

**In the matter of the Chartered
Professional Engineers of New Zealand
Act 2002**

Appeal 14/15

AND

**In the matter of an appeal to the
Chartered Professional Engineers
Council pursuant to Section 35**

From

**Mr N
Appellant**

Against a decision of

**IPENZ (as the Registration
Authority under the Chartered
Professional Engineers of New
Zealand Act 2002)
Respondent**

**Decision of the Chartered Professional Engineers Council
Dated 6 June 2016**

The Legislation

1. Mr N appealed against an assessment by the Registration Authority being a decision of a Competence Assessment Board of the Registration Authority declining his application for continued registration as a Chartered Professional Engineer (CPEng).
2. That right of appeal is contained in s35 of the Act and s37 of the Act sets out the scope of this Council's jurisdiction which is to deal with the matter by way of rehearing. For that purpose we have been provided

with the complete file of the Registration Authority relating to the case, which has been paginated.

3. Under s11 of the Chartered Professional Engineers Act 2002 (“the Act”) the Registration Authority must assess whether or not a registered person meets the minimum standards for continued registration contained in the Rules.
4. The Rules are the Chartered Professional Engineers of New Zealand Rules (No.2) 2002 (“the Rules”). The Rules were enacted pursuant to s40 of the Act.
5. Under the Rules minimum standards for registration as a Chartered Professional Engineer are set under Rule 6:

“6 Minimum standard for registration as chartered professional engineer

- (1) *To meet the minimum standard for registration, a person must demonstrate that he or she is able to practise competently in his or her practice area to the standard of a reasonable professional engineer.*
- (2) *The extent to which the person is able to do each of the following things in his or her practice area must be taken into account in assessing whether or not he or she meets the overall standard in subclause (1):*
 - (a) *comprehend, and apply his or her knowledge of, accepted principles underpinning—*
 - (i) *widely applied good practice for professional engineering; and*
 - (ii) *good practice for professional engineering that is specific to New Zealand; and*
 - (b) *define, investigate, and analyse complex engineering problems in accordance with good practice for professional engineering; and*
 - (c) *design or develop solutions to complex engineering problems in accordance with good practice for professional engineering; and*
 - (d) *exercise sound professional engineering judgement; and*
 - (e) *be responsible for making decisions on part or all of 1 or more complex engineering activities; and*
 - (f) *manage part or all of 1 or more complex engineering activities in accordance with good engineering management practice; and*
 - (g) *identify, assess, and manage engineering risk; and*

- (h) *conduct his or her professional engineering activities to an ethical standard at least equivalent to the code of ethical conduct; and*
- (i) *recognise the reasonably foreseeable social, cultural, and environmental effects of professional engineering activities generally; and*
- (j) *communicate clearly to other engineers and others that he or she is likely to deal with in the course of his or her professional engineering activities; and*
- (k) *maintain the currency of his or her professional engineering knowledge and skills.”*

6. Relevant to the interpretation of Rule 6 is Rule 7:

“7 Definitions for the purpose of minimum standards for registration

For the purposes of rule 6,—

complex engineering activities means engineering activities or projects that have some or all of the following characteristics:

- (a) *involve the use of diverse resources (and, for this purpose, resources includes people, money, equipment, materials, and technologies):*
- (b) *require resolution of significant problems arising from interactions between wide-ranging or conflicting technical, engineering, and other issues:*
- (c) *have significant consequences in a range of contexts:*
- (d) *involve the use of new materials, techniques, or processes or the use of existing materials, techniques, or processes in innovative ways*

complex engineering problems means engineering problems that have some or all of the following characteristics:

- (a) *involve wide-ranging or conflicting technical, engineering, and other issues:*
- (b) *have no obvious solution and require originality in analysis:*
- (c) *involve infrequently encountered issues:*
- (d) *are outside problems encompassed by standards and codes of practice for professional engineering:*
- (e) *involve diverse groups of stakeholders with widely varying needs:*
- (f) *have significant consequences in a range of contexts:*
- (g) *cannot be resolved without in-depth engineering knowledge.”*

7. The overriding consideration is that expressed in Rule 6(1) that is that a Chartered Professional Engineer should be able to practise competently in his or her practice area to the standard of a reasonable professional engineer.
8. The matters listed in subsection 6(2)(a) to (k) *must be taken into account* in making an overall assessment required by Rule 6(1). However, the Rules do not provide for a mandatory “pass mark” for these matters, and nor could they. Ultimately, taking the matters in (6)(2) into account, an objective decision still needs to be made as to whether an applicant meets the overall standard prescribed in Rule (6)(1).
9. The Registration Authority has recast the Rules into a summary of 12 Elements. It is helpful to refer to these elements since that is what the Registration Authority refers to in its assessments, though we note that the actual test is that listed in Rule 6(1).

Background

10. The Appellant applied to the Registration Authority seeking continued registration as a Chartered Professional Engineer in the practice field of Geotechnical and Structural engineering on 16 June 2014.
11. The application included:
 - (a) Evidence of current competence (CA03). This document in turn refers to a number of work examples;
 - (b) Curriculum Vitae;
 - (c) CPD records from 2012 to 2015;
 - (d) 6 work examples:
 - (i) 120 Wigram Christchurch.
 - (ii) 360 Great North Road, Henderson.

- (iii) 56 Nicholls Road, Halswell, Christchurch.
 - (iv) 5 Mollymawk, Christchurch.
 - (v) 11 Shakespeare Road, Napier.
 - (vi) 7 Michael Avenue. Christchurch
12. The evidence (pages 1-334) listed above was provided with the original application.
 13. An initial assessment panel was appointed on 17 November 2014 - consisting of Mr Steven Kelly (Staff Assessor) and Mr Victor Lam (Practice Area Assessor)
 14. The Staff Assessor and Practice Area Assessor reviewed Mr N's portfolio of evidence on 12 February 2015.
 15. An additional Practice Area Assessor Mr Gordon Hughes, who has structural expertise, was appointed on 19th February 2015.
 16. The panel sought additional evidence from Mr N and invited him to participate in another interactive with all three assessors on the panel. Mr N was advised the further interview would focus on the identified local knowledge gaps with elements 2 and 11 identified. No further evidence was supplied and the invitation to participate in the interactive was declined.
 17. The Assessment panel submitted a report on 20 May 2015 in support of its position (pages 348 to 355) which overall found that Mr N's registration as CPEng should be suspended. Specifically, the Assessment Panel noted that the evidence provided by Mr N (sic) demonstrates that he is not able to practice competently and has not taken reasonable steps to maintain currency of knowledge and skills" as required to meet the standard of Rule (6)(1) in the following elements: 2, and 11. The assessment panel recommended suspension of Mr N's CPEng registration.

18. The CAB supported this decision in their meeting of 3rd June 2015.
19. The Appellant submitted a Natural Justice submission on 19 August 2016 (page 356 - 377). This submission addressed the elements where the Assessment Panel had found that the Appellant did not “demonstrate competence”
20. The CAB sent the natural justice submission back to the Assessment Panel. The panel reissued their report (page 545 - 554) on 17 November 2015. The revised report contained some amendments under section 2 but still concluded that Mr N’s evidence demonstrated that he was not able to practice competently and he had not taken reasonable steps to remain current with the changes in his practice area. (P554/554)
21. The Registration Authority issued their decision, including the updated report, on 16 December 2015 (pages 542 - 554).
22. The Appellant issued a notice of appeal dated 16 December 2015.
23. After initially acknowledging receipt of the notice appeal, the Council outlined the process to be followed in an e-mail dated 23 January 2016. In January the Council appointed a panel comprising Roly Frost (Principal), Chris Harrison and Alan Winwood (members). The process for progressing the appeal was confirmed by letter dated 1 March 2016.
24. The Registration Authority provided a paginated bundle of all documentation on 4 February 2016.
25. The Appellant provided his submission on 25 February 2016. This was confirmed as the grounds of the appeal in the e-mail dated 7th March 2016.
26. The RA provided their submission on 18 March 2016. The Appellant replied in response to the submission on 22 March 2016.
27. The appeal hearing took place in Wellington on 2 May 2016.

The Hearing

28. The Appellant was asked to demonstrate how the evidence he had provided (the work samples and competence self-review form (pages 1 - 319) demonstrated competence against the standards set in Rule 6 (2) (a) - (k).
29. The Appellant led the panel through the various work samples answering the points raised by the assessor at the interview.
30. Much of the information provided at the hearing had been provided in the natural justice submission and also in the grounds of appeal.
31. The assessors had concluded that Mr N had provided insufficient evidence of local knowledge considered to be required by a Chartered Professional Engineer.
32. The Assessors had noted the following deficiencies:
 - Timber design: Knowledge of when to use stainless fixings or galvanised fixings
 - Steel Design: knowledge of scaling factors for tension braced systems and recent developments regarding EBF design
 - Concrete Design: Knowledge of shrinkage rates and capacity design principles
 - Masonry Design: Knowledge of situations where non-specific design code application may not be appropriate
33. While the final test of competence must be against Rules 6 (1) and 6 (2), the Appeal Panel has considered the 12 competencies as defined in the IPENZ document CA30 - Competency Standards with Revised Indicators (Version 3.2) 6 August 2013.
34. As noted above, the Registration Authority's Assessment Panel found that the Appellant did not "demonstrate competence" in the following elements: 2 and 11.

35. On its own, each of the deficiencies may be acceptable within the definition of competent. However, taken as a whole the view of the assessors based on the work samples provided by Mr N was that he had not demonstrated an adequate level of competence.
36. From the evidence presented by the Appellant at the hearing the Appeal Panel could find no reason to vary any of the decisions made by the Assessment Panel. Specifically, the Appeal panel concluded
 - (a) Mr N had not provided sufficient evidence to overturn the decision of the Registration Authority.
 - (b) The evidence of Continuing Professional Development was light and, given the significant changes in application of codes to his practice area, there was more reason to demonstrate a depth and appropriate balance in his CPD.

Findings

37. Ultimately, the test of competency is an objective one made by the people making the assessment.
38. Having said that, the onus is always on an applicant to prove that he or she meets the appropriate standard for registration as a Chartered Professional Engineer.
39. In this case we conclude that the Appellant has not proven that he has met the requisite standard.
40. The appeal is therefore declined.
41. The Panel, however was concerned that because Mr N declined the further interactive with all the assessors as offered by the Registration Authority he had disadvantaged himself to the point where he was not able to present the full evidence to establish his level of competence.

Conversely this potentially prevented the assessors from access to evidence which may have answered their concerns and possibly provided a basis for them to alter their findings.

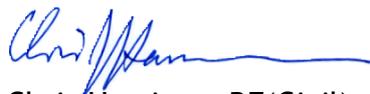
42. The panel directs the Registration Authority, subject to Mr N's agreement, to hold a further interview with the assessors to establish his level of competence.
43. Should Mr N decline the interview the suspension is upheld.
44. While we have the power to award costs we do not consider it appropriate in this case.

Dated this 6th day of June 2016

Signed by the Appeals Panel



Roly Frost BE (Civil) CEng, FIPENZ
Chair



Chris Harrison, BE(Civil), CEng, FIPENZ



Alan Winwood, BE(Civil), FIPENZ