

DISCIPLINARY COMMITTEE DECISION REGARDING AN OWN MOTION INQUIRY ABOUT PRAJNA SINGH

Confidential to parties

In accordance with:

Engineering New Zealand Rules 2019

Engineering New Zealand Disciplinary Regulations 2017

Prepared by

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Hamish Wilson, nominated by Consumer New Zealand

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

Members of the Disciplinary Committee

14 April 2022 - Addendum added 24 May 2022



**engineering
new zealand**
te ao rangahau

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EXECUTIVE SUMMARY

1. Ms Singh was a student member of Engineering New Zealand from 9 November 2017 to September 2020. In October 2019, Engineering New Zealand received information from an anonymous person advising that Ms Singh had signed documents representing herself as a chartered professional engineer ('CPEng'). Subsequent inquiries raised questions as to the extent to which she has misrepresented herself as a CPEng, and whether she had completed her engineering degree.
2. Ms Singh has held senior engineering positions in recent years, which also raises concerns as to whether she has been practising outside her competence.
3. Engineering New Zealand commenced an own motion investigation on 14 January 2020 into Ms Singh's conduct.

DECISION

4. Having considered the matter, we have found Ms Singh's conduct was not in accordance with the expected standard of a Student Member of Engineering New Zealand.
5. We have found that:
 - a. Ms Singh breached her obligation under the Engineering New Zealand Rules to conduct herself as a fit and proper person to be a student member of Engineering New Zealand; and
 - b. Ms Singh breached her obligations in respect of the Code of Ethical Conduct applicable to members of Engineering New Zealand by acting outside her competence, by misrepresenting her competence, and by failing to act with honesty and integrity.
6. The complaint is upheld.
7. In exercising our delegated powers, we order that Ms Singh:
 - a. is admonished as a former member of Engineering New Zealand;
 - b. pay a fine of \$5,000;
 - c. pay 60% of the costs incurred by Engineering New Zealand in investigating this matter, being \$10,254.00 plus GST.
8. In addition, Engineering New Zealand will, subject to any appeal by Ms Singh, publish our final decision on its website, naming Ms Singh, and in any other communication it considers appropriate.

BACKGROUND

THE ENGINEER

9. Prajna Singh was a Student Member of Engineering New Zealand from 9 November 2017 to September 2020. She resigned her membership with Engineering New Zealand on 16 September 2020.

INITIAL NOTIFICATION

10. In October 2019, Engineering New Zealand received information from an anonymous person via email advising that Ms Singh had signed documents representing herself as a CPEng.
11. The email attached two examples of documents signed in this manner:
 - a Producer Statement – Design¹ (PS1) prepared for submitting to a building consent authority
 - an Initial Evaluation Procedure² (IEP) assessment prepared for submitting to a different building consent authority.
12. The PS1 document stated it was “*on behalf of [Company B]*”, and that Ms Singh was “*a Member of Engineering NZ and holds the following qualifications: MIPENZ (Structural and Civil), CPEng*”. At this time, Ms Singh was an employee of Company B, an engineering consultancy.
13. Following the anonymous notification, on 23 October 2019 Engineering New Zealand wrote to Ms Singh and Company B. Ms Singh was asked to confirm if the information provided to Engineering New Zealand was true; if she had any explanation for it; and if there had been any other instances in which she had signed documents representing herself as a CPEng.
14. Ms Singh responded on 5 November 2019 that the two documents provided anonymously to Engineering New Zealand were the only instances in which she had represented herself as a CPEng. She provided a transcript from the University of Auckland showing an incomplete engineering degree and advised she would provide transcripts of her previous tertiary studies in Fiji. She said she had resigned from her job and intended to go back to study. She said she was not seeking another technical engineering position.
15. By this time Company B had found several more documents also signed by Ms Singh as a CPEng. It provided 38 documents allegedly signed by Ms Singh between September 2018 and September 2019. These are discussed in more detail below.

COMPLAINT

16. The inquiries made by Engineering New Zealand raised questions as to the extent to which Ms Singh had misrepresented herself as a CPEng, and whether she had completed her engineering degree. As Ms Singh had held senior engineering positions, this also raised concerns as to whether she had been practising outside her competence.

¹ A PS1 is a statement from the design engineer which states they believe on reasonable grounds their design complies with the Building Code. Their intent is to signal to a Building Consent Authority (“BCA”) that certain design work has been done (or overseen/supervised) by a practitioner who is competent to perform the defined work (most usually, a chartered professional engineer). The PS1 has no legal status under the Building Act 2004 nor the Building Code but is part of the package of information a BCA will consider when deciding whether to issue a building consent.

² An IEP is a spreadsheet used to calculate an initial assessment of the %NBS earthquake rating based on the “Seismic Assessment of Existing Buildings, Technical Guidelines for Engineering Assessment”, July 2017.

17. Accordingly, Engineering New Zealand commenced an own motion investigation on 14 January 2020 into Ms Singh's conduct.
18. Engineering New Zealand notified Ms Singh an own motion investigation had been commenced and asked her on 14 January 2020 to provide additional information, including details of her qualifications, and any further instances in which she had misrepresented herself as a CPEng.
19. On 27 May 2020, after considering the matter, Cliff Boyt FEngNZ, chair of Investigating Committees, acting as Adjudicator, decided to refer the complaint to an investigating committee.

INVESTIGATING COMMITTEE

20. The members of the Investigating Committee were:
 - Kelvin Barclay FEngNZ CPEng IntPE(NZ)
 - Terry Kayes FEngNZ ONZM
 - Matt Bishop CEngNZ CPEng IntPE(NZ)
21. The Investigating Committee found the complaint raised serious concerns about Ms Singh's competency (including misrepresenting her competency) and her honesty, objectivity, and integrity.
22. After considering the matter, the Investigating Committee decided on 3 August 2021 there were no grounds to dismiss the complaint and concluded the complaint should be referred to a disciplinary committee on the basis that it raised concerns as to whether Ms Singh had met the standard expected of a reasonable Member of Engineering New Zealand.

DISCIPLINARY COMMITTEE

23. On 30 August 2021, a disciplinary committee was appointed to hear the complaint.
24. The members of the Disciplinary Committee are:
 - Deane McNulty FEngNZ CPEng (Chair)
 - Gordon Hughes FEngNZ CPEng IntPE(NZ)
 - Geoffrey Farquhar FEngNZ CPEng IntPE(NZ)
 - Hamish Wilson, nominated by Consumer New Zealand
 - Dr Cordelia Thomas, Barrister and Solicitor of the High Court of New Zealand
25. On 2 November 2021, Engineering New Zealand wrote to Ms Singh to enquire as to her availability for a disciplinary hearing on particular dates. She responded by email on 9 November 2021 advising that she did not require a hearing to be held.
26. By joint memorandum dated 30 November 2021, Engineering New Zealand and Ms Singh confirmed to the Disciplinary Committee that both parties:
 - accept the facts as set out in the Investigating Committee's decision
 - accept that these facts constitute a ground of discipline; and
 - consider the Disciplinary Committee can proceed to penalty.
27. After reviewing the Investigating Committee's decision and the information on which it was made, the Disciplinary Committee was satisfied no hearing was required. Accordingly, no hearing was held.

JURISDICTION

28. Ms Singh was a student member of Engineering New Zealand from 9 November 2017 to September 2020. She was also a student member of the then Institution of Professional Engineers New Zealand³ (IPENZ) between 2009 and 2010.
29. Engineering New Zealand records show that when Ms Singh applied for student membership, she stated she had completed a Bachelor of Engineering degree from Auckland University in 2008. She also listed her education provider as the University of Auckland as the basis for her student membership.
30. To become a student member, an applicant must declare they will abide by the Rules and Regulations of Engineering New Zealand and comply with the Code of Ethical Conduct; and confirm all information in their membership application is true and accurate. Engineering New Zealand does not require students to provide evidence of their study – it relies on the honesty of applicants in making these declarations.
31. Ms Singh’s view before the Investigating Committee was that she was ineligible for student membership as she was not in fact studying at the time she made her application for membership. She submitted that Engineering New Zealand’s failure to verify an applicant was currently enrolled in study is a systemic fault.
32. The Investigating Committee was provided with evidence of Ms Singh’s online applications for student membership in 2017 and 2019. It disagreed with Ms Singh’s statement that Engineering New Zealand should have verified her studies. Although Ms Singh may have been ineligible for membership, she declared to Engineering New Zealand the information in her application was true and accurate. The Investigating Committee considered that Engineering New Zealand had the jurisdiction to investigate this complaint. We agree. We also note that Ms Singh has now accepted the decision of the Investigating Committee.
33. For the avoidance of doubt, we record that Rule 11.4 of the Engineering New Zealand Rules 2019 (‘the Rules’) confirms that a concern, complaint or inquiry, and any decision on a complaint or inquiry, may relate to a person who is no longer an Engineering New Zealand member but who was a member at the time of the relevant conduct. This is the case with Ms Singh.

INFORMATION GATHERED

34. We considered the bundle of documents provided by Engineering New Zealand including, but not limited to:
 - correspondence between Engineering New Zealand and Ms Singh;
 - correspondence between Engineering New Zealand and Company B;
 - correspondence between Engineering New Zealand and Ms Singh’s former employer Company A;
 - the Adjudicator’s decision dated 27 May 2020;
 - further information gathered by the Investigating Committee;
 - correspondence between Engineering New Zealand and Company C, where Ms Singh was employed after Company B;

³ The Institution of Professional Engineers New Zealand changed its trading name to Engineering New Zealand in 2017.

- correspondence between Engineering New Zealand and the Ministry of Business, Innovation and Employment; and
- the Investigating Committee’s decision dated 3 August 2021.

INITIAL INVESTIGATION

35. Following the anonymous notification in October 2019, Engineering New Zealand wrote to Ms Singh and Company B. Ms Singh was asked to confirm if the information provided to Engineering New Zealand was true; if she had any explanation for it; and if there had been any other instances in which she had signed documents representing herself as a CPEng.
36. Ms Singh responded that signing the two documents as a CPEng had been an error of judgment, and that these were the only documents she had signed representing herself as a CPEng. She said she had resigned from her job, intended to go back to study, and was not seeking another technical engineering position.
37. After receiving Engineering New Zealand’s letter of 23 October 2019, Company B promptly undertook an internal investigation. The Managing Director said this revealed further documents which Ms Singh had signed as a CPEng. At this stage, Engineering New Zealand did not request this information from Company B.
38. Company B found some incorrect results in some of the reports signed by Ms Singh, which resulted in a different risk profile for some buildings. The Managing Director said there was one project where, if constructed, the roof purlins would not have been adequately sized to prevent excessive deflections and another area on the same project which would have been unsupported over an area used by children below unless it had been picked up. Other areas on the same project were excessively designed and would have been expensive for the client.
39. However, most of the works carried out were assessments and nothing had been constructed as a result. The Managing Director said it had become apparent through the review Ms Singh was “*a bit lacking in technical skills*”.
40. Company B met with all affected clients, client representatives and local authorities. It explained exactly what happened, what it was doing to resolve it, and apologised that it had happened.

DOCUMENTS SIGNED BY MS SINGH

41. On 25 August 2020, Company B provided Engineering New Zealand with the 38 documents which Ms Singh had allegedly signed using the postnominals: CPEng (38); MIPENZ⁴ (four); and/or CMEngNZ⁵ (three), and also stating she held a Bachelor of Engineering degree (two).

⁴ Member of the Institution of Professional Engineers New Zealand (MIPENZ) (a now obsolete membership class)

⁵ Chartered Member of Engineering New Zealand

42. Of these 38 documents, 26 were Initial Seismic Assessments⁶ (ISAs), five were Producer Statements, four were Detailed Seismic Assessments⁷ (DSAs), and one was a compliance certificate.
43. One document was signed by Ms Singh as a CPEng but no CPEng number was entered.
44. Ms Singh used Mr X's CPEng registration number to sign 36 of these documents. This CPEng registration number belongs to Mr X CMEngNZ CPEng IntPE(NZ), an Associate Engineer at a different engineering firm.
45. Mr Y's CPEng registration number was used alongside Ms Singh's name on two of these 38 documents. This CPEng number belongs to Mr Y CMEngNZ CPEng IntPE(NZ), Principal, at Company B. These documents are not signed by Ms Singh and she denies she was the person who used Mr Y's CPEng number on those documents.
46. Engineering New Zealand wrote to Mr X and Mr Y and provided them with the documents signed by Ms Singh using their CPEng numbers. They were asked whether they knew Ms Singh, and if so, in what capacity; were they aware that their CPEng registration number had been used on the documents; if they were aware of any other time their CPEng registration number had been used by Ms Singh, or anyone else; and whether there was any other information they could provide which would be relevant to the investigation.

Mr X

47. Mr X responded on 25 September 2020 that he did not know Ms Singh in any capacity. He said he was not aware of Ms Singh using his CPEng registration number until he was contacted by Engineering New Zealand.
48. To the best of his knowledge, until he was contacted by Engineering New Zealand, he was the only one using his CPEng number. He said he did not have any further information to assist the investigation, and he did not know anyone who was employed by Company B.
49. Mr X also raised concerns in his response about his reputation being tainted and noted the work which Ms Singh had signed off was outside his practice areas.

Mr Y

50. Mr Y said he did know Ms Singh as she was a former colleague at the Company B Auckland office (Mr Y works in a different regional office of Company B). He said he first learned of Ms Singh allegedly using his CPEng registration number when he was contacted by the Managing Director.
51. Mr Y advised he had never worked with Ms Singh on any of the jobs in question. He said at no point did Ms Singh discuss the relevant jobs with him or ask whether he was happy to sign them off with

⁶ "[the] Initial Seismic Assessment (ISA), which is the recommended first step in the overall assessment process. It is intended to be a coarse evaluation involving as few resources as reasonably possible. [...] If important decisions need to be made that rely on a building's seismic status, it is expected that an ISA would be followed by a Detailed Seismic Assessment (DSA). Such decisions could include those relating to pre-purchase due diligence, arranging insurance, or before designing seismic retrofit works. A comprehensive ISA with reference to drawings and interior and exterior inspections and supplemented with calculations (if required) may be used to confirm the status of an earthquake-prone building, provided that the engineer is confident that the result reflects the expected behaviour of the building." MBIE Guidance, Seismic Assessment of Existing Buildings – Part B: Initial Seismic Assessment: Available at: <https://www.building.govt.nz/assets/Uploads/building-code-compliance/b-stability/b1-structure/seismic-assessment/b-initial-seismic-assessment.pdf>

⁷ "The focus of a DSA is to achieve an understanding of the likely behaviour of the building in earthquakes by quantifying the strength and deformation capacities of the various structural elements, by checking the building's structural integrity against the loads/deformations (demands) that would be used for the design of a similar building on the same site." MBIE Guidance, Seismic Assessment of Existing Buildings – Section C1: General Issues. Available at: <https://www.building.govt.nz/assets/Uploads/building-code-compliance/b-stability/b1-structure/seismic-assessment/c1-general-issues.pdf>

his CPEng number. He checked his emails and timesheets to confirm this and was not able to find any record of the jobs.

52. He was not aware of any other incidences where Ms Singh, or anyone else, had used his CPEng registration number.

MS SINGH'S EMPLOYMENT AND QUALIFICATIONS

Company A 2015 – 2018

53. Ms Singh was employed at Company A as a Senior Structural Engineer from 1 July 2015 until 15 January 2018. Previously she worked as an Associate Structural Engineer at Company AA, which was acquired by Company A in 2015.
54. On 17 February 2020, Engineering New Zealand contacted Company A to make enquiries about Ms Singh. The Chief Executive of Company A advised they were aware Ms Singh was not a CPEng, and were not aware of her misrepresenting herself as one during her time at the firm.
55. Company A provided a copy of the CV Ms Singh had given it, which stated she had a Diploma in Civil Engineering from Fiji National University (2004) and a Bachelor of Engineering (Hons) from the University of Auckland (2008).

Company B 2018 – 2019

56. Ms Singh was employed by Company B from sometime in early 2018 until 4 November 2019.
57. Company B provided Engineering New Zealand with the CV Ms Singh had provided during her hiring process. This CV stated she had an Advanced Diploma in Engineering from Fiji National University (2004) and a Bachelor of Engineering (Hons) from the University of Auckland (2008).
58. The CV given to Company B also stated Ms Singh held GIPENZ membership (a now-obsolete membership class for engineering graduates) and described her as a “qualified Senior Structural Engineer”. Company B was told by a recruitment advisor when it hired Ms Singh that she had applied to become a CPEng and that her assessment was underway.

Company C – 2020

59. Ms Singh was employed by Company C for a short period in 2020.
60. Company C wrote to Engineering New Zealand on 23 September 2020 saying it was Ms Singh's employer and had become aware she may be the subject of an investigation by Engineering New Zealand. It asked for further details to assess whether there was any risk of harm to the public.
61. Engineering New Zealand responded on 30 September 2020 confirming that an own motion investigation was proceeding.

Company D

62. Ms Singh is currently employed as a Senior Structural Engineer at Company D, an engineering consultancy.⁸ We do not know when her employment commenced.
63. Ms Singh provided us with a letter dated 21 September 2021 from Company D confirming her employment and that she had disclosed this Own Motion Inquiry to Company D during the

⁸ This was correct at the time of the substantive decision in February 2022.

see Addendum - added 24 May 2022

recruitment process. The letter confirmed Company D understood *“the conduct giving rise to the investigation involved Prajna’s signature appearing on documents confirming they had been reviewed in the capacity of a CPEng. Also, her CV incorrectly noted that she had completed her qualifications.”*

64. Company D also provided a copy of the position description for a Senior Structural Engineer which was signed by Ms Singh and the General Manager of Company D. Under the heading ‘Structural Technical Skills’ are the following ‘day-to-day activities’:
- *Structural design for residential and commercial projects.*
 - *Earthquake assessment and strengthening design.*
 - *Asset inspection and assessment.*
 - *Retaining wall design.*
 - *Foundation design.*
 - *Coastal revetments.*
 - *Prepare and issue PS1 documents for design.*
 - *Prepare and issue design memorandums.*
 - *Contract preparation and management.*
 - *Prepare drawings/sketches and reports for submission to client in a format and to the standard required by [Company D]. This includes all typing and edits, preparation of plans, cross sections, and collaboration of appropriate data.*
 - *Undertake site investigations, assessments and PS4 inspections.*
65. We note that earthquake assessments may only be signed off by a qualified CPEng.⁹ Some building consent authorities will only accept producer statements signed by a CPEng, although this is not a nationwide practice.
66. The Position Description requires, among other things, that a Senior Structural Engineer *“adhere to the Engineering New Zealand Code of Ethics”*.

University of Auckland

67. On 29 November 2019 Ms Singh provided Engineering New Zealand with an unofficial transcript from the University of Auckland for the years 2005-2009, for her study towards a Bachelor of Engineering, specialising in civil engineering. The transcript shows Ms Singh’s studies being discontinued in October 2011.
68. The transcript shows some 100-level credits applied towards her studies from the Fiji Institute of Technology.
69. It also shows a number of failed or uncompleted papers across the five years. In 2008, for example, she passed 5 out of 9 papers, and received a D- for paper 411 (Structures and Design 4). Ms Singh failed 11 out of the 29 papers she sat.
70. The Investigating Committee made inquiries with the University of Auckland General Counsel, who confirmed the transcript Ms Singh had provided was correct; it showed she had not completed a Bachelor of Engineering degree, and she had not graduated from the University of Auckland.

⁹ A1.5, Engineering Assessment Guidelines available at <https://www.building.govt.nz/building-code-compliance/b-stability/b1-structure/seismic-assessment-existing-buildings>

71. On 22 December 2020, Ms Singh provided Engineering New Zealand with a copy of letter from the University of Auckland showing that she became eligible to graduate from the University of Auckland with a Bachelor of Engineering (Honours) with Third Class Honours on 15 December 2020.

Fijian qualifications

72. Despite requests from Engineering New Zealand, Ms Singh did not provide transcripts from her studies in Fiji.
73. On 11 November 2021, Engineering New Zealand obtained from the University of Auckland a copy of the information Ms Singh provided to the University in order to transfer credits towards her Bachelor of Engineering programme. That information showed her examination results on 28 papers from the Fiji Institute of Technology's¹⁰ School of Building and Civil Engineering between February 2002 and July 2004 towards a Diploma in Civil Engineering.

FURTHER INFORMATION GATHERED BY ENGINEERING NEW ZEALAND

74. Engineering New Zealand provided the Investigating Committee with all relevant emails between Ms Singh and Engineering New Zealand from 5 April 2016 to 8 March 2019. Many of these emails relate to Ms Singh emailing Engineering New Zealand seeking advice as to the process for becoming a Chartered Professional Engineer.
75. Ms Singh emailed Engineering New Zealand on 5 April 2016 (using her Company A email address). Her email signature stated she was a Senior Structural Engineer, and her postnominals were BE(Hons) Adv Dip GIPENZ.
76. Two years later, on 28 June 2018, Ms Singh (using her Gmail address) emailed Engineering New Zealand. She stated:
- "I have an advance Diploma in Engineering from Fiji National University... I have 2 more papers do go before i finish my Bachelors from University of Auckland... I think I am a student member of engineering nz [sic]"*
77. An Engineering New Zealand staff member responded saying: *"that's great! Once you gain your degree, you will be able to apply for Chartership"*.
78. Approximately six months later Ms Singh contacted the same Engineering New Zealand staff member to make enquiries about becoming CPEng without holding a Bachelor of Engineering, by way of a knowledge assessment. In an email dated 9 January 2019 from Ms Singh (using her Gmail address) to Engineering New Zealand Ms Singh stated: *"I was 3 papers why [sic] of completing my BE from UoA some years back as i had to leave this incomplete due to some personal circumstances"*. The Engineering New Zealand staff member provided Ms Singh with information about how to complete a knowledge assessment.
79. Ms Singh emailed the Engineering New Zealand staff member approximately seven weeks later asking how to upload her knowledge assessment. Engineering New Zealand responded saying:
- you are still a student member of Engineering New Zealand.... Once you complete your Bachelor of Engineering from the University of Auckland you will not be needing a knowledge assessment.*

¹⁰ Since 15 February 2010, the Fiji Institute of Technology has been part of Fiji National University.

However, if you have completed your studies, you will need to be upgraded to member or be given online access as a full member.

RESPONSE TO COMPLAINT

80. Ms Singh was provided with all of the information gathered during the investigation and asked to respond to the complaint.
81. As has been noted above, Ms Singh has accepted the Investigating Committee's decision and did not make submissions to the Disciplinary Committee.
82. Ms Singh told the Investigating Committee that she worked in a very busy team at Company B. When she was asked to complete seismic assessment work for a building consent authority, she says the directors assumed that she was "a chartered member" and so she signed the documents. Ms Singh said:

[T]his is a grave mistake and a gross error in my judgement. I have never conducted myself in this way and I am ashamed of this step that I have taken. I have apologised on numerous occasions and accept my wrongdoing.

83. Ms Singh admitted she signed 32 of the 38 documents provided by Company B and notes their investigation did not find mistakes which were grossly negligent or incompetent or which would lead to a risk of harm to the public.
84. Ms Singh admitted that at the time covered by the complaint, she did not have an engineering degree. She told the Investigating Committee that she now knows that putting the Bachelor of Engineering on her CV was wrong and she should not have done it. She has now graduated with a Bachelor of Engineering (Honours) with Third Class Honours.

THE DISCIPLINARY COMMITTEE'S ROLE

85. 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 members of the profession adhere to certain universal (or accepted) professional standards.¹¹
86. Our role is to consider the information before us relative to the Engineering New Zealand Rules 2019, Engineering New Zealand Disciplinary Regulations 2017, and Engineering New Zealand Code of Ethical Conduct 2016. We must consider whether Ms Singh has acted in accordance with her obligations and, if not, whether there are grounds for disciplining her in accordance with Engineering New Zealand's Rules and Regulations.
87. The Disciplinary Committee is required to apply the civil standard of proof, that is, the balance of probabilities, when making a finding of fact. In other words, we must be satisfied that the material facts are "more likely than not" to be true, based on the evidence before us.

¹¹ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC).

DECISION

DISCUSSION

88. We may make an order for discipline against Ms Singh as a Member of Engineering New Zealand if we are satisfied she has breached her obligations to comply with the relevant Code of Ethical Conduct and to act as a fit and proper person.
89. There are two key issues arising from Ms Singh's conduct:
- whether she breached the Code of Ethical Conduct; and
 - whether she breached the Engineering New Zealand rule requiring she conduct herself in a manner consistent with being a fit and proper person to be a member of Engineering New Zealand.¹²

Code of Ethical Conduct

90. The Code of Ethical Conduct applies to all members of Engineering New Zealand, including student members. It requires that members must only undertake engineering activities within their competence and undertake engineering activities in a careful and competent manner. The Code requires members not to misrepresent or to permit others to misrepresent their competence.
91. In performing and in connection with their engineering activities, the Code requires members to act with honesty, objectivity and integrity.
92. There are two relevant Engineering New Zealand practice notes about ethical practice which cover the period of Ms Singh's conduct:
- IPENZ Practice Note 8: Engineers and Ethical Obligations, version 2, October 2016; and
 - Engineering New Zealand Practice Note 8: Being Ethical, version 3, August 2019.
93. The IPENZ Practice Note 2016 states:
- Clients typically rely on relative strangers for significant engineering services in circumstances where they cannot assess the expertise or diligence required for the service. This leads to a client placing significant trust in an engineer which the engineer, as a professional, must uphold by demonstrating high levels of competence and professionalism and by adhering to their ethical obligations.*
- Members of the engineering profession are engaged in a practice that has ethics at its core. Ethical practice is not an optional extra.*
94. The Engineering New Zealand Practice Note 2019 contains similar guidance:
- Ethical practice is at the core of engineering. It is not an optional extra.*
- Engineers hold significant knowledge and specialised expertise. Engineers are capable of making judgements, applying their skills and reaching informed decisions in relation to their work, that the general public can't. The decisions you make and the services you provide often don't just impact you and your client, but have wide-reaching effects on the public.*
- The public places significant trust in engineers to self-regulate. As a professional, you take responsibility for being competent and acting ethically. Your actions as an individual engineer also play an important role in the way in which the ethics of the profession are viewed by the public. If*

¹² Engineering New Zealand Rules 2017, rule 4.5.

we don't behave ethically, we lose the public's trust and confidence, and our standing and influence. ...The Code gives the public confidence that all members have agreed to uphold high standards of ethical behaviour, and it is a benchmark by which we can measure expected standards of conduct.

95. The Code exists to protect the engineer, their clients, the public, and the reputation of the profession.

Competence

96. The Code requires that members only undertake engineering activities within their competence. Members must not misrepresent their competence nor permit others to misrepresent their competence.
97. One of the key aspects of competence is understanding the limits of your own competence. As noted in the Engineering New Zealand Practice Note 2019, *"If you do work that you're not qualified nor experienced enough to do, then you deceive your client, risk harm to others and potentially damage both your own reputation and the profession's reputation."*
98. It is also crucial that engineers *"don't misrepresent [their] area of expertise, level of experience or level of competence."*
99. Ms Singh has failed in both regards. She has repeatedly declined to accept that her competence is limited and has clearly misrepresented her competence by claiming to be a CPEng when she is not. She also permitted her employer to misrepresent her competence by failing to correct the misunderstanding that she was a qualified engineer and a CPEng.
100. CPEng is recognition of an engineer's competence by their peers. To become a CPEng, an engineer must have either an accredited degree or equivalent engineering knowledge, must complete an assessment to demonstrate they meet the competence standard, must commit to the CPEng Code of Ethical Conduct, and must be reassessed at least every six years to maintain their CPEng registration. The process an applicant must go through to demonstrate their competence and the minimum standards for registration are tightly prescribed by rules made pursuant to the Chartered Professional Engineers of New Zealand Act 2002 ('the Act'). Validation, assessment, and registration is a rigorous process which may take several months.
101. Ms Singh was not a CPEng and had not had her competence assessed in any other form. By misrepresenting her competence, both by misstating her qualifications and claiming to be a CPEng, Ms Singh enabled herself to undertake engineering work that ought to have been carried out by a qualified engineer. In doing so she undertook engineering activities outside of her competence.
102. Ms Singh has accepted that she misrepresented her competence by signing at least 32 of the 38 documents as a CPEng. That number represents several buildings and locations and spans multiple projects. Registration as a CPEng signals to employers and the public that an individual has a high level of competence. It is also an important indicator that an engineer is qualified and committed to high ethical and competency standards, and accountable to the Registration Authority if they fail to uphold those standards.
103. Ms Singh's repeated representations, on at least 32 occasions, that she held that qualification when she did not is alarming and has the very real potential to damage the trust the public places in the CPEng title. Ms Singh has damaged her own reputation and potentially also the profession's reputation.

104. We question whether it was Company B who made assumptions about Ms Singh as she suggests, or whether it was Ms Singh herself who misled Company B.
105. Even if we give Ms Singh the benefit of the doubt, we find it concerning Ms Singh admitted to the Investigating Committee that she did nothing to correct any assumptions which Company B had made about her status as a CPEng. Not only did she misrepresent her own competence by signing documents as a CPEng, but she also allowed Company B and those working for Company B to misrepresent her competence.
106. Ms Singh had many opportunities while working for Company B across nearly two years to correct this assumption but chose not to do so to protect her own career. As the person who knew these assumptions were false, it was up to Ms Singh to correct those who assumed she was a CPEng.
107. Not only did Ms Singh say she was a CPEng and thereby misrepresented her competence, but she also included a CPEng registration number (which was an actual CPEng number belonging to another engineer). That indicates an additional level of deception and seriousness. Ms Singh has consistently denied using Mr Y's CPEng credentials on two documents and we acknowledge that those documents were not signed by her. We do not make a factual finding about how Mr Y's CPEng registration number came to be entered into those two documents.
108. Nonetheless, these are serious and repeated errors of judgement which Ms Singh had opportunities to correct, and in our view indicate that Ms Singh has not complied with the Code of Ethical Conduct.
109. Ms Singh also misrepresented her competency by way of her qualifications. She said in multiple places that she had completed a Bachelor of Engineering degree, including on her CV. These misrepresentations were made to her former employers (Company A and Company B), a recruiter, and Engineering New Zealand (both in her application for membership and in an email to staff dated 5 April 2016 in which her signature included "BE(Hons)").
110. We find that Ms Singh has breached the Code of Ethical Conduct by acting beyond her competence and by misrepresenting, and allowing others to, misrepresent her competence.

Honesty and integrity

111. The Code of Ethical Conduct requires members to act with honesty, objectivity and integrity in performing and in connection with their engineering activities.
112. The title of 'chartered professional engineer' is a protected one. Section 7(1) of the Act provides that *"no person, other than a chartered professional engineer, may use in connection with his or her business, trade, employment, calling, or profession (a) the title 'chartered professional engineer'; or (b) any words, initials, or abbreviations of that title that are intended to cause, or that may reasonably cause, any person to believe that the person using those words, initials, or abbreviations is a chartered professional engineer"*. A person who contravenes section 7(1) commits an offence, and is liable on conviction to a fine not exceeding \$5,000.
113. This Committee's role is to examine whether Ms Singh acted honestly and with integrity in accordance with the Code of Ethical Conduct. It is not our role to make any judgment on any criminal liability arising from her actions.
114. By accepting the Investigating Committee's decision, Ms Singh has admitted to dishonestly holding herself out to be a CPEng and signing documents as such. We think it is clear that she has breached her ethical obligation to act with honesty and integrity.

Engineering New Zealand Rules

115. We must also examine whether Ms Singh breached the Engineering New Zealand rule requiring she conduct herself in a manner consistent with being a fit and proper person to be a member of Engineering New Zealand.

Fit and Proper Person

116. Rule 4.5 of the Engineering New Zealand Rules 2017 ('the Rules') provides that members must conduct themselves at all times in a manner consistent with being a fit and proper person to be a member of Engineering New Zealand. This is also referred to as the 'good character' obligation.

117. We note the courts have examined the definition of 'fit and proper' in the context of who is a fit and proper person to hold a practising certificate as a lawyer:

- In *New Zealand Law Society v Mitchell*,¹³ the Court found that a person is 'fit and proper' where they are "of unquestionable integrity, probity or trustworthiness".
- In *R v Lundon*,¹⁴ the Court of Appeal found that a person was 'fit and proper' where they were "of such integrity and moral rectitude [that he or she may] be safely accredited by the Court to the public to be entrusted with their business and private affairs".

118. In *New Zealand Law Society v Stanley*,¹⁵ the Supreme Court said:¹⁶

... the fit and proper person standard has to be interpreted in light of the purposes of the [Lawyers and Conveyancers] Act. Those purposes broadly reflect two aspects. The first aspect is the need to protect the public, in particular by ensuring that those whose admission is approved can be entrusted with their clients' business and fulfil the fundamental obligations in s 4 of the Act. The second aspect is a reputational aspect reflecting the need to maintain the public confidence in the profession at the present time and in the future.

119. We believe the same purposes apply to the fit and proper person standard in the Engineering New Zealand Rules, namely to:

- protect the public by ensuring that members of Engineering New Zealand can be trusted with their clients' business and fulfil the obligations of the membership rules, and
- maintain public confidence in the engineering profession.

120. We acknowledge that lawyers are held to a very high standard that reflects the Courts' power over people's life and liberty. We are not holding Ms Singh to quite that standard. However, even at a lesser standard, her conduct was unacceptable.

121. In the decision of *Attorney-General v Institution of Professional Engineers New Zealand Incorporated and Reay*¹⁷ 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 [of Professional Engineers], can confer a status that signals trustworthiness to the public. This status reflects the value that

¹³ [2010] NZCA 498

¹⁴ [1926] NZLR 656

¹⁵ [2020] NZSC 83

¹⁶ At para [35].

¹⁷ [2018] NZHC 3211 at [52].

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.

122. The Court also went on to set out the public expectation of Engineering New Zealand's role in maintaining the standard of the profession¹⁸:

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.

123. We must turn now to assessing whether Ms Singh's conduct met the good character obligation. In a complaint about engineer Joseph McGirr,¹⁹ an Engineering New Zealand disciplinary committee said:

We consider the following matters to be relevant when assessing a complaint in accordance with a member's "good character" obligation, as set out in Rule 4.5:

- *Members are required to comply with the "good character" obligation at all times. The obligation is not limited to an engineer's "engineering activities".*
- *The focus of the obligation is on public protection.*
- *The test of whether a person is "fit and proper" for the purpose of the legal profession has been developed through case law. The test has three key features. In particular, the test:*
 - *focuses on the future conduct of the person at issue, as opposed to punishing them for past conduct;*
 - *takes an overall view of the person's behaviour, as opposed to focussing on one particular event; and*
 - *makes allowances for immaturity, where the conduct at issue occurred when the person was young.*

124. The Disciplinary Committee in the McGirr case considered "A range of conduct may justify a finding that a person is not 'fit and proper', although the threshold should be considered high. It usually requires more than a lack of professionalism. However, it does not require proof of criminal conduct." In that case, the Committee found that "In our opinion, Mr McGirr's peers would consider that he did not conduct himself in a manner consistent with being a 'fit and proper' person. There would be a strong expectation that a member of Engineering New Zealand would comply with the law. We find that Mr McGirr did not meet the 'good character' obligation at the time of his offending."

125. We find that similar reasoning applies to Ms Singh's conduct. We are particularly concerned about the repeated and sustained nature of the behaviour. We believe she displayed poor judgment and a lack of professionalism such that she was not acting as a fit and proper member of Engineering New Zealand.

¹⁸ Ibid. at [56].

¹⁹ *Disciplinary Committee Decision Regarding the Own Motion Inquiry by Engineering New Zealand About Joseph Douglas McGirr* (18 December 2019), available online at: <https://www.engineeringnz.org/public-tools/engineering-concerns/upheld-complaints/>

126. We note that the Disciplinary Committee in the *McGirr* decision refers to making “allowances for immaturity, where the conduct at issue occurred when the person was young”. We accept that Ms Singh was a student member of Engineering New Zealand at the time of her misconduct. However, we understand Ms Singh was in her mid-thirties at the time she misrepresented her qualifications.²⁰ She had also worked in the engineering field for several years. We do not think we need to make any allowance in this case for youthful immaturity.
127. We find that Ms Singh has breached her obligation under the Engineering New Zealand Rules to conduct herself as a fit and proper person to be a student member of Engineering New Zealand. This type of deceptive behaviour will never be appropriate for any member of Engineering New Zealand.

DECISION

128. Having considered all the evidence, we have decided to uphold the complaint about Ms Singh.
129. Ms Singh’s conduct has been below the standard reasonably expected of a Student Member of Engineering New Zealand. Her conduct certainly would not have met the much higher standards expected of Members and Chartered Members of Engineering New Zealand. We find that she has breached her obligation under the Engineering New Zealand Rules to conduct herself as a fit and proper person.
130. We find that Mr Singh has breached the Code of Ethical Conduct, specifically by undertaking engineering activities outside of her competence, by misrepresenting and permitting others to misrepresent her competence, and by failing to act with honesty and integrity.
131. Accordingly, we find there are grounds for disciplining Ms Singh under regulation 17 of the Engineering New Zealand Disciplinary Regulations 2017.

PENALTY

132. Having found Ms Singh in breach of her obligations as a member of Engineering New Zealand, we need to determine what orders, if any, should be made against her.
133. There is a range of sanctions available under Engineering New Zealand’s Disciplinary Regulation 17(3).
134. On 24 February 2022, our substantive decision was sent to the parties. We invited Engineering New Zealand to provide any submission on penalties by 11 March 2022. We asked Ms Singh to provide any submissions on penalties by 18 March 2022.

Submissions on behalf of Engineering New Zealand

135. Engineering New Zealand made submissions on 11 March 2022.
136. Engineering New Zealand said it wished to see the imposition of a penalty that made it clear Ms Singh’s deceptive conduct was not acceptable. It submitted that the title of ‘chartered professional engineer’ is a protected one and the penalty imposed on Ms Singh should reflect the importance of preserving both the public and the industry’s trust in the reputation of engineers.

²⁰ In her membership applications to Engineering New Zealand and to SESOC, Ms Singh gave her date of birth as 16 November 1983. We have no reason to question that.

Engineering New Zealand made submissions about the rigorous assessment process which is required of applicants wishing to become a CPEng.

137. Engineering New Zealand submitted that Ms Singh's misconduct displayed a pattern of behaviour which could have had serious safety risks. It said that if not for this investigation being triggered by an anonymous tip-off, Ms Singh may have continued practising beyond her competence and without having completed her engineering qualifications. At the time the investigation commenced in 2019, Ms Singh had not finished her university studies, having discontinued study in 2011 without completing her degree. Engineering New Zealand said Ms Singh did not take any active steps to complete her studies and gain her engineering degree until after Engineering New Zealand began this investigation.
138. Engineering New Zealand sought that Ms Singh be admonished, fined \$4,000, named in a published decision, and ordered to pay 60% of the costs incurred in investigating and hearing the matter.

Ms Singh's submissions

139. Ms Singh responded to Engineering New Zealand's submissions on 25 March 2022.
140. Ms Singh conceded that it was *"irresponsible and erroneous"* to practice as an engineer without qualifications. However, she submitted that she has broken this pattern of irresponsible behaviour by completing her degree and pursuing further studies. Ms Singh said she *"never intended to take anything away from the work done in the industry by other CPeng [sic] Engineers through my actions. If I did then this is a completely unintended consequence and I apologize deeply for this."*
141. Ms Singh submitted that she had been *"very cooperative throughout this investigating [sic] process"*. She said that in the early stages of the investigation, she had responded out of fear. She said that she had otherwise cooperated fully with Engineering New Zealand.
142. Ms Singh reiterated that she did not write nor sign the documents which used Mr Y's CPEng registration number. Her role was only as a reviewer. We have noted that in paragraphs 45 and 107 of our substantive decision above.
143. Ms Singh submitted that Engineering New Zealand's suggestion of a \$4,000 fine plus 60% of costs was too high a financial burden. She told us that she has resigned from her role at Company D and no longer receives a salary. She offered to provide us with further details of her financial situation. We accepted that offer. Ms Singh provided us with some personal information in this regard on 3 April 2022. We have taken this into account in our decision.
144. Ms Singh submitted that she should not be named publicly when our decision is published. She said she was not at risk of repeating her wrongdoings.
145. In closing, Ms Singh said becoming a CPEng registered engineer remained a *"personal and professional goal"*. She said *"I lost my way once, but it is something that I will intentionally never let happen again. I know that the only way for me to achieve this goal is to only work within my competence and within the code of ethics set out by ENZ."*

RELEVANT LAW

146. In *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*²¹ the High Court outlined a number of principles to be applied by the Health Practitioners Disciplinary Tribunal

²¹ [2012] NZHC 3354.

in determining the appropriate penalty to impose in disciplinary proceedings. The High Court determined that a disciplinary penalty must:

- protect the public (including through deterrence of other practitioners from engaging in similar conduct);
- set and maintain professional standards;
- where appropriate, rehabilitate the practitioner back to the profession;
- be comparable with penalties imposed on practitioners in similar circumstances;
- reflect the seriousness of the practitioner's conduct, in light of the range of penalties available;
- be the least restrictive penalty that can reasonably be imposed in the circumstances; and
- be fair, reasonable, and proportionate in the circumstances.

147. 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.
148. The principles in *Roberts* are broadly applicable to our power to make disciplinary orders under the Disciplinary Regulations. They are the principles we rely on when considering the appropriate penalty orders in this case.
149. 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*.²² In *Z*, the Supreme Court made general statements about the purposes of professional disciplinary proceedings, noting such proceedings are designed to:

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.

150. This is consistent with *Roberts*, as *Roberts* lists public protection and the maintenance of professional standards as the foremost considerations relevant to penalty.
151. The Supreme Court in *Z v Dental Complaints Assessment Committee*²³ 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.
152. The reasoning underlying *Roberts*' focus on practitioner rehabilitation is less relevant to penalties under Engineering New Zealand's Regulations because expulsion or suspension of an engineer's membership of the organisation does not prevent the individual practising as an engineer. It only prevents the individual from claiming to be a member of Engineering New Zealand.
153. It is appropriate that disciplinary penalties mark the profession's condemnation of the relevant conduct. We note that to do otherwise would not be consistent with the objectives of Engineering New Zealand.²⁴

²² [2008] NZSC 55.

²³ *Ibid.*

²⁴ Rule 3 of the Engineering New Zealand Rules sets out the objectives of Engineering New Zealand which include promoting the engineering profession, and contributing to the development and recognition of good engineering practice.

DISCUSSION

154. 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.
155. We found Ms Singh has not acted in the manner expected of a reasonable engineer. That is, she has breached her obligation to undertake engineering activities in a careful and competent manner. In our view, Ms Singh's conduct, if condoned, would undermine the public's trust in the engineering profession and reduce the public confidence in Engineering New Zealand members.
156. We have found that Ms Singh has departed from what could be expected of a reasonable engineer. Any departure from this standard is serious and is not to be tolerated.

Membership of Engineering New Zealand

157. In the decision of *Attorney-General v Institution of Professional Engineers New Zealand Incorporated and Reay*²⁵ 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.

158. The Court also went on to set out the public expectation of Engineering New Zealand's role in maintaining the standard of the profession:²⁶

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.

159. In respect of orders relating to membership with Engineering New Zealand, we may order an Engineering New Zealand member be:²⁷

- expelled from membership;
- suspended from membership for any period;
- suspended from membership until such time as the member has fulfilled requirements for professional development as have been specified by the Committee; or
- suspended from membership for a period of time if by a prescribed date, the member fails to fulfil requirements for professional development as has been specified by the Committee.

²⁵ [2018] NZHC 3211 at [52] and [55].

²⁶ *Ibid* at [56].

²⁷ IPENZ Disciplinary Regulations, reg 17(3)(a) – (d).

160. Ms Singh was a student member of Engineering New Zealand until 16 September 2020. She chose to resign her membership after this investigation started.
161. As she is no longer a member, we are not able to make any decision about whether to expel or suspend Ms Singh from membership of Engineering New Zealand. However, we wish to record that if she had still been a member, her behaviour would have, in our view, warranted expulsion from the organisation.

Fine

162. The Disciplinary Regulations state that the Disciplinary Committee may order that an engineer pay a fine. The quantum of the fine we may impose is limited by the Regulations to a maximum of \$5,000.²⁸
163. In the recent disciplinary cases we have reviewed as part of our deliberations, we note that fines imposed have ranged from a low of \$500 to a high of \$3,500. We acknowledge that in cases of particularly grave wrongdoing, there may not have been a fine imposed at all because the Act does not allow for a fine to be imposed in addition to removal of an engineer from the CPEng register. That restriction does not apply to us in this case.
164. In a decision about an unnamed engineer,²⁹ the Disciplinary Committee found that the engineer had not met the expected standard in his design of an accessway to a new subdivision. He was fined \$500. The Committee observed there were no life safety issues and the shortcomings were due more to a lack of care than to any incompetence or negligence.
165. In *A Complaint about Steven King-Turner* CPEng MIPENZ,³⁰ the Disciplinary Committee found that Mr King-Turner's conduct fell below the standard expected of a professional engineer but was towards the lower end of the scale compared to other recent decisions. Mr King-Turner had signed off construction on a residential building without ensuring the work had the appropriate building consent. The Committee considered there to be no life safety risks, no indication of a pattern of behaviour, and no significant concerns as to Mr King-Turner's competence. The fine imposed in that decision was \$1,500.
166. In *A Complaint about Peter Wastney* CPEng,³¹ the Disciplinary Committee found the respondent engineer had acted negligently in designing and certifying a truck trailer draw-beam. The Committee considered there were serious safety risks arising out of Mr Wastney's conduct but fortunately the incident had not resulted in any actual harm. There was no clear pattern of repeat behaviour. The engineer was fined \$1,500.
167. At the higher end of the spectrum, in the decision on a *Complaint about Richard Joyce* MIPENZ³², the Disciplinary Committee imposed a fine of \$3,500 on Mr Joyce. Mr Joyce had inspected and certified a crane without investigating why it had previously failed load testing. The Committee in that case

²⁸ In 2020, the Engineering New Zealand Complaints Resolution and Disciplinary Regulations raised this to a maximum of \$10,000.

²⁹ 8 December 2020, available online at: https://www.engineeringnz.org/documents/722/Disciplinary_Committee_decision_March_2021.pdf

³⁰ 27 May 2021, available online at https://www.engineeringnz.org/documents/798/Disciplinary_Committee_decision_on_complaint_against_Steven_King-Turner1.pdf

³¹ 31 May 2021, available online at https://www.engineeringnz.org/documents/797/Disciplinary_Committee_decision_on_complaint_against_Peter_Wastney.pdf

³² 10 December 2019, available online at https://www.engineeringnz.org/documents/558/Disciplinary_Committee_decision_NZTA_v_Joyce.pdf

found that Mr Joyce fell well below the standard expected of a professional engineer and had acted incompetently. It was important that Engineering New Zealand condemned this behaviour and this was reflected in the fine ordered.

168. In the recent case of an *Own Motion Inquiry regarding Joseph McGirr CPEng CMEngNZ*³³, the Disciplinary Committee ordered Mr McGirr be fined \$3,500 and suspended for three months pending his completion of alcohol and drug counselling. The engineer in that case had been convicted of a third drink-driving offence. The Committee found he had displayed a serious lack of judgment. The Disciplinary Committee emphasised the rehabilitative aspect of its orders while acknowledging that the engineer's actions fell very well short of what would reasonably be expected of a member of Engineering New Zealand.
169. Reviewing other cases is helpful but each must be considered on its own merits and no two complaints are the same. Furthermore, we are not bound by precedent.
170. We found that Ms Singh failed to act in accordance with standard reasonably expected of a student member of Engineering New Zealand. She breached her obligation to conduct herself as a fit and proper person to be a member of Engineering New Zealand, acted outside her competence, misrepresented her competence, and failed to act with honesty and integrity. There was a deliberate pattern of behaviour over multiple years and with multiple employers; this was not a one-time mistake made in haste.
171. We consider the *Wastney* case is similar to the current matter in that safety issues could have but did not arise from Ms Singh's work. She worked on seismic assessments of buildings which she was not qualified or competent to do. If an earthquake had occurred, her assessments and the clients' reliance on them had the potential to endanger people and property. While the probability of that happening may have been low, the consequences could have been catastrophic. Like *Wastney*, Ms Singh was fortunate that her work did not result in any actual harm. Unlike *Wastney* however, Ms Singh engaged in a pattern of deceptive behaviour. It was deliberate and it was prolonged.
172. We echo Engineering New Zealand's concern that Ms Singh still does not accept the gravity of the potential safety risks of misrepresenting her competence. Ms Singh said there are many industry practice checks in place, such as internal and external peer review mechanisms, which were there as a safety net to ensure mistakes were mitigated. We agree with Engineering New Zealand that this is an extraordinary statement to make. Even if Ms Singh could have conceivably considered she could rely on her work being checked by others, at the time the work was carried out, she did not even have a Bachelor of Engineering degree. Ms Singh had not, and still has not, been assessed as competent to be registered as a CPEng. She has continually through this process diminished her own responsibility and the responsibility of all CPEng registered engineers.
173. Ms Singh's employers, colleagues, clients, and the public were all entitled to rely on her representation of her qualifications and competence as being truthful and demonstrating she had met a defined level of competency. Her misrepresentations about her competence had the potential to cause harm to the public had they not been discovered.
174. Engineering New Zealand has submitted that an appropriate fine is \$4,000. We disagree. We consider that the ongoing and very serious nature of Ms Singh's conduct warrants the maximum

³³ 18 December 2019, available online at https://www.engineeringnz.org/documents/648/Disciplinary_Committee_decision_on_own-motion_complaint_against_Joseph_McGirr.pdf

possible fine of \$5,000. We are unable to think of any conduct which better justifies the maximum penalty than dishonestly holding oneself out to be a qualified engineer and a CPEng registered engineer. Ms Singh has brought the reputation of the profession into disrepute and has potentially endangered the public. She has provided no acceptable justification for her actions and continues to downplay their significance. We believe Ms Singh appears to lack true comprehension of the gravity of the situation in which she finds herself.

175. The imposition of a fine of this quantum achieves the principles set out in the *Roberts* decision. We also consider that the amount of the fine will send a clear signal to the industry and the public that Engineering New Zealand takes complaints about its members extremely seriously.

Reprimand and admonishment

176. The Engineering New Zealand Disciplinary Regulations provide that we may reprimand or admonish an engineer.

177. As submitted by Engineering New Zealand, the Oxford English Dictionary defines these two terms as follows³⁴:

- Admonish: to give a firm rebuke or reprimand, to reprove or reprimand firmly, to warn, reprimand, or rebuke for a fault or misdeed.
- Reprimand: to express strong disapproval of, to censure, condemn.

178. The words are used in daily language as synonyms but we accept Engineering New Zealand's submission that the term 'admonish', as defined above, is slightly firmer.

179. Ms Singh has by her own admission breached the Code of Ethical Conduct and has acted carelessly and irresponsibly. We order that Ms Singh be admonished in the strongest possible terms.

Costs

180. We may order an engineer pay costs and expenses of, and incidental to, the inquiry by Engineering New Zealand.³⁵ We note the ordering of payment of costs is not in the nature of a penalty.

181. When ordering costs, it is generally accepted the normal approach is to start with a 50% contribution.³⁶ That, however, is a starting point and other factors may be considered to 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.³⁷

182. In respect of the medical profession, the Court in *Vatsyayann v PCC* said:³⁸

[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;

³⁴ OED Online. December 2021. Oxford University Press. <https://www-oed-com> (accessed 3 March 2022).

³⁵ Disciplinary Regulations, reg 17(3)(g).

³⁶ Including *Cooray v Preliminary Proceedings Committee HC* Wellington AP 23/94, 14 September 1995 per Doogue J.

³⁷ *PCC v Van Der Meer* 1019/Nur18/422P.

³⁸ [2012] NZHC 1138 at [34].

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.

183. Further, in *O'Connor v Preliminary Proceedings Committee* the High Court stated:³⁹

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.

184. In the recent cases we have reviewed, disciplinary committees have ordered contributions to costs ranging from 40% to 60%.

185. In *Wastney*, the Disciplinary Committee took into account Mr Wastney's early admissions and cooperation with the disciplinary process and ordered that he pay 40% of the costs of the investigation.

186. In a decision regarding an unnamed engineer CPEng,⁴⁰ the engineer had accepted the Investigating Committee's decision and agreed the Disciplinary Committee could proceed straight to a decision on penalty without requiring a hearing. They were ordered to pay 50% of costs. The Committee found the engineer's error was of a limited scope rather than being a systemic issue, there were no public safety issues, and the engineer had cooperated fully in the process.

187. In *Joyce*, the Committee ordered the engineer pay 60% of costs due to the additional costs incurred by Engineering New Zealand in investigating and hearing the matter owing to the engineer's lack of engagement in the process. Other aggravating factors included the engineer's failure to acknowledge his wrongdoing and that it was not his first disciplinary matter.

188. As noted above, the usual approach is to start with a 50% contribution as a default and to consider any reasons which may justify a reduction or an uplift from that portion. The balance of costs is to be met by Engineering New Zealand itself.

189. Ms Singh's failure to engage honestly and openly with the process from its commencement led to extra time and costs being incurred by Engineering New Zealand. She told Engineering New Zealand on 5 November 2019 that the two documents provided anonymously to Engineering New Zealand were the only instances in which she had represented herself as a CPEng. At least 32 documents were subsequently discovered by her then employer. Further investigation by Engineering New Zealand also revealed that not only was Ms Singh not a CPEng but she had not completed her engineering degree.

190. Her lack of engagement in the entire process did not form part of this complaint; however, we are able to consider this when we determine the appropriate costs contribution. In *Joyce*, the Committee criticised the engineer's lack of engagement in Engineering New Zealand's process and his lack of insight in not acknowledging his failures. The Committee made an order that the engineer pay 60% of the costs incurred in investigating and hearing the complaint.

³⁹ *O'Connor v Preliminary Proceedings Committee HC Wellington AP 280/89*, 23 August 1990 at [13] per Jeffries J.

⁴⁰ 18 October 2019, available online at:

<https://www.engineeringnz.org/documents/537/>

Disciplinary_Committee_decision_regarding_house_design.pdf

191. We acknowledge that Ms Singh accepted the majority of the Investigating Committee's findings and agreed to dispense with a disciplinary hearing, allowing us to proceed directly to a penalty decision. The cost savings of this will be reflected in the total amount of costs incurred by Engineering New Zealand.
192. We consider Ms Singh's lack of engagement with Engineering New Zealand throughout this process, particularly at the beginning of the matter, is an aggravating factor justifying an uplift from the starting point of 50% of costs. We consider her failure to cooperate honestly and openly nullifies any credit she should be given for agreeing to dispense with a disciplinary hearing.
193. Taking these factors into account, we have decided that Ms Singh should pay 60% of the costs incurred by Engineering New Zealand in investigating this matter, being 60% of \$17,090 + GST.
194. Ms Singh submitted that she is unable to pay costs in the region of the \$10,000 estimated by Engineering New Zealand as being 60% of its actual costs. She told us she has recently resigned from her current job for personal reasons and is not receiving a salary. She has financial commitments, including a mortgage, which will need to be met solely by her husband as the main income earner.
195. Ms Singh provided us with some details of her current financial obligations. Although the details of her financial commitments are relevant to our consideration of her financial means and ability to contribute to costs, we have seen no evidence of financial hardship or inability to pay. Whilst we have some sympathy for her situation, we believe it is one entirely of Ms Singh's own making.

Naming and publication

196. We may order the member be named, the order against the member be stated and the nature of the breach described in the official journal of Engineering New Zealand or publicised in any other manner as may be prescribed by the Committee.⁴¹
197. The Regulations do 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.⁴² These include:
 - openness and 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.⁴³

⁴¹ Clause 17(3)(h) of the Disciplinary Regulations

⁴² 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.

⁴³ *Professional Conduct Committee of the Pharmacy Council of New Zealand v El-Fadil Kardaman* 100/Phar18/424P at [113] – [114].

198. 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*⁴⁴ 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.⁴⁵ 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*".⁴⁶ 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.⁴⁷
199. 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.
200. We consider this matter is not comparable to that of *An Engineer CPEng CMEngNZ*⁴⁸ when it comes to naming, in which the engineer's name was permanently suppressed because that Disciplinary Committee had evidence that the publication of the name would cause extreme hardship. We have seen no evidence that naming Ms Singh would cause her undue hardship.
201. In an earlier complaint relating to a different engineer CPEng CMEngNZ,⁴⁹ the Disciplinary Committee found that, while the threshold to displace the principle of open justice is high, there were no wider competency concerns about the engineer's practice, they had accepted accountability and implemented processes to avoid a recurrence, and, in the circumstances of that case, publicly naming them would have been a disproportionate response.
202. Ms Singh submitted that our decision should be published as an educational opportunity for other engineers but that she should not be named. She said she is not at risk of repeating her misconduct.
203. We do not ignore Ms Singh's submission that this has been a difficult journey for her. We acknowledge the personal and professional toll that this matter has had on her life. We hope she can get the support she needs. However, this situation is of her own making and she must accept the consequences of her actions.
204. We acknowledge that public naming may expose Ms Singh to some embarrassment. However, this does not justify name suppression. As submitted by Engineering New Zealand, in *Erceg v Erceg*⁵⁰, the Supreme Court emphasised that courts should not make non-publication or confidentiality orders simply because the publicity associated with a proceeding would be embarrassing or unwelcome. To justify an exception, the party seeking suppression must put forward private interests that would

⁴⁴ [2016] NZCA 474.

⁴⁵ Ibid at [25].

⁴⁶ Ibid at [32].

⁴⁷ Ibid.

⁴⁸ 8 December 2020, available online: https://www.engineeringnz.org/documents/722/Disciplinary_Committee_decision_March_2021.pdf

⁴⁹ 18 October 2019, available online: https://www.engineeringnz.org/documents/537/Disciplinary_Committee_decision_regarding_house_design.pdf

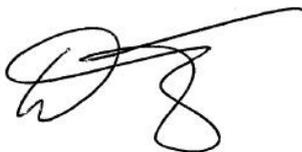
⁵⁰ [2017] 1 NZLR 310

overcome the public interest in naming, that is, the party must show specific adverse consequences. We accept the standard is a high one.

205. We find there are no reasons for name suppression which displace the high threshold, nor justify departing from the fundamental principle towards naming. We have not seen any evidence of specific adverse consequences for Ms Singh. We also observe that Ms Singh has not sought name suppression in related criminal proceedings; her name and the nature of her offending will be in the public arena some weeks before this decision is published.
206. We consider there is a strong public interest in support of naming Ms Singh. Specifically, for the fundamental principles of 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.
207. We order Engineering New Zealand to publish a full copy of our decision on its website naming Ms Singh but anonymising the details of Ms Singh's employers and the two engineers whose CPEng credentials were used.

SUMMARY OF ORDERS

208. In exercising our delegated powers, we order that Ms Singh:
- is admonished in the strongest possible terms;
 - pay a fine of \$5,000; and
 - pay 60% of the costs incurred by Engineering New Zealand in investigating this matter, being \$10,254.00 plus GST.
209. In addition, Engineering New Zealand will publish our final decision of this complaint, naming Ms Singh, on its website and in any other communication it considers appropriate.
210. Ms Singh's interim name suppression is lifted.



Deane McNulty FEngNZ CPEng

Disciplinary Committee Chair

ADDENDUM

1. Our decision was issued on 14 April 2022.
2. This addendum is issued pursuant to clause 38(2) of the Engineering New Zealand Disciplinary Regulations 2017 and is to be read in conjunction with and is to form part of our decision.
3. Since our decision was published on Engineering New Zealand's website on 13 May 2022, information has been brought to our attention.
4. At paragraph 63 of our decision, we referred to and quoted from a letter dated 5 October 2021 written by the General Manager of Company D. That letter had been provided to us by Engineering New Zealand who had received it from MBIE, via the Crown prosecutor and Ms Singh's legal counsel in the criminal proceedings.
5. The letter on Company D letterhead stated:

It is confirmed that Prajna Singh is employed on a permanent basis with [Company D] as a Senior Structural Engineer.

Prajna has not represented herself as nor is she acting in the capacity of a CPEng.

*Prajna disclosed the ENZ investigation during the recruitment process. We understand that the conduct giving rise to the investigation involved Prajna's signature appearing on documents confirming they had been reviewed **in the capacity of a CPEng. Also, her CV incorrectly noted that she had completed her qualifications.** (our emphasis added)*

6. The version of that letter which we received is not the same as the letter which Company D provided to Ms Singh. The letter provided to us from Company D on 18 May 2022 stated:

It is confirmed that Prajna Singh is employed on a permanent basis with [Company D] as a Senior Structural Engineer.

Prajna has not represented herself as nor is she acting in the capacity of a CPEng.

*Prajna disclosed the ENZ investigation during the recruitment process. We understand that the conduct giving rise to the investigation involved Prajna's signature appearing on documents confirming they had been reviewed **when they had not.** (our emphasis added)*

7. We do not know when or how the changes were made to the letter. It is not within our powers to investigate this inconsistency. We update our decision accordingly.
8. Paragraph 63 of our decision is deleted and replaced with the following paragraph:

Ms Singh provided us with a letter dated 21 September 2021 from Company D confirming her employment and that she had disclosed this Own Motion Inquiry to Company D during the recruitment process.

DATED 24 May 2022



Deane McNulty FEngNZ CPEng

Disciplinary Committee Chair