



# Gazette

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REGULATORY COMPLIANCE DEPARTMENT, PEO

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The Discipline Committee of the Association of Professional Engineers  
of Ontario

In the matter of a hearing under the *Professional Engineers Act*, R.S.O.  
1990, Chapter P. 28

And in the matter of a complaint regarding the conduct of

**Hamzey Ali, P.Eng.**

a member of the Association of Professional Engineers of Ontario

BETWEEN

The Association of Professional Engineers of Ontario and  
Hamzey Ali, P.Eng.

## Summary of Decision and Reasons

A Panel of the Discipline Committee of the Association of Professional Engineers of Ontario (PEO) met in the offices of the association on March 26, 2002, to hear allegations of professional misconduct and incompetence against Hamzey Ali, P.Eng., a member of PEO.

Hamzey Ali did not attend the hearing. William Black, counsel for PEO, advised the panel that Mr. Ali had made a written request for an adjournment of the hearing. PEO introduced evidence that showed the member had received ample notice and reminders from PEO as to the date of this hearing, and that an original hearing date had been postponed prior to this hearing date due to submissions made to PEO by the member. Notwithstanding reasons provided by the member in a letter of March 22, 2002, requesting a postponement of these proceedings, the panel's decision was to proceed with the hearing as scheduled.

The allegations against Ali as stated in the Notice of Hearing dated September 7, 2001, are as follows:

It is alleged that Ali is guilty of professional misconduct and/or incompetence as defined in the *Professional Engineers Act* (the Act), the particulars of which are as follows:

1. Ali was first licensed as a professional engineer in the Province of Ontario on May 17, 1990.
2. At no material time relative to the events in issue did Ali hold a Certificate of Authorization under the Act either in his own name or under the trade name of his business Kamid Engineering.
3. In or about February 1999, the member, operating as Kamid Engineering, was retained by 1099042 Ontario Inc. (the owner) to design a replacement

- balcony/porch structure at 1010 Campbell Road in Windsor, Ontario.
4. The new porch structure was intended to replace an existing wooden structure that was in a deteriorated state.
  5. On March 4, 1999, the owner submitted a building permit application to the City of Windsor Building Department (the building department) for the new porch. Included with the application were two unsealed, unsigned and undated drawings by Kamid Engineering for the “demolition and re-construction” of the porch.
  6. On receiving the permit application, the building department established that the subject property was zoned “legal non-conforming use” and that therefore approval would be required from the Committee of Adjustment of the City of Windsor (the Committee of Adjustment) if the existing porch had to be removed. This fact was communicated to the owner.
  7. On March 10, 1999, Ali wrote a letter to the building department, as an addendum to the building permit application, setting out a revised scope of work. Ali described the revised scope of work as a “substantial renovation” to the existing porch but now indicated that “demolition of the structure will not be required.”
  8. By letter dated March 26, 1999, the building department advised the owner that the revised scope of work would still require the effective demolition of the existing porch (based on an inspection by a representative of the building department). The building department further advised that a minor variance would have to be obtained from the Committee of Adjustment.
  9. On June 8, 1999, the owner made an application to the Committee of Adjustment for the required variance. In a decision dated August 11, 1999, the Committee of Adjustment granted the application in part and approved the replacement of the second means of egress only. The Committee of Adjustment did not grant permission for a replacement of the porch.
  10. Some time following the Committee of Adjustment’s decision, in an undated letter to the building department, Ali advised that he had attended the committee’s hearing and interpreted its decision as limiting the length of the porch. Included with Ali’s undated letter were two unsealed, unsigned and undated design drawings reflecting Ali’s interpretation of the Committee of Adjustment’s decision.
  11. By letter dated August 16, 1999, the building department advised Ali that, after consultation with the Committee of Adjustment, the building department had determined that the intent of the Committee of Adjustment’s decision was not to grant a continuous porch as shown in Ali’s drawings.
  12. On August 25, 1999, the Committee of Adjustment amended its decision to include a requirement that the second means of egress be constructed of non-combustible materials and that it exit in an easterly direction only, all to the satisfaction of the building commissioner.
  13. On September 28, 1999, the owner submitted a further building permit application to the building department to “construct fire escape as per plans attached.” Included with the application were two drawings, one of which was sealed, signed and dated (September 6, 1999) by Ali. The sealed drawings included details as follows:
    - (a) The columns supporting the porch were specified as 3” O/D with minimum 3/16” steel;
    - (b) The plan view indicated 5’ x 12’ lengths of L5” x 3 1/2” x 3/8” fastened to steel posts every 12.0 inches; and
    - (c) The porch floor material was to be 2” grating for the full length of egress.
  14. On October 19, 1999, the building department faxed to Ali a request for 10 items of additional information not included in the drawings. The building department indicated that these 10 items were required as a precondition to approval of the building permit application.
  15. On October 25, 1999, Ali faxed the building department additional information intended to “answer the 10 questions” in the building department’s fax of October 19, 1999. The fax included four drawings or portions of drawings, none of which were sealed, signed or dated.
  16. By fax dated October 26, 1999, the building department informed Ali that his fax of October 25, 1999, did not address all of the requested items of information. The building department further advised Ali that the building permit could not be issued until all the questions were answered.
  17. On November 3, 1999, Ali faxed to the building department additional portions of drawings, all unsealed, unsigned and undated, providing additional information about the porch design. One of the drawings indicated that the posts supporting the porch were 4” O/D with minimum 3/16” steel columns, a detail which differed from the original drawings submitted with the building permit application.
  18. There was a telephone conversation between representatives of the building department and Ali on November 10, 1999, regarding the deficiencies set out in the department’s fax of October 26, 1999. On that same day, Ali faxed to the building department another unsealed, unsigned and undated portion of a drawing. This was a portion of the plan view and indicated the 5’ x 12’ lengths of L8” x 3 1/2” x 3/8” fastened to steel posts every 12 feet, different from the original drawings submitted with the building permit application.
  19. On November 17, 1999, Ali faxed to the building department another unsealed, unsigned and undated portion of a drawing showing “detail at door.” This drawing indicated that the

- porch floor material was to be check-plate, differing from the original drawings submitted with the building permit application.
20. On or about November 30, 1999, Ali attended at the offices of the building department, at which time staff of the building department explained to him the handrail requirements for the proposed new structure.
21. On December 14, 1999, the building department received four drawings from the owner, prepared by Ali, representing a complete revised set of drawings for the porch design and apparently intending to address all of the issues raised by the building department. None of the drawings were sealed, signed or dated. The drawings included details as follows:
- The columns supporting the porch were 4" O/D with minimum 1/4" steel;
  - The plan view indicated 12' lengths of L8" x 3 1/2" x 3/8" fastened to steel posts every 12'-0" C/C; and
  - The porch floor material was to be 1" x 1/4" steel grating.
22. By letter dated February 1, 2000, the building department advised the owner that the building department was unable to process the owner's building permit application because the plans submitted were inadequate and insufficient in detail.
23. During the period of time in which the events set out above occurred, Ali wrote to PEO on May 21, 1999, stating that because of a back injury he was experiencing severe pain that was preventing him from doing his work. Ali requested a fee remission from PEO. By letter dated May 31, 1999, PEO advised Ali that PEO has a policy to remit fees of members who are unable to work as a result of health problems. PEO granted Ali's request for a fee remission. As of December 18, 2000, in the absence of further information from Ali, Ali's fee remission was still in effect.
24. It appears that Ali:
- breached Section 12(2) of the *Professional Engineers Act* by offering and providing engineering services to the public without a Certificate of Authorization;
  - misled PEO as to the extent of his back problems when requesting a full fee remission for health reasons;
  - provided professional engineering services while under a fee remission from PEO for health reasons;
  - failed to advise PEO that he was once again able to work and had in fact resumed working and hence was no longer entitled to a fee remission for health reasons;
  - submitted drawings for a building permit application that were inadequate for permit approval;
  - demonstrated a lack of understanding of the engineering issues involved in the design of the porch by repeatedly failing to provide adequate design detail information requested by the building department; and
  - breached section 53 of Regulation 941 made under the *Professional Engineers Act* by failing to seal, sign and date numerous final drawings submitted in relation to the building permit application.
25. By reason of the facts set out above, it is alleged that Ali is guilty of professional misconduct as defined in section 28(2)(b) as follows: "28(2) A member of the association or holder of a Certificate of Authorization, temporary licence or a limited licence may be found guilty of professional misconduct by the Committee if,
- The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the Regulations."
26. By reason of the facts set out above, it is alleged that Ali is guilty of incompetence as defined in section 28(3)(a) as follows: "28(3) The Discipline Committee may find a member of the association or holder of a temporary licence or limited licence to be incompetent if in its opinion,
- The member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer."
- As Ali was not present, the panel proceeded on the basis that Ali denied the allegations set out in the Notice of Hearing.
- PEO presented evidence that Ali had been a member of PEO since 1990, and that he had received a fee remission based on his request for it. In particular, as alleged in paragraph 23 of the Notice of Hearing, Ali had received a fee remission.
- The fee remission was requested by Ali in writing to the registrar on May 21, 1999, citing health reasons for the request, and was granted by PEO on May 31, 1999, pursuant to Section 39(4) of *By-Law No. 1*. The fee remission has remained in effect since that time.
- The facts pertaining to the engineering work in question were confirmed by PEO's witness, William George Jean, P. Eng., who was then director of site development for the City of Windsor, and by means of various exhibits presented to the panel.
- The Panel received exhibits consisting of various correspondence, notes and drawings prepared by Ali. Many were unstamped, unsigned. The exhibits show that the city repeatedly requested Ali to explain the intent of the submitted drawings and designs and to provide further explanatory details. The panel noted several instances of conflicts in proposed structural member sizes and similar design inconsistencies in Ali's submissions, as stated in paragraphs 13, 17, 18, 19 and 21 of the Notice of Hearing.
- Having considered the evidence and the onus and standard of proof, the Panel finds that Ali is:**
- ◆ **guilty of a breach of section 12(2) of the *Professional Engineers Act* (the Act) by providing services to the public which were within the practice of professional engineering (consulting engineering), without a valid Certificate of Authorization;**

- ◆ **guilty of a breach of section 53 of Regulation 941 made under the Act by failing to seal, sign and date the final drawings submitted in respect of a building permit application;**
- ◆ **guilty of professional misconduct as defined in section 28(2)(b) of the Act and, in particular, committed the following acts of professional misconduct:**
  - (i) **negligence as defined in section 72(2)(a) of Regulation 941;**
  - (ii) **breach of section 72(2)(b) of Regulation 941 by a failure to make reasonable provision for the safeguarding of the property of a person who may be affected by the work;**
  - (iii) **breach of section 72(2)(d) of Regulation 941 by failure to make responsible provision for complying with applicable statutes, regulations; standards, codes, by-laws and rules in connection with work undertaken under the responsibility of Ali;**
  - (iv) **breach of section 72(2)(g) of Regulation 941 by breaching the regulations as set out herein;**
  - (v) **breach of section 72(2)(j) of Regulation 941 in that his conduct relevant to the practice of a professional engineer, having regard to all the circumstances, would reasonably be regarded by the engineering profession as dishonourable and unprofessional conduct ; and**
  - (vi) **breach of section 72(2)(k) of Regulation 941 by a failure to abide by the limitations on Ali's licence pursuant to the fee remission granted for health related matters.**

The panel found that Ali was not guilty of incompetence as defined in section 28(3) of the Act and not guilty of a breach of Section 72(2)(h) of Regulation 941, Having considered the evidence, the panel concluded that Ali:

- ◆ was practising engineering independently and/or as Kamid Engineering,
- ◆ had offered professional engineering services without benefit of a Certificate of Authorization, and while under a

fee remission from PEO that explicitly prohibited such employment, and

- ◆ had provided engineering services which were inadequate and contradictory to the city's building department and permitting authorities, requiring several revisions and much guidance from city officials.

On the basis of the evidence before it, the panel concluded that the allegations contained in the Notice of Hearing as to facts were substantially accurate. In particular, the panel finds:

1. At all times during the conduct of the work in question, Ali provided services which are within the practice of professional engineering.
2. Ali was not a holder of a valid Certificate of Authorization, pursuant to Section 12(2) of the Act, during the conduct of the work.
3. Ali provided services within the practice of professional engineering at times while benefiting from a fee remission.
4. Ali has a duty to understand the restriction placed on him with respect to gainful employment, whether in the practice of engineering or not, while under fee remission, notwithstanding that PEO could have provided more specific information to Ali regarding restrictions on gainful employment or practice of professional engineering while under fee remission.
5. Ali failed to provide adequate information to the City of Windsor Building Department for the issuance of a building permit, even after repeated requests for revisions and clarifications, as set out in paragraphs 14, 16, 18, 21 and 22 of the Notice of Hearing.
6. Ali displayed a lack of skill and judgment by failing to respond to the shortcomings in his designs, even when these shortcomings were identified to him by the City of Windsor Building Department on several occasions. The shortcomings were found to be those

contained in paragraphs 16, 18, 21 and 22 of the Notice of Hearing.

7. Ali breached section 53 of Regulation 941 by failing to seal, sign and date the final drawings and submissions with respect to the building permit application.

Counsel for PEO proposed a penalty in this case and the panel accepted most of the submissions of counsel for PEO. The panel makes the following order as to penalty:

1. Ali's licence is suspended for a period not less than 12 months or as long as it takes Ali to pass the examinations referred to in paragraph 2 herein, such period not to exceed 24 months from the date of this decision.
2. Ali shall, within the period of suspension, pass the following examinations:
  - (a) the Professional Practice Examination;
  - (b) Elementary Structural Analysis Course #98-CIV-A1;
  - (c) Advanced Structural Analysis Course #98-CIV-B1; and
  - (d) Urban and Regional Planning Course #98-CIV-B6.
3. If Ali fails to pass the examinations referred to in paragraph 2 herein, within 24 months of the date of this decision, Ali's licence shall be revoked.
4. Ali shall be reprimanded in writing and the fact of the reprimand shall be recorded on the register of PEO.
5. A summary of the Discipline Panel's Decision and Reasons shall be published in the *Gazette* with names.
6. Ali shall pay costs to PEO in the amount of \$3,000, less the cost of each successfully completed examination referred to in paragraph 2 herein, within 24 months of the date of this decision.

The panel considered the submissions of PEO counsel with respect to the penalties in this matter. The panel was of the view that Ali's knowledge of the principles of structural analysis and the requirements of municipal building codes and regula-

tions was lacking. Moreover, the panel was of the view that Ali should not practise as an engineer until he had demonstrated an understanding of these principles and standards. The panel concluded that Ali had shown a disregard for the standards of professional practice required of an engineer.

Ali's licence was suspended to eliminate the opportunity for him to conduct further work of this nature. The prescribed structural analysis courses were selected to ensure that Ali's knowledge of these topics would meet the standards of practice. The panel considered that the period of suspension of Ali's licence could be applied to the completion of these courses

of study. The panel further considered that failure of Ali to complete and pass the prescribed courses should result in revocation of Ali's licence. This measure was prescribed to ensure that Ali would not practise as a P.Eng. if he were unable to meet the knowledge standards of the profession in these topics.

The panel imposed a penalty of a written reprimand on Ali to be recorded on the PEO register to ensure that these findings against Ali are known among the profession.

Ali was assessed costs of \$3,000 as a result of the delays to these proceedings occasioned by Ali. The panel was of the view that a credit of the cost of each suc-

cessfully completed course should be afforded Ali to encourage him to pursue these studies forthwith.

Finally, the panel directed that this Decision and Reasons should be published using the names of the parties to provide an example for the profession of the consequences of this member's actions.

The written Decision and Reasons in this matter were dated October 1, 2002, and were signed by the Chair of the Panel, Bruce Clarida, P.Eng., for and on behalf of the other members of the Discipline Panel: Cameran Mirza, P.Eng., Nick Monsour, P.Eng., Anne Poschmann, P.Eng., Don Turner, P.Eng.

## Note from the Regulatory Compliance department

The written Decision and Reasons were served on Mr. Ali on October 8, 2002. Mr. Ali filed a Notice of Appeal with the Divisional Court on November 7, 2003. Because Mr. Ali failed to take further action within the timeframe established under the rules of the Divisional Court, PEO filed a motion on October 7, 2003 to have the appeal dismissed for delay. On October 27, 2003, the Divisional Court heard submissions from PEO and Mr. Ali and ordered that the appeal be dismissed. The suspension of Mr. Ali's licence therefore took effect as of October 27, 2003.

## Summary of Scheduled Discipline Hearings

This schedule is subject to change. For further information contact PEO at 416-224-1100; toll free 1-800-339-3716.

Any person wishing to attend a hearing should contact the complaints & discipline coordinator at extension 496.

All hearings commence at 9:30 a.m.

NOTE: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference regarding the status, qualifications or character of the member or C of A holder should be made based on the allegations listed herein.

Further details regarding the allegations against the members and Certificate of Authorization holders listed below can be found on PEO's website at [www.peo.on.ca](http://www.peo.on.ca).

### January 26 to 28, 2004 William Tessler, P.Eng., and Sonterlan Corporation

It is alleged that Tessler is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*.

It is alleged that Tessler and Sonterlan are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

### February 3 to 4, 2004 John Kadlec, P.Eng.

It is alleged that Kadlec is guilty of professional

misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

### February 5 to 6, 2004 Daniel Brouwer, P.Eng., and Dan Brouwer Associates Ltd. (DBA)

It is alleged that Brouwer is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Brouwer and DBA are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

### February 17 to 20, 2004 Jeffrey A. White, P.Eng., and Delta Engineering

It is alleged that White and Delta are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

### March 22 to 25, 2004 Victor F. Wilcox, P.Eng., and Barrie Inspection & Engineering Limited (BIEL)

It is alleged that Wilcox is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*.

It is alleged that Wilcox and BIEL are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

### April 5 to 6, 2004 Derk Meyer, P.Eng. and Philips Engineering Ltd. (PEL)

It is alleged that Meyer is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Meyer and PEL are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

The Discipline Committee of the Association of Professional Engineers of Ontario

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, Chapter P. 28

And in the matter of a complaint regarding the conduct of

## Several Professional Engineers

members of the Association of Professional Engineers of Ontario, and

## Company X

a holder of a Certificate of Authorization

BETWEEN:

The Association of Professional Engineers of Ontario and

Several Professional Engineers and Company X

## Summary of Decision and Reasons

A Panel of the Discipline Committee of the Association of Professional Engineers of Ontario (PEO) met in the offices of PEO on January 6, 2003, to hear allegations of incompetence and professional misconduct against several professional engineers (the members), who were members of PEO, and allegations of professional misconduct against Company X, a holder of a Certificate of Authorization issued by PEO.

The principal allegations, as stated in the Notice of Hearing, dated May 24, 2002, against the members and company X were as follows:

### Allegations

1. The members and company X issued copies of a catalogue utilizing specific text and figures, which were taken from another company's catalogue without consent from the other company.
2. The catalogue implied that the members and company X were responsible for the product.
3. Company X was selling the product described in the catalogue without complying with the requirements of the *Energy Efficiency Act*.

Counsel for PEO advised that PEO was seeking leave of the Discipline Panel to withdraw the allegation of incompetence made against the members.

Counsel for PEO advised that PEO was not calling any expert or other evidence with respect to the allegations as set out in the Notice of Hearing except for filing the other company's catalogue and the company X catalogue as exhibits.

The members and company X admitted the principal allegations as set out above.

The panel conducted a plea inquiry and was satisfied that the admission by the members and company X was voluntary, informed and unequivocal.

**The panel considered the allegations and the admission by the members and company X and finds that the facts support a finding of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act* as follows:**

**"28(2) A member of the Association or a holder of a Certificate of Authorization, temporary licence or a limited licence may be found guilty of professional misconduct by the Committee if,...**

**(b) the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the Regulations."**

**The sections of Regulation 941 made under the Act relevant to the panel's finding of professional misconduct are:**

- ◆ **Section 72(2)(a): "negligence";**
  - ◆ **Section 72(2)(d): "failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner";**
  - ◆ **Section 72(2)(g): "breach of the Act or Regulations, other than an action that is solely a breach of the Code of Ethics"; and**
  - ◆ **Section 72(2)(j): "conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would be reasonably regarded by the engineering profession as unprofessional."**
- The panel granted leave to PEO to withdraw the allegation of incompetence made against the members.
- The panel considered the submissions of counsel and in particular that the

members admitted the allegations and that the members claimed that the catalogue had been prepared by employees of company X without the permission and knowledge of the members. The members, however, take responsibility for this occurrence. When it came to their attention, company X did not issue further copies of the catalogue and the members took steps to retrieve copies of the catalogue already distributed.

With respect to the finding of negligence [section 72(2)(a)], the panel accepts the submissions of counsel for PEO that the failure of the members and company X to properly monitor company X employees constitutes negligence in that they failed to have a system in place to ensure that this type of error would not occur. Furthermore, with respect to section 72(2)(g), the panel accepts that the conduct of the members and company X was a breach of section 75(a) and (b) of Regulation 941 in that it was not professional to include language from another company in the company X catalogue, and that company X's catalogue was not factual. The panel also found the conduct to be unprofessional and a breach of 72(2)(j) of Regulation 941. With respect to section 72(2)(d), the panel accepted the submissions of PEO counsel that company X was selling its products without complying with the *Energy Efficiency Act* and its associated Regulation 82/95, in that the company X products had not been tested to show compliance with the efficiency standards prescribed in the Regulation and the units did not bear the labeling required under the Regulation.

Counsel for PEO advised the panel that a Joint Submission as to Penalty had been agreed upon. The panel concluded that the proposed joint penalty was reasonable and in the public interest. The members cooperated with PEO and, by agreeing to the facts and a proposed penalty have accepted responsibility for their actions.

**The panel, therefore, ordered the following penalty:**

**1. The members shall receive a verbal reprimand, the fact of which**

**will not be recorded on the register of the Association;**

**2. Company X will receive a written reprimand, the fact of which will be recorded on the register of PEO for a period of six months;**

**3. The members and company X shall jointly provide a written undertaking to PEO to locate, recover and destroy all remaining copies of the company X catalogue and any other material in their possession that contains text and images copied from the other company material that is not in the public domain;**

**4. The members and company X shall jointly provide a written undertaking to PEO that, in the production of future company X marketing or technical material, they will never again utilize text or images from a third-party source without consent of that third party and without giving credit to that third party in the company X marketing or technical material;**

**5. The members shall write and pass the Professional Practice Examination (PPE) within 12 months of the date of the decision, failing which, this matter shall be brought back before the Discipline Committee for additional penalty action;**

**6. Company X shall pay costs to PEO in the amount of \$3,000, payable at the conclusion of the discipline hearing;**

**7. A summary of the discipline hearing proceedings shall be published in the official publication of the association, without reference to names or identifying details; and**

**8. The members and company X shall jointly provide a narrative, directly to PEO within 60 days**

**of delivering the panel's written decision, describing the circumstances and their experience in this matter, without reference to names or identifying details, for publication in the official publication of the association as an addendum to the summary described in paragraph 7 above.**

The panel is of the view that copying is a significant offence, not only in the technical field but also in the literary and artistic fields. It cannot be defended unless the permission of the author and proper credit is given. Copying and purporting the work to be original is reprehensible and unjustifiable. This is especially true for professional engineers who are to ascribe to a code of ethics and should be above this type of conduct.

The senior management of company X was lax in fulfilment of their responsibilities for allowing such actions to be committed. PEO cannot tolerate Ontario engineers to be tainted with a label of plagiarist.

Another aspect of this case that concerned the panel was the fact that company X brought a product to market without complying with the requisite standards, rules and regulations, i.e., the *Energy Efficiency Act*. These standards, rules and regulations exist to protect the public and the environment. Although, luckily, in this case no significant impact on the public occurred, this non-compliance cannot be construed as acceptable. Senior management must be aware of requirements before introduction of products to the public. The panel accepts, however, that the members as senior engineers of company X, stood up to their responsibilities and did not attempt to pass the actions off as the responsibilities of their junior engineers.

The written Decision and Reasons in this matter were dated March 3, 2003, and were signed by the Chair of the Panel, Kenneth Serdula, P.Eng., for and on behalf of the other members of the Discipline Panel: Jim Lucey, P.Eng., Colin Moore, P.Eng., Anne Poschmann, P.Eng., Derek Wilson, P.Eng.

## Note from the Regulatory Compliance department

The members and company X waived their right of appeal in this matter and therefore the penalty took effect as of January 6, 2003. The reprimand was administered at the conclusion of the discipline hearing. Costs were paid on January 21, 2003. The members wrote and passed the Professional Practice Examination in April 2003. The undertakings were received in June 2003.

The narrative was also received in June 2003 and appears below without modification or editing.

### Narrative from the members and company X

“Time is of the essence”, “time is money”, “time marches on”, etc. etc. etc. How many times have we in the engineering profession heard or faced the stressful realities of these expressions?

This article will recount an interesting situation arising in our company that was:

- a) driven by the above-noted point
- b) easy to have fallen into

It is hoped that by reading this narrative, the pitfalls can be avoided by other practising professional engineers.

Document reproduction technology, and how that technology can help engineers design and document their works has made amazing strides in the past few years. Advances in computer drafting, electronic transmission of large drawings, photocopying/publishing, scanning, Internet posting of documents, etc.—these are but a few examples of technologies available to engineers to help produce and manage document flow.

While these technologies are generally wonderful aids for the engineer in documenting his or her work, they introduce new challenges in good old-fashioned document management and control, which need to be thought through and overcome.

In our company's situation, we developed a prototype product for a certain application in the residential construction industry. We produced various prototypes, did internal factory performance testing and were eager to find and apply the product to some “beta-type” construction projects, in an effort to improve the product, and identify production-streamlining processes. As many of you know, products applied to construction sites must be supported by some kind of product literature—be that installation and maintenance manuals, application guides, product catalogs, etc.

Our organization comprises of a number of senior engineers. We are great believers in hiring and training young engineers, and training these individuals in the specifics of our industry. Generally, these junior engineers are attached to a senior engineer in an assistant capacity, and that senior engineer has overall supervisory responsibility.

So... to the problem. In our urgency to get product prototypes onto beta sites for testing and streamlining, we tasked the production of rudimentary dimensional, performance, electrical and installation instruction literature to a supervised junior engineer. Using the above-noted wonders of modern document management technology, our employee was able to produce this literature in very little time. Unfortunately, in several instances, the literature product of those efforts was created using scanned original documents from various uncredited sources and edited slightly via computer.

While this is bad enough, the bigger problem was that the final product, appearing to be very professional, and ready for distribution was not caught in our supervisory process, and several copies of the offending document were released to the industry. Of course, this set off alarm bells in the marketplace, and upon learning of the problem our organization immediately removed the offending document from distribution and worked to create an original material document.

In dealing with the fallout, we learned several valuable things that we would like to pass along in this article:

1. A company must have clear policies and procedures in place with respect to document production and document control, and these clear policies need to be effectively communicated to all employees. Modern technology has exacerbated the problem of potential unauthorized use of public domain documents, since that effort can be done relatively easily, and the final product can be presented to appear as original material.
2. Engineering supervisory capacity means exactly that... supervisory. Senior professional engineers, relying on engineering assistants who may be co-op students, new graduates, graduates-in-training, etc. must be aware of what their assistants are doing, must give them clear and unambiguous direction, must communicate the expectations of the company in terms of policies and procedures as they relate to the activities of the junior, and must take responsibility for the product of those juniors.
3. The buck stops here. Ultimate responsibility for any document bearing the company's name lies with the principals of the company. In hindsight, it doesn't matter why the above-described situation happened, or how it happened, but rather that it did happen. In our case, the principals of the company, en-masse, faced the complaint/disciplinary process of PEO.
4. You (the reader) don't ever want to face the complaint/disciplinary process of PEO.

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The Discipline Committee of the Association of Professional Engineers of Ontario

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, Chapter P. 28

And in the matter of a complaint regarding the conduct of

## A Member

a member of the Association of Professional Engineers of Ontario

BETWEEN:

The Association of Professional Engineers of Ontario and

A Member

## Summary of Decision and Reasons

A Panel of the Discipline Committee of the Association of Professional Engineers of Ontario (PEO) met in the offices of PEO on December 3, 2002, to hear allegations of professional misconduct against a member of PEO (the member).

Both PEO and the member were represented by legal counsel. Independent legal counsel was in attendance for the Panel of the Discipline Committee.

The allegations against the member as stated in the Notice of Hearing dated March 21, 2002, are summarized as follows:

### Allegations

It is alleged that the member is guilty of professional misconduct, the particulars of which are as follows:

1. In early 1992, a businessman (hereinafter referred to as the purchaser) made an offer to a property owner (hereinafter referred to as the vendor) to purchase a property located in Etobicoke, Ontario. Because the site had previously been occupied by a gas station and, at the time of the offer, was occupied by two automotive service franchises, the offer to purchase was conditional upon the purchaser's satisfaction with the environmental condition of the soil.
2. The vendor retained an environmental assessment firm to conduct an environmental investigation at the site. Their report, dated February 1992, identified a number of minor contamination issues. The report included drawings showing the locations on the site where samples and measurements were taken, and it also included, as an appendix, copies of the certificates of analysis from the independent laboratory that conducted the tests.
3. In July 1992, the manager of retail environmental affairs for the vendor reviewed the report and identified recommendations for site remediation activities that would be required prior to the sale of the property. The recommendations included the determination of the existence and status of an abandoned underground furnace fuel oil tank.
4. In or about September 1992, the vendor retained the member, who at the time worked for a firm of environmental engineers and contractors, to perform a site investigation and remediate the soil where required at the property. The member attended at the site between October 1, 1992, and October 5, 1992.
5. In an October 26, 1992, letter to the vendor, the purchaser noted that, in accordance with Ministry of Consumer and Commercial Relations regulations, the vendor should remove the tank, but that if that was not possible then they could have it filled with concrete.
6. In a November 5, 1992, letter to the purchaser, the vendor agreed to the purchaser's telephone request that his own consultant be present during the fuel oil tank location assessment.
7. The member issued a site investigation and soil remediation report dated November 30, 1992. The signature block of the report named the member as the author, but it did not bear his seal and was signed on his behalf by the president of his firm. The report noted that the exact location of the furnace oil tank could not be determined. It further noted that eight soil samples were taken and submitted to an independent laboratory for analysis to determine the presence and concentrations of various petroleum related compounds and total petroleum hydrocarbons. However, Table 1 of the report provided data for only six soil samples. Furthermore, the certificates of analysis from the independent laboratory were not included with the report. The report concluded that the soil samples met the Ontario Level II remediation criteria and that the site had been satisfactorily decommissioned from petroleum use.
8. The underground fuel oil tank was ultimately located and removed on November 30, 1992. The vendor

- retained the member and his firm to examine the soil conditions within the tank excavation during the removal of the tank.
9. In a December 4, 1992, letter to the purchaser, the vendor noted that the tank was removed and that remediation of the soil surrounding the tank was completed on November 30, 1992. The vendor proposed a closing date of December 21, 1992, for the sale of the property.
  10. The member issued a report dated December 23, 1992, arising from the November 30, 1992, removal of the furnace oil tank. The signature block of the report named the member as the author, but it did not bear his seal and was again signed on his behalf by the president of his firm. The report noted that the 1000-gallon steel underground furnace oil tank had to be cut into small sections to facilitate removal. It further noted that four representative soil samples were taken from the walls and base of the excavation and these were submitted to an independent laboratory for analysis to determine the presence and concentrations of various petroleum related compounds and total petroleum hydrocarbons. However, Table 1 of the report provided data for only three soil samples. Furthermore, the report did not include a figure showing the locations where the samples were taken and the certificates of analysis from the independent laboratory were not included. The report stated that "examination of the laboratory results for the representative soil samples indicates" that the petroleum compound and total petroleum hydrocarbon concentrations were below the Ontario Level II remediation criteria. The report also stated that "no petroleum related environmental liability exists at the location of the former underground furnace oil tank at the present time."
  11. In January 1993, the purchaser's consultant called and advised the purchaser that one of the soil samples he had taken from the tank excavation had total petroleum hydrocarbon levels well in excess of the Level II criterion. In a January 4, 1993, letter to the vendor, the purchaser requested a copy of the laboratory results obtained by the vendor. The vendor responded on January 8, 1993, and included a copy of Table 1 from the December 23, 1992, report, which showed three samples all below the Level II criteria. The purchaser accepted this and assumed that a small spill had occurred during removal of the tank and that there was no significant contamination.
  12. In 1996, the purchaser applied for a building permit for the property. The City of Etobicoke building department requested reports on the environmental conditions for the site. The purchaser forwarded all of the reports in his possession. The city requested the complete reports by the member's firm, including laboratory certificates. The purchaser contacted the vendor and obtained the reports, but he noted that there were no certificates of analysis attached. He then contacted the member's firm and they found the certificates in their archives and faxed them to the vendor on April 24, 1997. The vendor faxed the certificates to the purchaser the same day.
  13. A review of the certificates indicated that four soil samples from the tank excavation were analyzed and that the one sample not included in the December 23, 1992, report had total petroleum hydrocarbon levels in excess of the Ontario Level II criterion.
  14. In a July 21, 1997, letter to the vendor, the purchaser noted that the building department at the City of Etobicoke was not accepting any of the reports by the member's firm, due to the error in reporting of the tank excavation soil samples. The purchaser requested that the vendor arrange for new soil and groundwater testing and remediation. The vendor agreed.
  15. In or about August 1997, the vendor retained an independent environmental assessment firm to carry out an environmental site assessment and remediation. In reports dated August 19, 1997, and September 11, 1997, that firm reported two areas that did not meet the Ministry of Energy and the Environment's 1996 *Guideline for Use at Contaminated Sites in Ontario*. Those areas were cleaned up at the vendor's expense.
  16. In summary, it is alleged that the member
    - (a) issued a December 23, 1992, soil condition report that failed to meet the standards of a reasonable and prudent practitioner in those circumstances in that he failed to report data for all soil samples analyzed;
    - (b) failed in his duty to the public and his client by failing to report a soil sample that he knew, or ought to have known, was contaminated beyond applicable criteria; and
    - (c) stated that no petroleum-related environmental liability existed at a site when he knew, or ought to have known, that it did.
  17. **By reason of the facts aforesaid, it is alleged that the member is guilty of incompetence as defined in section 28(3)(a) and professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act, R.S.O. 1990, Chapter P.28.***

Counsel for the association advised the panel that agreement had been reached on the material facts listed above, with explanations by the member as follows:

    1. Regarding the reports bearing the member's name, but being signed by the president of his firm, the member noted that this was in accordance with the customary procedure at the firm that was in effect at the time of the work. Similarly, it was the customary procedure of the firm at the time to not include the certificates of analysis from the independent laboratory.
    2. The results from the sample taken by the purchaser's consultant were not reported to the member's firm at the time.

3. The vendor and the purchaser completed the sale of the property on December 21, 1992, in advance of the December 23, 1992, report being issued.
4. The lab results for all four samples described in the December 23, 1992, report were orally reported to the vendor.

The member admitted the allegations of professional misconduct as outlined above. The panel conducted a plea inquiry and was satisfied that the admission of the member was voluntary, informed and unequivocal.

**The panel considered the agreed facts and found that the facts support a finding of professional misconduct and, in particular, finds that the member committed an act of professional misconduct as alleged in the Notice of Hearing, in particular:**

- ◆ **Section 72(2)(a): negligence as defined at Section 72(1): In this section, “negligence” means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;**
- ◆ **Section 72(2)(b): failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;**
- ◆ **Section 72(2)(d): failure to make responsible provision for com-**

**plying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner; and**

- ◆ **Section 72(2)(j): conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as unprofessional.**

The panel deliberated on the matter and considered the usefulness of resolution discussions to the discipline process. In consideration of this, and after reviewing the Agreed Statement of Facts, it was the panel's unanimous decision to accept the admission of professional misconduct.

**Counsel for PEO advised the panel that a Joint Submission as to Penalty had been agreed upon. The panel accepted the Joint Submission as to Penalty and accordingly ordered:**

- a) **that the member is reprimanded and the fact of the reprimand is recorded on the register;**
- b) **that the member write and pass the Professional Practice Examination within a period of 12 months, failing which this matter be brought back before the Discipline Committee for further penalty action;**
- c) **that the member's current practice be subject to a practice inspection under the following terms:**
  - (i) **the practice inspection will be carried out by an independent expert**

- to be named by the registrar and who will provide a report to the Discipline Committee at the conclusion of the inspection;**
  - (ii) **the practice inspection will be limited to not less than three and not more than six projects of a scope similar to that which was the subject of his hearing (to be agreed upon between the member and the independent expert named by PEO);**
  - (iii) **the practice inspection shall be completed and the report submitted to the Discipline Committee within 12 months;**
  - (iv) **after review of the independent expert's inspection report, the Discipline Committee may, at its sole discretion, order additional penalty action against the member under Sections 28(4)(c), 28(d), and/or 28(e) of the *Professional Engineers Act*; and**
  - (v) **the cost of the practice inspection shall be paid by the member;**
- d) the decision be published, but without names.**

The panel unanimously concluded that the jointly submitted penalty is reasonable and in the public interest. The member has cooperated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association.

The written Decision and Reasons in this matter were dated January 24, 2003, and were signed by the Chair of the Panel, Angelo Mattacchione, P.Eng., for and on behalf of the other members of the Discipline Panel: James Dunsmuir, P.Eng., Tom Ellerbusch, P.Eng., Monique Frize, P.Eng., Ken Lopez, P.Eng.

## Note from the Regulatory Compliance department

The member waived his right of appeal and the reprimand was administered at the conclusion of the discipline hearing. The practice inspection report was issued on June 27, 2003 and was accepted by the Discipline Panel. On October 16, 2003, at the member's request, the Discipline Panel granted the member a six-month extension to the deadline for writing the Professional Practice Examination.

# Council approves designation and redesignation of Consulting Engineers

At the 419th Meeting of Council held on November 13-14, 2003, the following members were designated or redesignated as Consulting Engineers pursuant to Ontario Regulation 941 made under the *Professional Engineers Act*. Also listed are firms to which Council has granted permission to use the title "Consulting Engineers."

## Newly designated Consulting Engineers

**Borbala Homonnay, P.Eng.**  
Akkanga Engineering International Inc.  
Toronto, ON

**Allan Murray, P.Eng.**  
Dillon Consulting Limited,  
London, ON

**Anne Poschmann, P.Eng.**  
Golder Associates Ltd.  
Mississauga, ON

**Geoffrey Pound, P.Eng.**  
Mitchell Pound & Braddock Ltd.  
Richmond Hill, ON

**Mark Tarras, P.Eng.**  
The Municipal Infrastructure Group  
Vaughan, ON

**David Trudeau, P.Eng.**  
Macviro Consultants Inc.,  
Markham, ON

## Certificate of Authorization holders granted permission to use the title "Consulting Engineer"

**Bogdanowicz Consulting Engineering Inc.**  
Toronto, ON

**C & V Engineering Ltd.**  
Thornhill, ON

**KIB Consultants Inc.**  
Kanata, ON

**Gheorghe Silber, P.Eng. (o/a Silber Enterprises)**  
Richmond Hill, ON

Designation as a Consulting Engineer is for a period of five years. At the end of that time, the member must apply for redesignation. Anyone wishing information about the Consulting Engineer Designation Program may contact Sandra Bartholomeusz, C of A Coordinator, Department of Licensing and Registration, at 1-800-339-3716, or (416) 224-1100, ext. 492; or by email at [abarholomeusz@peo.on.ca](mailto:abarholomeusz@peo.on.ca)

**Pitura Husson Limited**  
Richmond Hill, ON

## Redesignated Consulting Engineers

Craig Baker, P.Eng.  
James Bennett, P.Eng.  
Kearon Bennett, P.Eng.  
Edward Bogdanowicz, P.Eng.  
Helmut Brosz, P.Eng.  
Peter Casson, P.Eng.  
Phillip Davis, P.Eng.  
Michael Dwyer, P.Eng.  
Davor Fisher, P.Eng.  
Ewen Fisher, P.Eng.  
David Frost, P.Eng.  
H. Paul Haines, P.Eng.  
Victor Hebert, P.Eng.  
Brian Isherwood, P.Eng.  
Rameshwar Jagdat, P.Eng.  
Andrew Lawton, P.Eng.  
Jack Lay, P.Eng.

Anwar Memon, P.Eng.  
George Meyer, P.Eng.  
Clifford Morey, P.Eng.  
David Naylor, P.Eng.  
Ian Nitsch, P.Eng.  
Cal Oswin, P.Eng.  
Kenneth Peaker, P.Eng.  
Robert Peterman, P.Eng.  
Eryk Psiuk, P.Eng.  
Donald Redmond, P.Eng.  
Bryan Richardson, P.Eng.  
Richard Sabourin, P.Eng.  
Rosario Sacco, P.Eng.  
Zaven Sarkissian, P.Eng.  
Peter Sawras, P.Eng.  
Rakesh Sharma, P.Eng.  
Michael Soligo, P.Eng.  
Donovan Spence, P.Eng.  
William M. Sztrimbely, P.Eng.  
Ronald Weir, P.Eng.  
Michael Weiss, P.Eng.  
Derek Wilson, P.Eng.  
Robert Wingate, P.Eng.  
Brian Young, P.Eng.



Professional Engineers  
Ontario

In accordance with Section 20 of Bylaw No. 1, which relates to the administrative affairs of PEO, the 2004 Annual General Meeting of the Association of Professional Engineers of Ontario will be held on Saturday, April 24, 2004, commencing at 8:30 a.m. at the Toronto Eaton Centre Marriott Hotel, Toronto, Ontario. No registration is required.

As noted in Bylaw No. 1, the Annual General Meeting of PEO is held for the following purposes: to lay before members the reports of the Council and committees of the association; to inform members of matters relating to the affairs of the association; and to ascertain the views of the members present at the meeting on matters relating to the affairs of the association. Officers of PEO and other members of both the outgoing and incoming Councils will be in attendance to hear such views and to answer questions.

## Notice of Annual General Meeting

PEO President Kenneth C. McMartin, P.Eng., will preside and present his annual report to the Annual General Meeting. The President-elect, Officers and Councilors for the 2004-2005 term will take office at the meeting.

### Process for submitting member resolutions at 2004 AGM

Resolutions presented by members at PEO's Annual General Meeting serve as a vehicle for members in attendance to express their views on matters relating to the affairs of the association. A member resolution should clearly describe the issue being addressed and indicate how it advances the objects of the *Professional Engineers Act*, which define the mandate and responsibilities of PEO. To ensure that member resolutions receive proper consideration at the Annual General Meeting, members

must submit resolutions in writing to CEO and Registrar Kim Allen, P.Eng., by no later than 4:00 p.m., Friday, April 16, 2004. Resolutions must be signed by the mover and seconder, either of whom must be present at the meeting. Resolutions may be submitted by fax to (416) 224-8168 or (800) 268-0496, or by letter.

Procedures for addressing member resolutions during and after the AGM will be published in the March/April 2004 issue of *Engineering Dimensions*, to be mailed March 22.

Member resolutions that are passed at the Annual General Meeting will be referred to PEO Council for consideration at a future Council meeting. The mover and seconder of a member resolution that is passed at the AGM will be invited by Council to address their resolution in detail at the Council meeting at which the resolution is to be considered.

*Kim Allen, P.Eng., CEO and Registrar*