McNulty CPEng FEngNZ (Chair)

John Snook CEngNZ

Simon Aimer FEngNZ

Hamish Wilson, nominated by Consumer New Zealand

Dr Cordelia Thomas, Barrister and Solicitor of the High Court of New Zealand

Procedural matters

16. In mid-October 2020, Waka Kotahi and Mr Morrison, on behalf of Mr Wastney, filed a joint memorandum stating:

⁴ Chartered Professional Engineers of New Zealand Act 2002, s 20(3).

- the parties accept the facts as set out in the Investigating Committee’s decision and that these facts constitute a ground of discipline; and
 - the parties consider the Disciplinary Committee can proceed to penalty.
17. On 22 October 2020 the Chair of the Disciplinary Committee accepted the parties’ request to proceed to penalty and dispensed with a hearing for this matter. Annexed is a copy of the Investigating Committee’s decision.
18. The Disciplinary Committee met by videoconference on 11 November, and on 1 and 21 December 2020 to deliberate the matter.

DISCUSSION

THE DISCIPLINARY COMMITTEE’S ROLE

19. Professional disciplinary processes primarily exist to protect the public, uphold professional standards, and maintain public confidence in the profession and its regulation. They do this by ensuring that members of the profession adhere to certain universal (or accepted) professional standards.⁵
20. The role of the Disciplinary Committee in the disciplinary process is to consider whether Mr Wastney has acted in accordance with accepted professional standards and, if not, whether there are grounds for disciplining him in accordance with the Chartered Professional Engineers of New Zealand Act 2002.

THE LEGAL TEST

21. The legal test to assess whether Mr Wastney acted in accordance with acceptable professional standards is whether he acted in accordance with what a reasonable body of his peers would have done in the same situation.
22. The assessment of whether an engineer has acted in accordance with accepted standards may be informed by whether reasonable members of the public would “consider such an act or omission, if acceptable to the profession, were to lower the standard of that profession in the eyes of the public”.⁶
23. If the evidence reflects that Mr Wastney acted in accordance with accepted standards, then we will dismiss the complaint. If the evidence reflects that Mr Wastney did not act in accordance with accepted standards, then we will uphold the complaint. If the behaviour meets the latter criterion, we must consider whether the conduct “falls seriously short of accepted conduct” before imposing a disciplinary sanction.⁷
24. This means that the matter for the Disciplinary Committee to decide in this case is whether the engineering services provided by Mr Wastney, as agreed to by the parties, met the standard to be reasonably expected of a Chartered Professional Engineer.
25. Our approach to this question has been to consider the analysis and findings of the Investigating Committee, as accepted by the parties, and the information that formed the basis of that decision.

⁵ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC).

⁶ *Robinson v RA* (10 July 2015, *Appeal Ruling #21*) Chartered Professional Engineers Council. Available at: <http://www.cpec.org.nz/appeal-rulings/appeal-21-10-july-2015-robinson-v-ra>.

⁷ *Ibid.*

ANALYSIS

26. We have considered the Investigating Committee's decision, in particular their discussion around the reasons for the draw-beam failure and the adequacy of Mr Wastney's analysis, design, and certification of the completed draw-beam installation, (paragraphs 43 to 52) and their conclusions (paragraphs 53 to 59). We also agree with the Investigating Committee's reasons for referring this matter to a disciplinary committee (paragraph 57).
27. We accept the Investigating Committee's finding of fact that the draw-beam failed because Mr Wastney poorly executed multiple tasks regarding certification. During the investigation Mr Wastney accepted the draw-beam was deficient and under-designed and he had not been able to satisfactorily explain how these errors may have occurred.
28. We also agree with the findings of the Investigating Committee, that:

*An experienced engineer should have identified the load path in the draw-beam structure at the design stage and designed a structure to appropriately account for this.*⁸

29. During the investigation Mr Wastney accepted he should not have certified the draw-beam as meeting the requirements of the Standard. We agree that he should not have done so.
30. We also agree with the findings of the Investigating Committee:

*A high level of trust is placed in HVSCs by Waka Kotahi and the public to ensure heavy vehicles do not present undue risk on the roads."*⁹

*While we have not made a finding whether Mr Wastney carried out a physical inspection of the draw-beam, we comment that a professional engineer in these circumstances should know and meet that requirement, and we would be significantly concerned if he had not carried one out.*¹⁰

31. The parties have accepted that the reasons for the Investigating Committee's decision constitute a ground of discipline. We agree.

DECISION OF THE DISCIPLINARY COMMITTEE

GROUNDS OF DISCIPLINE

32. The Disciplinary Committee may make an order for discipline against a Chartered Professional Engineer if it is satisfied that the engineer has performed engineering services in a negligent and/or incompetent manner, or that the engineer has breached the Code of Ethical Conduct.
33. The Code of Ethical Conduct includes an obligation to act competently, and to undertake engineering activities in a careful and competent manner.¹¹
34. A finding of negligence or incompetence is a more serious finding than a breach of the obligation to perform engineering services in a careful and competent manner. An engineer may breach the Code of Ethical Conduct requirement without meeting the threshold for negligence or incompetence.

⁸ Investigating Committee Decision dated 6 July 2020, para 54.

⁹ Ibid, para 56.

¹⁰ Ibid, para 55.

¹¹ Chartered Professional Engineers of New Zealand Rules (No 2) 2002, r 42E(a)(iii).

35. To determine whether Mr Wastney acted negligently or incompetently we refer to the decision of the Chartered Professional Engineers Council in *R v K*:¹²

The starting point is to consider what standard sets the benchmark for negligent or incompetent behaviour. We consider that incompetence is a more serious allegation than negligence. One can be negligent without being incompetent, but it is highly unlikely that someone who is incompetent is not also negligent.

36. Further, *Robinson v RA* states:¹³

Whether engineering services have been performed in an incompetent manner is a question of whether there has been a serious lack of competence (or deficit in the required skills) judged by the areas of competence which in this case are encapsulated by Rule 6 [of the Chartered Professional Engineers Rules (No 2) 2002 (the Rules)].

37. Chartered Professional Engineers are assessed against the 12 elements set out in Rule 6 of the Rules to establish their competence, they are:

(a) comprehend, and apply his or her knowledge of, accepted principles underpinning—

(i) widely applied good practice for professional engineering; and

(ii) good practice for professional engineering that is specific to New Zealand; and

(b) define, investigate, and analyse complex engineering problems in accordance with good practice for professional engineering; and

(c) design or develop solutions to complex engineering problems in accordance with good practice for professional engineering; and

(d) exercise sound professional engineering judgement; and

(e) be responsible for making decisions on part or all of 1 or more complex engineering activities; and

(f) manage part or all of 1 or more complex engineering activities in accordance with good engineering management practice; and

(g) identify, assess, and manage engineering risk; and

(h) conduct his or her professional engineering activities to an ethical standard at least equivalent to the code of ethical conduct; and

(i) recognise the reasonably foreseeable social, cultural, and environmental effects of professional engineering activities generally; and

(j) communicate clearly to other engineers and others that he or she is likely to deal with in the course of his or her professional engineering activities; and

¹² *R v K*, Appeal Ruling 11/14, Chartered Professional Engineers Council at [36] and [38].

¹³ *Robinson v RA* (10 July 2015, Appeal Ruling #21) Chartered Professional Engineers Council at [40(c)].

(k) maintain the currency of his or her professional engineering knowledge and skills.

DECISION

38. For the reasons set out in paragraphs 43 to 52 of the Investigating Committee's decision, which we agree with, we consider that the evidence in this case demonstrates Mr Wastney acted negligently when designing the draw-beam, checking his analysis, and subsequently in his certification of the draw-beam.
39. The shortcomings highlighted in the Investigating Committee's decision in paragraphs 43, 44, and 47 to 49 of the Investigating Committee's decision demonstrates a serious lack of due care and attention to his draw-beam design and analysis, and a failure to check whether all requirements had been met before he certified the draw-beam.
40. Mr Wastney has admitted to these serious shortcomings in his practice, acknowledged the draw-beam design and analysis was inadequate, and recognised he should not have certified the draw-beam as meeting the requirements. Mr Wastney did not manifest confidence but understood that several things went wrong in his practice.
41. We consider this breach also demonstrates a severe lack of due care and a failure by Mr Wastney to meet his obligation to undertake engineering activities in a careful and competent manner.¹⁴
42. We believe this breach of the Code of Ethical Conduct was serious but do not consider it reached the threshold for determining Mr Wastney incompetent. However, we consider Mr Wastney has breached the Code of Ethical Conduct to the extent he acted negligently.
43. The essence of this matter is about protecting the public with respect to heavy commercial vehicles and Mr Wastney has admitted to his shortcomings. We understand Mr Wastney is no longer a HVSC and has stopped practicing as an engineer.
44. On the balance of probabilities, we are satisfied evidentially the grounds for discipline under section 21(1)(c) of Chartered Professional Engineers of New Zealand Act 2002 have been met.
45. Having considered all the evidence, we have decided to uphold the complaint about Mr Wastney.
46. Having found that Mr Wastney acted negligently, we need to determine what orders, if any, should be made against him.
47. There are a range of disciplinary actions available to the Disciplinary Committee as set out in section 22(1) of the Chartered Professional Engineers of New Zealand Act 2002.

PENALTY

48. On 4 March 2021, our substantive decision was sent to the parties and they were invited to make submissions on penalties. On 11 March 2021 Waka Kotahi provided its submissions. Counsel for Mr Wastney, John Morrison, provided a submission on behalf of his client on 19 March 2021.

WAKA KOTAHI'S SUBMISSIONS

49. Waka Kotahi submitted it would adhere to our decision but believed our findings should be published, including Mr Wastney's name.

¹⁴ Chartered Professional Engineers of New Zealand Rules (No 2) 2002, r 42E(a)(iii).

MR WASTNEY'S SUBMISSIONS

50. Mr Wastney acknowledged naming is the norm in a disciplinary process and does not oppose it. However, he submitted that publication would be a sufficient penalty. He explained this penalty would be “punishment enough” because the time taken for this matter to reach the disciplinary process has had its own punitive effect. He also submitted that publication, on its own, would achieve the objectives of the disciplinary process.
51. Mr Wastney submitted a monetary penalty should not be imposed because it would be unnecessary and deny him the credit he is entitled to, based on his “early and candid admissions” to negligence and cooperation with the disciplinary process. He pointed out his admissions minimised costs and avoided the need for a hearing. In addition, Mr Wastney said Waka Kotahi did not submit a monetary penalty should be imposed; and his ability to deal with any financial consequences was affected by him being retired and his only income being national superannuation.

RELEVANT LAW

52. In *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*¹⁵ the High Court outlined a number of principles to be applied by the Health Practitioners Disciplinary Tribunal in determining the appropriate penalty to impose in disciplinary proceedings. The High Court determined that a disciplinary penalty must:
- a. protect the public (including through deterrence of other practitioners from engaging in similar conduct);
 - b. set and maintain professional standards;
 - c. where appropriate, rehabilitate the practitioner back to the profession;
 - d. be comparable with penalties imposed on practitioners in similar circumstances;
 - e. reflect the seriousness of the practitioner’s conduct, in light of the range of penalties available;
 - f. be the least restrictive penalty that can reasonably be imposed in the circumstances; and
 - g. be fair, reasonable, and proportionate in the circumstances.
53. The High Court also stated that while penalty may have the effect of punishing a practitioner, punishment is not a necessary focus for the Tribunal in determining penalty.
54. The principles in *Roberts* are broadly applicable to our power to make disciplinary orders under section 22 of the Act and under the Engineering New Zealand Disciplinary Regulations and they are the principles we rely on when considering the appropriate penalty orders in this case.
55. The principles have general application to professional disciplinary proceedings in the light of the Supreme Court’s decision in *Z v Dental Complaints Assessment Committee*.¹⁶ In *Z*, the Supreme Court makes general statements about the purposes of professional disciplinary proceedings, noting that such proceedings are designed to:

¹⁵ [2012] NZHC 3354.

¹⁶ [2008] NZSC 55.

Ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

56. This is consistent with *Roberts*, as *Roberts* lists public protection and the maintenance of professional standards as the foremost considerations relevant to penalty.
57. The Supreme Court in *Z v Dental Complaints Assessment Committee*¹⁷ also states that while professional disciplinary proceedings are not intended to punish practitioners, they may have a punitive effect in practice. This is also consistent with the principles set out in *Roberts*, in that the penalty must be the least restrictive penalty and that punishment is not a necessary focus of a disciplinary penalty.
58. It is appropriate that disciplinary penalties mark the profession's condemnation of the relevant conduct, noting that to do otherwise would not be consistent with the purpose of the Act to establish the title of Chartered Professional Engineer as a mark of quality.¹⁸

DISCUSSION

59. Engineers hold significant knowledge and specialised expertise. They are capable of making judgements, applying their skills and reaching informed decisions in relation to their work that the general public cannot. The decisions engineers make and the services they provide often do not just impact the engineer and their client but have wide-reaching effects on the public.
60. The public places significant trust in engineers to self-regulate. As a professional, an engineer must take responsibility for being competent and acting ethically. The actions of an individual engineer also play an important role in the way in which the profession is viewed by the public.
61. Based on the Investigating Committee's helpful decision and the information before us, we have found Mr Wastney has departed from what is expected of a reasonable engineer. That is, Mr Wastney has breached his obligation to undertake engineering activities in a careful and competent manner, to the extent of negligence.
62. In our view, Mr Wastney's actions, if condoned, would undermine the public's trust in the engineering profession and reduce the public confidence in the Chartered Professional Engineer title. Mr Wastney's actions demonstrated a lack of due care and were a departure from the expected standards of a Chartered Professional Engineer. This departure is at the higher end of the scale, and our orders need to reflect our view of the breach.

Registration

63. In respect of orders relating to registration as a Chartered Professional Engineer, we may order that:¹⁹
- an engineer's registration be removed, and they may not apply for re-registration before the expiry of a specified period;
 - their registration be suspended for a period of no more than 12 months or until they meet specified conditions relating to the registration; or

¹⁷ Ibid.

¹⁸ Chartered Professional Engineers of New Zealand Act 2002, s 3.

¹⁹ Chartered Professional Engineers of New Zealand Act 2002, s 22.

- the engineer be censured.

64. In *A v Professional Conduct Committee*²⁰ the High Court said, in relation to a decision to cancel or suspend a professionals' registration, that four points could be expressly and a fifth impliedly derived from the authorities:

First, the primary purpose of cancelling or suspending registration is to protect the public, but that 'inevitably imports some punitive element.' Secondly, to cancel is more punitive than to suspend and the choice between the two turns on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is 'some condition affecting the practitioner's fitness to practise which may or may not be amendable to cure'. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish.

65. In the decision of *Attorney-General v Institution of Professional Engineers New Zealand Incorporated and Reay*²¹ the High Court set out the standard the public expects when an engineer is a member of Engineering New Zealand:

[M]embership of a professional body, such as the Institution, can confer a status that signals trustworthiness to the public. This status reflects the value that society places upon the training and skill acquired by members and upon the Institution's ability to maintain the standards of its members through ongoing education, training and disciplinary processes.

66. The Court also went on to set out the public expectation of Engineering New Zealand's role in maintaining the standard of the profession:²²

There is, however, a counterbalance to the public trust that is reposed in members of professional bodies such as the Institution. That counterbalance is the public expectation that the Institution will tightly regulate admission into its ranks and ensure members maintain high professional standards. The public expects that if a person is to be afforded the status of membership of the Institution, then those individuals will maintain professional standards and that those standards will be enforced by the Institution through, if necessary, disciplinary proceedings. If a professional body, such as the Institution, wishes to maintain that public trust, and the value associated with membership status, then it must act in accordance with this expectation.

67. We consider the Judge's comments in *Reay* are equally applicable to the Registration Authority and their role in regulating Chartered Professional Engineers.

68. The Disciplinary Committee cannot make an order for Mr Wastney's registration to be removed or suspended because Mr Wastney's Chartered Professional Engineer title was suspended on 13 May 2019. In the interest of maintaining an open and transparent disciplinary process, it is important for us to turn our minds to what we would have ordered if Mr Wastney was still a Chartered Professional Engineer. Afterwards, we will discuss the actual penalty for Mr Wastney.

²⁰ *A v Professional Conduct Committee* [2008] NZHC 1387 at [81].

²¹ [2018] NZHC 3211 at [52] and [55].

²² *Ibid* at [56].

69. After considering the principles set out by the High Court in *Roberts* (above) we consider we would have suspended Mr Wastney's registration as a Chartered Professional Engineer for 12 months if he was not already suspended. The primary purpose for cancelling or suspending registration is protection of the public which extends to deterring other practitioners from engaging in similar conduct and setting and maintaining professional standards expected of Chartered Professional Engineers. Although Mr Wastney is retired and no longer conducting engineering activities, and the incident in August 2017 did not result in any serious harm, there were significant safety risks arising out of his conduct.
70. However, because Mr Wastney is no longer a Chartered Professional Engineer, the next available and most appropriate penalty available to us is censure. In applying the same rationale as above, we are concerned that Mr Wastney's conduct, if condoned, would have a significant effect on the value and trust society places upon members of Engineering New Zealand. Therefore, we consider it is appropriate that Mr Wastney is censured.

Fine

71. The Chartered Professional Engineers of New Zealand Act 2002 state we may order an engineer pay a fine up to a maximum of \$5,000.
72. As stated above, Mr Wastney's conduct fell below the standard expected of a Chartered Professional Engineer. Given the seriousness of Mr Wastney's conduct, we consider a fine is appropriate.
73. In the decision of *Lim v Medical Council of New Zealand*,²³ when determining penalty, personal and financial circumstances should be considered. Personal hardship must be weighed against competing factors, namely, the responsibility to uphold professional standards and mitigate risk to the public.
74. We have considered Mr Wastney's submission that he has a reduced ability to cover any financial penalty because he is retired and his only income is superannuation. We have not been provided with any information to give us insight into what Mr Wastney's current financial position might be nor the extent to which he has the ability to pay a portion of a fine imposed by Engineering New Zealand.
75. We have also considered Mr Wastney's submission that a financial penalty should not be imposed because the time it has taken for the case to be heard before the Disciplinary Committee is punitive in itself and therefore together with publication is "punishment enough".
76. The Registration Authority's responsibility to uphold professional standards and mitigate risk to the public carries considerable weight. It is important the Registration Authority condemns this behaviour and that this condemnation is reflected in the fine we order.
77. When compared to other recent Disciplinary Committee decisions, for example *Joyce*, issued on 19 September 2018, we consider this case sits lower on the scale. There were significant safety risks in both cases but *Joyce's* conduct reflected a clear pattern of behaviour.
78. We consider a fine of \$1,500 is appropriate.

Costs

79. We may order an engineer pay costs and expenses of, and incidental to, the inquiry by the Registration Authority.²⁴ We note the ordering of payment of costs is not in the nature of penalty.

²³ [2016] NZDC 2149, [2016] NZHC 4851.

²⁴ Chartered Professional Engineers of New Zealand Act 2002, s 22(4) and IPENZ Disciplinary Regulations, reg 17(3)(g) respectively.

80. When ordering costs, it is generally accepted the normal approach is to start with a 50% contribution.²⁵ That, however, is a starting point and other factors may be considered to increase, reduce, or mitigate that portion. Those factors include any co-operation from or attendance at the hearing by the engineer, and consistency with the level of costs in previous decisions. The balance of costs after the orders must be met by the profession itself.²⁶

81. In respect of the medical profession, the Court in *Vatsyayann v PCC* said:²⁷

[P]rofessional groups should not be expected to bear all the costs of a disciplinary regime and that members of the profession who appeared on disciplinary charges should make a proper contribution towards the costs of the inquiry and a hearing; that costs are not punitive; that the practitioner's means, if known, are to be considered; that a practitioner has a right to defend [themselves] and should not be deterred by the risk of a costs order; and that in a general way 50% of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.

82. Further, in *O'Connor v Preliminary Proceedings Committee* the High Court stated:²⁸

It is a notorious fact that prosecutions in the hands of professional bodies, usually pursuant to statutory powers, are very costly and time consuming to those bodies and such knowledge is widespread within the professions so controlled. So as to alleviate the burden of the costs on the professional members as a whole the legislature had empowered the different bodies to impose orders for costs. They are nearly always substantial when the charges brought are successful and misconduct admitted, or found.

83. We are cognisant the incident on August 2017 has placed Mr Wastney in the public eye and has caused significant stress. We consider that, along with Mr Wastney's submission that his early admissions amounted to cooperation with the disciplinary process.

84. For these reasons, a departure from the starting point is warranted. We consider Mr Wastney should pay \$6,760; being 40% of the costs incurred by the Registration Authority.

Naming

85. In addition to notifying any orders made against an engineer on the register of Chartered Professional Engineers, the Registration Authority must notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the order and the reasons for it. We may also publicly notify the order in any other way we think fit.²⁹

86. The Act does not prescribe factors we should consider when deciding whether to name an engineer. While we are mindful of the specific legislative test of "desirability" set out in the Health Practitioners Competence Assurance Act 2003, we are guided by the public interest factors considered by the medical profession when deciding whether to name a practitioner.³⁰ These include openness and

²⁵ Including *Cooray v Preliminary Proceedings Committee HC Wellington AP 23/94*, 14 September 1995 per Doogue J.

²⁶ *PCC v Van Der Meer* 1019/Nur18/422P.

²⁷ [2012] NZHC 1138 at [34].

²⁸ *O'Connor v Preliminary Proceedings Committee HC Wellington AP 280/89*, 23 August 1990 at [13] per Jeffries J.

²⁹ Chartered Professional Engineers of New Zealand Act 2002, s 22(5).

³⁰ The presumption in s 95(2) of the Health Practitioners Competence Assurance Act 2003 is that a hearing shall be in public, but the Tribunal has discretion to grant name suppression. The test is whether it is "desirable" to prohibit publication of the name or any particulars of the affairs of the person in question and the Tribunal must consider both the interests of any person and the public interest.

transparency in disciplinary proceedings; accountability of the disciplinary process; public interest in knowing the identity of the practitioner; the importance of freedom of speech; unfairly impugning other practitioners; and that where an adverse disciplinary finding has been made, it is necessary for more weighty private interest factors (matters that may affect a family and their wellbeing, and rehabilitation of the practitioner) to be advanced to overcome the public interest factors for publication.³¹

87. Naming is the starting point and will only be inappropriate in a limited number of circumstances where the engineer's privacy outweighs the public interest. In *Y v Attorney-General*³² the Court of Appeal explored the principles that should guide the suppression of the names of parties, witnesses, or particulars in the civil context. The starting point is the principle of open justice.³³
88. The question is then, do the circumstances justify an exception to the principle of open justice? In a professional disciplinary context, a practitioner is "likely to find it difficult to advance anything that displaces the presumption in favour of disclosure".³⁴ This is because the practitioner's existing and prospective clients have an interest in knowing details of the conduct, as this allows them to make an informed decision about the practitioner's services.³⁵
89. Consistent with these precedents, the starting point is naming of engineers subject to a disciplinary order is the normal expectation. This is because public protection is at the heart of disciplinary processes, and naming supports openness, transparency, and accountability.
90. We have considered Mr Wastney's submission where he accepts naming is the starting point and the norm in a disciplinary process and Waka Kotahi's submission that naming is appropriate.
91. We consider there is strong public interest in support of naming and the principles: openness and transparency of the disciplinary proceedings, right of the public to know the failings in the circumstances of this matter, and accountability of the disciplinary process, are strong. We have not been provided with any private interest factors to support departure from the normal practice of naming.
92. As there are no significant factors to displace this starting point, we consider publication and naming is appropriate.

SUMMARY OF ORDERS

93. In exercising our delegated powers, we order that:
 - a. Mr Wastney is censured;
 - b. Mr Wastney is fined \$1,500; and
 - c. Mr Wastney is to pay \$6,760 towards the costs incurred by the Registration Authority in inquiring into his conduct (40% of their total costs).
94. In addition, the Registration Authority will:
 - a. notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the order and the reasons for it; and

³¹ *Professional Conduct Committee of the Pharmacy Council of New Zealand v El-Fadil Kardaman* 100/Phar18/424P at [113] – [114].

³² [2016] NZCA 474.

³³ *Ibid* at [25].

³⁴ *Ibid* at [32].

³⁵ *Ibid*.

- b. publish and name Mr Wastney in our final decision and the Investigating Committee's decision of this complaint on its website, in a public press release and in any other communication it considers appropriate.

A handwritten signature in black ink, appearing to be 'DM', with a long horizontal stroke extending to the right.

Deane McNulty CPEng FEngNZ
Chair of Disciplinary Committee