

Board of Professional Engineers v X2

This case was a disciplinary proceeding brought by the Board of Professional Engineers of Queensland (“Board”) against a registered professional of Queensland (deidentified as X2) in the Queensland Civil and Administrative Tribunal.

X2 is and was at all material times registered in the area of Civil engineering.

Disciplinary grounds

There were three separate allegations of misconduct in this matter. The disciplinary grounds cover X2’s conduct in relation to professional engineering services carried out at two separate properties spanning a time period of 3 years.

1. In October 2018, X2 issued a Form 16 Inspection Certificate without having first conducted a proper inspection of the certified work.
2. In November 2018, X2 issued another Form 16 Inspection Certificate without having first conducted a proper inspection of the certified work.
3. In 2015, X2 prepared a design for a retaining wall which was inadequate for its intended purpose.

Section 36 of the *Professional Engineers Act 2002* (Qld) (the “Act”) provides grounds for disciplining a RPEQ, including if “the engineer has...behaved in a way that constitutes unsatisfactory professional conduct”.

‘Unsatisfactory professional conduct’ is defined in the Act as conduct that includes the following:

- a) Conduct that is of a lesser standard than that which might reasonably be expected of the registered professional engineer by the public or the engineer’s professional peers;
- b) Conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgment or care, in the practice of engineering.

The investigation

The Board carried out an investigation of X2’s conduct following complaints made to the Board. The investigation revealed that:

- i. In relation to the design of the retaining wall, X2 did not obtain a geotechnical report or seek or obtain copies of proper engineering details, drawings or plans;
- ii. X2 did not undertake any invasive investigations to confirm the adequacy of the bracing to meet the intention required;
- iii. With respect to the inspection certificates X2 did not take photos while undertaking his inspections;
- iv. X2 did not make a written record of the inspections other than the Form 16; and
- v. X2 failed to consider and/or take measurements and keep records of certain calculations.

Tribunal's findings

The Tribunal stated:

“There are significant concerns as to consumer protection and public safety involved in this activity. Members of the public rely on professional engineers for their skill and experience. Where conduct is inadequate or demonstrates a lack of adequate knowledge, skill, judgement, or care, it can have serious consequences on the consumer who engaged and relied upon the engineer’s expertise.”

The Tribunal found that X2’s conduct in designing the retaining wall and issuing the Form 16 certificates met the definition of ‘professional engineering services’ in the Act.

The Tribunal found that X2’s conduct amounted to unsatisfactory professional conduct, being conduct that is of a lesser standard than that which might reasonably be expected of a registered profession engineer by the public or his professional peers and conduct that demonstrates incompetence or lack of adequate knowledge, skill, judgement, or care in the practice of engineering. Accordingly, a disciplinary ground is established pursuant to section 131(1) of the Act.

Consequences for X2

X2 was co-operative with the Board and the investigation throughout. X2 accepts that they engaged in conduct that constituted unsatisfactory professional conduct.

The Tribunal found it was relevant that X2 had prior disciplinary history. The Board had dealt with complaints against X2 on several previous occasions.

The Tribunal found it was of concern that one of the most recent complaints was of a similar nature to these disciplinary grounds.

The Tribunal ordered X2 be reprimanded pursuant to s 131(3)(a) of the PE Act. In addition to the reprimand, the Tribunal imposed a monetary penalty of \$10,000 having regard to the nature of the behaviour and its consequences.

The Tribunal also deemed it appropriate in the interests of justice that X2 pay \$40,000 for the Board’s costs.