

LESSON LEARNT FROM DISCIPLINARY CASE

Registration of Engineers Regulations 1990 Part IV: Code of Conduct

Presented by:

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Boulevard Grand Ballroom,
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Regulation 23

- ***Conduct of Registered Person***
- **Every registered Person shall conduct himself honourably, responsibly, ethically and lawfully**
- ***honourably → in a way that is honest and fair, or that deserves praise and respect***
- ***responsibly → in a way that shows good judgement and the ability to act correctly***
- ***ethically → in a way that is morally right or that relates to moral principles***
- ***lawfully → in a way that is allowed by law***

Case 1 : RE refusal to attend site meeting

- Case 1:
Engineer A (ECP) was engaged by government for a school project.
- Gov dept rep as SO
Engineer A as RE
- RE scope : Supervise, approve RFI , attend site meeting
- Enginner A complained that contractor's site agent is different from the list submitted to SO and also not under CIDB list of contractor's organization.
- RE complained to SO: Site agent not listerning to RE. Proceeded on piling although RFI not approved
- SO called for Technical meeting followed by Site meeting

Case 1 : RE refusal to attend site meeting

- Case 1:
- Engineer A inquired during Technical meeting on contractor organization chart but no response.
- Engineer A complained that Site Agent is only a sub contractor.
- Engineer A refused to attend the site meeting after the Technical meeting for following reasons:
 - Ir A wanted to deal with rightful Site Agent - contract mentioned S.A. must be a qualified member of professional group
 - Site agent not listening to RE - piling without RFI
- Engineer A refused to attend site meeting after Tech meeting since chairman of Tech meeting cannot provide QP of contractor.

Case 1 : RE refusal to attend site meeting

- Case 1:
- SO complained to BEM - Ir A as RE refusal to attend site meeting
- IC charged Engineer A -
 - did not conduct yourself responsibly and
 - did not discharge his duty to client with complete fidelity.

Regulation 24

- ***Responsibility to employer, client or profession***
- **A registered Person shall -**
 - (a) **discharge his professional duties with due skill, care, diligence and good faith;**
- ***skill → do it well***
- ***care → pay serious attention especially to the details***
- ***diligence → work carefully to ensure it is safe***
- ***good faith → done in an honest and sincere way***

Case 2: Endorsing standard plan - patent product

Case 2 :

- Engineer B was requested by a steel roof fabricator C to check and endorse the roof steel truss - standard plan with PE stamp.
- B signed on the steel roof truss plan for a mosque with his PE stamp.
- The roof later collapsed after a storm
- B was charged by IC :
‘ failed to discharge professional duties with due skill, care and diligence ‘
- B was found guilty - he did not supervised

Case 2: Endorsing standard plan - patent product

Case 2 :

- B was found guilty - B did not supervise (wall plate bolt spacing not following the drawing)
- B appealed :
B was only asked by roof truss manufacturer to check and sign the plan
- BEM's submission to the appeal board:
 - by signing on the plan, Ir B carries a responsibility to supervise
 - a duty of care to verify the structure has been probably constructed according to plan and specification

Case 2: Endorsing standard plan - patent product

Case 2 :

- UBBL bylaw 5: no erection unless SP or person authorized by him undertakes the supervision.
- BEM Circular No. 02 - 1989
Of late, there were several cases where ECP carried out design of buildings and obtained approval from LA but left it to developer to engage their staff to supervise the construction. The ECPs were not engaged to supervise.
- All PEs are strongly advised not to certify completion of construction if they (or staff under his direct control) have not carried out full time supervision.

Case 2: Endorsing standard plan - patent product

Case 2 :

- The thrust of Ir B's defence was that he was not engaged for the construction stage.
- Such argument may probably stand a chance of succeeding in a breach of contract in the civil courts.
- But it is not the standard of ethnics expected of a PEPC.
- If the PEPC was told not to supervise, he ought to have declined the job.

Regulation 24

- ***Responsibility to employer, client or profession***
- **A registered Person shall -**
 - (b) at all times hold paramount the safety, health and interest of the public; and**
 - (c) take reasonable steps to reduce foreseeable adverse effects of professional engineering services on the environment.**
- ***paramount → more important than anything else***
- ***reasonable → based on good judgement and fair and practical***

Case 3: PETW for alternative design

- Case 3:
- Developer of a condominium appointed PEPC A as C&S ECP
- PEPC A submitted earthworks & foundation plan to LA and approved.
- Contractor C appointed a sub-Contractor D for foundation works - piling and pile cap
- Sub-Contractor D appointed PEPC B for the piling and pile cap plan, endorsed and submitted to PEPC A. PEPC A approved the lan.
- The main earthworks involved steep slope cutting near pile cap E.

Case 3: PETW for alternative design

- Case 3:
- Piling completed and pile cap E's plan submitted to PEPC A.
- PEPC A rep directed to installed sheep piling on 3 sides of pile cap E.
- adjacent cut slope showed signs of failure and soil nailing was proposed
- Developer wanted to reduce number of soil nails by more than half.
- Meanwhile, pile cap E was completed a back filled within 2 days after excavation.
- two months later, the cut slope failed and killed 11 persons

Case 3: PETW for alternative design

- Case 3:

Commission of Enquiry :

- PEPC A : 15 negligent acts & omissions
- PEPC B “...contributorily negligent in relation to the slope failure, by reason of the further excavation of another 2.7m for a pit of the construction of pile cap E, which was carried out, without design, calculations and supervision.”
- IC : role of ensuring proper temporary works has been undertaken by PEPC A as SP for the foundation works and not PEPC B.

Case 3: PETW for alternative design

- Case 3:

Lesson learnt:

- PEPC A as SP to ensure PETW appointed by contractor or else, he assumes the responsibility on temporary works
- PEPC B should ensure a PETW appointed by sub-contractor D or main contractor C to avoid being dragged into the dispute.
In this case, PEPC B was found by Commission of Enquiry to have committed contributory negligence.

Case 4: Collapse of falseworks of LRT project

Case 4: Collapse of falseworks of LRT project

- PEPC A was appointed by the contractor as PETW for the falsework of the construction of LRT project
- Contractor also appointed contractor's Independent Checking Engineer (CICE) to check on temporary works by PETW.
- All falsework support's main components must be checked and signed off (sequence flow) by Contractor -- TWE-- PETW --CICE and witnessed by SC prior to any loading

Case 4: Collapse of falseworks of LRT project

Case 4: Collapse of falseworks of LRT project

- For pier B, contractor signed PTL
- TWE (Temporary work engineer) signed
- PETW signed
- CICE provided 6 comments of omissions- absence of bracing, box-tie missing, bearers not at middle of U-Head etc and recommended PETW to inspect on site
- PETW communicated with PWE who informed that works were rectified and shown photos to PEPC A thru Whatsapp
- PETW assumed ok by looking at the Whatsapp photos

Case 4: Collapse of falseworks of LRT project

Case 4: Collapse of falseworks of LRT project

- CICE was not informed nor communicated
- PTL (permission to load) approved by SC and concreting proceeded
- Pier B collapsed killing one and injured 4 workers
- IC finding:
PEPC A failed to rectify the comments by CICE before he signed the approval form of PTL for Pier B -
- IC Charge:
Regulation 24 : not upholding paramount the safety and interest of the public.

Case 4: Collapse of falseworks of LRT project

Case 4: Collapse of falseworks of LRT project

Lesson learnt :

BEM Guidelines No. 001

- There shall be adequate numbers of **qualified and experienced** PEPC's representatives at site to supervise temporary works full time (para 5.0(5))
(in this case: PWE was also employee of falseworks supplier)
- The design of temporary works shall be given the **same due respect** as that of the permanent works by PE.

Case of Penang Second Bridge Ramp collapse

Commission of Enquiry findings:

- Those engineers (especially the ones from Supervision Consultants, whose job it was to supervise) had breached their common law duty of care, in failing to detect obvious errors and “acts of incredible folly”.

Regulation 25

- ***Discharge of duties with fidelity***
- **A registered Person shall discharge his duties to his employer or client, as the case may be, with complete fidelity.**
- ***fidelity → honest and full support, or loyalty***
 - doing the work as if you are doing for yourself***
 - not accepting payment from other party***

Case 5: Compliant of PSP/SP not signing Form G

Case 5: Compliant of PSP/SP not signing Form G

- Owner appointed a main D&B contractor A of a store project
- Contractor A appointed D&B sub-contractor B for major parts of works
- PEPC C was appointed as PSP and SP (C&S) by D&B sub-contractor B
- When works completed, sub-ctr B was not paid a big portion of progress payment.
- Direct sub-ctr (fire) by main ctr A was also not paid.

Case 5: Compliant of PSP/SP not signing Form G

Case 5: Compliant of PSP/SP not signing Form G

- Main ctr A requested PEPC C to process Form G and issue CCC
- Sub-ctr B directed PEPC C not to sign Form Gs and CCC
- Ctr A complained to BEM : PEPC refused to sign Form Gs and CCC
- IC was formed and investigated case

Case 5: Compliant of PSP/SP not signing Form G

Case 5: Compliant of PSP/SP not signing Form G

- PEPC C main explanation:
 - Ctr A did not make payment although works completed to ctr B and hence from B to him.
- He was also directed by ctr B not to proceed with signing Form G and CCC
- PEPC C mentioned too that some sub-contractors and tradesmen including Ctr A direct sub-ctr refused to sign Form G since they were not paid their claims.

Case 5: Compliant of PSP/SP not signing Form G

Case 5: Compliant of PSP/SP not signing Form G

IC findings:

- PEPC C's reasons of not signing Form Gs because of **non-payment by client cannot be accepted** as he is obliged to certify whatever works done
- Non-payment is a contractual issues best settled through dispute resolution among the parties concern.
- However, since sub-ctr and tradesmen refused to sign Form Gs, he is also prevented legally to sign as SP and thereafter CCC as per UBBL requirements.

Regulation 26

- ***Reputation etc. of a registered Person not to be injured***
- **A registered Person shall not maliciously injure or attempt to maliciously injure whether directly or indirectly, the professional reputation, prospects or business of another registered Person.**
- ***maliciously → in a way that is intended to cause harm, upset or damage, bad intention***
- ***reputation → the opinion people have about someone, the good name of a person***

Regulation 26

- ***Reputation etc. of a registered Person not to be injured***
- A registered Person shall not maliciously injure or attempt to maliciously injure whether directly or indirectly, the professional reputation, prospects or business of another registered Person.
- Conclusion of peer review report or checking report should only point out areas of disagreements if any - based on technical findings and to make conclusion based on his technical assessment per sec.
- Avoid using comments with insinuation effect that may be interpreted as slandering motive.

Regulation 26

- *Reputation etc. of a registered Person not to be injured*
- A registered Person shall not maliciously injure or attempt to maliciously injure whether directly or indirectly, the professional reputation, prospects or business of another registered Person.
- Example (case of a review of technical report by another PEPC) :
Report conclusion : it is of critically importance that a technical report must be performed professionally with the public interest in mind. There must not be any predetermined objectives for which results and analysis are biased.”

Reputation etc. of a registered Person not to be injured

- **A registered Person shall not maliciously injure or attempt to maliciously injure whether directly or indirectly, the professional reputation, prospects or business of another registered Person.**
- Be very careful before making statements about another person to a third party that could arguably impute the lack of integrity in that individual's profession. While you might believe that your statements are true, making them to a third party could get you being complained for defamation. Therefore, always think before you make concluding statements.

Regulation 27

- ***Canvassing and advertising prohibited***
- **A registered Engineer shall not -**
 - (a) canvass or solicit professional employment;**
 - (b) offer any gift or other valuable consideration, or pay a commission or brokerage fee in order to secure professional employment;**
- ***canvass → try to get support***
- ***solicit → to ask for something in a persuasive and determined way***
- ***Corruption → also see Section 17A, Akta SPRM***

Regulation 27

- **Canvassing and advertising prohibited**
- **A registered Engineer shall not -**
(c) except as permitted by the Board,
advertise in any manner or form
in connection with his profession;

• ***BEM Circular No. 005***



Rev. No.: 2
Date: 25.5.2017

BOARD OF ENGINEERS MALAYSIA

CIRCULAR NO. 005

ADVERTISING BY REGISTERED ENGINEERS

In exercise of the powers conferred by paragraph 4(1)(f) of the Registration of Engineers Act 1967 [Act 138], the Board of Engineers Malaysia (the Board) hereby determines as follows:

I. INTRODUCTION

1. Recognising the need for the public to have easy access to information on what engineering consultancy services are available and from whom, the Board in pursuance of Regulation 27(c) of the Registration of Engineers Regulations 1990 hereby permits a Professional Engineer or an Engineering Consultancy Practice (ECP) to:
 - (i) make known to the public the services offered by him or the ECP, and
 - (ii) seek engagement from potential Clients.

Regulation 27

- ***Canvassing and advertising prohibited***
- **A registered Engineer shall not -**
 - (d) provide engineering services to any person, unless the scope of such services are clearly defined in a written agreement between both parties; or**
 - (e) offer, give, solicit or receive, either directly or indirectly, any contribution which may be reasonably construed as having the effect of intent to influencing the award of a contract.**

Regulation 27A

- ***Canvassing and advertising by an ECP***
- **An Engineering consultancy practice shall not -**
 - (a) canvass or solicit to provide professional engineering services except as permitted by the Board;**
 - (b) offer any gift or other valuable consideration, or pay a commission or brokerage fee in order to provide professional engineering services;**
 - (c) except as permitted by the Board, advertise in any manner or form any advertisement in connection with the engineering profession;**

Regulation 27A

- ***Canvassing and advertising by an ECP***
- **An Engineering consultancy practice shall not -**
 - (d) provide professional engineering services to any client, unless the scope of the services are clearly defined in a written agreement between both parties; or**
 - (e) offer, give, solicit or receive, either directly or indirectly, any contribution which may be reasonably construed as having the effect of intent to influencing the award of a contract.**

Regulation 29

- ***Restrictions on making payments or placing contracts***
- **A registered Person or an ECP shall not be a medium of payment made on his client's behalf unless he is so requested by his client nor shall he, in connection with work on which he is employed, placed contracts or orders except with the authority of and on behalf of his client.**
- ***cannot enter into a contract, or place an order for something, or give directive for payment (e.g. tender deposit) to be made, on behalf of the client, unless authorized by the client to do so***

Regulation 31

- ***A registered Engineer or an ECP is not to intervene or to take over the work of another***
- **A registered Engineer or an ECP shall not directly or indirectly -**
 - (a) supplant or attempt to supplant another registered Engineer or an ECP;**
 - (b) intervene or attempt to intervene in or in connection with engineering work of any kind which to his knowledge has already been entrusted to another registered Engineer or an ECP; or**
- ***supplant → to replace, to take over the job, 'potong jalan'***
- ***intervene → to intentionally become involved***

Regulation 31

- ***A registered Engineer or an ECP is not to intervene or to take over the work of another***
- **A registered Engineer or an ECP shall not directly or indirectly -**
(c) ~~take over~~ any work of that other registered Engineer or an ECP acting for the same client unless he has -
- ***take over → coming in as the 2nd Engineer/ECP to continue the work from the 1st Engineer/ECP, who is withdrawing from the job, or whose services have been terminated by the client***

Regulation 31

- *A registered Engineer or an ECP is not to intervene or to take over the work of another*
- A registered Engineer or an ECP shall not directly or indirectly -
 - (c) take over any work of that other registered Engineer or an ECP acting for the same client unless he has -
 - (i) obtained the consent of that other registered Engineer or an ECP; or
- *take over → coming in as the 2nd Engineer/ECP to continue the work from the 1st Engineer/ECP, who is withdrawing from the job, or whose services have been terminated by the client*
- *consent given → through a 'Letter of Release'*

Regulation 31

- *A registered Engineer or an ECP is not to intervene or to take over the work of another*
- A registered Engineer or an ECP shall not directly or indirectly -
 - (c) take over any work of that other registered Engineer or an ECP acting for the same client unless he has -
 - (ii) been formally notified by the client that the services of that other registered Engineer or an ECP have been terminated in accordance with the provisions of any contract for professional engineering services entered into between that other registered Engineer or an ECP and the client, provided always that in the case of dispute over non-payment of fees or quantum of any outstanding fees under the contract, the client may request the Board to be the stakeholder.

Circular No. 008

Rev. No.: 4
Date: 9.4.2019



BOARD OF ENGINEERS MALAYSIA

CIRCULAR NO. 008

PROCEDURE FOR A REGISTERED ENGINEER OR AN ENGINEERING CONSULTANCY PRACTICE TAKING OVER THE WORK OF ANOTHER REGISTERED ENGINEER OR AN ENGINEERING CONSULTANCY PRACTICE

In exercise of the powers conferred by paragraph 4(1)(f) of the Registration of Engineers Act 1967 [Act 138], the Board of Engineers Malaysia hereby set out the procedure for taking over the work of a registered Engineer or Engineering consultancy practice by another registered Engineer or Engineering consultancy practice in accordance to Regulation 31 of the Registration of Engineers Regulations 1990 (Revised 2015).

This Circular supersedes Circular No. 1/2006, Guidelines for An Engineer Taking Over the Work of Another (BEM/RD/PPC/02).

1. Regulation 31 of the Registration of Engineers Regulations 1990 (Revised 2015) states:

A registered Engineer or an Engineering consultancy practice shall not directly or

Regulation 32

- **Reg 31 was introduced to protect the engineer and the client**
- **LOR is still applicable where the new project has linkage to the previous project, whether in terms of ownership or developments details**
- **LOR is not necessary if :**
 - **First PEPC has commenced dispute resolution after his termination**
 - **suspended by BEM or name removed**
 - **informed LA that he is withdrawing from the work**
 - **has terminated his employment on his own.**

Regulation 32

- *Restrictions on being a director, member or shareholder of contracting and manufacturing company, etc*
- (1) Except with the prior approval of the Board, a registered Engineer in an ECP shall not be a director or executive of or substantial shareholder in or agent for any contracting or manufacturing company or firm or business related to building or engineering.**
 - (2) If such approval is given, such registered Engineer shall not undertake any contract work wherein he is engaged to provide professional engineering services in such project unless it is in respect of a “design and build” project.**

Regulation 33

- ***Disclosure of interest***
- Every registered Engineer while acting in his professional capacity shall disclose in writing to his client of the fact if he is a director or member of or substantial shareholder in or agent for any contracting or manufacturing company or firm or business or has any financial interest in any such company or firm or business, with which he deals on behalf of his client.

Circular No. 001

Rev. No.: 1
Date: 27.10.2016



BOARD OF ENGINEERS MALAYSIA

CIRCULAR NO. 001

CODE OF CONDUCT OF REGISTERED PERSON

In exercise of the powers conferred by paragraph 4(1)(f) of the Registration of Engineers Act 1967 [Act 138], the Board of Engineers Malaysia hereby determines the Code of Conduct of registered Person as stated herein below.

This Circular supersedes Circular No. 3/2005, Guidelines for Code of Professional Conduct (BEM/RD/PPC/08).

This Code of Conduct is in addition to Part IV, Code of Conduct of the Registration of Engineers Regulations 1990.

Lessons learnt - advice

- understand your scope of works well esp when few ECPs are involved - temporary works
- your responsibility in construction project goes beyond the REA
- As PSP, get to know the SPs under your care in particular the ECPs appointed by the utility sub-contractors (eg fire active)



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THANK YOU



"Committed To Engineering Excellence"

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