

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a single-member panel of the Discipline Committee on October 4, 2005, at the offices of the Association of Professional Engineers of Ontario at Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. David W. Seberras, P.Eng., (“Seberras”) and Seberras Professional Services Ltd. (“SPSL”) were represented by Andrew Heal of Blaney McMurtry LLP.

Agreed Facts and Allegations

The relevant facts and the allegations against Seberras and SPSL were contained in the Fresh Notice of Hearing dated September 23, 2005. Counsel for the association advised the panel that agreement had been reached by the parties and that the facts in the Fresh Notice of Hearing could be treated as an Agreed Statement of Facts. The facts and allegations are summarized as follows:

1. Seberras was at all material times a member of the Association of Professional Engineers of Ontario.
2. In or about 1999, Progressive Building Systems Inc. (“PBS”) retained Seberras for the design of an inground water tank. The water tank was approximately 203 feet long by 30 feet wide by 8 feet high. Initially, there were 12 equal sections in the tank, each approximately 34 feet by 15 feet, changed later to two sections (Revision D). The top of the tank was to have a precast concrete slab (later changed to steel deck with concrete topping) that was to serve as the floor of Clark’s Mini Warehouse (“CMW”) at 7079 Wellington in the Township of Guelph/Eramosa. Donald Russell Clark, owner of CMW, retained Diamond Forming (“DF”) for the construction of the water tank.

Summary of Decision and Reasons

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding the conduct of:

David W. Seberras, P.Eng.

a member of the Association of Professional Engineers of Ontario, and **Seberras Professional Services Ltd.**, a holder of a Certificate of Authorization.

3. Seberras was not paid to prepare engineering drawings to record DF’s intended design and construction, but prepared such drawings nonetheless.
4. In or about March 2001, Elizabeth Waywell of Flynn & Sorbara, the solicitor for Clark, retained C.C. Tatham & Associates Ltd. (“CCT”) to review the engineering drawings of the tank.
5. By letters dated March 9 and June 1, 2001, Alan Woolnough, a limited licence holder, and Alan Lavender, P.Eng., both of CCT, reported their engineering review of the design drawings provided by Seberras and SPSL. The purpose of the report was to comment on the issues involving whether the structure could hold water. CCT concluded that if the base slab and walls were constructed as drawn and noted on the drawings, there should be minimal loss of water through the walls and/or the joint at the interface of the base of the walls and the foundation slab. CCT further noted that the water stop at the base of the perimeter wall as being typical, but that a specific detail would have been helpful, and that a contractor experienced with building water-retaining structures would have found the drawings adequate.
6. On March 16, 2001, DF retained Gerald Schorn, P.Eng., (“Schorn”) of Schorn Consultants Inc., to undertake a structural review of the as-constructed water tank in the context of a civil litigation. The review was based on the engineering drawings prepared by Seberras. Schorn also performed a visual review of the structure.
7. On April 17, 2001, Schorn issued a signed and sealed report entitled *Water Reservoir Construction Engineering Report*. Schorn provided his findings in Section 2 of his report. The following items were among the major findings:
 - (a) It was not clear that the structure was intended to be a water-storage tank;
 - (b) Basic information, such as the loading and reinforcing steel strength, was missing from the drawings;
 - (c) Reinforcing steel specified for reinforcement as per section BB did not meet the minimum reinforcing steel requirements of CSA Standard A23.3;
 - (d) The 12-inch thick wall with one layer of reinforcement violated the minimum requirements of CSA A23.3, Clause 14.3.4;
 - (e) It was found that the specified reinforcing steel was inadequate for crack control;

- (f) No expansion joints were specified in the floor slab for proper expansion of the wall structure.
8. The Association of Professional Engineers of Ontario retained Kleinfeldt Consultants Limited (“KCL”) to review and report on the design details of the water-storage tank. In its report dated December 14, 2004, KCL provided the following comments:
- (a) According to CSA Standard A23.3-94 *Design of Concrete Structures*, Clause 1.1.4, tanks and reservoirs are classified as “special structures” to which stringent service requirements apply and, therefore, should be designed and constructed with great care. With respect to the “special structures,” the provisions of the CSA standard shall govern insofar as they are applicable and some requirements may not be sufficient for structures designed to be watertight. Water-storage tanks belong to the category of structures for which minimal cracking is a paramount requisite. As a reference, the US Standard ACI-350R is quoted. ACI-350R provides the requirements to meet this criterion. The ACI-350R Standard has been used as a reference in Canada by designers of water-storage tanks.
- (b) Revision C (Drawings 1336-P1 and P2) is incomplete. Many dimensions are not specified. The thickness of the exterior wall of the tank is not clearly specified. The section of the interior wall of the tank is not shown.
- (c) Revision D (Drawings 1336-P1 and P2) provides more information and incorporates some changes. The interior wall arrangement was changed. Section C-C shows details of the interior, and knee walls are added. The exterior wall is specified as one foot thick and the horizontal reinforcement is changed from 5-15M to 7-15M. Wire-mesh reinforcing for the slab-on-grade is specified.
- (d) In general, the final design drawings (Revision D) produced by Seberras do not provide sufficient details and information (11 specific examples were identified in the KCL report).
9. In summary, it appeared that David W. Seberras, P.Eng.:
- (a) provided a water-retention structural design that did not meet the minimum requirements of the *Ontario Building Code*;
- (b) provided a water-retention structural design that did not meet the minimum reinforcing steel requirements of CSA Standard A23.3-94 *Design of Concrete Structures*;
- (c) failed to specify expansion joints in the floor slab for proper expansion of the wall structure;
- (d) failed to maintain the standards that a reasonable and prudent practitioner would maintain in carrying out the design project; and
- (e) acted in an unprofessional manner.
10. By reason of the facts aforesaid, it is alleged that Seberras is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
11. “Professional misconduct” is defined in section 28(2)(b) as:
- “The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.”
12. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
- (a) *Section 72(2)(a)*: negligence;
- (b) *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 a practitioner; and
- (c) *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 disgraceful, dishonourable or unprofessional.

Plea

Seberras admitted the allegations of professional misconduct contained in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the plea was voluntary, informed and unequivocal.

Decision

The panel deliberated and found that the member committed acts of professional misconduct as alleged in paragraph 19 of the Fresh Notice of Hearing, as defined in sections 72(2)(a), 72(2)(d) and 72(2)(j) of Regulation 941 of the *Professional Engineers Act*, R.S.O. 1990, c. P.28.

Reasons for Decision

The panel accepted Seberras’ plea and the agreed facts, which substantiated the findings of professional misconduct.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty (“JSP”) had been agreed upon, which addressed all issues except the form of publication. Counsel for the association submitted that publication in Gazette should be with Seberras’ name and any identifying references. Counsel for Seberras submitted that publication should be without his name or any identifying references, as the public interest would be served in this case by this and the panel only needs sufficient reasons not to publish.

Penalty Decision

The panel deliberated and accepted the JSP with one change, namely that the costs were reduced from \$3,000 to \$2,000. Further, the panel concluded that publication with names and identifying references was warranted in the circumstances of this case.

Accordingly, the panel ordered:

1. The member is to be reprimanded and the fact of the reprimand shall be recorded on the Register until such time as the member writes and successfully completes the Professional Practice Examinations, Parts A and B (“PPE”).
2. A summary of the decision and reasons of the Discipline Committee shall be published in Gazette with the name of the member, and any identifying references.
3. The member shall write and successfully complete the Advanced Structural Design (ASD-98-CIV-B2) (“ASD”) and PPE within 14 months of the date of the order of the Discipline Committee.
4. That in the event the member fails to write and successfully complete the ASD within a 14-month period commencing on the date of the order of the Dis-

cipline Committee, his licence to engage in the practice of professional engineering shall be restricted in that he shall not be allowed to engage in the practice of structural design.

5. That in the event the member fails to write and successfully complete the PPE within a 14-month period commencing on the date of the order of the Discipline Committee, his licence to engage in the practice of professional engineering shall be suspended.
6. That in the event the member fails to write and successfully complete the PPE within 24 months from the commencement date of the order of the Discipline Committee, his licence to engage in the practice of professional engineering shall be revoked; and

7. The member shall pay costs of the disciplinary proceeding fixed in the sum of \$2,000 within 12 months of the date of the hearing.

Reasons for Penalty

The assignment of the ASD and the PPE will help upgrade current knowledge of the skills offered by this member. The reduction in the cost is based on the offering of free service on this project. No financial gain was received by the member. Consequently, in the panel’s judgment, the \$2,000 penalty is adequate in this case. Further, the panel concluded that publication with names and identifying references was warranted in the circumstances of this case.

The member signed a waiver of appeal and at the conclusion of the hearing, the oral reprimand was administered.

The written Decision and Reasons in this matter were dated December 12, 2005, and were signed by the Chair of the panel, Nick Monsour, P.Eng.

This matter came on for hearing with the consent of both parties before a single-member panel of the Discipline Committee on Monday, November 7, 2005 at the Association of Professional Engineers of Ontario (“association”) at Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. William L. Haas, P.Eng., (“Haas”) and William Haas Consultants Inc. (“WHCI”) were represented by Robert Hutton of Brown Beattie O’Donovan LLP.

Agreed Facts and Allegations

The allegations against William Lloyd Haas, P.Eng., and William Haas Consultants Inc. were contained in the Fresh Notice of Hearing dated November 4, 2005. Counsel for the association advised the panel that agreement had been reached on the facts and advised that the facts contained in the Fresh Notice of Hearing could be treated as an Agreed Statement of Facts. The relevant facts and allegations are summarized as follows:

Decision and Reasons

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding the conduct of:

William L. Haas, P.Eng.

a member of the Association of Professional Engineers of Ontario, and **William Haas Consultants Inc.**, a holder of a Certificate of Authorization.

General

1. Haas was at all material times a member of the Association of Professional Engineers of Ontario.
2. WHCI was at all material times the holder of a Certificate of Authorization to offer and provide to the

public services within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure that its employees, including Haas, carried on the practice of professional engineering in a proper and lawful

manner. Haas was one of the professional engineers.

Plains Road Building

3. In or about August 2003, the City of Burlington (“City”) received building permit application drawings for a multi-storey apartment building located at 168 Plains Road West (“Plains Road Building”) sealed and signed by Haas. The City subsequently retained Halsall Associates Limited (“Halsall”) to conduct a limited structural review of the building application permit drawings.
4. On or about August 28, 2003, Samir Nakkar, P.Eng., (“Nakkar”) a senior staff member at Halsall, conducted a limited structural review. Nakkar requested seismic calculations and informed the City and Haas that the subject Plains Road Building drawings were incomplete for the following reasons:
 - (a) general notes should indicate the design was in conformance with the latest requirements of the *Ontario Building Code*;
 - (b) wind loading: values of p and q were missing;
 - (c) seismic loading: data and assumptions for design were not given;
 - (d) the majority of the concrete walls were unreinforced; and
 - (e) levels P1 and ground: no slab thickness or design loading was specified.
5. On or about August 28, 2003, in response to the Halsall list of concerns, Haas provided to the City and Halsall a one-page response letter and copies of a four-page information and calculations attachment from the Canam Manac Group, a manufacturer and supplier of structural steel systems.
6. In or about September 2003, Halsall noted that all items on its list had not been addressed and continued its review with the information provided. Consequently, a second list of

comments and missing information was compiled by Halsall and forwarded to the City and Haas. The second list contained items relating to moment and punching shear overstressing of building elements, among other issues.

7. In or about October 2003, Haas provided to the City and Halsall a three-page letter, and attached hand calculations in response to the September request by Halsall for information.
8. On or about October 24, 2003, Halsall continued its review and made additional requests for information from Haas and wherein noted that it (Halsall) was not willing to provide an opinion as to whether the building permit could be released until appropriate calculations had been received from Haas and reviewed.
9. In or about November 2003, in response to the Halsall request for information, Haas provided a two-page letter, including calculations, to the City and Halsall.
10. In or about November 2003, Halsall continued its review and again requested information from Haas. Halsall noted the drawings were still considered incomplete for the purpose of obtaining a building permit.

Ironstone Drive Building

11. In or about October 2003, the City received building permit application drawings for a multi-storey apartment building located at 1998 Ironstone Drive (“Ironstone Drive Building”), sealed and signed by Haas. The City again retained Halsall to conduct a limited structural review of the building application permit drawings.
12. On or about November 10, 2003, Halsall, through Nakkar, conducted

a limited structural review and forwarded a list of comments and missing information to the City and Haas. This list included the following:

- (a) incorrect specification of R (seismic ductility factor) for plain (unreinforced) concrete shear walls;
 - (b) only one generic foundation wall section was indicated on the drawings; and
 - (c) top and bottom bar placing layers not indicated on plans.
13. On or about November 10, 2003, Haas sent to Halsall a one-page response letter to the Halsall list. The response letter noted Haas’s willingness to revise the R factor, to specify nominal steel in the lower wall levels, with the addition of details and notes to the drawings, and requested the approval for foundation permit only.
 14. On or about November 11, 2003, in a fax memorandum to the City and Haas, Halsall noted that seismic load calculations and distribution were still not addressed, as requested, and issuance of the foundation building permit would be dependant on that information. Halsall continued its review with the information provided. Consequently, a second list by Halsall, of comments and missing information, was compiled and forwarded to the City and Haas. The second list included the following:
 - (a) garage reinforced slabs, ramps, walls and columns exposure and strength specifications of Type C-1 and 35 MPa, which must be indicated on the drawings;
 - (b) garage slab on grade requires exposure type C-2, 32 MPa concrete, which must be indicated on the drawings;
 - (c) concrete slabs reinforcing steel required concrete cover for top bars is 40mm and for the bottom bars is 30mm, which must be indicated on the drawings;
 - (d) along Lines A and G: slab punching shear capacity exceeded at the terraced area supporting columns by

- about 35 per cent. Designer should submit punching shear calculations and building sections across these lines for review; and
- (e) are outside garage and terraced areas slab protected from the elements, as sufficient details for this issue were not found on the drawings? Designer to clarify.
15. In or about November 2003, Haas provided response letters regarding items on the second Halsall list. These letters noted apparent compliance with concrete exposure types and strengths and column capital provision; however, Haas did argue the concrete exposure types issue in the presence of chlorides and reaffirmed the use of a membrane for slab protection from the elements. The seismic load calculations issue was still not addressed.
16. On or about November 19, 2003, Halsall continued its review and did not agree with Haas's arguments on the issue of concrete exposure types and strengths. The issue of seismic load calculations and distribution submission remained outstanding.

Independent Third-party Review

17. By letter dated May 31, 2004, Robert E. Brown, P.Eng., ("Brown") provided the association with an independent third-party review of the work performed by Haas. Among other findings in the review, Brown provided the following opinions:
- (a) The drawings signed and sealed by Haas for the Plains Road and Ironstone Road buildings did not meet the minimum standard of practice for structural engineering services;
- (b) The drawings were not properly checked before they were signed and sealed by Haas;
- (c) The drawings were not adequate for construction;
- (d) There were errors in items such as seismic response factor and shear strength calculations for concrete walls;
- (e) Errors in sizing of footings could result in excess settlement;
- (f) Errors in proportioning slab thickness and reinforcement could lead to

- excessive cracking, deflection and, in severe cases, collapse; and
- (g) Obsolete load factors were used in a sample calculation by Haas indicating lack of familiarity with current code requirements.
18. It is alleged that William L. Haas, P.Eng., and William Haas Consultants Inc.:
- (a) failed to comply with current *Ontario Building Code* requirements for seismic loadings for proposed multi-storey residential buildings at 168 Plains Road West and 1998 Ironstone Drive in Burlington, Ontario;
- (b) failed to provide adequate structural designs and drawings for a proposed multi-storey residential building at 168 Plains Road West in Burlington, Ontario, which included the overstressing of reinforcing steel for moments in the garage floor slabs, and of punching shear at garage and ground floor columns, beyond allowable limits;
- (c) failed to provide adequate structural designs and drawings for a proposed multi-storey residential building at 1998 Ironstone Drive West in Burlington, Ontario, which included the overstressing of punching shear at the columns of the terraced areas beyond allowable limits;
- (d) sealed substandard structural designs and drawings for two proposed multi-storey residential buildings that, among other things, lacked building sections and details and were designed using an incorrect seismic ductility factor for plain concrete; and
- (e) acted in an unprofessional manner.

By reason of the facts aforesaid, it is alleged that William Lloyd Haas, P.Eng., and William Haas Consultants Inc. are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

19. "Professional misconduct" is defined in section 28(2)(b) as:
 "The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."

20. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
- (a) *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;
- (b) *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;
- (c) *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 a practitioner;
- (d) *Section 72(2)(g)*: breach of the Act or regulation, other than an act that is solely a breach of the Code of Ethics;
- (e) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner; and
- (f) *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 disgraceful, dishonourable or unprofessional.

Plea by Member and/or Holder

The member and WHCI admitted the allegations set out in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that their admissions were voluntary, informed and unequivocal.

Decision

The panel deliberated and found that the facts support a finding of professional misconduct and, in particular, found that Haas and WHCI committed an act of professional misconduct as alleged in the Fresh Notice of Hearing. Specifically, the panel found that

the member and WHCI were guilty of professional misconduct as set out in sections 72(2)(a), 72(2)(b), 72(2)(d), 72(2)(g), 72(2)(e) and 72(2)(j) of Regulation 941.

Reasons for Decision

The panel accepted the member and WHCI's plea and admission of the facts as set out in the Fresh Notice of Hearing, which substantiated the panel's findings of professional misconduct. In particular, the panel's finding of professional misconduct as set out in sections 72(2)(a), 72(2)(b), 72(2)(d), 72(2)(g), and 72(2)(e) of Reg. 941 is based on the facts set out in paragraph 19 and 20 (a) to (d), inclusive. The panel's finding of professional misconduct as set out in section 72(2)(j), Regulation 941, is based on the facts set out in paragraph 20 and, in particular, paragraph 20(e) of the Fresh Notice of Hearing.

Penalty

Counsel for the association advised the panel that a Joint Resolution on Penalty ("JRP") had been agreed upon and that the JRP addressed the five relevant principles of protection of public, maintenance of the reputation of the profession, general deterrence, specific deterrence and rehabilitation. Counsel for the association submitted that the actions of the member and WHCI had the potential for extremely serious consequences to the health and safety of the public in each of the two circumstances.

Counsel for the association further submitted that the member had been a professional engineer for 39 years and has an unblemished record with the association. The member had cooperated throughout the investigation and prosecution. He engaged counsel experienced in engineering matters and admitted at the earliest opportunity to the allegations of misconduct. His cooperation was a significant factor in mitigation of penalty; thereby reducing cost to investigate, prosecute and hear through a single-member panel.

Counsel for the association submitted that while the facts are serious and have the potential for grave consequences to the pub-

lic and reputation of the profession, the cooperation in reaching the JRP was commendable. The penalty was considered to be within an appropriate range. The penalty under the JRP includes a portion of the total cost of the process and this is an acknowledgment of responsibility by the member.

Counsel for the member and WHCI indicated agreement with the submission. While a full hearing had originally been scheduled, the parties met and were able to resolve the joint statement of fact captured in the Fresh Notice of Hearing and agree on the joint submission to be heard before a single-member panel.

Independent legal counsel for the panel noted the established precedent for panels to consider and accept a JRP. A consideration supporting acceptance was that the JRP was entered into with the assistance of experienced counsel.

Penalty Decision

The panel deliberated, accepted the JRP, and accordingly ordered:

1. **that the member shall be reprimanded and the fact of the reprimand shall be recorded on the register;**
2. **that a summary of the findings and penalty shall be reported with names in Gazette;**
3. **that the member shall write and pass the Professional Practice Examinations, Parts A and B ("PPE"), within 12 months of the date of this hearing;**
4. **that the member shall write and pass the 98-Civ-B1 (Advanced Structural Analysis) and 98-Civ-B2 (Advanced Structural Design) ("Technical Examinations") within 18 months of the date of this hearing;**
5. **that the licence of the member shall be suspended for a period of two months and such suspension to commence on Thursday, the first day of December 2005;**

6. **in the event the member does not write and pass the PPE within 12 months of the date of this hearing, his licence and the Certificate of Authorization of WHCI shall be suspended;**
7. **in the event the member does not write and pass the Technical Examinations within 18 months of the date of this hearing, his licence and the Certificate of Authorization of WHCI shall be suspended;**
8. **in the event the member does not write and pass the PPE and Technical Examinations within 24 months of the date of the hearing, the licence of the member and Certificate of Authorization of WHCI shall be revoked;**
9. **the designation of Consulting Engineer of the member shall be revoked; and**
10. **the member shall pay the costs of the proceeding in the sum of \$5,000 within three months of the date of the hearing.**

Reasons for Penalty

The panel concluded that the penalty proposed was reasonable and in the public interest. The member cooperated with the association and, by agreeing with the facts and proposed penalty, accepted responsibility for his actions and avoided unnecessary expense for the association. The panel considered the penalty to be reasonable and publishing with names would be a general deterrent to practitioners.

The member and WHCI waived their right of appeal and following the hearing the panel administered an oral reprimand.

The written Decision and Reasons in this matter were dated December 2, 2005, and were signed by the Chair of the panel, David Robinson, P.Eng.

This matter came on for hearing with the consent of the parties before a single-member panel of the Discipline Committee on Wednesday, November 23, 2005 at the Association of Professional Engineers of Ontario (“association”) at Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Eric Desbiens, P.Eng., appeared on his own behalf.

Agreed Facts and Allegations

The allegations against Eric Desbiens, P.Eng., (“Desbiens”) were contained in a Fresh Notice of Hearing dated November 8, 2005. Both the member and counsel for the association advised the panel that agreement had been reached on the facts and that the facts, as set out in the Fresh Notice of Hearing, were accepted as accurate by the member. The relevant facts and allegations are summarized as follows:

1. Desbiens was at all material times a member of the Association of Professional Engineers of Ontario.
2. On or about July 16, 2003, the Ministry of Transportation of Ontario (MTO) awarded a contract (“Contract”) to Miller Paving Northern Limited (“Miller”) for the removal of the Blanche River Bridge and replacement with a Bailey bridge. At all material times, Desbiens was the general manager of Miller and the engineer responsible for its work on the project.
3. It was a requirement of the contract that Miller was to submit a structure removal procedure, stamped by a professional engineer, prior to the commencement of the work. The procedure was to be designed to comply with contract requirements for no debris in the watercourse or construction activity on the watercourse banks.
4. On or about September 23, 2003, Miller submitted a procedure for the removal of the subject bridge to MTO. The written procedure for the temporary structure and removal of the bridge was signed and sealed by Desbiens. The submitted procedure

Summary of Decision and Reasons

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding the conduct of:

Eric Desbiens, P.Eng.

a member of the Association of Professional Engineers of Ontario.

5. On or about September 26, 2003, MTO advised Miller in an instruction notice that there was insufficient information in the removal procedure to provide comments. The instruction notice also noted that Miller must ensure the stability of the bridge truss and the removal system throughout the operation and that there would be no environmental impacts from the removal.
6. On or about October 2, 2003, Miller removed the subject bridge. A temporary structure spanned the river and was installed beside the subject bridge. Two cranes placed the steel bridge truss onto the temporary structure. As the truss was being dragged across the temporary structure onto the top of the riverbank, the temporary structure failed and collapsed into the river below. The temporary structure was later pulled from the river.
7. On or about May 3, 2004, MTO invited Desbiens to comment on the failure of the temporary structure and provide copies of drawings and design calculations for the temporary structure. Desbiens did not provide a written response. Desbiens took the position that he was not required to respond, as he was a contractor and not a consultant. There was no specific contractual provision obligating Desbiens to respond.
8. It is alleged that Eric J. Desbiens, P.Eng.:
 - (a) designed a temporary structure that was structurally inadequate for its intended use;
 - (b) failed to comply with applicable codes and requirements for the design of the temporary structure;
 - (c) allowed the use of a structural design which he knew or should have known was not adequate and which failed under the intended use;
 - (d) breached section 12 of the *Professional Engineers Act* by providing professional engineering services to the public without a Certificate of Authorization; and
 - (e) acted in an unprofessional manner.
9. It is alleged that Eric J. Desbiens, P.Eng., is guilty of professional misconduct as defined in the *Professional Engineers Act*. “Professional misconduct” is defined in section 28(2)(b) as:

“The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.”
10. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:

- (a) *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;
- (b) *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;
- (c) *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 a practitioner;
- (d) *Section 72(2)(g)*: breach of the Act or regulation, other than an act that is solely a breach of the Code of Ethics;
- (e) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
- (f) *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.

Plea by Member

The member admitted the allegations of professional misconduct as set out in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the member’s admission was voluntary, informed and unequivocal.

Additional Evidence

Counsel for the association also introduced into evidence a video tape of the removal of the bridge on October 2, 2003, relevant portions of which were viewed during the hearing.

Decision

The panel considered the allegations, the agreed facts and also the video evi-

dence, and found that the facts support a finding of professional misconduct and, in particular, found the member to be guilty of an act of professional misconduct as defined in section 28(2)(b) of the Act and as admitted by the member in the Fresh Notice of Hearing.

Reasons for Decision

The panel accepted the agreed facts on the basis that there were no major differences of opinion between counsel for the association and the member. The member freely admitted that the allegations and facts were all substantially true and, on the basis of these facts, all matters were agreed to between the parties.

The panel concluded that the collapse of the structure would likely have been prevented if the member had focused more attention on the adequacy of the structural design and safety of the temporary structure, rather than on some presumed production economies with subsequent associated risks.

The panel viewed the allegations and the conduct of the member very seriously, especially in view of the many concerns expressed by MTO and the facts that were clearly borne out based on the video evidence.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. Counsel submitted that the proposed penalty would address the goals of general and specific deterrence. He stressed that the member had cooperated with the association.

The panel accepted the Joint Submission as to Penalty and accordingly ordered:

1. that the member shall be orally reprimanded and the fact of the reprimand shall be recorded on the register;
2. that a summary of the findings and penalty shall be reported with names in Gazette;
3. that there shall be a term, condition or limitation on the licence of the

member that he not engage in the practice of professional engineering with respect to structural engineering, save and except, that he may act as a quality verification engineer for projects for the Ministry of Transportation of Ontario;

4. that the licence of the member shall be suspended for a period of six months, such suspension to commence on November 23, 2005;
5. that the member shall write and pass the Professional Practice Examinations, Parts A and B (“PPE”) within 12 months of the date of the hearing;
6. that the licence of the member shall again be suspended if Desbiens does not write and pass the PPE within 12 months of the date of the hearing;
7. that the licence of the member shall be revoked if the member does not write and pass the PPE within 24 months of the date of the hearing; and,
8. that the member shall pay costs of the proceeding fixed in the sum of \$2,500 and payable within two months of the date of the hearing.

Reasons for Penalty

The panel concluded that the proposed penalty is both reasonable and in the public interest. The member had fully cooperated with the investigation and, by agreeing to the facts and a proposed penalty, had accepted full responsibility for his actions. In light of the panel’s penalty decision, the panel’s decision and reasons shall be published in the official publication of the association together with the name of the member pursuant to section 28(5) of the Act.

At the conclusion of the hearing, the member provided a waiver of appeal and the panel then administered the reprimand.

The written Decision and Reasons in this matter were dated December 7, 2005, and were signed by the Chair of the panel, Jim Lucey, P.Eng.

This matter came on for hearing before a panel of the Discipline Committee of the Association of Professional Engineers of Ontario (“association”) at Toronto on Monday, the 5th day of December 2005. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Mohammad Nasiruddin, P.Eng., was represented by George Glezoz of Lerner LLP.

The Allegations

The allegations against Mohammad Nasiruddin, P.Eng., (“Nasiruddin”) as set out in the Fresh Notice of Hearing dated November 9, 2005 were as follows:

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

1. Nasiruddin was at all material times a member of the Association of Professional Engineers of Ontario.
2. In April 2002, the Ministry of Transportation of Ontario (“MTO”) awarded Contract No. 2002-2000 (“Contract”) to Graham Brothers Construction Limited (“GBC”) for improvements to Highway 401 between Renforth Drive and Highway 427.
The work included the replacement of two overpasses that required the construction of several pier footings, including Pier Footing PC2 South. The drawings for the overpasses were stamped by A.H. Hachborn, P.Eng., (“Hachborn”) and M.W.M. Ibrahim, P.Eng., of Marshall Macklin Monaghan (“MMM”). The contract drawings included:
 - (a) Sheet No. 504, *Highway 401/27 Overpass EBL Foundation Layout*; and
 - (b) Sheet No. 505, *Highway 401/27 Overpass Foundation Reinforcing 1*.

In accordance with the terms of the contract, GBC was required to provide the services of a quality verification engineer (QVE) to confirm that specific working drawings and components of the work were in general conformance with the requirements of the contract documents. Nasiruddin was appointed QVE for the reinforcing steel in Pier Footing PC2 South. The con-

Summary of Decision and Reasons

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding the conduct of:

Mohammad Nasiruddin, P.Eng.

a member of the Association of Professional Engineers of Ontario.

- tract was administered on behalf of MTO by Morrison Hershfield Ltd. (“MHL”).
3. On November 19, 2002, prior to the placement of concrete in Pier Footing PC2 South, MHL expressed concerns to the steel placement workers of GBC that the placement of reinforcing steel was not in accordance with the design drawings.
4. Nasiruddin arrived on site the same day. Nasiruddin directed the steel placement workers of GBC to include additional reinforcing steel in the bottom of the footing to compensate for piles that were out of position or slightly twisted. This direction was given without the knowledge or approval of the design engineer or the MTO.
5. Nasiruddin issued a sealed Certificate of Conformance, dated November 19, 2002, for the reinforcing steel placement in the footing stating that the reinforcing steel placement had been inspected and the work was carried out in general conformance with the stamped drawings and contract drawings. He included a note on the certificate indicating: “Four extra bars were provided in the bottom to compensate for a slightly twisted pile in the centre. Drawing #138-1-01.”
6. After the receipt of the Certificate of Conformance, and other supporting documents from GBC, Yen-Le (“Yen-Le”) signed the Notification of Placement of Structural Concrete form and the concrete placement was carried out in the footing, beginning at approximately 3:00 p.m. on November 19, 2002.
7. Following placement of the concrete, Yen-Le identified his concerns to the contract administrator, Terry Choo-Kang (“Choo-Kang”), of MHL.
8. At approximately 6:00 p.m. on November 19, 2002, Choo-Kang issued Instruction Notice No.121, with a copy of the Certificate of Conformance attached, to Alfredo Maggio, P.Eng., (“Maggio”) manager of highways for GBC, expressing concern that the placement of reinforcing steel was altered from the arrangement shown in the contract drawings. Choo-Kang stated in the instruction notice that: “This is considered a major departure from the design in that the capacity of the footing may have been significantly altered.” He also stated that the Certificate of Conformance did not fully reflect the changes indicated and, therefore, was considered unacceptable. He directed Maggio to look into the matter that was currently being reviewed by Hachborn and Chris Sadler, P.Eng., (“Sadler”) senior structural engineer of MTO.

9. Nasiruddin provided a response to Instruction Notice No. 121 by letter to Maggio dated November 21, 2002, which included the following:
- “We would like to clarify that there were no changes to the basic placement of the reinforcing steel. Due to a slight twist in the centre pile, the bottom steel had to be moved leaving a bigger spacing between the bottom bars. Therefore these extra bars were provided to ensure proper spacing and avoid any gap in the continuity of the bottom mat. We are sure that these extra bars have added to the structural strength of the footing.”
10. Maggio forwarded Nasiruddin’s response to Choo-Kang, under cover of letter dated November 22, 2002, summarizing that the additional reinforcing steel bars were to fill some gaps that had developed as a result of the piles not being located exactly as per contract, but still within tolerance.
11. By letter dated November 22, 2002 to Jason Raymond, Q.C., plan administrator of GBC, and entitled *QC Plan Deviations for Incorrect QVE Certification of Reinforcing Steel Placement*, Choo-Kang stated: “The role of the QVE is to ensure conformance with the contract documents, and not to instruct on any field modification of the proposed design. Modifications to the design (in this case the modification to the arrangement and addition of reinforcing steel) is the responsibility of the design engineer. Any modifications are to be approved and included as part of the contract documents, and then the QVE can certify as per the approved changes. Accordingly, it is evident that the QVE did not allow for this process to take place.” Choo-Kang attached a copy of the sketch of reinforcing steel drawn by Yen-Le. Yen-Le drew the sketch after he returned to the office on November 19, 2002, based on his recollection of the layout. Choo-Kang also requested a copy of the as-built drawing to confirm the location of the piles and the reinforcing steel placement arrangement in the footing.
12. By fax dated November 27, 2002, Frank Steblay (“Steblay”) of GBC provided Choo-Kang a copy of Nasiruddin’s cover letter dated November 27, 2002 with a layout sketch of the as-built reinforcing steel for Pier Footing PC2 South location. Choo-Kang forwarded both the layout sketch of the as-built reinforcing steel and Nasiruddin’s cover letter of November 27, 2002, to Sadler.
13. On December 2, 2002, Sadler faxed Nasiruddin’s sketch of the as-constructed reinforcing steel arrangement to Hachborn for comments. By inter-office memo to Sadler dated December 2, 2002, Hachborn responded with the following comments and options:
- “The capacity under U.L.S. loading meets OHBDC requirements”;
 - “The capacity under S.L.S loading does not meet OHBDC requirements (approx. 88 per cent)”;
 - “We have concerns regarding the consolidation of concrete around and in contact with the layer of six (6) 30M bars if these bars were placed in one layer”;
 - Option 1: “Additional horizontal reinforcing steel could be grouted into core drilled holes”;
 - Option 2: “Additional horizontal reinforcing steel could be added when the pile cap is partially demolished to provide additional capacity.”
- Hachborn also recommended that testing should be carried out to verify that there was adequate consolidation of the concrete around the 30M bars.
14. Sadler provided, through the contract administrator, a copy of Hachborn’s recommendations to GBC, who chose option 2 to partially remove the concrete at the footing.
15. The concrete was removed on December 4, 2002. The position of the piles and the reinforcing steel was recorded in a photograph. The location of the reinforcing steel differed from both the contract drawings and Nasiruddin’s as-built sketch, thus contradicting both the Certificate of Conformance and Nasiruddin’s stamped letter.
16. By letter to Nasiruddin dated July 15, 2003, Dr. D.G. Manning, P.Eng., (“Manning”) construction engineer of MTO, advised that the MTO’s Qualification Committee had reviewed the documentation alleging professional deficiencies in the services that Nasiruddin provided as the QVE under the terms of Contract 2002-2000 with GBC. Manning invited Nasiruddin to comment.
17. By letter dated August 12, 2003, Nasiruddin responded to Manning stating that he found that the steel had been placed in general conformance with the contract requirements and that the non-reinforced space was evident in the base area of the footing. He recommended that reinforcing bars be added to the bottom base knowing that Note 2 of Contract Sheet 505 would be met. Note 2 stated: “bottom reinforcement to fit with equal spaces between piles.”
18. In summary, it appears that Nasiruddin:
- issued a Certificate of Conformance stating that the reinforcement was in general conformance with the contract documents when, in fact, it was not;
 - directed the placement of four additional steel reinforcing bars without the approval of the design engineer or MTO;
 - provided a modified design that did not meet the requirements of the *Canadian Highway Bridge Design Code*;
 - provided a signed and stamped letter stating that there were no changes to the basic placement of the steel reinforcing bars when, in fact, the reinforcing steel was not in general conformance with the contract documents and extra steel reinforcing bars were added to the footing;

- (e) inappropriately directed the contractor to modify steel reinforcing bar placement;
- (f) failed to carry out his duty as quality verification engineer by failing to identify the non-conforming work;
- (g) failed to follow the procedure for non-conforming work as per contractual document SP 199S48: "Quality Verification Engineer Services"; and
- (h) acted in an unprofessional manner.

19. By reason of the facts aforesaid, the Association of Professional Engineers of Ontario alleged that Nasiruddin was guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

20. "Professional misconduct" is defined in section 28(2)(b) as:
 "The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."

21. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:

- (a) *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;
- (b) *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;
- (c) *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 a practitioner; and
- (d) *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 engi-

neering profession as disgraceful, dishonourable or unprofessional.

Counsel for the association advised the panel that the parties had agreed upon the facts and that the facts contained in the Fresh Notice of Hearing could be treated as an Agreed Statement of Facts ("ASF").

Plea by Member and/or Holder

Nasiruddin admitted the allegations set out in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the member's admission was voluntary, informed and unequivocal.

Decision

The panel considered Nasiruddin's admission and found that the facts supported a finding of professional misconduct and, in particular, found that Nasiruddin's actions constituted professional misconduct as set out in the Fresh Notice of Hearing. The panel did not find that these actions were disgraceful or dishonourable in accordance with section 72(2)(j) of Regulation 941.

Reasons for Decision

The panel accepted Nasiruddin's plea which, along with the ASF, sustained the finding of professional misconduct.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon, with the exception of the issue of whether the panel's decision would be published with or without names. The Joint Submission as to Penalty was as follows:

1. Nasiruddin shall be reprimanded and the fact of the reprimand shall be recorded on the Register;
2. The decision and reasons of the Discipline Committee shall be published in Gazette;
3. Nasiruddin shall write the Professional Practice Examination, Parts A and B ("PPE") on December 17, 2005;
4. If Nasiruddin does not pass the PPE, there shall be a term, condition and limitation on his licence that he not

act or serve as a quality verification engineer for Ministry of Transportation of Ontario projects;

5. The term, condition and limitation set out in paragraph 4 above shall remain on Nasiruddin's licence until such time as he again writes and passes the PPE;
6. That in the event Nasiruddin fails to write and pass the PPE within 12 months of the date of the discipline hearing, his licence to engage in the practice of professional engineering shall be suspended;
7. That in the event Nasiruddin fails to write and pass the PPE within 24 months of the date of the discipline hearing, his licence to engage in the practice of professional engineering shall be revoked; and
8. That Nasiruddin shall pay costs of the disciplinary proceeding fixed in the sum of \$2,500 within three months of the date of the hearing.

The panel heard submissions from counsel for the association and for Nasiruddin on the issue of whether the panel's decision would be published with or without names.

Penalty Decision

The panel considered the cases provided as precedents on the issue of publishing with names and noted that except for one decision, they were all rendered after the Council for the association passed a motion that discipline decisions should be published with names. While most of the decisions in the 16 precedents provided cited general deterrence as a reason for the penalties, only one specifically addressed why the panel exercised its authority to order that it be published without names. That reason, that the actions were not that serious, does not apply in the Nasiruddin matter.

The panel noted that the decisions to publish without names were rendered in stipulated hearings, contested hearings, and when there were Agreed Statements of Facts and Joint Submissions as to Penalty. In addition, the member of this

panel was not a member of any of the panels in the precedent cases.

The panel considered the submission on behalf of and by Nasiruddin that publishing with names would be embarrassing and would impair his ability to act as a mentor for other professional engineers or engineers-in-training. In addition, the panel considered the evidence provided that shows Nasiruddin has over 30 years of experience as a professional engineer in Ontario without a discipline decision against him, that he is remorseful, that he is of good character, that by agreeing to the facts and a proposed penalty accepted responsibility for his actions, and has avoided unnecessary expense to the association.

The panel decided that embarrassment was not a mitigating factor since any defendant could make this claim, but since no measure was proposed for this factor, the effect of accepting embarrassment as a mitigating factor would be to prevent any decision being published.

The panel considered the submission of the association that publishing discipline decisions with names is consistent with the direction provided by the Council for the association, that it is consistent with the trend for such decisions in other professional associations in Ontario, that it is required for general deterrence to other members of the association, and that it is required for transparency in the public interest.

The panel weighed the public interest and mitigating factors by assessing that compliance with most of the factors was required before considering whether to publish. Then, the factor to consider was whether any other person would be significantly impacted by the discipline decision or whether there is significant detriment to the public interest to publish with names.

The panel concluded that the proposed penalty, as a whole, is reasonable and in the public interest. In particular, the panel concluded that the penalty is appropriate in terms of general deterrence to the members of the profession, of specific deterrence to Nasiruddin that is proportionate to the seriousness of his actions, will reinforce Nasiruddin's rehabilitation, and will ensure that the public is protected.

The panel accepted the Joint Submission as to Penalty and accordingly ordered that:

1. Nasiruddin be reprimanded and the fact of the reprimand shall be recorded on the Register;
2. the decision and reasons of the Discipline Committee be published with names in Gazette;
3. Nasiruddin write the Professional Practice Examination, Parts A and B ("PPE") on December 17, 2005;
4. if Nasiruddin does not pass both parts of the PPE, there shall be a term, condition and limitation on his licence that he not act or serve as a quality verification engineer for Ministry of Transportation of Ontario projects;
5. the term, condition and limitation set out in paragraph 4 above shall remain on Nasiruddin's licence until such time as he again writes and passes the PPE;
6. in the event Nasiruddin fails to write and pass the PPE within 12 months of the date of the discipline hearing, his licence to engage in the practice of professional engineering shall be suspended;
7. in the event Nasiruddin fails to write and pass the PPE within 24 months of the date of the discipline hearing, his licence to engage in the practice of professional engineering shall be revoked; and
8. Nasiruddin pay costs of the disciplinary proceeding fixed in the sum of \$2,500 within three months of the date of the hearing.

Nasiruddin waived his right to appeal and the reprimand was administered immediately following the hearing.

The written Decision and Reasons in this matter were dated March 15, 2006, and were signed by the Chair of the panel, Glenn Richardson, P.Eng.

Discipline Hearing Schedule

This schedule is subject to change without public notice. For further information contact PEO at 416-224-1100; toll free 800-339-3716.

Any person wishing to attend a hearing should contact the complaints and discipline coordinator at extension 1072.

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 Certificate of Authorization holder should be made based on the allegations listed herein.

September 11-15, 2006

Rene G. Caskanette, P.Eng., and Caskanette & Associates (C&A)

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

September 11-15, 2006

Jeffrey D. Udall, P.Eng.

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

Notice of Revocation—John S. Ivanyi and Conengr Inc.

At a discipline hearing held on June 6, 2006, at the offices of the association in Toronto, the Discipline Committee ordered the revocation of the licence of John S. Ivanyi after finding him guilty of professional misconduct. Similarly, the Discipline Committee ordered the revocation of the Certificate of Authorization of Conengr Inc. after finding it guilty of professional misconduct. Ivanyi and Conengr were found to have engaged in the practice of professional engineering, and to have offered and provided professional engineering services to the public, at a time when their respective licence and Certificate of Authorization were suspended. Ivanyi and Conengr waived their right of appeal and therefore the revocations took effect as of the date of the hearing.

The Decision and Reasons of the Discipline Committee will be published in due course.