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 LLOYD 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.

This matter came on for hearing before a panel of the Discipline Committee on September 25, 2007 at the Association of Professional Engineers of Ontario (association) in Toronto. The association was represented by Neil J. Perrier. William Lloyd Haas, P.Eng., and William Haas Consultants Inc. were represented by Gary W. Gibbs. Johanna Braden acted as independent legal counsel (ILC).

THE ALLEGATIONS

Association counsel tendered the Notice of Hearing as Exhibit 1. The allegations contained in the Notice of Hearing went into considerable background detail and contained multiple allegations of professional misconduct against William Haas (Haas) and against William Haas Consultants Inc. (WHCI). It also alleged that Haas was incompetent.

Association counsel advised that, after much fact-finding and discussion, including reviewing many expert reports, the association was withdrawing certain allegations and, instead, proceeding only with more limited allegations of professional misconduct based on specific facts. A Statement of Agreed Facts was tendered as Exhibit 2.

The Statement of Agreed Facts reads as follows:

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 responsible for the services provided by WHCI.

3. In or about October 2004, the Town of Oakville (town) received building permit application drawings for a four-storey building at 459 Kerr Street, sealed and signed by Haas.

4. On October 4, 2004, Haas signed a General Review Commitment Certificate (GRCC) for the discipline responsibilities of structural and architectural for the project.

5. On March 31, 2005, Haas submitted further sealed architectural and engineering drawings to the building department of the town for the purpose of obtaining foundation permits for 459 Kerr Street for the proposed building. The sealed structural drawings did not contain any notations or limitations that reflected the intention of Haas. In that facsimile transmission, Haas promised to provide the town with further details

and specifications, including structural details, prior to construction.

6. On or about March 31, 2005, the town issued a building permit conditional upon the receipt of additional information from Haas on the project. This additional information was to be provided to the town for approval prior to construction. A note was also written on all structural drawings emphasizing this condition. As stated in paragraph 4, Haas executed the GRCC for the project and was responsible for general review of the structural and architectural construction aspects of the building.

7. On or about September 29, 2005, the subject building was under construction and a section of the exterior masonry wall from the top floor level collapsed. The masonry crushed four vehicles in the adjacent used car parking area. It has been agreed by the experts, who have reviewed this matter at the request of PEO and the member, that the likely cause of the collapse of the section of the exterior masonry wall from the top level floor was construction-related as opposed to design-related and, therefore, fell outside Haas' scope of responsibility.

8. When the town investigated the collapse, it discovered that a partial basement had been constructed that was not shown on the structural drawings, and the town was concerned that the basement footings might undermine the building footings.

9. On October 7, 2005, the town sent a letter to Haas by facsimile asking for additional information and to verify the footings situation.

10. On October 19, 2005, Haas sent the town a sealed sketch showing that the adjacent footings were constructed as stepped down, and he indicated that there were no structural concerns and there was no undermining.

11. Arising from the town's investigation into the collapse, it was ultimately determined that the initial March 31, 2005 set of sealed structural drawings submitted to the town were incomplete and lacked structural detail. Haas has asserted that the intention of the sealed structural drawings was for foundation permit purposes only.

12. As an example, the March 31, 2005 sealed drawings:
(a) were incomplete and lacked full structural detail;
(b) contained insufficient information to conduct a lateral load resistance analysis for wind and seismic loads;
(c) indicated that wood wall studs close to joist bearings were heavily loaded, while studs located between joist bearings supported much less load. The drawings also provided no detail regarding how studs were to be located relative to joist bearings, which could have resulted in a possible ratio of load effect to resistance of 2.16 in bearing and 1.17 for column strength (i.e. in excess of the maximum: 1.00). In that regard, Haas omitted to detail in the drawings that they were for schematic purposes only and that actual construction of the floor system was to be governed separately by sealed Hambro drawings, which is a pre-engineered system; and
(d) contained no provision to accommodate for horizontal deflection at the bearing caused by the roof trusses. In that regard, Haas omitted to detail in the drawings that they were for schematic purposes only and that actual construction of the roof trusses was to be governed separately by sealed MiTek drawings, which is a pre-engineered system.

13. The deficiencies in the March 31, 2005 drawings were ultimately addressed through iterative exchanges of information and revised drawings between Haas and the town, both before and after the September 29, 2005 wall collapse. The records retention and document revision control practices of Haas and WHCI exacerbated the length of time required to address the various concerns and deficiencies.

14. Haas and WHCI agree that the facts stated above constitute professional misconduct on the part of Haas and WHCI.

15. 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, bylaws and rules in connection with the 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 engineering profession as disgraceful, dishonourable or unprofessional.

On the last point, with regard to section 72(2)(j) of Regulation 941, association counsel advised that he was only seeking a finding that Haas and WHCI were unprofessional, and was not seeking a finding that they acted disgracefully or dishonourably.

PLEA BY MEMBER AND/OR HOLDER

Haas, on behalf of himself and WHCI, admitted the allegations contained in the Statement of Agreed Facts. The panel conducted a plea inquiry and was satisfied that Haas' admission was voluntary, informed and without reservation.

DECISION

The panel considered the Statement of Agreed Facts, the member's plea and admissions, and the submissions of counsel.

The panel found that the facts supported a finding of professional misconduct and, in particular, found that Haas and WHCI committed an act of professional misconduct pursuant to Regulation 941 of the *Professional Engineers Act* and, in particular, committed professional misconduct pursuant to sections 72(2)(a), 72(2)(d) and 72(2)(j).

With respect to the finding of professional misconduct pursuant to section 72(2)(j), the panel found that Haas and WHCI acted unprofessionally.

The panel made no finding of professional misconduct pursuant to section 72(2)(b).

REASONS FOR DECISION

The member admitted that he provided sealed architectural and engineering drawings for the purpose of obtaining foundation permits. These sealed structural drawings had no notation or limitation reflecting this intention. The drawings were subsequently found to be incomplete as described in paragraph 12 of the Agreed Statement of Facts. Haas issued revised drawings and provided further information to remedy this, but dealing with this took a long time.

During this time, a section of the exterior masonry wall collapsed, crushing four vehicles in a car park. Experts acting for both parties agree that this collapse was not a design issue, but construction related, which was not within Haas' scope of responsibility. The panel, therefore, made no finding of professional misconduct pursuant to section 72(2)(b) since material presented in the Statement of Agreed Facts, and consistent with expert testimony, showed that Haas did not willfully fail to make reasonable provisions for public safety that could have caused the incident.

PENALTY

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. The Joint Submission as to Penalty provides as follows:

1. Haas and WHCI shall be reprimanded and the fact of the reprimand shall be recorded on the register;

2. Haas and WHCI shall submit, within four months of the date of the hearing, a Quality Assurance Plan (QAP), acceptable to the registrar, to be implemented by Haas and WHCI regarding the engineering practice of Haas' and WHCI's provision of engineering services to the public. The plan shall address, but shall not be limited to, issues regarding the completeness

of drawings submitted for building permit application, methods to document and control revisions to drawings that have been issued, the organization and storage of physical and electronic copies of drawings that have been issued, the tracking of delivery of documents that have been sent to a client or third party, and the use and application of Haas' seal;

3. Haas and WHCI shall undergo a series of quality control practice inspections in accordance with the attached terms of reference dated September 25, 2007; and

4. There shall be publication of a summary of the Decision and Reasons in Gazette, including reference to names.

The parties had not reached agreement with respect to costs of the proceeding and counsel made submissions on that issue.

Association counsel explained that the joint submission proposed that the member and WHCI would draw up a QAP to be submitted to the registrar of the association. Following this, there would be a series of quality control inspections to determine that the member and WHCI were conducting their practice in accordance with the plan, and to ensure that they were conducting their practice in accordance with good engineering practices and standards. Details of the inspection process were covered in the terms of reference. The inspector would report to the registrar within 30 days of the start of the inspection. This would ensure that if there were any concerns about the practice, they would be brought to the registrar's attention quickly and could be corrected. The terms of reference also stipulated that the fees and expenses for the practice inspections were to be entirely paid by the member and WHCI, up to a limit of $5,000.

Association counsel argued that in this case, protection of the public and rehabilitation of the member were linked concepts. Rehabilitating the member and ensuring that he and WHCI met the standards of the profession was in the public interest.

Association counsel advised the panel that the member had been before a previous discipline panel with a finding of misconduct requiring him to write examinations, suspending his licence for two months, and ordering that he pay $5,000 in costs. The member met all the terms of that penalty order. The facts in the case being considered took place before the previous finding of misconduct, and so the member's discipline history was not as aggravating a factor as it might be in other cases.

Association counsel submitted that the joint penalty submission should ensure the public would not be at risk in the future regarding the member's practice. The complete practice will conform to the standards required by the engineering profession and by the association. The penalty was significant, requiring a thorough re-examination of the member's practice. Considerable time and resources would be involved in developing the QAP and the practice inspection. The joint submission was reached through engineers instructing association counsel on behalf of PEO, working with the member and his experienced counsel, and the panel should accept it.

As to costs, association counsel advised that he was bound by a decision of council not to enter into negotiations about costs with members facing discipline and, therefore, that formed no part of the Joint Submission as to Penalty. On the issue of costs, association counsel submitted that $5,000 would be an appropriate award. This represented only part of the actual cost to the association.

Counsel for the member adopted the submissions of association counsel with respect to the joint submission. He further advised that the member had practised for 39 years with an unblemished record. He co-operated throughout the investigation and prosecution. He recognized his professional responsibilities, admitted to the allegation of misconduct at the earliest opportunity, and engaged counsel experienced in engineering matters. They held early "without prejudice" meetings and tabled expert reports. The two parties moved to rehabilitate the member so he would never be back again before a discipline panel. That would ensure that he would be a better practitioner and, thus, protect the public.

Counsel for the member submitted that there will be publication with names; there was no intent of the member to hide. However, this may have financial repercussions for the member. The member has already incurred significant costs to pay for experts and lawyers. He would now have a further investment of both time and resources to prepare the QAP and to pay for and undergo the practice

inspections. Counsel submitted that, in view of all these factors, a cost award of perhaps $1,000 to $2,000 might be appropriate.

In reply, counsel for the association argued that the costs of the QAP and practice inspections were not relevant to a cost award in this case. He argued that a $5,000 cost award, similar to that awarded in the member's previous discipline case, would be appropriate.

ILC advised the panel that the goal of the penalty decision should be to protect the public, maintain high professional standards, and preserve public confidence in the engineering profession. The ideal penalty should provide for general deterrence, specific deterrence and rehabilitation or remediation. No single principle should guide the decision. All the factors, both mitigating and aggravating, should be considered.

In this case, ILC advised that a very important factor the panel must consider is that the parties agreed on a Joint Submission as to Penalty. The panel had the discretion to reject or vary the joint submission, but should only do so if the panel had a very persuasive reason. The joint submission should be considered as a whole, without tinkering with each individual provision.

ILC advised that the panel should consider the following:

1. Is the joint submission within the range of penalties that might be expected had this come before the panel as a fully contested hearing? Is it somewhere in that range, or is it so far outside that it would shock the public and bring the administration of the association into disrepute?;

2. Is the public interest being served and protected by the joint submission? ILC advised that on this point, the panel should consider the fact that experienced counsel, representing opposing interests and knowing much more detail about the case than the panel, had been able to reach an agreement. This suggests, in and of itself, that an appropriate balancing of interests has occurred;

3. ILC also advised that when considering the public interest, the panel should have regard for the fact that it is in the public interest to have disputes resolved quickly. It saves significant time and expense and spares witnesses the inconvenience of testifying. If this matter had been fully contested, it is clear there would have been many expert reports and it would have been a cumbersome matter. Refusing to accept the joint submission, assuming that it is in a reasonable range, may make parties in future cases reluctant to reach agreement; and

4. Finally, ILC noted that the act gives the panel the power to make the order requested and that a reprimand may be recorded on the register for either a stated or unlimited period of time. On this point, counsel for the parties agreed that the intent was for the reprimand to be recorded on the register for an unlimited time.

PENALTY DECISION

The panel accepts the Joint Submission as to Penalty and accordingly orders:

1. Haas and WHCI shall be reprimanded and the fact of the reprimand shall be recorded on the register;

2. Haas and WHCI shall submit, within four months of the date of the hearing, a Quality Assurance Plan (QAP) acceptable to the registrar, to be implemented by Haas and WHCI regarding the engineering practice of Haas' and WHCI's provision of engineering services to the public. The plan shall address, but shall not be limited to, issues regarding the completeness of drawings submitted for building permit application, methods to document and control revisions to drawings that have been issued, the organization and storage of physical and electronic copies of drawings that have been issued, the tracking of delivery of documents that have been sent to a client or third party, and the use and application of Haas' seal;

3. Haas and WHCI shall undergo a series of quality control practice inspections in accordance with the terms of reference dated September 25, 2007; and

4. There shall be publication of a summary of the Decision and Reasons in Gazette, including reference to names.

The panel made no order as to costs.

REASONS FOR PENALTY DECISION

The panel unanimously accepted the Joint Submission as to Penalty. The panel found that the reprimand was appropriate, serving as both a general and specific deterrent, as it included Haas being recorded in the register, along with the fact that the summary of the Decision and Reasons was to be published in Gazette with names.

The panel made no order as to costs as the panel found that the public interest is safeguarded by requiring Haas to develop a QAP to be approved by the registrar. This plan will also meet the goal of rehabilitation of the member. The panel considered that Haas will certainly incur both human and financial costs when developing a viable and acceptable QAP. The panel concluded that imposing an additional cost would only serve to compromise the goal of rehabilitation and the progress of developing the QAP.

The written Decision and Reasons were signed by J.E. (Tim) Benson, P.Eng., on October 21, 2008, as the chair on behalf of the other members of the discipline panel: Ken Lopez, P.Eng., and Henry Tang, P.Eng.

PEO OBTAINS ORDER AGAINST STONEY CREEK-AREA MAN

On January 21, 2009, Professional Engineers Ontario obtained an order against Vincent M. Brake, requiring that he refrain from representing that he is a professional engineer. Brake must cease from holding himself out as practising professional engineering and from engaging in the business of providing professional engineering services to the public.

Brake cannot use the titles "engineer," "professional engineer," and "P.Eng.," and must stop using a seal that would lead to the belief that he is a professional engineer. A PEO investigation revealed that Brake had been using an unauthorized seal.

The order was obtained under the *Professional Engineers Act* in the Ontario Superior Court of Justice in Toronto. Brake was also ordered to surrender the offending seal and pay costs to PEO in the amount of $2,500.

Brake has never held a licence to practise professional engineering or a Certificate of Authorization in Ontario.

Under the act, a public protection statute, only individuals who are licensed as professional engineers by PEO may represent themselves as professional engineers or engage in the practice of professional engineering. The titles "professional engineer," "P.Eng.," or "engineer" may be used only by PEO licence holders.

The investigation resulted from a complaint to PEO from a former employer of Brake's, who hired him based, in part, on Brake's representation that he was a professional engineer.

During the course of his employment, Brake sealed a drawing with an unauthorized seal identical to those PEO issues to licensed professional engineers.

In addition, PEO's investigation revealed that Brake had prepared and sealed two pre-start safety reports for a client. These reports had to be redone by a licensed professional engineer when it was determined that Brake was not licensed.

The investigation resulted in PEO obtaining the order.

Neil Perrier of Perrier Law Professional Corporation represented PEO on the application.

Honourable Madam Justice Stewart found Brake had breached several sections of the act and ordered that he refrain from engaging in the practice of professional engineering and from holding himself out as engaging in the business of providing to the public in Ontario services that are within the practice of professional engineering unless he obtains a licence or a Certificate of Authorization from PEO.

Eric Newton, manager, discipline, registration and enforcement at PEO, told *Engineering Dimensions* the success of this action was due, in large part, to the co-operation of Brake's former employer and others throughout the investigation and subsequent legal proceedings.

NOTICE OF LICENCE REVOCATION–SERDAR KALAYCIOGLU

At a hearing on February 17, 2009, the Discipline Committee ordered the revocation of the licence of SERDAR KALAYCIOGLU, after finding him guilty of professional misconduct. Kalaycioglu had been convicted in the United States of 11 counts of wire fraud and one count of conspiracy to commit wire fraud, and is currently serving a 27-year prison sentence in that country. Further, pursuant to its powers under section 29(2) of the *Professional Engineers Act*, the Discipline Committee ordered that the revocation take effect immediately, regardless of any appeal of the decision that may be launched by Kalaycioglu. The written decision and reasons of the Discipline Committee will be published in due course.

ENFORCEMENT EXPLAINED

This Q & A column aims to educate members about some of the issues PEO faces in protecting the public against unlicensed individuals who engage in the practice of professional engineering, and in enforcing the title protection provisions of the *Professional Engineers Act*.

By Steven Haddock

Q. What are the rules for the use of the word "engineer" by non-profit associations, for-profit organizations, clubs and other non-business organizations in Ontario?

A. The rules for using the words "engineer" and "engineering" for a non-profit organization are actually more strict than those for for-profit corporations. A for-profit corporation may use the word "engineer" if the use does not suggest the practice of professional engineering. However, a non-profit requires PEO's consent to use either "engineer" or "engineering," in all cases.

PEO receives between five and 10 requests from non-profit organizations every year to use "engineer" or "engineering," and consents in most cases. Consent is usually contingent on the organization serving solely as an organization to promote some form of engineering, or the professional and personal development of people with an engineering education. PEO usually attaches the condition that the organization not offer any type of engineering services. Consent is required either for incorporated associations or non-incorporated associations operating under a business style.

PEO's approach to granting consent is very broad. An organization does not have to be controlled by professional engineers or be set up for the promotion of professional engineering. The majority of requests that PEO receives are from organizations set up to serve engineering graduates from a particular country or ethnic background. In one case, PEO granted consent to an organization that is a branch of a larger organization set up for the benefit of graduates of one particular engineering school.

The primary question PEO asks is whether the existence of the organization is contrary to the purposes for which PEO was formed. If the new organization can exist without interfering with PEO's mandate, PEO will readily provide consent for the use of the words. PEO also won't object to the use of "engineer" or "engineering" where the use by non-professionals is historic, or is allowed by other Ontario legislation, such as operating engineers.

Use of the term "professional engineer" is a bit more controlled. There are only a few non-profit organizations in Ontario, other than PEO, that are allowed to use this term (most notably, the Ontario Society of Professional Engineers).

In addition to its other criteria, PEO has to ensure the proposed name will not lead to the organization being confused with PEO.

PEO restricts the use to organizations that are likely to be controlled by professional engineers, or are set up solely for the promotion of professional engineering.

There have been cases where PEO has challenged the name of a non-profit organization, usually because it is unsure why the organization was set up in the first place. Non-profit organizations that contain the word "engineering" in their name but appear to be set up for the benefit of other for-profit entities are generally not allowed to continue using the words. PEO has successfully challenged such uses with the Ministry of Government and Consumer Services.

PEO objects to the use of any name that appears to belong to an organization that certifies or accredits engineering abilities (which would interfere with PEO's mandate).

The current law regarding corporate names dates back to the early 1980s. Organizations that were incorporated or registered prior to the current law coming into effect are permitted to use "engineer" and "engineering" in their names without interference from PEO. This includes most of the historical Canadian engineering associations, many of which predate the formation of PEO itself.

These rules do not apply to nationally incorporated associations, which come under the control of Engineers Canada. Federal incorporation rules, however, do not allow any corporation to use a name that would make it appear to be related to Engineers Canada or any of the provincial engineering associations.

Please report any person or company you suspect is violating the act. Call the PEO enforcement hotline at 416-224-9528, ext. 1444 or 800-339-3716, ext. 1444. Or email your questions or concerns to enforcement@peo.on.ca.

Professional Engineers
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Order form is online at www.peo.on.ca

Publications Order Form

	$	No.	Total
The Professional Engineers Act, R.S.O. 1990, Chapter P.28	N/C		
Ontario Regulation 941/90	N/C		
Ontario Regulation 260/08	N/C		
By-law No. 1	N/C		
Practice Guidelines			
Acting as Contract Employees (2001)	10.00		
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Acting Under the Drainage Act (1988)	10.00		
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Use of Agreements Between Clients & Engineers (2000) (including sample agreement)	10.00		
Use of Computer Software Tools Affecting Public Safety & Welfare (1993)	10.00		
Use of the Professional Engineer's Seal (2008)	10.00		
Business Publications			
Agreement Between Prime Consultant & Sub-Consultant (1993) per package of 10	10.00		
Licensing Guide & Application for Licence (2007)	N/C		
Required Experience for Licensing in Ontario (2007)	N/C		
Schedule of Fees for Engineering Services (2001)	10.00		

Fax to: 416-224-8168 or 800-268-0496
Phone: 416-224-1100 or 800-339-3716
Mail to: Professional Engineers Ontario
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Membership #

February 2009