

**DISCIPLINE COMMITTEE OF THE
ONTARIO COLLEGE OF TRADES**

IN THE MATTER OF the *Ontario College of Trades and Apprenticeship Act, 2009*,
(the “Act”) and Ontario Regulation 97/13 (Professional Misconduct) thereunder;

AND IN THE MATTER OF a discipline proceeding against
Ron E Heitto, a member of the Ontario College of Trades.

PANEL: Hanno Weinberger, Chair
Paul Sousa
Vish Jadunauth

BETWEEN:)
)
) John J. S. Park,
) College Counsel
) Ontario College of Trades
ONTARIO COLLEGE OF TRADES)
)
)
-and-) No one appearing for Ron E. Heitto,
)
)
RON E HEITTO)
(Member #13106333))
) Aaron Dantowitz,
) Independent Legal Counsel
)
) Heard: February 13, 2018

REASONS FOR DECISION

1. A hearing of this matter took place before a panel of the Discipline Committee (the “Panel”) on February 13, 2018 at Victory Verbatim, Court Reporting Services, 222 Bay Street, Toronto, Ontario.
2. An *Affidavit of Service* dated September 5, 2017 (Exhibit 1) affirms that the *Notice of Hearing* in this matter (Exhibit 2) issued on August 1, 2017 was served on Ron E. Heitto (the “Member”) on August 11, 2017. A First Appearance in this matter was scheduled to take place by teleconference on September 26, 2017, however, the Member did not participate. A second First Appearance was scheduled for November 2,

2017, however the Member failed to participate in that teleconference as well.

3. An *Endorsement* (Exhibit 3) issued by a member of the Discipline Committee on November 2, 2017 set this matter down for a hearing on its merits on February 13, 2018.

MEMBER'S ABSENCE

4. Prior to presenting the Panel with the *Notice of Hearing*, College Counsel asked that the *Affidavit of Service* be entered as Exhibit 1. College Counsel stated that the content and timelines contained within the *Affidavit of Service* assured the Panel that the Member had been given proper notice of the hearing. The *Affidavit of Service* contained two (2) Endorsements (including Exhibit 3). The First Endorsement dated September 26, 2017, indicated that the First Appearance was adjourned due to the Member's failure to attend and therefore, a date of November 2, 2017, was set to continue with this matter. The Second Endorsement dated November 2, 2017 (at which time the Member did not attend, nor indicate in writing that he would not attend), set down Tuesday, February 13, 2018 as the date that the hearing of this matter would take place. In paragraph 3 of the Endorsement dated November 2, 2017, the date, time and venue address were clearly indicated.
5. College Counsel presented the Panel with the *Notice of Hearing* and it was entered as Exhibit 2. The date of issue of the *Notice of Hearing* was August 1, 2017. Both College Counsel and Independent Legal Counsel (ILC) drew the Panel's attention to the following:
 - (i) adequate time had been provided to the Member for the February 13, 2018 proceeding;
 - (ii) the *Notice of Hearing* included reference to the statute allowing for this matter to be referred to and heard by the Discipline Committee;
 - (iii) adequate notice was provided to the Member of the First Appearance via teleconference on Tuesday, September 26, 2017 in order to set a date for the hearing (page 5); and
 - (iv) if the Member failed to attend the hearing on the date scheduled, the Panel could proceed in his absence.
6. ILC confirmed for the Panel that it had the authority to proceed in the Member's absence, if it was satisfied

that the notice of requirements set out in the *Statutory Powers Procedure Act* were met.

7. The Panel considered the information and timelines contained within the *Affidavit of Service* and the *Notice of Hearing*. The Panel was confident that the Member had been duly served and informed. Therefore, noting that 24 minutes had already passed since the appointed time of the hearing, the Panel directed that the hearing commence and invited College Counsel to make his opening address.

THE ALLEGATIONS

8. The allegations against the Member in the *Notice of Hearing* are as follows:

“IT IS ALLEGED that Ron E. Heitto has engaged in Professional Misconduct as defined in subsection 46(2) of the *Act* and/or Ontario Regulation 97/13 made under the *Act* in that he:

- a) failed to take reasonable steps to safeguard the life, health or property of a person who may be affected by the work of a person for whom he is responsible, when he knew or ought to have known that there was a risk to life, health or property (Ontario Regulation 97/13, subsection 1(1));
- b) failed to act to correct or report a situation that he knew or ought to have known may endanger the safety or welfare of the public (Ontario Regulation 97/13, subsection 1(2));
- c) signed or issued, in his capacity as a member of the College, a document that he knew or ought to have known contained a false, improper or misleading statement (Ontario Regulation 97/13, subsection 1(8));
- d) was found guilty of contravening a law that is relevant to his suitability to hold a certificate of qualification (Ontario Regulation 97/13, subsection 1(9));
- e) failed to maintain the standards of a trade (Ontario Regulation 97/13, subsection 1(10)); and
- f) acted or failed to act, in respect to the practice of a trade, in a manner that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (Ontario Regulation 97/13, subsection 1(11)).

PARTICULARS OF THE ALLEGATIONS ARE AS FOLLOWS:

BACKGROUND

1. Ron E. Heitto, Membership No. 13106333 (the “Member”), is a member of the Ontario College of Trades (the “College”).
2. At all material times, the Member held Certificates of Qualification (“C of Q”), Journeyperson Class, in the trades of Automotive Service Technician (310S) and Truck and Coach Technician (310T), and carried on business as R & H Automotive Inc., located at 124 Queen Street, in Longlac, Ontario, POT 2A0 (“R&H”).
3. At all material times, R&H operated as a Motor Vehicle Inspection Station, licensed by the Ontario Ministry of Transportation (“MTO”), by virtue of the Member being a C of Q holder, to issue Safety Standard Certificates (“SSC”) for motor vehicles pursuant to the *Highway Traffic Act*, RSO 1990, ch. 8 (the “HTA”) and its Regulations.
4. On or about 14 April 2016, Joseph Nieman (the “Complainant”) acquired a 2005 Ford FX5 with vehicle identification number 3FAFP37NX5R136836 (the “Vehicle”), with the intention to operate it on public roads.

COMPLAINANT ENLISTS THE SERVICES OF THE MEMBER

5. On or about 16 April 2016, the Complainant took his Vehicle to the Member in order to obtain a SSC. A valid SSC is an attestation by the issuer that the Vehicle meets the basic safety standards to be driven on public roads and highways in Ontario and is required to legally register the Vehicle with the MTO.
6. On or about 16 April 2016, the Member advised the Complainant that some repairs were necessary before a SSC could be issued for the Vehicle. The Complainant authorized the Member to perform the necessary repairs to the Vehicle for maximum cost of \$1,000.

MEMBER ISSUES IMPROPER SSC

7. On or about 29 April 2016, the Member issued and gave the SSC to the Complainant. At that time the Member had not completed all necessary repairs the Member knew were required in order for the Vehicle to meet the minimum safety standards required for the issuing of the SCC.

MEMBER INVOICES COMPLAINANT ABOVE THE ESTIMATED QUOTE

8. On or about 29 April 2016, the Member invoiced the Complainant \$1,448.70 for the work done on the Vehicle (before tax). This amount exceeds the estimate given to the Complainant on 16 April 2016 by more than 10% and, therefore, violates sections 56 and 58 of the *Consumer Protection Act, 2002*.

MTO CONCLUDES THAT VEHICLE IS UNSAFE AND MEMBER FAILED TO REPORT CERTAIN DEFECTS OF THE VEHICLE

9. On or about 12 May 2016, a MTO Enforcement Officer inspected the Vehicle. This inspection indicated that the Vehicle had multiple safety-related defects that should have prevented the Vehicle from obtaining a SSC on 29 April 2016.

MEMBER CONVICTED IN PROVINCIAL OFFENCES COURT

10. As a result of the MTO's inspection, on 19 May 2016, the Member was charged under the *HTA*,
 - a. in relation to the Vehicle, with:
 - i. issuing a SSC on 29 April 2016, when the Vehicle was found not to be in compliance with the prescribed vehicle component standards;
 - ii. failing to record defects and recommend repairs, as required when issuing the SSC for the Vehicle; and
 - b. in relation to another motor vehicle, with:
 - iii. failing to keep records of a safety inspection the Member had performed on that other vehicle.

11. On 26 July 2016, the Member pleaded guilty in the Ontario Court of Justice and was convicted of all three charges outlined in paragraph 10 above.

MTO SUSPENDS THE MEMBER FROM ISSUING SSC's

12. Since its inspection, the MTO revoked the Member's licence to conduct vehicle safety inspections and issue further SSCs.

MEMBER'S PLEA

9. In light of the fact that the Member was neither present, nor represented by legal counsel, a plea of not guilty was entered to all the allegations on his behalf. The Panel decided to proceed with this matter confident that the Member had been duly informed of the particulars of the allegations. Further, the Panel clearly understood that regardless of the Member's attendance, the onus rested with the College to prove the allegations levelled against the Member in the *Notice of Hearing*.

THE EVIDENCE

10. The College informed the Panel that it would rely on the Affidavit of Alex McWilliam (Exhibit 4) to provide an overview of the events in this matter. The College stated that its concerns focused on two (2) sets of alleged misconduct:
 - (i) The College's first area of concern regarded the issuing of a Safety Standard Certificate (SSC). An SSC is required when transferring ownership of a used vehicle. The Member conducted a safety inspection and issued a signed SSC, even though minimum safety standards had not been met; and
 - (ii) The College's second area of concern related to the variance and discrepancy between the initial quote and the final amount charged on the invoice given to the Complainant. The amount charged by the Member was well above ten (10) per cent of the original quote, thereby contravening the *Consumer Protection Act, 2002*.
11. The Complainant brought his Vehicle to the Member to have work done in order to bring the car up to legal safety standards. The Complainant informed the Member that based on his budget, \$1000.00 was

the maximum he could pay the Member for any work that needed to be done. The final invoice issued to the Complainant by the Member, listed the amount owed as \$1448.70 (before taxes). By charging the Complainant almost fifty (50) per cent more than the initial quote, the Member's conduct was not consistent with the *Consumer Protection Act, 2002* (sections 56 and 58).

12. In its submission, the College referred the Panel to Exhibit 4 as evidence of the following:
- (i) The Member has been a member of the Ontario College of Trades since April 8, 2013 and, at all material times, held Certificates of Qualification, Journeyman Class, in the trades of Automotive Service Technician (310S) and Truck and Coach Technician (310T) (Exhibit 4, Tabs B and C);
 - (ii) At all material times, the Member was licensed to issue Safety Standard Certificates for motor vehicles (Exhibit 4, Tab G);
 - (iii) Sometime between April 14, 2016 and April 29, 2016, the Complainant took his Vehicle to the Member in order to obtain an SSC (Exhibit 4, Tab E);
 - (iv) The Complainant authorized the Member to perform necessary repairs to the Vehicle, to a maximum cost of \$1000.00 in order to have an SSC issued (Exhibit 4, Tab E);
 - (v) On April 29, 2016, the Member issued an SSC verifying that the Vehicle met the minimum safety standards required for the issuing of an SSC (Exhibit 4, Tabs G and J - official conviction record) when in fact, not all of the necessary repairs had been completed;
 - (vi) On April 29, 2016, the Member invoiced the Complainant \$1448.70 (Exhibit 4, Tab H), exceeding the estimate given to the Complainant by more than ten (10) per cent, violating sections 56 and 58 of the *Consumer Protection Act, 2002*;
 - (vii) On May 12, 2016, a Ministry of Transportation (MTO) Enforcement Officer inspected the Vehicle. This inspection indicated that the Vehicle had multiple safety-related defects that should have prevented the Member from issuing an SSC on April 29, 2016 (Exhibit 4, Tab I);
 - (viii) As a result of the MTO's inspection the Member was charged under the *Highway Traffic Act* with:

- (a) issuing an SSC on April 29, 2016 when the Vehicle was found not to be in compliance with the prescribed vehicle component standards, contrary to section 90(3)(a) of the *Highway Traffic Act* (Exhibit 4, Tab J); and
 - (b) failing to record defects and recommend repairs, as required when issuing an SSC for the Vehicle, contrary to section 10(1)9b) of *Highway Traffic Act* Regulation 601 (Exhibit 4, Tab K).
- (ix) On July 26, 2016, the Member pleaded guilty in the Ontario Court of Justice and was convicted on both charges and fined \$200.00 for each of the charges; and
- (x) Following its inspection, the MTO revoked the Member's licence to conduct vehicle safety inspections and issue further SSCs (Exhibit 4, Tab I, page 3).
13. College Counsel concluded his submission by stating that the facts as alleged had been proven on a balance of probabilities and that the facts supported a finding of professional misconduct.
14. ILC instructed the Panel that its role was to determine whether the factual allegations had been proven, and if so, whether the facts amounted to professional misconduct.

DECISION

15. Having deliberated and considered the submissions and evidence presented by the College, the Panel found that the allegations outlined in the *Notice of Hearing* (Exhibit 2) a) through f)) had been proven, on a balance of probabilities.
16. Therefore, pursuant to section 46(2)(c) of the Act, the Panel found the Member guilty of professional misconduct for having engaged in conduct that is defined as being professional misconduct in Ontario Regulation 97/13, section 1, paragraphs 1, 2, 8, 9, 10 and 11, namely that the Member:
- (i) failed to take reasonable steps to safeguard the life, health or property of a person who may be affected by the work of any person for whom he is responsible, when he knew or ought to have known that there was a risk to life, health or property (subsection 1(1));

- (ii) failed to act to correct or report a situation that he knew or ought to have known may endanger the safety or welfare of the public (subsection 1(2));
- (iii) signed or issued, in the Member's capacity as a member of the College, a document that the Member knew or ought to have known contained a false, improper or misleading statement (subsection 1(8));
- (iv) was found guilty of contravening a law that is relevant to his suitability to hold a certificate of qualification (subsection 1(9));
- (v) failed to maintain the standards of a trade (subsection 1(10)); and
- (vi) acted or failed to act, in respect to the practice of a trade, in a manner that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (subsection 1(11)).

REASONS FOR DECISION

17. The Panel accepted and found as fact that the Member:

- (i) issued an SSC when not all necessary repairs had been completed;
- (ii) invoiced the Complainant \$1448.70, exceeding the initial estimate given to the Complainant by more than ten (10) per cent;
- (iii) was charged under the *Highway Traffic Act*;
- (iv) pleaded guilty and was convicted and fined; and
- (v) had his licence to conduct vehicle safety inspections revoked by the Ministry of Transportation.

18. The Panel understood that the onus was on the College to prove its case based on a balance of probabilities. The Panel could accept as fact the July 26, 2016, Ontario Court of Justice conviction of the

Member. That conviction had been made based on the Member's admission of guilt using the higher benchmark of "beyond a reasonable doubt".

19. The Panel was satisfied that by issuing an SSC when not all necessary repairs had been completed, the Member engaged in professional misconduct by contravening Ontario Regulation 97/13, subsection 1(1), 1(2), 1(8), 1(10), and 1(11) as alleged in Exhibit 2 *Notice of Hearing*, paragraphs a), b), c), e), and f).
20. By issuing the above-noted SSC, the Member failed to take reasonable steps to safeguard the life, health or property of a person when he knew or ought to have known that there was a risk to life, health or property. Further, the Member failed to act to report a situation that he knew or ought to have known may endanger the safety or welfare of the public. And finally, the Member signed or issued, in his capacity as a member of the College, a document that he knew or ought to have known contained a false, improper or misleading statement.
21. The Panel was satisfied that by issuing an invoice to the Complainant exceeding the initial estimate given, by almost fifty (50) per cent, the Member engaged in professional misconduct by contravening Ontario Regulation 97/13, subsection 1(10) and 1(11) as alleged in Exhibit 2, the *Notice of Hearing*, paragraphs e) and f). The variance between the initial quote and final invoice also contravened the *Consumer Protection Act, 2002*.
22. The Panel was satisfied that by being charged, convicted and fined by the Ministry of Transportation, the Member engaged in professional misconduct by contravening Ontario Regulation 97/13, subsection 1(1), 1(2), 1(8), 1(9), 1(10), and 1(11) as alleged in Exhibit 2, the *Notice of Hearing*, paragraphs a), b), c), d), e), and f).
23. The Panel accepted that the Member was found guilty of contravening a law that is relevant to his suitability to hold a certificate of qualification.
24. By engaging in the conduct described above, the Panel found that the Member failed to maintain the standards of a trade and acted in respect to the practice of a trade, in a manner that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PENALTY SUBMISSIONS

25. College Counsel filed the *College's Submission on Penalty & Costs* (Exhibit 6), proceeded to make submissions thereon, and asked the Panel to impose the following penalties:
- (i) That the Member pay a fine in the amount of \$500.00 to the Minister of Finance for payment into the Consolidated Revenue Fund within twelve (12) months of the date of the order, pursuant to section 46(5)2 of the Act;
 - (ii) That the Member's Certificate of Qualification in the trade of Automotive Service Technician (310S) be suspended for twelve (12) months following the date of the order;
 - (iii) That the Member not be allowed to apply for reinstatement of his suspended Certificate of Qualification for twelve (12) months from the date of the order; and
 - (iv) That the finding and the order of the Panel shall be published in summary with the name of the Member, and the name and address of the Member's business, in the official publication of the College and on the website of the College, pursuant to section 46(5)3 of the Act.
26. College Counsel also provided the Panel with a casebook containing two earlier College decisions. Both matters dealt with Automotive Service Technicians and the issuing of Safety Standard Certificates.
27. As noted above, in this matter, College Counsel was proposing a \$500.00 fine payable to the Minister of Finance for payment into the Consolidated Revenue Fund.
28. The College was also seeking a 12-month suspension of the Member's Certificate of Qualification in the trade of Automotive Service Technician (310S). The suspension of this certificate would still allow the Member to work as a Truck and Coach Technician (310T). College Counsel stated that the allegations proven concerned the Member's Automotive Service Technician qualification and that there was no evidence that issues existed regarding his Truck and Coach Technician (310T) certification. The email from the MTO (Exhibit 4, Tab I), confirmed that by mutual agreement, the Member's ability to issue safety inspections in the province of Ontario had been terminated. The College was confident that public safety was not being impacted by leaving the Member's Truck and Coach Technician (310T) certification intact.

29. The College submitted that the \$500.00 fine and the 12-month suspension was sufficient to ensure public safety.
30. College Counsel submitted that the separate order prohibiting the Member from applying to reinstate his suspended certificate for 12 months further addressed and ensured public safety and confidence.
31. College Counsel submitted that the proposed penalties were appropriate in light of the facts of this case.
32. College Counsel presented legal precedents to the Panel demonstrating that the penalties set out in Exhibit 6 were appropriate in light of the findings of professional misconduct.
33. ILC reminded the Panel that it had the authority to make any or all of the orders requested by the College. ILC advised that in its deliberations, the Panel needed to consider specific deterrence, general deterrence, protection of the public, maintenance of the profession's high standard and the public's confidence in the College's disciplinary process. The Panel also needed to consider any mitigating and aggravating factors in reaching its decision.

PENALTY DECISION

34. After considering the submissions of College Counsel and deliberating during a recess, the Panel accepted the penalties set out in Exhibit 6 and ordered that the following penalties be imposed:
 - (i) the Member shall pay a fine in the amount of \$500.00 to the Minister of Finance within twelve (12) months of the date of this order (February 13, 2018), pursuant to section 46(5)2 of the Act;
 - (ii) the Registrar is directed to suspend the Member's Certificate of Qualification in the trade of Automotive Service Technician (310S), Journeyperson class, for a period of twelve (12) months effective February 13, 2018, pursuant to section 46(4)1 of the Act;
 - (iii) the Member shall not apply to the Registrar under Part VI of the Act to have a new Certificate of Qualification issued for a period of twelve (12) months from February 13, 2018, pursuant to section 46(7) of the Act; and
 - (iv) the finding and the order of the Panel shall be published in summary with the name of the

Member and the name and address of the Member's business in the official publication of the College and on the website of the College, pursuant to section 46(5)3 of the Act.

REASONS FOR PENALTY DECISION

35. In making its order, the Panel considered the College's submission, the advice provided by ILC, the basic principles of sanctioning as well as the mitigating and aggravating factors. The Panel finds that the order is fair, considered and appropriate.
36. As a result of the Panel's finding of guilt, the Panel must first and foremost take into consideration the safety of the public, ensuring minimum standards are met by regulated trades professionals. Serving and protecting the public's confidence in both the trades and the College's disciplinary process are paramount. It was the view of the Panel, that all aspects of its penalty decision did just that.
37. The fine and suspension send a strong message to the Member, the profession, and the public that the College will not tolerate conduct of this severity. The fact that the order also contains language that the Member cannot apply for reinstatement for a period of 12 months further reinforces the College's and the Panel's concern about the Member's conduct in this matter.
38. The publication in summary sends a clear and strong message to the Member, the profession, and the public about the necessity of providing service in a safe, ethical and professional manner.
39. As previously stated, the fine, the suspension and the publication of the Member's name are both specific and general deterrents. The fine, suspension and publication of the Member's name addresses the issue of public confidence. The above information is in the public domain and readily available, thereby assuring the public that the College takes seriously issues of professional misconduct and acts fairly and appropriately when such matters come before it.
40. The publication in summary of the fine and suspension sends a clear message to the public that the College and its disciplinary process have responded seriously and appropriately to these proven transgressions. The fine, suspension and publication further reassure the public that the College will respond to allegations of misconduct and that the public can continue to have confidence in the professional trade of Automotive Service Technician.

41. The Panel understood that the onus of proof was on the College. The Member was not required to mount a defence. The fact of the Member's failure to participate was not seen as an aggravating factor by the Panel.
42. The Panel believes that the penalties ordered will deter the Member from engaging in the same or similar conduct in the future; will serve as a deterrent to other members of the College from engaging in the same or similar conduct; and will reduce the risk of harm to members of the public who retain the services of skilled tradespersons like the Member.
43. The Panel is satisfied that the penalty is fair, considered and appropriate. It speaks to the principles of sanctioning and ensures the public's trust in the profession, the College and the College's disciplinary process.

COSTS SUBMISSIONS

44. The College submitted a proposal in its *Submission on Penalty & Costs* that the Member pay costs to the College in the amount of \$1500.00 within 24 months of the date of the order.
45. College Counsel stated that \$1500.00 was not at the highest end of the spectrum. The Member's failure to participate, while disrespectful to the College and its ability to govern its members, resulted in the College having to do less work at the front end of this matter. Therefore, the amount of \$1500.00 was a fair and realistic amount to request toward reimbursing the College's costs.
46. ILC advised the Panel to consider the issue of costs separately from the penalty. ILC stated that awarding costs recognizes that the members of the College as a whole pay for disciplinary matters. In light of that, it is regarded as fair and appropriate to ask the Member to cover a portion of the associated costs, when warranted.
47. ILC further advised the Panel that the Member's lack of participation could not be viewed as an aggravating factor in the penalty phase, but could be taken into account when awarding costs.

COSTS DECISION

48. The Panel considered the proposal and ordered the Member to pay what is in effect only a portion of the

College's investigation and prosecution costs in the amount of \$1500.00 within 24 months of February 13, 2018, pursuant to section 46(5)4 of the Act. This amount will help to offset some of the costs associated with the investigation and prosecution of this matter, and is not a penalty or sanction.

REASONS FOR COSTS DECISION

49. When it came to the issue of costs, the Panel accepted that the Member's lack of participation could be viewed as a mitigating factor in light of the fact that initial College costs were decreased. Although representing only a portion of the College's costs incurred in relation to this matter, the Panel was of the view that \$1,500 was fair and reasonable under the circumstances. The Panel understood that this amount would help to offset a portion of the costs associated with the investigation and prosecution of this matter, and was neither a penalty nor sanction.
50. I, Hanno Weinberger, sign these Reasons for Decision as Chair of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below.

Date: March 28, 2018

"Hanno Weinberger"
Hanno Weinberger
Chair, Discipline Panel

Paul Sousa
Member, Discipline Panel

Vish Jadunauth
Member, Discipline Panel

End.