

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

Appeal 05/22

AND

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

Between

Ms A

Appellant

And

Ms B

Complainant

Decision of the Chartered Professional Engineers Council

Dated 13 March 2024

Introduction

1. Ms A has appealed a decision made by a disciplinary committee (“the Disciplinary Committee”) of the Registration Authority (“the RA”), the Institution of Professional Engineers of New Zealand Incorporated trading as Engineering New Zealand.
2. The appealed decision upheld a complaint made in 2020 by Ms B about Ms A [BOD 244-259] who is a chartered professional engineer, and a chartered member of Engineering New Zealand with civil engineering and structural engineering practice fields.
3. The decision of the Disciplinary Committee includes consideration of Engineering New Zealand’s membership complaints resolution and disciplinary regulations. This reference falls outside the jurisdiction of the Chartered Professional Engineer’s Council (“CPEC”) under the Act and is therefore not considered by the CPEC appeal panel (“the Panel”).
4. The RA provided the Panel and the parties with a paginated Bundle of Documents file [BOD pages 001 to 808]. The bundle’s covering pages [BOD 001 and 002] list the correspondence in chronological order. References to specific pages within this bundle are annotated “[BOD nnn]”.

The Legislation

5. This appeal is brought under the Chartered Professional Engineers of New Zealand Act 2002 (“the Act”), from which CPEC derives its power to hear and determine appeals of decisions made by the RA about chartered professional engineers.
6. The Chartered Professional Engineers of New Zealand Rules (No.2) 2002 (“the Rules”), enacted pursuant to s 40 of the Act, sets out the rules under which the appealed decision is made.
7. The Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (“the Regulations”) sets out the requirements pertaining, amongst other matters, to the hearing and the deciding of appeals to CPEC.
8. Clause 15 of the Regulations, provides CPEC with the ability to receive any evidence that the RA would have been entitled to receive on the decision being appealed.
9. Relevant extracts from the Act and the Rules are included in the text of this decision, with the full, relevant section or rule set out in Schedule 1.

10. Appeals proceed by way of rehearing. Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, the Panel has the responsibility of arriving at its own assessment of the merits of the case. However, it is only if the Panel considers that the appealed decision is wrong that it is justified in interfering with it. The onus is on the appellant to demonstrate why the decision is wrong. If the Panel comes to a different view from the original decision maker on the evidence, the original decision maker will be deemed to have erred, and the appeal must be allowed.
11. The Panel may make any decision that could have been made by the Disciplinary Committee, refer the decision back to the Disciplinary Committee for reconsideration (in whole or part), and may confirm, vary, or reverse the Disciplinary’s decision.

Purpose of professional disciplinary processes

12. The overriding purpose of the Professional Disciplinary Process is to ensure professional standards are maintained so that clients, the profession, and the broader community are protected.
13. The process does not exist to punish an individual for their conduct or to appease those dissatisfied with the professional services they received.
14. As noted in paragraph 3.3 of the RA’s submission, this is addressed in *Z v Dental Complaints Assessment Committee*¹ where the Supreme Court stated:

“The purpose of disciplinary proceedings is 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.”

Disciplinary Committee’s decision and procedure of appeal

15. The decision under appeal is the final decision of the Disciplinary Committee, dated 17 October 2022 [BOD 268-296].
16. The Disciplinary Committee concluded Ms A had breached her code of ethical conduct obligations as a CPEng by²:

¹ [2008] NZSC 55

² Disciplinary Committee’s decision 17 October 2022 BOD 270

- (a) *failing to treat people with respect and courtesy in the manner in which she communicated with Ms B on the phone and later by email once the complaint to Engineering New Zealand had been made by Ms B;*
 - (b) *failing to advise her client, the builder, of the adverse consequences of not following her advice when she neglected to document in writing her concerns about the non-compliant retaining wall; and*
 - (c) *failing to undertake engineering activities in a careful and competent manner when she neglected to keep adequate records of her engagement, payments, and site observations.*
17. In exercising their delegated powers, the Disciplinary Committee ordered that Ms A:³
- (a) be censured⁴;
 - (b) pay a fine of \$1000⁵; and
 - (c) pay 50% of the costs incurred by the Registration Authority in investigating and hearing the matter being \$8360 plus GST⁶.
18. In addition to paragraphs 16 and 17 above, and subject to any appeal, the Disciplinary Committee directed the RA to publish a copy of its full decision on its website; lift interim name suppression; and to notify orders a) to c) in the register and notify the Registrar of Licensed Building Practitioners⁷.
19. The RA issued the Disciplinary Committee's decision on 18 October 2022.
20. On 14 November 2022, Ms A filed her undated Notice of Appeal with CPEC.
21. On 17 November 2022, CPEC's chair emailed the parties and the RA acknowledgement of receipt of the notice of appeal, within time, and provided the RA's primary contact; confirmed the RA wished to make submissions and requested the RA provide an electronic link to the Bundle of Documents. The RA provided a link to an electronic copy of the BOD by email on 30 November 2022.

³ Disciplinary Committee's decision 17 October 2022 BOD 270

⁴ pursuant to s 22(1)(c) of the Act

⁵ pursuant to s 22(1)(d) of the Act

⁶ pursuant to s 22(4) of the Act

⁷ Disciplinary Committee's decision BOD 270

22. On 8 December 2022 CPEC’s chair notified the parties and the RA of the appointment of the Panel consisting of Ms Sandra Hardie as Principal, and Mr Tony Fairclough and Ms Megan Neill as members.
23. The Panel Principal emailed a letter dated 07 January 2022 outlining the timing and process to be followed.
24. Submissions were received:

From Ms A	Monday 30 January 2023
From Ms B	Monday 13 February 2023
From the Registration Authority	Monday 13 February 2023
Reply from Ms A	Thursday 2 March 2023
25. Additional, relevant evidence was supplied with Ms A’s submissions dated 30 January 2023 and reply submissions of 2 March 2023. Given the relevance of that additional evidence and the opportunity afforded to Ms B and the RA to address it in submissions and/or at the hearing if they wished to, the Panel has considered this evidence in reaching its decision in this appeal.
26. The parties and the RA agreed to an in-person hearing to be conducted via a Zoom virtual meeting on 31 May 2023.
27. On 30 May 2023, Ms B advised she was unable to attend this hearing due to personal circumstances but noted she was comfortable with the hearing going ahead without her.
28. Following comment from the RA and Ms A, the hearing was rescheduled to 21 June 2023.
29. On 13 June 2023 Ms B advised she was unable to attend the rescheduled hearing and reminded the Panel of her preference for the matter to be heard on the papers.
30. The hearing was further rescheduled for 12 July 2023. Ms A and counsel for the RA attended a hearing on that date.

Background

31. Ms B’s complaint relates to the alleged conduct of Ms A during her provision of engineering services to Ms B ’s father, Mr C, in 2018 and subsequent phone

interactions with herself about the production of paperwork for the retaining walls in 2020. The relevant background to this complaint is set out below.

32. A building consent for the residential development at property D (“the property” or “the site”) was approved by the City Council on 5 April 2018.⁸ The consent [BOD 121 - 129, 196 – 241] allowed the build of a new two-storied residential dwelling; cantilevered timber pole retaining walls of varying heights up to 1.80m on 3 of the 4 boundaries; and an accessway.
33. The consent is addressed to Mr C, the owner of the property. In raising her complaint Ms B refers to her involvement with the property as “we built our own house”.
34. The consented design [BOD 196 – 241] was prepared by Company E, and included structural engineering design elements, including the retaining walls designed by Mr F of Company G (“the Structural Engineer”).
35. Company H (“Company H”) carried out a pre-pour inspection of the retaining wall foundations on 1 October 2018⁹ for City Council. This report records Person I¹⁰ of Company J as the designer and the person attending the inspection.
36. Ms B refers to Person I, from Company J, as “the Architect”, in her initial concern.
37. The Company J’s report includes a description of the retaining wall poles, their installation, and the works yet to be completed. Photographs on pages 3, 4, and 5 of the report show the cut banks, the excavated foundation, and the poles placed within their foundation holes, and fencing above in part. Reference is made to an increase in foundation depth and pole embedment. In the general comments section on page 2, the report states, “*Engineer has inspected and issued positive inspection record, ok to pour, observations required*”¹¹. On page 3, the report requires a producer statement for construction review (PS4) along with the engineer’s site observations for the retaining wall.

⁸ Ms A reply submission – page 30 of 32 Code Compliance Certificate notes the date of the issue for BCO10258416 as 5 April 2018. Stamped BC documents suggest the BC was processed on 16 March 2018 page 12 of 32.

⁹ Ms A’s submission pages 17-21 of 21.

¹⁰ Person I is further referred to as Mr I in this decision.

¹¹ Company H Inspection Report, 1 October 2023 - Ms A’s submission pages 17-21 of 21.

38. Sometime in mid-October 2018, Ms A was phoned by the Builder. She says that she was asked to carry out urgent construction monitoring of the pre-pour works associated with the foundation/floor of the residence.
39. Ms A considers Company K (“the Builder”) to be her client, and the persons in control of the building site at the time of her site visits, as evidenced by her preparation of a short form agreement for consultant engagement [BOD 119].
40. Ms A visited the site twice during mid-October 2018 to observe the house’s foundation/slab reinforcing before the floor/foundation concrete pour.
41. During Ms A’s site visit on 18 October 2018, Ms A provided the builder with:
 - (a) a short form agreement [BOD 119]; and
 - (b) a copy of her handwritten site notes (dated 18 October 2023) on a templated form that included her name, phone number, and CPEng registration number [BOD 013].
42. Ms A notes, in her handwritten site notes acknowledgment of the residential dwelling floor/ foundation build and the works carried out by others.
43. During this visit, Ms A signed a handwritten receipt (prepared by Mr C) for payment received for her work up to that date. That receipt states “Paid Cash Ms A [sic.] to check floors 2 visit Paid \$700” [BOD 010].
44. Ms B provided copies of three additional pages from Mr C’s records. These pages are unsigned [BOD 009, 011, and 012]. Ms A states she has no knowledge of these pages.
45. Whilst on site Ms A says she provided a verbal response to the builder about a question he raised about a variance between the retaining wall height and what was consented.
46. Soon after Ms A contacted the builder, querying the forward programming for structural monitoring and seeking the signed agreement. The builder advised Ms A that her services were no longer required as his contract with the house owner was in dispute.
47. On 23 October 2018 Company J undertook a pre-pour inspection for the raft foundation slab¹². This report contains photographs of the prepared under-slab

¹² Ms A’s submission pages 10-12 of 21.

reinforcement and drainage works. The boundary cantilevered pole retaining walls are visible in the background of two of these photographs and such walls appear to be completed.

48. Ms B says that in 2020 her father (Mr C) called Ms A seeking a receipt for payment made and a certificate of acceptance for the retaining wall.
49. On Sunday 19 July 2020¹³ [BOD 052] Mr I of Company J emailed Ms A stating “*this is what we require*” without providing any detail.
50. That same day Ms A responded to Mr I by email saying “she was engaged by the builder for site inspections and was told he was going to use another engineer”and “*I didn’t approve it..... therefore – talk to the builder*”.
51. On or about Saturday 1 August 2020¹⁴, Ms B phoned Ms A. Ms B says she explained to Ms A who she was and why she was calling. She says Ms A denied working on the site and didn’t know Ms B or her father before hanging up. When Ms B called her again, Ms A answered and started to scream at her, and said “*f**k you*” before hanging up the phone. [BOD 005]
52. On Sunday 2 August 2020¹⁵ Mr I emailed Ms A. [BOD 054], advising her:
 - (a) he had been contacted by the owners;
 - (b) he was proceeding with the CCC application for their residence, advising the Council to proceed with the application without PS4 and site notes;
 - (c) she had sworn at the client; and
 - (d) his client had contacted the IRD and had made an official complaint to Engineering NZ.
53. On Monday 3 August 2020, Ms A emailed Mr I advising him she had not sworn at anyone. [BOD 054]
54. On Monday 3 August 2020, Mr I emailed Mrs A advising her she had sworn and hung up on the client’s daughter. [BOD 053]

¹³ Sunday at 5:54 pm

¹⁴ Date approximated based on emails and Ms A stating the phone call occurred on a Saturday.

¹⁵ Sunday 9:10 pm

55. On Monday 3 August 2020. Ms A responded, noting the woman who had called her had not identified herself as the client's daughter. [BOD 053]
56. Ms A says the woman on the phone demanded she immediately supply a Certificate of Acceptance but refused to identify herself or tell Ms A what her relationship was to the property despite repeated requests. Ms A says she did not deny working on the property but said her services as an engineer on this project were not to provide a Certificate of Acceptance and her involvement had been terminated a long time ago. When the same private number continued to call her, she did not answer because she could not provide confidential information to an unknown person. [BOD 016]. Ms A acknowledges ending the call but maintains she did not swear and communicated and treated Ms B respectfully and courteously.
57. Shortly after, on 9 August 2020, Ms B filed a complaint with the RA.

The Original Concern/Complaint

58. Ms B raised her concerns about Ms A's conduct with the RA on 9 August 2020 [BOD 003-008].
59. Ms B was concerned about Ms A's engagement with:
 - (a) her father, during the construction phase of his residential build, and
 - (b) herself, post the build.
60. Ms B claimed Ms A had failed to provide the required documentation for the retaining wall; receipts or invoices for monies paid and was rude and unprofessional in her phone manner.
61. Ms B provided her father, Mr C, and Mr I, as further contacts, as the persons present on site when Ms A visited the site.
62. She noted, "... *should the Registration Authority fail to take action; her recourse would be dealing with this legally and seeking media help to get justice.*"
63. On 20 August 2020, the RA commenced their investigations and relayed Ms B's concerns about Ms A to her.
64. On 23 August 2020 Ms A provided her response to Ms B's concerns to the RA. [BOD 016-017]
65. Between 26 and 31 August 2020, the RA liaised with both Ms B and Ms A about alternate dispute resolution as a means of addressing the concerns.

66. On 28 August 2020, Ms B asked the RA to relay to Ms A that *“she will also be laying a complaint against her with the IRD”*, which they did.
67. On 1 September 2020 [BOD 031] Ms B again contacted the RA and advised she was not accusing Ms A but genuinely heard the word *“f**k you”* before the phone was disconnected; and *“if Ms A is happy and willing to scan and email her all the required documents for my house then in return, she was happy to drop her complaint.”*
68. Later that day the RA advised Ms A, *“Ms B was willing to withdraw her complaint subject to Ms A providing the site notes and PS4 requested to the Registration Authority”*.
69. Ms A requested time to provide her response, as she was dealing with the loss of her sister.
70. The RA progressed the complaint to their triage team and to a chair of investigating committees.
71. The investigating committee queried Ms A on her engagement, specifically with the developer or Ms B, and the documentation she had released.
72. The investigating committee further offered alternate dispute resolution to both parties. Ms B declined the offer. Ms A agreed.
73. The investigating committee issued their preliminary decision, and both parties provided comments.
74. As part of Ms A’s comment she provided a copy of an unsigned short form agreement addressed to the Builder, dated 18/10/18. [BOD 119]
75. The investigating committee issued their decision on 9 November 2021 [BOD 152-164]; recommending *“... the complaint be referred to a disciplinary committee in accordance with rule 60(a) of the Act...”*, noting they considered there to be no grounds to dismiss the complaint and an inability to obtain the agreement of both parties to mediation.
76. Between 4 May 2022 and 15 June 2022, the Chair of the Disciplinary Committee emailed both parties the hearing procedure [BOD 168-172] and the parties made their submissions [BOD 173-241].
77. Counsel for Ms A, Mr L, submitted a memorandum dated 31 May 2022 [BOD 173-178].

78. Ms B provided her response, headed “The response to Ms A’s Momoranum (sic)” [BOD 178-189]¹⁶.
79. Counsel for Ms A also submitted an outline of submissions for respondent dated 15 June 2022 [BOD 190-194], and Ms A provided additional documentation dated 14 June 2022 [BOD 195-241].
80. On 4 August 2022 the Disciplinary Committee issued their decision and sought submissions on penalty.
81. Both parties made submissions. Ms B’s submission was issued on 28 August 2022 and Ms A’s submission was issued on 5 September 2022.
82. On 18 October 2022, the RA issued the Disciplinary Committee’s decision of 17 October 2022, as summarised in 16 to 18 above.

Grounds of appeal and outcome sought

83. Ms A has appealed both:
 - (a) the findings of the Disciplinary Committee; and
 - (b) the penalties ordered.
84. Ms A’s Notice of Appeal cites the following four grounds:
 - (i) New evidence of a decisive nature that could not reasonably have been available at the time of the Disciplinary Committee hearing was now available;
 - (ii) The Disciplinary Committee did not follow the procedures set out in the Regulations;
 - (iii) The penalty imposed is unfair in light of the gravity of the breach concerned; and
 - (iv) The decision reached by the Disciplinary Committee’s is manifestly at odds with the evidence presented at the hearing.
85. Grounds (i) and (iv) have been considered below in relation to the findings of the Disciplinary Committee.

¹⁶ This document is undated and unsigned.

86. As ground (ii) is a procedural based argument, it is dealt with as a separate and initial point below.
87. Ground (iii) is related to the penalty which, in undertaking the rehearing of this matter, the Panel will consider following discussion of whether or not it will uphold the substantive findings of the Disciplinary Committee on Ms A's conduct.
88. The outcome sought by Ms A is removal of all penalties ordered by the Disciplinary Committee.

Discussion and Findings of Panel

89. The Panel is tasked with considering whether the Disciplinary Committee made the correct decision.
90. After considering the grounds and the supporting evidence, the Panel must consider whether there are grounds for disciplining Ms A under s 21 of the Act, specifically whether Ms A has breached the code of ethical conduct (s 21(1)(b) of the Act) contained in part 3 of the Rules as identified by the Disciplinary Committee.
91. The benchmark against which Ms A's conduct is measured is whether Ms A acted in accordance with accepted standards. If the Panel consider that she has, we will dismiss the complaint (or the relevant part).
92. If the evidence is that Ms A did not act in accordance with accepted standards as found by the Disciplinary Committee, we will uphold the complaint, and dismiss the appeal. If the behaviour meets the latter criterion, we must consider whether the conduct "falls seriously short of accepted conduct" before imposing a disciplinary sanction.

Challenge to RA's process (ground of appeal (ii))

93. In relation to ground (ii) of Ms A's appeal, she has argued that Ms B and the Registration Authority did not "follow protocol" because Ms B lodged her complaint without having first reached out to Ms A in writing to request clarification or resolution.
94. Ms A referred to a section on the RA's website which reads:

"If you've got a concern about an engineer, we advise that you let them know and try to resolve it directly with them first by:

- *Writing to the engineer, being clear about your concerns and asking for a response. Tell the engineer what outcome you want.*
 - *Requesting a meeting with the engineer to talk through your concerns. You could take a support person with you, and you could request that an independent person facilitate the meeting.*
 - *Raising your concerns with the engineer’s manager.”*
95. In addition, the form that the RA provides for complainants to ‘raise concerns’ about an engineer includes a step-by-step procedure, of which Step 3 is “Raise your concerns directly with the engineer first” [BOD 003].
96. The RA submitted that the website commentary is ‘guidance’ only and is not a mandatory requirement of the complaints process. While it is preferable that a complainant attempt to clarify matters and communicate with the relevant engineer, this is not a prerequisite to making a complaint.
97. The RA also submitted that the Act allows any person to make a complaint about the conduct of an engineer.
98. Rule 54 of the Rules describes how a person may complain about a chartered professional engineer or former chartered professional engineer to the RA. Rule 54(2) provides that a complaint must be in writing and contain the complainant’s name and contact details. There are no other requirements beyond those for a person making the complaint. There is no requirement in the rules requiring a concern to be raised with the CPEng before raising the concern with the RA.
99. The Panel notes the RA’s commentary and template form as guidance only. It would be inappropriate for the RA to create a barrier to people exercising a statutory right – particularly when there may be safety or other concerns that would make an individual hesitant to take the step of contacting the engineer directly.
100. The Panel does not consider there can be any real suggestion that Ms B’s complaint was not able to be made or the RA’s process was flawed because Ms B did not first reach out to Ms A in writing.
101. Therefore the Panel considers this ground has no merit, but does acknowledge that the RA’s website and its associated documents be reviewed by the RA to avoid future confusion as to whether there being additional barriers or procedures before a

complaint can be made to the RA, in relation to complaints associated with a CPEng.

Appeal against findings of Disciplinary Committee (grounds of appeal (i) & (iv))

102. With regard to rules 42E, 42F and 42G of the code of ethical conduct the Disciplinary Committee considered Ms A had breached her ethical obligations as a Chartered Professional Engineer for the following reasons:

- (a) *“by failing to treat people with respect and courtesy in the manner in which she communicated with Ms B on the phone and later by email once the complaint to Engineering New Zealand had been made by Ms B”* (rule 42F);
- (b) *“by failing to advise her client, the builder, of the adverse consequences of not following her advice when she neglected to document in writing her concerns about the noncompliant retaining wall”* (rule 42G);
- (c) *“by failing to undertake engineering activities in a careful and competent manner when she neglected to keep adequate records of her engagement, payments, and site observations”* (rule 42E(a)(iii)).

103. The grounds of appeal relevant to the above findings that are challenged by Ms A are discussed below in relation to each of those findings.

Finding 1: Breach of rule 42F – Failure to treat Ms B with respect and courtesy

104. Rule 42F provides:

42F Behave appropriately

A chartered professional engineer, in performing, or in connection with, the engineer's engineering activities, —

- (a) *must—*
 - (i) *act with honesty, objectivity, and integrity; and*
 - (ii) *treat people with respect and courtesy; and*
 - (iii) *disclose and appropriately manage conflicts of interest; and*
- (b) *must not—*
 - (i) *offer or promise to give to any person anything intended to improperly influence a decision relating to the engineer's engineering activities; or*

- (ii) *accept from any person anything intended to improperly influence the engineer's engineering activities; or*
- (iii) *otherwise engage in, or support, corrupt practices.*

105. While the Disciplinary Committee has not explicitly said so, the Panel infers from its finding that Ms A breached her ethical obligations, “*by failing to treat people with respect and courtesy*” that the Disciplinary Committee’s view is that she has breached part (a)(ii) of rule 42F.
106. The Panel notes that the Disciplinary Committee refers in paragraph 121 of its decision to Ms A failing to act with integrity [BOD 282-283]. Acting with ‘honesty, objectivity and integrity’ is a separate obligation under rule 42F (rule 42F(a)(i)) to the obligation to treat people with respect and courtesy (42F(a)(ii)). However, failing to act with integrity does not appear to have been reached as a conclusion by the Disciplinary Committee earlier in the decision in the discussion of rule 42F [BOD 281], nor repeated in the summary of the Disciplinary Committee’s decision [BOD 270].
107. In the Panel’s view, it requires careful consideration and reasoning before concluding a chartered professional engineer has acted without integrity.
108. The Panel has considered both 42F(a)(i) and (a)(ii) below.
109. A core element of rule 42F is that it is an obligation specific to the performance of ‘engineering activities’, i.e. a chartered professional engineer, “*in performing, or in connection with, the engineer’s engineering activities, - (a) must - (i) act with honesty, objectivity, and integrity; and (ii) treat people with respect and courtesy...*”. (Emphasis added).
110. The phrase ‘engineering activities’ is defined in rule 42A of the Rules as “*activities for which a chartered professional engineer uses the engineer’s engineering knowledge and skills.*”
111. Therefore, the first consideration is whether the conduct concerned was in the performance of or in connection with Ms A’s ‘engineering activities’.
112. The conduct that the Disciplinary Committee based their finding of a breach of rule 42F on was ‘the manner in which she communicated with Ms B ...’:
- (a) ‘on the phone’; and
 - (b) ‘later by email’.

Phone calls

113. The phone call(s) referred to were those made by Ms B to Ms A in August 2020. Ms B and Ms A have described the number and content of those phone calls very differently, as summarised above in paragraph 51. While Ms A has said she did not know the name of the person she was speaking with at the time, it was evident following an email from the Architect the day after the call, that the call was in connection with a project that she had undertaken some work on. In the Panel's view, that makes the communication sufficiently connected to her 'engineering activities' for the purposes of rule 42F.
114. Concerning Ms A's interaction with Ms B on the phone, the Disciplinary Committee noted it had insufficient evidence to determine whose account of the phone conversations is more accurate [BOD 280].
115. However having noted it has insufficient evidence to determine whose account of the phone conversation was more accurate, the Disciplinary Committee went on to determine Ms A had failed to treat Ms B with respect and courtesy, because:
- (a) Ms A admitted hanging up on Ms B, terminating both calls. The Disciplinary Committee considered that this was unprofessional [BOD 281].
- (b) Ms A could/should have [BOD 281]:
- Done more to establish what Ms B was requesting of her;
 - Offered to consult her records and phoned Ms B or Mr C back to find out more about the problem and to address it;
 - It should have been clear from Ms B's persistence that she wanted information from her.
116. Having heard very different submissions from the parties, the Panel is not in any better position than the Disciplinary Committee to determine what was said on the phone and cannot determine whose account is more accurate.
117. Having agreed that it cannot conclude what occurred during the phone calls, the Panel considers it difficult to determine whether those interactions were in breach of rule 42F.
118. Ms A has acknowledged terminating the call with Ms B. The Panel's view is that there can be occasions when there is little option but to terminate a call earlier than desired

by the other Party, and that doing so is not necessarily an unreasonable or disrespectful thing to do. Therefore, having determined that there is insufficient evidence of what occurred during those phone calls, the Panel finds it cannot conclude that Ms A's termination of the calls was unreasonable or unjustified in the circumstances.

119. Similarly, the Panel does not consider that the act of terminating a call when the context is unknown showed a lack of integrity.
120. Concerning other steps Ms A could or should have taken in response to the phone calls, the Panel considers the timing and proximity of the phone call with the emails between Ms A and Mr I has relevance.
121. Ms A had three email exchanges with Mr I. One before and two following the 'phone call', as described in 49 to 56 above.
122. In response to Mr I's first email, Ms A advised him "*she was engaged by the builder for site inspections and was told he was going to use another engineer*" and "*I didn't approve it..... therefore – talk to the builder*".
123. In his second email, Mr I advised Ms A [BOD 054]:
 - (a) he had been contacted by the owners;
 - (b) he was proceeding with the CCC application for their residence, advising the Council to proceed with the application without PS4 and site notes;
 - (c) she had sworn at the client; and
 - (d) his client had contacted the IRD and had made an official complaint to Engineering NZ.
124. Ms A responded by email denying she had sworn at anyone. [BOD 054]
125. In his third email Mr I advised Ms A that she had sworn and hung up on the client's daughter [BOD 053], to which Ms A advised him the woman who had called her had not identified herself as the client's daughter [BOD 053].
126. This Panel considers that at the time of the above email exchanges, Mr I was acting as the owner's agent.
127. In this role, concerning the previously requested documents, the reason for Ms B 's phone call, Mr I advised his CCC application was being progressed without the documents.

128. Concerning Ms As' interaction with Ms B, Ms A provided Mr I with her version of what had occurred, and considered this information would be relayed to his client.
129. The Panel accepts, by the end of this emailing Ms A had established who Ms B was, and identified the information Ms B was phoning for was no longer required for the CCC application.
130. The Panel also acknowledges a more prudent step would have been for Ms A to have contacted her client, the Builder, to further assure herself that she had fulfilled her role from her client's perspective.
131. The Panel does not consider the evidence supports a failure to carry out the action described in paragraph 115 above, and if it had, was not of a level sufficient to be considered a breach of her obligations of acting with 'honesty, objectivity, and integrity' and treating people with 'respect and courtesy'.

Email

132. The Panel understands from the background recorded in the Disciplinary Committee's decision that the reference to 'later by email' is Ms A's email to Ms B of 31 August 2020 [BOD 274].
133. However, it is unclear to the Panel whether the Disciplinary Committee made a finding that this email was correspondence that breached rule 42F as this email is not referred to in the Disciplinary Committee's discussion of Ms A's ethical obligations around communication in paragraphs 96 to 104 of its decision [BOD 280 – 281].
134. Further, the Disciplinary Committee states at paragraph 118 of its discussion that "*We are also concerned about the email Ms A sent to Ms B during the complaints process. It does not form part of the complaint, but we may take this into account when determining any penalties*". Yet, a reference to this email is made in the Disciplinary Committee's statements in:
 - Paragraph 4, in which the Disciplinary Summarises its findings and states Ms A breached her obligations as a Chartered Professional Engineer... "by failing to treat people with respect and courtesy in the manner in which she communicated with Ms B on the phone and later by email once the complaint to Engineering New Zealand had been made by Ms B "
 - Paragraph 121, under the heading 'Decision', where it states:

“...[Ms A] failed to act with integrity and failed to treat people with respect and courtesy in the manner in which she communicated with Ms B on the phone and, in our opinion, by email once a complaint to Engineering New Zealand had been made by Ms B .”

135. Also, the Investigating Committee’s decision refers to the email of 31 August 2020 by way of background, but it is not referred to in the discussion of the complaint or as a basis for referring the matter to the Disciplinary Committee.

136. In the above email Ms A writes [BOD 028]:

Ms B

I understand that you want to get PS4 -not Certificate of Acceptance. You complained to Engineers New Zealand - with fabricated complaints.

*Please understand, I never said to you f**k you - this word I never used in My Life. But you said in writing saying that I said against you - which is a clear false statement which is now evidence and also you attempt to cancel my registration by making complaints with a fabricated statement. Please note that I have my phone recordings to prove that I never said anything like that.*

Please note your action to attempt to damage my professional status with a false statement is a serious offense and I am talking to my lawyer to issue a legal notice to claim damages.

But before I proceed to legal action - as the Engineers New Zealand mediator indicated that you apologized for your action and therefore, I will give you a chance to remedy this by withdrawing your complaint to Engineers New Zealand and apologize to me in person -then only I will consider helping you. Otherwise, no way I can help you until the investigation is completed.

If you want to keep the Engineers New Zealand Complaint - I will not go for mediation and the investigation will go about two years before it is dismissed (as this happened last time and it is finally dismissed). I am very much confident that your complaint also will be dismissed as I have not done anything wrong. Please send your reply soon as my lawyer is waiting for me to send the legal notice.

Regards

Ms A

137. Ms B has said that she found this email to be threatening [BOD 029].

138. The Panel agrees with the Disciplinary Committee that the email was not part of the complaint, and therefore is not conduct for this Panel to consider.
139. However, the Panel wishes to note some disquiet about the email of 31 August 2020. Ms A has argued that the context for this email makes it clear that it was an attempt to resolve the matter in the manner Engineering New Zealand had suggested Ms B was open to – i.e. assist with providing the certificate if Ms B were to withdraw the complaint and point out that settling the matter in private would be faster. While the Panel can accept this explanation, it can also appreciate how Ms B could have considered this email to be threatening and the panel considers the email wording as being poorly considered.
140. Based on the above discussion the Panel does not consider Ms A has breached her code of ethics obligations of rule 42F.

Finding 2: Breach of rule 42G – Failure to advise client of adverse consequences

141. Rule 42G provides:

42G *Inform others of consequences of not following advice*

A chartered professional engineer who becomes aware that the engineer's professional advice may not be followed, and who considers that a failure to observe that advice may have adverse consequences, must inform the recipient of the advice of those adverse consequences.

142. The obligation in rule 42G is triggered where the engineer considers a failure to observe their advice may have 'adverse consequences'. The term 'adverse consequences' is defined in rule 42A as:
- (a) *significant harm, or an unacceptable likelihood of significant harm, to the health or safety of people; or*
 - (b) *significant damage, or an unacceptable likelihood of significant damage to the environment.*
143. It is important to note that the term 'adverse consequences' is also used in the obligation in rule 42D. This requires a CPEng to report potential adverse consequences to an authority, providing:

42D *Report adverse consequences*

A chartered professional engineer who has reasonable grounds to believe that an engineering matter has, or could have, adverse consequences must bring the matter to the notice of the relevant regulatory body unless the engineer, having made inquiries, is satisfied on reasonable grounds that the matter is being dealt with through an appropriate process or in an appropriate manner.

144. Given that the circumstances of ‘adverse consequences’ means the triggering of the above obligation, the Panel’s view is that the definition of ‘adverse consequences’ is intended to introduce a reasonable threshold at which this obligation will take effect.
145. Ms A acknowledged to the Disciplinary Committee that she erred by not following up in writing with regards to her concerns about the retaining wall, but noted she did not consider the effects would have adverse consequences.
146. On appeal, Ms A has argued that the inspection reports that she has obtained from the Council and provided as part of this appeal confirm that the retaining wall construction was completed before her first site inspection on 16 October 2018.
147. The Registration Authority submits *“It is not clear how this advances her position. The Disciplinary Committee’s concern was that Ms A had witnessed potential problems with the retaining wall and had failed to follow up on this in writing. That concern remains valid.”*
148. The Panel’s view is that the state of the retaining wall is relevant to the question of what issues may have been evident and whether possible ‘adverse consequences’, i.e. an unacceptable likelihood of significant harm to the health and safety of people or significant damage to the environment, were apparent to Ms A.
149. The Panel notes that the Disciplinary Committee did not address the question of whether these elements were likely to have been present at the time.
150. As set out above in paragraphs 35, 37, and 47 , Ms A obtained and provided two Company J inspection reports to CPEC in this appeal.
151. The report of 1 October 2018 predates Ms A’s involvement. It states *“Engineer has inspected and issued positive inspection record, ok to pour. Observations required.”* During the appeal hearing in answer to a Panel question, Ms A advised she was not the Engineer referred to in this Company J report. She reconfirmed her site visits occurred later, on approximately the 16th and 18th of October. She was not called to carry out a retaining wall inspection.

152. The second Company J report, dated 23 October 2018, documents a raft slab construction booking, and has photographs attached in which the retaining wall appears completed in the background.
153. It is not apparent at what stage between 1 October and 23 October 2018 the retaining wall was completed. It cannot be conclusively determined that the retaining wall was completed by the time of Ms A's site visit on 18 October 2018. However, this Panel accepts the photographs in both reports confirm the retaining wall commenced construction prior to Ms A's visit and was substantially constructed, with "back planks" in place, within 5 days of her 18 October 2020 visit.
154. Further, whether the retaining walls were in the state photographed on 1 October or 23 October 2018, the Panel's view is that no evidence has been provided suggesting an unacceptable likelihood of significant harm to the health and safety of people or significant damage to the environment. Company J visually assessed the relevant construction and issued the instruction 'ok to pour' on 1 October, having observed the ground heights and pole installation, and the inspection on 23 October did not identify any concerns. Any issues would not at that juncture have reached the threshold at which the Rules require mandatory notification and reporting of 'adverse consequences'.
155. Ms A has reiterated that the context for this is that while on site to inspect the house foundation/ slab, she was asked a question by the Builder about the height of the retaining wall. Ms A says the discussion with the builder regarding the retaining wall *"was a discussion on site, not part of her engagement and the builder was well aware of the consequences if this work was unsupervised ... this retaining wall now has been approved by another engineer and no failure or danger to human life"*.¹⁷
156. Ms A discussed with the builder the design height variance which required reconfirmation of the design by a suitably qualified person. Whilst she commented on the variance between the wall height consented and built (but could not comment further without reviewing the design), she did not consider there to be any imminent danger or threat to life or property. She noted the Builder was aware of consequences such as not complying with the building consent, and not having the works observed

¹⁷ Ms A reply submissions, p 4.

and it was up to her client, the builder to relay that information and possible consequence to his client, the owners.

157. Ms A says that because she had not designed nor been engaged to review the design or the building of the retaining wall, she was not prepared to provide a comment beyond noting the height variance. Ms A says she followed up with the builder, by phone, seeking both the signed agreement and a timetable for further site visits, but was removed from the project at this time.

158. The Panel therefore considers that Ms A's conduct was not in breach of rule 42G as there is insufficient evidence of there being 'adverse consequences' as defined in the Act that would have triggered the obligation. An email to the Builder reiterating their conversation about the possible non-compliance of the retaining wall would have been prudent, however, this was not a step she was obligated to take.

Finding 3: Breach of rule 42E(a)(iii) – failing to undertake engineering activities in a careful and competent manner

159. Rule 42E(a) provides:

42E Act competently

A chartered professional engineer—

(a) must—

(i) *ensure that the engineer's relevant knowledge and skills are kept up to date; and*

(ii) *only undertake engineering activities that are within the engineer's competence; and*

(iii) *undertake engineering activities in a careful and competent manner; and*

...

(Emphasis added)

160. The obligation in rule 42E(a)(iii) also centers on the undertaking of 'engineering activities'. As noted above, this is defined in rule 42A as 'activities for which a chartered professional engineer uses the engineer's engineering knowledge and skills'.

161. The Disciplinary Committee considered Ms A had breached her obligations to undertake engineering activities in a careful and competent manner having 'failed to

act carefully', as 'demonstrated by her poor practises in record keeping'¹⁸, having neglected to keep adequate records of her engagement, payments, and site observations"¹⁹, as demonstrated by:

- a) not having a written scope of engagement with the builder for her construction monitoring services,
- b) signing Mr C 's record book when she received payment in cash on site, but otherwise not issuing any invoices nor receipts for her work; and
- c) failing to write up her site observations in relation to the retaining wall.

Written scope of engagement

162. The Panel acknowledges that a scope of engagement for engineering services is an 'engineering activity', and therefore something which should be done in a careful and competent manner.
163. Ms B and Ms A have conflicting accounts of Ms A's role and engagement.
164. Ms B says "*In 2018, we decided to build our house and Ms. A was the engineer for the project.*" She says Ms A was the engineer responsible for carrying out all site observations associated with the project, prior to replacement.
165. Ms A maintains that she did everything that she was asked to do by her client, the builder. She further states that her engagement was brief; and that such engagement was on a when-called basis for construction observation. Ms A states that she was "*contacted by the builder over the phone and requested a site inspection for a rib raft floor reinforcement check before pouring concrete. I visited the site, provided a site inspection note, and received payment for the work*"²⁰.
166. The Panel accept that she presented the Builder with her Short Form Agreement for Consultant Engagement²¹ during her site visit on 18 October 2018. The Panel notes

¹⁸ BOD 279, at [85]

¹⁹ BOD 270, at [4]

²⁰ Ms A submission page 002 section 2 para 3.

²¹ [BOD 119]

that this agreement identified the 'Scope & nature of the Services', as "*Structural site inspection for construction Monitoring inspection will be carried out as per the Building Consent Conditions on the Builders request*" (emphasis added).

167. Ms A acknowledged her short form agreement²² was not signed. She says that she "*handed over the paperwork to the builder²³. He promised me that he would sign and sent it to me*", and that "*It is not unusual in residential construction to accommodate urgent requests and cover the paperwork later*", "*Even though having a contract in place is better, a small job like this not mandatory to have a contract.*"
168. She says she called the Builder to follow up on its signing and the builder responded "*That no more services were required as his contract with the house owner was in dispute*".
169. While perhaps a more detailed scope of engagement could have avoided this complaint over responsibility for the retaining wall, the Panel considers that the scope in the short form agreement was sufficient in the circumstances of a brief and on-request engagement.
170. With regard to whether Ms A ought to have ensured that she obtained a signed copy of the contract with her scope of engagement, the Panel considers it was understandable in the circumstances of an urgent engagement to have taken the approach of 'sorting out the paperwork later'. However, the Panel considers Ms A could benefit by reflecting on her business practices of the time and notes that a further written record in the form of an email could have assisted in quickly clarifying the later argument as to the scope of her services. An email following the call in which her services were terminated to acknowledge the services provided, payment, and termination would have been a prudent step.
171. In the Panel's view, not getting the Builder's signature on the Short Form Agreement for Consulting Engagement in the circumstances was not a breach of rule 42E(a)(iii).

Signing Mr C 's book and not issuing invoices or receipts

172. The key questions for the Panel here are:

²² [BOD 119]

²³ Ms A submission page 002 para 3.

- (a) whether the practice of issuing invoices or receipts falls within the definition of 'engineering activities'; and, if so,
 - (b) whether the lack of issuing invoices or receipts was a breach of the ethical obligation in rule 42E(a)(iii).
173. Neither party nor the RA has directly dealt with whether invoicing and receipting for work are 'engineering activities' that s 42E(a)(iii) applies to.
174. The RA has supported the broad approach taken by the Disciplinary Committee concerning the obligation being breached because of 'poor record keeping', submitting "*Ms A has not provided any reason to overturn the finding that her practices in record keeping demonstrated a lack of professionalism and fell below the standard of practice to be expected of a professional engineer.*"²⁴
175. The RA further argued that "*Ms A's s reference to BOD 010, 119 and 138 do not demonstrate thorough documentation.*"
176. Ms B, in her original complaint, was critical of Ms A's acceptance of cash without the production of any receipt.
177. Rule 42E(a)(iii) is specific to the careful and competent undertaking of *engineering activities*, being 'activities for which a chartered professional engineer uses the engineer's engineering knowledge and skills'.
178. It is not evident to the Panel that the creation and issuing of invoices or receipts, even when they are for engineering services, is an activity that a Chartered Professional Engineer uses their engineering knowledge and skill to produce. The application of 42E(a)(iii) to be a general obligation to have professionalism in their financial record-keeping sits uncomfortably with the Panel when that definition of 'engineering activities' is considered.
179. There may be other types of record-keeping that form part of 'engineering activities', but the Panel does not consider that, in these circumstances, the issuing of an invoice or receipt to be an activity for which Ms A would have used her engineering knowledge or skills.

²⁴ RA Submission 5.31

180. Therefore, the Panel finds Ms A has not breached rule 42E(a)(iii) obligation as a chartered professional engineer, in respect of not issuing invoices or receipts.
181. With regards to Ms A's on-site actions in signing Mr C 's record book to be a reasonable approach in acknowledging she was paid in cash whilst on site that day. This, in the Panel's view, is not an action that can be held up as a breach of ethics or professional behaviour.
182. Further, it is not clear whether the Disciplinary Committee was critical of the fact that Ms A accepted cash in payment. However, for completeness, the Panel accepts Ms A's argument that it was not unreasonable to have accepted cash as payment for her services and acknowledges cash remains legal tender.

Failed to Write Up her Site Observations of the Retaining Wall

183. The Disciplinary Committee stated in the content of the decision. Ms A had breached her obligations to report adverse consequences and inform others of the consequences of not following advice (i.e. r 40G) [BOD 281-282].
184. The Disciplinary Committee considered, "her obligation did not end when she was told by the builder that the homeowners had engaged a new engineer", and that "she could have and should have recorded her concerns in writing so that the new engineer was aware these needed to be addressed", "a reasonable engineer would have recorded their advice in writing and taken action to ensure their advice was being followed".
185. The Disciplinary Committee went on to summarise in their decision summary that Ms A had "failed to undertake engineering activities in a careful and competent manner when she neglected to keep adequate records of her ... site observations".
186. The Panel has examined the application of 42D and 42G above, with regard to Ms A's scope of works and her reporting adverse consequences in relation to the retaining wall, and now consider whether Ms A has failed to undertake engineering activities in a careful and competent manner when she neglected to record her response to the question raised by the Builder.
187. An engineer's site observations are an 'engineering activity' to which rule 42E(a)(iii) applies.
188. The Panel has accepted that it is more likely than not Ms A was engaged for part of the building project by the Builder. Whilst it is clear Ms A was asked to observe the

foundations for the house prior to the concrete pour, based on the evidence, the Company J reports, Ms As' response to a Panel question during the hearing, the Panel consider observation of the retaining wall was unlikely to be within Ms As' scope of work.

Therefore, with the retaining wall likely falling outside Ms A s' scope of work and given the circumstances including her termination, this Panel does not consider Ms A has breached rule 42E(a)(iii), in not recording the wall in her site observations.

Summary of Panel findings

189. In summary, and for the reasons that are set out above, the Panel has come to the following conclusions:

- (a) Rule 42F(a)(i) and (ii): No breach.
- (b) Rule 42G: No breach.
- (c) Rule 42E(a)(iii): No breach.

190. Accordingly, the Panel does not consider there to be grounds for discipline under s 21 of the Act, on which to discipline Ms A.

191. Having reached a different view of Ms A's conduct from the Disciplinary Committee, the Panel upholds the appeal and reverses the Disciplinary Committee's decision.

Penalty and costs

192. Having reversed the Disciplinary Committee's decision on grounds to discipline Ms A, no penalty can be appropriate. The Panel reverses the entirety of the Disciplinary Committee's decision as it relates to Ms A as a Chartered Professional Engineer, including penalty and order of costs.




Outcome of Appeal

193. The Panel has found that Ms A has not breached the code of ethical conduct in part 3 of the Rules, and therefore there are no grounds on which to discipline Ms A. The Panel upholds Ms A's appeal and orders the reversal of the Disciplinary Committee's decision as it relates to Ms A as a chartered professional engineer.

194. In accordance with s 35 of the Act either party may appeal this decision to the District Court within 28 days of receiving notice of this decision.

Dated 13 March 2024

Signed by the Appeal Panel

	
Sandra Hardie (Principal)	Megan Neill (Member)
	
Anthony Fairclough (Member)	

Schedule 1 – Legislation

Chartered Professional Engineers of New Zealand Act 2002

S 21 of the Act

“21 Grounds for discipline of chartered professional engineers

(1) The Registration Authority may (in relation to a matter raised by a complaint or by its own inquiries) make an order referred to in section 22 if it is satisfied that a chartered professional engineer-

- (a) has been convicted, whether before or after he or she became registered, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more if, in the Authority’s opinion, the commission of the offence reflects adversely on the person’s fitness to practise engineering; or*
- (b) has breached the code of ethics contained in the rules; or*
- (c) has performed engineering services in a negligent or incompetent manner; or*
- (d) has, for the purpose of obtaining registration or a registration certificate (either for himself or herself or for any other person),—*
 - (i) either orally or in writing, made any declaration or representation knowing it to be false or misleading in a material particular; or*
 - (ii) produced to the Authority or made use of any document knowing it to contain a declaration or representation referred to in subparagraph; or*
 - (iii) produced to the Authority or made use of any document knowing that it was not genuine.*

(2) The Registration Authority may make the order whether or not the person is still a chartered professional engineer.

(3) The Registration Authority must comply with the applicable procedures under section 25 before making an order.”

S 35 of the Act

“35 Right of appeal

(1) The person to whom the decision relates or, if it is a disciplinary matter, the complainant may appeal to the Council against a decision of the Registration Authority under this Part.

(2) The Registration Authority, the person to whom the decision relates, or, if it is a disciplinary matter, the complainant may appeal to the District Court against a decision of the Council under this Part.

(3) The appeal of a decision must be made by written notice to the Council or District Court (as the case may be) within—

- (a) 28 days after the person receives notice of the decision from the decision authority; or (b) any further time that the Council or District Court (as the case may be) allows on application made to it before the expiry of the 28-day period.”*

S 37(5) of the Act

“(5) The Council or District Court, as the case may be, may—

- (a) confirm, vary, or reverse the decision, or part of decision, to which the appeal relates:*

- (b) *refer the matter back to the decision authority for it to reconsider, either generally or in relation to specific matters, the whole or any part of the decision (together with any direction on that whole or part that the Council or District Court, as the case may be, thinks fit):*
- (c) *make any decision that could have been made by the decision authority:*
- (d) *make any order as to the payment of the costs of the appeal that it thinks fit.”*

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

Rule 42A of the Rules

“42A Interpretation

In this Part. –

adverse consequences -

- (a) *significant harm, or an unacceptable likelihood of significant harm, to health or safety of people; or*
- (b) *significant damage, or an unacceptable likelihood of significant damage to the environment.*

engineering activities *means activities for which a chartered professional engineer uses the engineer’s engineering knowledge and skills.”*

Rule 42D of the Rules

“42D Report adverse consequences

A chartered professional engineer who has reasonable grounds to believe that an engineering matter has, or could have, adverse consequences must bring the matter to the notice of the relevant regulatory body unless the engineer, having made inquiries, is satisfied on reasonable grounds that the matter is being dealt with through an appropriate process or in an appropriate manner”.

Rule 42E of the Rules

“42E Act competently

A chartered professional engineer—

- (a) *must—*
 - (i) *ensure that the engineer’s relevant knowledge and skills are kept up to date; and*
 - (ii) *only undertake engineering activities that are within the engineer’s competence; and*
 - (iii) *undertake engineering activities in a careful and competent manner; and*
- (b) *must not—*
 - (i) *misrepresent, or permit others to misrepresent, the engineer’s competence; or*
 - (ii) *knowingly permit other engineers for whose engineering activities the engineer is responsible to breach paragraph (a)(ii) or (iii) or subparagraph (i).”*

Rule 42F of the Rules

“42F Behave appropriately

A chartered professional engineer, in performing, or in connection with, the engineer’s engineering activities,—

- (a) *must—*
 - (i) *act with honesty, objectivity, and integrity; and*
 - (ii) *treat people with respect and courtesy; and*
 - (iii) *disclose and appropriately manage conflicts of interest; and*
- (b) *must not—*
 - (iii) *offer or promise to give to any person anything intended to improperly influence a decision relating to the engineer’s engineering activities; or*
 - (iv) *accept from any person anything intended to improperly influence the engineer’s engineering activities; or*
 - (v) *otherwise engage in, or support, corrupt practices.”*

Rule 42G of the Rules

“42G Inform others of consequences of not following advice

A chartered professional engineer who becomes aware that the engineer’s professional advice may not be followed, and who considers that a failure to observe that advice may have adverse consequences, must inform the recipient of the advice of those adverse consequences.”