

DECISION OF THE DISCIPLINARY COMMITTEE

IN THE MATTER OF	The Chartered Professional Engineers of New Zealand Act 2002
AND	The Chartered Professional Engineers of New Zealand Rules (No 2) 2002
AND	The Institution of Professional Engineers of New Zealand Rules
AND	The Institution of Professional Engineers of New Zealand Disciplinary Regulations
AND	The Institution of Professional Engineers of New Zealand Regulations for Competence Registers
IN THE MATTER OF	An Own Motion Complaint by the Registration Authority (“the RA”)
ABOUT	Mr A (“the Respondent”)

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Executive Summary

1. In mid-2008, Mr A became a Graduate Member of the Institution of Professional Engineers New Zealand (IPENZ).
2. In mid-2013, the Registration Authority (RA) received an application from Mr A to be registered as a Chartered Professional Engineer (registration application). Mr A's registration application listed two practice fields and his practice areas for assessment, which did not include structural design.
3. In October 2013, IPENZ's Competency Assessment Board (CAB) approved Mr A's registration application. Mr A's practice areas were recognised by the CAB consistent with his application. Mr A was advised of that decision by letter dated 30 October 2013, which IPENZ emailed to him first on 30 October 2013, and then again on 25 November 2013. Mr A said that he never received that letter by email.
4. On or about December 2014, a building consent authority processed a Producer Statement authored by Mr A as part of a building consent application. This application related to structural engineering work. Building consent authority staff checked Mr A's status on its Producer Statement register (PSR), which is the building consent authority's list of who it will accept Producer Statements from. The building consent authority declined to accept the Producer Statement as Mr A did not have a practice area of "structural" recorded on the PSR.
5. As a result of ongoing communications between Mr A and the building consent authority in November and December 2014, Mr A said he would contact IPENZ for a copy of a letter outlining his practice areas. The building consent authority also directly asked IPENZ for information regarding Mr A's practice areas.
6. On 8 December 2014, in response to the building consent authority's query, IPENZ sent the building consent authority a letter dated that day, stating Mr A's practice areas consistent with his application. On the same day, Mr A sent the building consent authority a letter that closely resembled the letter dated 30 October 2013 that IPENZ had emailed to him in both October and November 2013 but which stated his practice areas as including structural design.
7. Mr A states that the letter he sent the building consent authority was a true copy of a hard copy letter he had received from IPENZ. IPENZ submits that no such hard copy letter was ever sent to Mr A, and that the letter appears to have been altered between when it was sent electronically to Mr A in October and November 2013 and when it was submitted by him to the building consent authority in December 2014. The RA brought an Own Motion complaint to consider Mr A's actions in sending the building consent authority a letter that did not accurately reflect the practice areas in which he had been assessed as competent by the CAB.
8. The Disciplinary Committee found Mr A's actions were in breach of his ethical obligations set out in Rule 45 and Rule 46 of the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 and Clauses 3 and 4 of the IPENZ Code of Ethics. In particular, that by sending a letter which he knew or ought to have known inaccurately stated his recognised areas of competence, Mr A breached his obligations not to misrepresent his competence, and to act with honesty, objectivity and integrity.

9. The Disciplinary Committee suspended Mr A's registration as a Chartered Professional Engineer for three months, and ordered he pay a fine of \$1,500 and \$19,500 towards the costs of the Inquiry. It also ordered he have permanent name suppression, and the decision be published in an anonymised form on the IPENZ website and in summary form in *Engineering Insight*, for educational purposes.
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Background

Own Motion complaint

10. The Registration Authority¹ (RA) has jurisdiction under the Chartered Professional Engineers of New Zealand Act 2002 (the Act) to consider complaints made about the conduct of Chartered Professional Engineers. Mr A became registered as a Chartered Professional Engineer in late 2013, and remains registered.
11. Mr A is also a Member of the Institution of Professional Engineers of New Zealand (IPENZ), which is New Zealand's professional body for engineers. As a member, Mr A is also subject to the obligations on Members and the complaints and disciplinary processes of the professional body.
12. On 30 April 2015, the RA informed Mr A it was bringing an Own Motion complaint under section 21(1)(b) of the Act in relation to this matter, considering whether or not Mr A breached the Code of Ethical Conduct contained in the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (the Rules). The purpose was to consider the circumstances giving rise to Mr A sending the building consent authority a letter that inaccurately recorded the practice areas in which he had been assessed as competent. Mr A was also informed his IPENZ Membership would be considered as part of the Inquiry.
13. In accordance with the relevant complaints procedures, IPENZ carried out an initial investigation to determine whether to proceed with the matter. The initial investigation did not identify grounds to dismiss the complaint, and the matter was subsequently referred to an Investigating Committee for formal investigation. The Investigating Committee considered the matter should be referred to a Disciplinary Committee to determine whether there were grounds for disciplining Mr A.
14. The members of the Disciplinary Committee appointed to determine the matter were:

Peter McCombs CPEng FIPENZ IntPE(NZ)
Peter Steel CPEng FIPENZ IntPE(NZ)
Wayne Stewart CPEng FIPENZ
Hamish Wilson
Murray Lints
15. Information was provided to IPENZ, and considered by the Disciplinary Committee.
16. The Disciplinary Committee received written statements of evidence.

¹ The Institution of Professional Engineers of New Zealand is the Registration Authority pursuant to the Chartered Professional Engineers of New Zealand Act 2002.

17. The Disciplinary Committee held a formal hearing into the matter. RA staff and Mr A gave oral submissions, and witnesses gave evidence.
 18. This report sets out the Disciplinary Committee's decision on the matter following that hearing.
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Information gathered

Application for assessment

19. In mid-2008, Mr A became a Member of IPENZ.
20. In mid-2013, the RA received an application from Mr A to be registered as a Chartered Professional Engineer pursuant to the Act (the registration application). Engineers applying to be Chartered Professional Engineers submit an application to the RA, which includes information about the fields in which they practice and their practice areas. The practice areas are a description of the area within which the engineer has engineering knowledge and skills, and the nature of their professional engineering activities.²
21. When the RA receives a registration application it convenes an Assessment Panel (Panel) to consider the application. The Panel assesses whether the engineer meets the minimum standards of competence to be a Chartered Professional Engineer.³ The engineer is assessed in the practice fields and areas they submit to the RA as an integral part of their written application. At the end of the assessment process, the Panel makes a recommendation to the Competence Assessment Board (CAB) as to whether the engineer meets the minimum standards of competence for a Chartered Professional Engineer and whether they should therefore be registered. The CAB is appointed by the RA and has delegated authority to make registration decisions.
22. Mr A's application listed two practice fields and his practice areas, which did not include structural design.
23. Mr A advised that he initially applied to be assessed with practice fields including structural engineering, but through discussions with the assessors, amended his practice field information in his application to two other fields only. A Panel was convened to assess Mr A's registration application. The assessment process proceeded in accordance with the RA's usual process and was completed in October 2013 (see below).
24. In mid-2013, Mr A left employment with the company he had been working for and commenced working for a structural engineering firm. The job title he used at the firm was Structural Engineer.
25. In October 2013, Mr A applied to a building consent authority for registration on its Producer Statement⁴ register (PSR).

² See rule 3 of the Rules.

³ The minimum standards of competence to be a Chartered Professional Engineer are set out in Rules 6 and 7 of the Rules.

⁴ Engineers produce Producer Statement documents to confirm their professional opinion that aspects of a building's design comply with the Building Code, or that elements of construction have been completed in

26. The PSR is a list of engineers and other qualified professionals approved by the building consent authority to offer Producer Statements. The building consent authority only accepts Producer Statements that have been authored by people listed on the PSR. The building consent authority uses practice area information as a means to assess whether the Producer Statements it receives are authored by suitably qualified individuals, and accordingly whether to accept them.
27. At the time of his application to the building consent authority, Mr A's registration application was still being assessed. Accordingly, he was not then a Chartered Professional Engineer and was not able to provide the building consent authority with his practice area information. A building consent authority staff member Ms B and Mr A had ongoing email communications regarding his application to be on the PSR. The building consent authority advised Mr A he had been added to its PSR, with the restriction "no restricted building work". He was advised that once he had his "Certificate and Practising letter from IPENZ", the register would be updated.
28. About a week later, in October 2013, CAB issued its final determination on Mr A's registration application approving his application for Chartered Professional Engineer status. Mr A's practice areas recognised by CAB were consistent with his registration application, and did not include structural design. He was given a term of six years until his next reassessment.

Communication of assessment decision

29. IPENZ staff member Mr C recorded CAB's determination in the IPENZ database. Mr C generated a letter dated 30 October 2013 from that database to advise Mr A of the outcome of his application and his recognised practice areas (the electronic letter). On 30 October 2013, Mr C emailed the electronic letter to Mr A. Mr A says he never received that email as he had changed jobs and had a different email address. He contacted Mr C who, on 25 November 2013, sent a further copy of the electronic letter to the new email address that Mr A provided.
30. Mr A said he never received that second email. Rather, Mr A says he received a letter dated 30 October 2013 advising him of the outcome of his registration assessment and recognised practice area information in hard copy. Mr A says he did not receive an electronic letter.

accordance with the approved building consent. There are three Producer Statements – PS1, PS2 and PS4 – used to provide verification at different stages in the design/construction process. For more information go to <https://www.ipenz.nz/home/professional-standards/design-documents/producer-statements>.

Subsequent communications with the building consent authority

31. On 11 March 2014, Mr A emailed the building consent authority asking for a change in his recognised status on the Council's PSR. His email explained that the category under which he was then listed was for non-restricted building works and he asked for this to be changed to include restricted building works. Mr A sent Ms B his IPENZ Membership certificate and his Chartered Professional Engineer status from the IPENZ website. He stated that as he did not have his practice field and area information Ms B agreed to email IPENZ on his behalf for that information.
32. On 12 March 2014, Ms B emailed IPENZ staff member Mrs D asking her to "provide Mr A's practice field please". The email was copied to Mr A. Mrs D did not respond to Ms B's email.
33. Mr A said he did not follow up on this matter as he presumed the information was provided by IPENZ and no further action was required by him.
34. On or about December 2014 the building consent authority processed a Producer Statement authored by Mr A as part of a building consent application. This application related to structural engineering work. Council staff checked Mr A's status on the PSR, and noted that it did not include structural.
35. The building consent authority advised that if a Producer Statement author submits a Producer Statement relating to work outside his or her practice areas it will either:
 - a. request the building consent applicant also obtain a Producer Statement from an engineer with the relevant practice area;
 - b. at the applicant's cost, carry out an in-house check of the calculations for the design or building work to which the Producer Statement relates; or
 - c. at the applicant's cost, send the calculations for the design or building work to which the Producer Statement relates to a subject matter expert for peer review.
36. The building consent authority declined to accept the Producer Statement from Mr A. As a result of ongoing communications between Mr A and the building consent authority, Mr A said he would contact IPENZ for a copy of a letter setting out his recognised practice areas. On 28 November 2014, Mr A advised Ms B by email that he had been unable to contact the relevant person at IPENZ to request the letter setting out his practice areas, and that he would follow up the following week.
37. At 2.03pm on 8 December 2014, Ms B emailed Mr A regarding the currency of his insurance information held by Council. In that email, she stated: "Also we require your [Chartered Professional Engineer] details."
38. On 8 December 2014, the building consent authority also directly asked IPENZ for information regarding Mr A's practice areas.
39. In an email sent at 4.04pm on 8 December 2014, Mrs D sent the building consent authority a letter dated 8 December 2014 addressed to Mr A, stating: "Please note as requested your current Practice Area in the [two] field/s as per your last assessment in 2013 is as follows: [practice areas listed consistent with his

application and not including structural design].” That email was not copied to Mr A, although Mrs D advised it would be her usual practice to do so.

40. Separately, and by way of an email sent at 4.32pm on the same day, Mr A sent the building consent authority a copy of a letter on IPENZ letterhead dated 30 October 2013. That letter was identical in wording to the electronic letter IPENZ has on record as emailing to Mr A in October and November 2013 except it stated Mr A’s practice areas as including “Structural design”. A yellow highlight emphasised these particular practice area words. In his email to the building consent authority Mr A stated: “I found this old letter in my inbox from last year, is this what you are looking for regarding the practice areas?”
 41. On 10 December 2014, the building consent authority contacted IPENZ identifying the discrepancy between the letter it received directly from IPENZ and the letter it received from Mr A. It asked whether Mr A had been reassessed, hence the different information in the two letters that had been provided. Upon questioning, the building consent authority confirmed it had made no changes to the letter.
 42. On 11 December 2014, Mr E from a building surveying company, emailed Ms B stating: “Mr A informs me he has sent through a letter from IPENZ regarding his structural approval. Can you tell me if you have received this? And does it resolve his ability to do structural design work?” This email related to the PS 1 Mr A authored that was not accepted by the building consent authority.
 43. On 23 December 2014, IPENZ staff member Mr F emailed Mr A and stated: “I have received an email from the building consent authority which included the attached letter it received from you. Can you please confirm that you forwarded this document to Council.” On 20 January 2015 Mr A emailed Mr F and stated he had scanned the letter and sent it to the building consent authority. He said he disposed of the original hard copy letter when he was made aware it was incorrect. On further enquiries he could not confirm why or how his copy of the letter was different.
 44. Further emails were exchanged between Mr F and Mr A in relation to this matter, but Mr A was not able to explain to the RA’s satisfaction why or how his copy of the letter was different.
 45. In early 2015, Mr A applied to the RA for an early continued registration assessment. His application listed his practice fields as including “Structural” and his practice areas as including “Structural Design.” The RA decided not to proceed with Mr A’s reassessment application at that time, given its workload and that, as it was only one and a half years since Mr A’s previous assessment, priority needed to be given to continued registration assessments that were due that year. The RA advised Mr A accordingly.
 46. Mr A accepts that the letter dated 30 October 2013 that he emailed to the building consent authority on 8 December 2014 incorrectly stated the areas in which he had been assessed as competent. The divergence of views relates to where the letter came from.
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Submissions

47. Through their submissions, counsel for the RA and for Mr A have put forward two different possible versions of events to explain the version of the IPENZ letter now

recognised as inaccurate that Mr A sent to the building consent authority. These two versions of events, and the relevant submissions, are set out below.

Submissions on factual matters

RA's submission

48. The RA's submission is that it only ever sent Mr A the 30 October 2013 letter electronically and that letter correctly stated his practice areas consistent with Mr A's registration application, the Panel's recommendation and the CAB's decision. It states the letter was never sent in hard copy, and no letter was sent to Mr A that recorded his practice areas as including structural design.

49. In support of this submission, the RA noted the following:

a. There were two forms of letterhead in use at the time the 30 October 2013 letter was sent to Mr A: a letterhead used for electronic letters that had the IPENZ logo in the top left hand header; and a letterhead used for letters printed on pre-printed letterhead and sent in hard copy that had the IPENZ logo in the top left hand header as well as the IPENZ address in the right side header. The letterhead seen on the hardcopy letters is not part of the template automatically generated from the database.

The 30 October 2013 letter IPENZ has on record as having emailed to Mr A in October and November 2013 is on the electronic letterhead. The 30 October 2013 letter that Mr A says he received in hard copy and scanned and emailed to the building consent authority is also on the IPENZ electronic letterhead, which is consistent with the RA's submission that the letter was generated and sent electronically, not in hardcopy form.

- b. The RA has no record of the inaccurate letter on any of its computer systems.
- c. The RA has no record that the 30 October 2013 letter was sent to Mr A on any occasion other than when Mr C emailed it to Mr A on 30 October and 25 November 2013.
- d. Mr A's reference in his 8 December 2014 email to the building consent authority to finding the letter in his "inbox" points to him having received the letter electronically rather than in hard copy form.

Counsel for Mr A referred to two assessment decision letters sent in hard copy to two other engineers in 2013 to support an argument that the RA does not always send assessment decision letters in electronic form, and sometimes sends them by hard copy.

The RA submitted that, during 2013, it changed its process from routinely sending assessment decision letters to engineers in hard copy to sending those letters in electronic form via email. It noted letters generated before the change have no logo on the template, as those letters would be printed on hardcopy letterhead. Letters generated after the change have the IPENZ logo on the left hand header of the template.

The RA noted that in the two examples referred to by Counsel for Mr A, the assessment letters each bore both the IPENZ logo and the street address on the

letterhead. This is consistent with them having been posted in hard copy. They were also dated as being sent before the time the process change occurred.

50. The RA concluded the 30 October 2013 letter it sent to Mr A in October and November 2013 was altered after it had been emailed to Mr A and before it was sent to the building consent authority on 8 December 2014. It is not the RA's submission that it was Mr A who altered the letter. However, the RA acknowledges that Mr A appears to be the most likely person to have done so. The RA pointed to potential motives for Mr A to have altered the letter. These factors include the implications in relation to Mr A's status on the PSR by not having a practice area including structural design, and the PS1 he had signed which was being queried by the building consent authority.
51. The RA further submitted that, regardless of whether Mr A altered the letter, he nevertheless knew or ought to have known when sending it to the building consent authority that he was providing the building consent authority with incorrect information about the areas in which he had been assessed as competent. The RA submits that a reasonable engineer would know, or ought to know, the practice areas in which they had been assessed as competent. It particularly pointed out Mr A had initially applied to the RA to be assessed with practice fields including structural engineering, but following discussions with the assessors, amended his practice field information in his application to two other fields only.
52. In his evidence, IPENZ Registrar Mr G described the high standards required for an engineer to be assessed as competent in structural engineering. He indicated there are more stringent checks on these standards following the Canterbury earthquakes.
53. Mr G further highlighted he would not expect someone to be assessed as competent with a practice area of "structural design" as that is a broad category and practice areas tend to be more specific. It was Mr G's evidence that more defined categories would be appropriate; indicating that the question asked in response to a stated practice area of "structural design" would be "structural design of what?" Examples such as low or high rise buildings were given as typical ways of identifying an engineer's competence in structural design.
54. The RA further noted Mr A knew, through his previous communications with the building consent authority, that it would make assessments in reliance on the information the letter contained.
55. The RA stated it is not relevant to the inquiry whether or not Mr A was actually competent in the area of structural design, but rather whether Mr A misrepresented his recognised competence to the building consent authority by sending it inaccurate information about the areas in which his competence had been assessed.

Mr A's submission

56. Mr A accepts he emailed the building consent authority on the afternoon of 8 December 2013 conveying a copy of the 30 October 2013 IPENZ letter now recognised as inaccurate. However, Mr A denies changing the letter.
57. Mr A said the 30 October 2013 letter he sent to the building consent authority as an attachment to his email on 8 December 2014 was the one he had received from IPENZ. He said he received the letter in hard copy form, scanned it, and emailed it to the building consent authority. At the hearing, Mr A said it was he who had highlighted the practice areas. He said he later disposed of the hard copy letter as he

was informed it did not accurately describe his practice areas. Counsel for Mr A submitted that, on occasion, the RA has sent letters to engineers with errors in them. He gave examples in support of this.

58. Mr A denied receiving an email from IPENZ with a letter containing his practice areas attached electronically. He said he only received this by post. Mr A indicated he forgot about, or was not fully aware of, the letter. Mr A indicated he had found the letter on his desk. He explained that when he referred to finding the letter in his “inbox”, he meant he had found it in his “in tray”.
59. Counsel for Mr A submitted that the RA had provided no evidence to show how it is alleged that the PDF could be edited. He stated at the hearing that Mr A would not have had sufficient time to alter the letter, indicating there were only 2 hours and 28 minutes between the building consent authority’s email to Mr A at 2.04pm on 8 December 2014 requesting his practice area information, and his response with the incorrect letter attached sent at 4.32pm.
60. Mr A disagrees that at the time he sent a copy of the letter to the building consent authority he knew or ought to have known the information contained within the letter was incorrect. Mr A states he supplied the Panel with multiple examples of design of engineering structures using reinforced concrete, and that he had been working as a civil and structural engineer for several years at that point. He therefore did not find it surprising that the letter included “structural design” as a practice area, despite his practice fields not including structural engineering. He explained he considers himself competent to do some parts of structural design.
61. Investigating Committee Chair Deane McNulty advised the Disciplinary Committee that an engineer is expected to continue to develop professionally, and their assessed areas of competence do not necessarily include all of the areas in which an engineer is competent. Mr A further discussed this when explaining why he felt it was appropriate for him to have signed the PS1 that the building consent authority queried.
62. Counsel for Mr A stated there were no adverse consequences as a result of the inaccurate letter being sent. The building consent authority identified the discrepancy almost immediately and no actions were taken on the basis of the incorrect description of Mr A’s practice areas.
63. In his evidence at the hearing, Mr A accepted that if he were asked about his areas of competence now, he would provide a narrower term to more appropriately reflect his competency.

Submissions on legal points

Standard of proof required

64. Counsel for the RA submitted that as this is a civil matter, the usual civil standard of proof applies. That is, that before we make an adverse finding against Mr A we must be satisfied on the balance of probabilities that the evidence supports that finding.
65. Counsel for Mr A submitted that the civil standard is the appropriate starting point, but contended the standard of proof is actually higher in this case. He drew parallels between the allegation against his client, and an allegation of fraud. He submitted that we must be sure Mr A acted as the RA alleges, and that we should not find against Mr A if we have any doubts as to whether he knowingly sent the letter

inaccurately describing his practice areas to the building consent authority. In support of his submission he quoted Simon France J in *Zogs International Ltd v Sexwax Inc* as follows:

“Ultimately, the standard of proof is the balance of probabilities but I consider there remains value in the words of Mr Thorley QC, the Appointed person, in *Royal Enfield Trade Marks*, where of a bad faith allegation he observed: It should not be made unless it can be fully and properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference.”

66. In short, Counsel for Mr A submitted that the strength of the evidence relied upon to make an adverse finding against Mr A must be so strong that it enables us to be convinced, sure and certain that there has been dishonesty and a fraudulent misrepresentation by Mr A in breach of his ethical obligations. He stated that there has to be an element of intent to deceive in Mr A's actions before a finding can be made by us against him (this submission is linked with that of intention, which we address below).
67. Nevertheless, Counsel for Mr A identified that a Full Court of the High Court in *Complaints Committee No 1 of the Auckland District Law Society v C* cited *Z v Complaints Assessment Committee [2008] 1 NZLR 65* in which the Court of Appeal held that the standard of proof in medical and dental disciplinary proceedings is civil in nature and not quasi-criminal.

Requirement of intent

68. Counsel for Mr A contended that for us to make an adverse finding against Mr A, we have to be satisfied that not only did he act dishonestly, but he also intended to act dishonestly. In that respect, he submitted that mere negligence is not sufficient for an adverse finding in this case.
69. Counsel for the RA responded that we do not need to find that Mr A acted intentionally in order to make a finding that Mr A breached his ethical obligations. Instead, he argued that the question for us is whether Mr A knew or ought to have known the information he provided to the building consent authority was inaccurate.

Discussion

Preliminary matters

Role of the Disciplinary Committee

70. Our role is to consider whether there are grounds for disciplining Mr A in accordance with the Act. In short, we can make an order in relation to Mr A in accordance with section 22 of the Act⁵ if we are satisfied he has breached the Code of Ethical Conduct contained in the Rules⁶ or that he has acted incompetently or negligently.

⁵ The types of orders a Disciplinary Committee can make in accordance with section 22 of the Act include an order that: the person's registration be removed and the person may not apply for re-registration before the expiry of a certain period; the person's registration be suspended for a period of no more than 12 months or until the person meets specified conditions relating to the registration; the person be censured; the person pay

71. Mr A is also a Professional Member of IPENZ. Accordingly, the complaint must also be considered against the membership, ethical, competence and good character obligations on Members as set out in IPENZ Rule 4.

Standard of proof

72. Both parties agree the starting point in this case is the civil standard of proof – that is, the balance of probabilities. Counsel for Mr A argues, however, that given the nature of the allegations, the standard of proof is actually higher in this case.
73. We agree the civil standard applies in this case. While we have regard to the nature of the allegations in our assessment of this matter, overall the standard of proof is the balance of probabilities. Counsel for Mr A appears to be advocating for a quasi-criminal standard but we are not persuaded that is the appropriate standard to apply in a disciplinary case considering alleged breaches of professional and ethical obligations. We consider that this is consistent with the approach taken by the Court of Appeal in *Z v Complaints Assessment Committee*.

Factual findings

74. There are certain facts in this case that are accepted and others that are contested. We set out below our findings on the facts, which form the basis of our decision.
75. It is accepted that:
- a. Mr A applied to be registered as a Chartered Professional Engineer in mid-2013. Although he originally applied to be registered with a practice field including structural engineering, that was changed following discussion with the assessors, and he amended his practice fields to two other practice fields only. In his application Mr A nominated his practice areas for assessment, which did not include structural design.
 - b. The Panel convened to consider Mr A's assessment application assessed him in the practice areas as described in Mr A's registration application.
 - c. In October 2013 the CAB issued its final determination on Mr A's registration application, approving his application for Chartered Professional Engineer status and recognising his practice fields and practice areas consistent with his application, which did not include structural design.
76. How the CAB's decision was communicated to Mr A is contested by the parties.
77. The RA submitted that it advised Mr A of the outcome of his registration assessment and his recognised practice areas in a letter dated 30 October 2013 that was generated electronically and sent to him by email on 30 October and again on 25 November 2013. There is clear evidence these emails were sent by the RA to Mr A on 30 October and 25 November 2013, and those emails contained as an attachment the electronic letter correctly stating Mr A's recognised practice areas.

a fine not exceeding \$5,000. The Disciplinary Committee can also order the person pay costs and expenses of, and incidental to, the inquiry by the Registration Authority.

⁶ Since the hearing of this matter, a new Code of Ethical Conduct has been released for both IPENZ Members and Chartered Professional Engineers. The Codes referred to in this decision are the Codes that applied at the time of these events, in particular, the IPENZ Code of Ethics 2005 and the Code of Ethical Conduct contained in the Rules. These are the Codes in place at the time Mr A sent the inaccurate letter to the building consent authority, and therefore is the standard against which he will be assessed.

78. Mr A has stated he did not receive either of the two emails sent by IPENZ and he did not receive the letter dated 30 October 2013 in electronic form. Rather, he submits that he received the letter in hard copy, and the hard copy letter he received had his recognised practice areas as including “Structural design”.
79. IPENZ has no record of having sent Mr A an assessment decision letter in hard copy form. The only assessment decision letter sent to Mr A by IPENZ conveying the CAB’s decision was the electronic letter emailed to him on 30 October and 25 November 2013. In addition, IPENZ has no record of sending Mr A a letter that recorded his recognised practice areas as including “Structural design”.
80. We note the originally prepared electronic letter and the inaccurate version Mr A emailed to the building consent authority each have a letterhead that carries just the IPENZ logo in its top left header. This appearance is consistent with the form that was being used by IPENZ in October 2013 for all of its emailed correspondence. This differed from letters prepared for sending in hard copy by ordinary post, where the letterhead used also included the physical address of the IPENZ office in its top right header.
81. Having heard and considered the evidence provided, we are satisfied the inaccurate letter Mr A emailed to the building consent authority on 8 December 2014 was not produced by and did not originate within IPENZ.
82. We accept the evidence of Mr C that IPENZ did not physically post the originally prepared electronic letter or any copy of it to Mr A. From the evidence received and the answers to questions asked, we accept the letter was sent to Mr A only via email.
83. The next matter we need to determine is whether there is sufficient evidence for us to make a factual finding as to how that letter came to be altered. First we will consider the matter of motivation, and then we will consider the matter of opportunity.
84. With regard to motivation, the RA has not alleged Mr A altered the letter, although it submitted that Mr A is the most likely person to have done so. The RA notes the motivating factors for Mr A to alter the letter include his status on the PSR and the building consent authority’s questioning of the PS1 he had signed.
85. The evidence suggests Mr A was concerned about limitations on his practice provided by the PSR, and remedying that was important to him. On 11 March 2014 he emailed the building consent authority asking for a change in his recognised status as a Producer Statement author. His email explained the category under which he was then listed was for non-restricted building works and he asked for this to be changed to include restricted building works.
86. The alterations to the letter Mr A sent to the building consent authority attached to his email of 8 December 2014 were such as to change the practice areas in which Mr A was assessed as competent to include “Structural design”. The alteration particularly addressed an issue Mr A was facing at the time as to the building consent authority’s regard for a Producer Statement authored by him as part of a building consent application. We note that when asked, Mr A told us he had highlighted these particular words in the letter he emailed to the Council on 8 December 2014.

87. In addition, Mr A made efforts with IPENZ towards being recognised as a structural engineer when he prepared and, in early 2015, lodged an application seeking to update his competency to include structural design
88. In our view there were significant motivating factors for Mr A to show he had been assessed as competent in structural engineering. Mr A sent the letter to the building consent authority in circumstances where he knew the Council were particularly looking to confirm and, if appropriate, update his practice areas.
89. With regard to opportunity, Counsel for Mr A submitted the RA had provided insufficient evidence to show it would have been possible for Mr A to have altered the letter in question. He submitted that the alteration would have had to occur within a 2 hour 28 minute window; that is, between the building consent authority's email to Mr A at 2.30pm on 8 December 2014 and his response, with the inaccurate letter attached, sent at 4.32pm.
90. We disagree Mr A only had a 2 hour and 28 minute window of opportunity to alter the letter. The building consent authority first requested Mr A's practice area information on 28 November 2014 and he replied on that day saying he would request it. Mr A was aware from that date that the building consent authority required his practice area information. Accordingly, we are satisfied Mr A did have the opportunity to alter the letter.
91. In our view, Mr A clearly had motivation and opportunity to alter the letter to include the practice area of "Structural design". We are satisfied the inaccurate letter did not originate from IPENZ. However, the evidence against Mr A is circumstantial and there is nothing concrete to point to Mr A actually having made the amendment. In these circumstances, we cannot say with certainty that it is more likely than not that he made the alterations. Accordingly, we find ourselves unable to make a factual finding, even on the balance of probabilities, that Mr A altered the letter.

Mr A's actions in sending the letter to Council

92. Although we have been unable to make a factual finding that Mr A altered the letter, it is accepted that he forwarded the inaccurate letter to the building consent authority in response to its request for his practice area information. The question now before us is whether he knew, or ought to have known, the letter was inaccurate and, if he did, whether in sending it he breached his professional obligations as a Chartered Professional Engineer and/or a member of IPENZ.
93. The RA submitted that when sending the letter Mr A knew, or ought to have known, he was providing the building consent authority with inaccurate information about the practice areas in which he had been assessed as competent. Its submission is that a reasonable engineer would know, or ought to know, that information.
94. Mr A disagrees. He stated he had provided the Panel with multiple examples relevant to structural engineering and, as he had been working as a Civil and Structural engineer for several years at that point, he did not find it surprising the letter included "Structural design" as a practice area.
95. Having carefully considered this matter, it is our view that when Mr A included the inaccurate letter as an attachment to his 8 December 2014 email to the building consent authority he should have known what it said was wrong.

96. In this respect, we note that in mid-2013 Mr A himself had prepared and made his application to the RA seeking to be recognised as a Chartered Professional Engineer. He had had a discussion with the assessors at that time about including a Practice Field of Structural design, and having considered the matter he decided not to include this. He made his application accordingly. The practice area statement he wrote and provided as part of his formal application made no mention of “Structural design”.
97. Following the CAB’s consideration, Mr A’s registration application was approved. We have found on the facts that he was notified of that decision by an electronic letter dated 30 October 2013 that accurately recorded his recognised practice areas. This formal recognition of Mr A’s practice areas by his professional engineering peers remains unchanged to the present day.
98. Mr A submitted that, having prepared and made his registration application and defined his practice fields and practice areas, he had not remembered the resulting outcome in terms of the particularities and content of the CAB’s decision. In our view, in circumstances in which Mr A was providing the building consent authority with signed approval of designs for proposed building works, Mr A had a professional duty to be properly aware of his recognised professional standing, particularly the practice areas within which he has been assessed as competent. He knew that information was important to the building consent authority when deciding whether to accept certain works submitted by him.
99. We are concerned Mr A took the view that because of his subsequent structural work he was in some way justified in regarding himself as being able to formally certify structural designs for the building consent authority when he was not authorised by it to do so.
100. In our view, a reasonable professional should know and act in accordance with the practice areas in which they have been assessed as competent by their registration authority. The public place trust in the engineering profession to ensure they know and act in accordance with their competence. Territorial Authorities place similar trust in the engineering profession. In our view, the status of engineering in the eyes of the public would be lowered if engineers were to have little regard to the importance of the registration assessment process and the relevancy of their assessed practice areas.
101. Mr A ought to have known his recognised practice areas did not include “Structural design”. Even if he did not, he knew the purpose for which the building consent authority was requesting his practice area information and it would rely on this. In these circumstances, he should have taken steps to ensure he was providing the building consent authority with accurate information. It was not sufficient for him to simply rely on his view that he was competent in structural engineering.
102. We consider Mr A’s professional conduct in sending the inaccurate letter to the building consent authority to be lacking the awareness and integrity that is both expected and required of a practising Chartered Professional Engineer.

Findings

103. Having considered the relevant information, we find Mr A has shown a serious lack of care and his behaviour fell below the standard expected of a Chartered Professional Engineer and a reasonable member of IPENZ. We find Mr A’s breaches are serious and warrant discipline.

104. Particularly, we find that:

- a. In failing to recognise the letter he sent to the building consent authority wrongly stated his recognised practice areas and therefore the practice areas in which he had been assessed as competent, Mr A misrepresented his competence to the building consent authority and breached Rule 46(a) of the Rules and Clause 4 of the IPENZ Code of Ethics.
- b. In failing to recognise the letter he sent to the building consent authority wrongly stated his recognised practice areas and therefore the practice areas in which he had been assessed as competent, Mr A failed to meet his ethical obligations to act with honesty and integrity, under Rule 45 of the Rules and Clause 3 of the IPENZ Code of Ethics.

105. Although not a formal finding, we note with concern that throughout this process Mr A has sought to convey the view that because of his subsequent structural work he was in some way justified in not recognising the error in the letter he sent to the building consent authority and is justified in regarding himself as being able to formally certify structural designs for the building consent authority when he was not approved by it to do so. This is not a case about what Mr A is or is not competent to do, it is a case about the accuracy with which he has represented himself to the Territorial Authority. It is our goal that Mr A learns from this experience.

Disciplinary actions

106. Having decided there are grounds for disciplining Mr A, we need to determine what orders, if any, should be made against him.

107. In this regard, there are a range of disciplinary actions available to the Committee, as set out in section 22(1) of the Act. Furthermore, under IPENZ Disciplinary Regulation 17, a range of sanctions in respect of Mr A's Membership of IPENZ are available.

108. On 1 August 2016 our reserved determination was sent to the parties and they were invited to make submissions as to penalties.

109. On 29 August we received a joint memorandum of counsel as to penalty. The joint memorandum recorded that, having discussed the appropriate penalty to be imposed on Mr A by the Disciplinary Committee and having considered information regarding Mr A's personal circumstances, counsel and the parties are jointly agreed that, having regard to all of the circumstances, the appropriate penalty under section 22 of the Act would be:

- a. three months' suspension of Mr A's registration as a Chartered Professional Engineer;
- b. a fine of \$1,500;
- c. payment of \$19,500 towards the costs incurred by the RA in inquiring into Mr A's conduct (which is approximately 29% of the RA's total costs of \$67,631.41);
- d. an order that, subject to section 22(5)(a) of the Act, Mr A and his employer have permanent name suppression in relation to the disciplinary proceeding and the decisions of the Disciplinary Committee;

- e. the RA may publish the Disciplinary Committee's final determination on the professional conduct of Mr A on its website only, provided always that Mr A and his employer are not identifiable in any such publication;
- f. a summary of the Disciplinary Committee's final determination may be published in publications of the RA and/or of IPENZ, subject to the identification restrictions outlined above.

110. We have considered the joint memorandum of the parties regarding penalty.

111. In *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*⁷ the High Court outlined a number of principles to be applied by (in that case) the Health Practitioners Disciplinary Tribunal (Tribunal) in determining the appropriate penalty to impose in disciplinary proceedings against a health practitioner. The High Court determined 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 into the profession;
- d. be comparable with penalties imposed on practitioners in similar circumstances;
- e. reflect the seriousness of the practitioner's conduct, in the 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.

112. Further, the High Court stated in that case that while a penalty may have the effect of punishing a practitioner, punishment is not a necessary focus for the Tribunal determining penalty. The principles in the *Roberts* case are broadly applicable to the exercise of our power to make disciplinary orders under section 22 of the Act, and they are the principles we rely on when considering the appropriate penalty in this case.

113. The public should be able to rely on a Chartered Professional Engineer to accurately represent the areas in which they have been assessed as competent. Mr A did not accurately represent to the building consent authority the areas in which he had been assessed as competent and, in doing so, showed a serious lack of care. In our view, his behaviour fell below the standard expected of a Chartered Professional Engineer and a reasonable Member of IPENZ. We found Mr A's breaches are serious and warrant discipline.

114. Accordingly, in our view, a firm condemnation and sanction of Mr A's actions are appropriate to reflect the seriousness of his conduct, deter other engineers from engaging in similar conduct, and to set and maintain professional standards.

⁷ [2012] NZHC 3354.

115. However, we are also thoughtful that Mr A is a young engineer with no previous history of professional misconduct. He has strong prospects of rehabilitation. We consider the penalty we impose should not interfere with his rehabilitative prospects. This is particularly relevant in respect of whether Mr A should be named publicly.
116. Naming of engineers subject to a disciplinary finding supports openness, transparency, and accountability. It is the starting point and will only be inappropriate in certain limited circumstances where the privacy of the individual engineer outweighs the public interest. In this case, counsel has indicated there are personal circumstances to be taken into account by the Disciplinary Committee regarding the penalty to impose on Mr A, including naming. While his breaches are serious, we are mindful that Mr A is a young engineer with no history of professional misconduct and strong prospects of rehabilitation that will be affected if he is named. In all the circumstances, it is our view that, in accordance with joint memorandum of counsel, it is appropriate not to name Mr A in this case.
117. In our view, the penalty suggested by the parties in the joint memorandum is an appropriate penalty for this case. In our view, it sets the right balance in reflecting the seriousness of Mr A's conduct, and the need to set and maintain professional standards and protect the public, while at the same time recognising his rehabilitative prospects. Overall, we consider it to be fair, reasonable, and proportionate in the circumstances, and the least restrictive penalty that can reasonably be imposed.
118. Accordingly, in exercising our delegated powers, we order under section 22 of the Act that Mr A:
- a. be suspended from registration as a Chartered Professional Engineer for three months;
 - b. pay a fine of \$1,500;
 - c. pay \$19,500 towards the costs incurred by the RA in inquiring into his conduct (which is approximately 29% of the RA's total costs of \$67,631.41); and
 - d. have permanent name suppression in relation to the disciplinary proceeding and the decisions of the Disciplinary Committee, subject to section 22(5)(a) of the Act.
119. We also order the RA:
- a. publish a fully anonymised version of our final determination on the professional conduct of Mr A on its website, for educational purposes;
 - b. publish a fully anonymised summary of our final determination on the professional conduct of Mr A in *Engineering Insight*, for educational purposes.
120. In addition, we recommend the RA consider whether it is appropriate to call Mr A for an early re-assessment of his competence to practise as a Chartered Professional Engineer.

Signed on behalf of the Disciplinary Committee

Peter McCombs

Chair of the Disciplinary Committee

Dated: 15 September 2016

Disciplinary Committee Members

Peter McCombs CPEng FIPENZ IntPE(NZ)

Peter Steel CPEng FIPENZ IntPE(NZ)

Wayne Stewart CPEng FIPENZ

Hamish Wilson

Murray Lints