Professional Engineers
Ontario

Gazette

Volume 23, No. 3
May/June 2004

REGULATORY COMPLIANCE DEPARTMENT, PEO

Published by
the Association of
Professional Engineers
of Ontario

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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

Scot S. McCavour, P.Eng.

a member of the Association of Professional Engineers of Ontario and

McCavour Engineering Limited

a holder of a Certificate of Authorization

BETWEEN

The Association of Professional Engineers of Ontario and

Scot S. McCavour, P.Eng., and McCavour Engineering Limited

Summary of Decision and Reasons

This matter came for hearing before a panel of the Discipline Committee on May 20, 2003, at the Association of Professional Engineers of Ontario (PEO) in Toronto. PEO was represented by Michael Royce of Lenczner Slaght Royce Smith Griffin, and Scot S. McCavour, P.Eng. (McCavour) and McCavour Engineering Limited (MEL) were represented by Gary Gibbs of Stieber Berlach Gibbs.

Overview

The matter involved a structural design using a proprietary building system produced by Mega Building Systems Limited (Mega) for a superstructure forming part of a retirement complex in the Town of Markham. The owner was the Renaissance Community Corporation (owner), the builder was Daniels Lifestyle Communities Ltd. The architect was A. Robert Murphy Architect Inc. Structural engineers for the substructure, including foundations, parking garage, and the ground floor were Daniel C. Connolly, P.Eng., and Kazmar Associates Limited.

The owner retained Mega. Mega retained McCavour and MEL to be the engineers for the superstructure.

John Stephenson Consultants Ltd. (JSCL) was retained by the owner to ensure that all final structural drawings met with the approval of the Town of Markham Building Department.

Following modifications to the drawings and certification from JSCL, the drawings were approved by the Town of

Markham Building Department. The owner subsequently decided not to use the Mega proprietary system and the contract between Mega and McCavour and MEL was terminated.

During the approval process, McCavour and MEL submitted stamped drawings to the Town of Markham Building Department for approval. Many of the details shown were not acceptable to the Town of Markham or to JSCL. McCavour and MEL cooperated by making changes until a building permit was issued by the Town of Markham.

There was considerable pressure on McCavour and MEL to quickly obtain approval from the building department. McCavour felt that he and MEL would be involved in the project from start to finish, and would therefore have ample opportunity to make changes on shop drawings to ensure that the details complied with the *Ontario Building Code* (OBC) and requirements from the Town of Markham Building Department.

Although the final drawings were approved, McCavour and MEL acknowledged that stamped drawings had been submitted to the Town of Markham Building Department with the knowledge that the drawings were preliminary in nature and would require further engineering detailing and design.

The Allegations

The allegations against McCavour and MEL in the Fresh Notice of Hearing dated May 28, 2001, are summarized as follows:

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

1. McCavour was at all material times a member of the Association of Professional Engineers of Ontario.

2. MEL 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 McCavour, carried on the practice of professional engineering in a proper and lawful manner. McCavour was the professional engineer responsible for the services provided by MEL.

3. McCavour and MEL:

(a) provided an incomplete structural design and drawing submissions for permit application for a retirement building;
(b) provided permit drawings which contained errors, omissions, and deficiencies, and which reflected a design that did not comply with the requirements of the OBC;
(c) on more than one occasion, failed to address and/or correct design errors, omissions, and deficiencies in the permit drawing submission for the retirement building that were identified by other engineers and building officials; and
(d) demonstrated a standard of care that was less than that reasonably expected of a licensed professional engineer, given the number and nature of the structural design deficiencies in permit drawing submission for the retirement building.

4. By reason of the facts aforesaid, it is alleged that McCavour and MEL are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter 28.

Plea by the Member and Holder

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

Agreed Facts

Counsel for the association and counsel for McCavour and MEL advised the panel that agreement had been reached on the facts and that the factual allegations as set out in the Fresh Notice of Hearing were accepted as accurate by McCavour and MEL.

Decision

The panel considered the agreed facts and finds that the facts support a finding of professional misconduct and, in particular, finds that McCavour and MEL committed an act of professional misconduct as alleged in the Fresh Notice of Hearing and as defined in s. 28(2)(b) of the *Professional Engineers Act* (Act). The sections of Regulation 941 made under the said Act and relevant to this misconduct are:

- **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)(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;**

- **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 reasonably be regarded by the engineering profession as unprofessional.**

Reasons for Decision

The panel accepted the agreed facts on the basis that there was no difference of opinion between counsel, and that McCavour and MEL had agreed to the facts.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. Royce advised that the association was satisfied that the Joint Submission was fair and reasonable. He noted that it was necessary for the association to get a message out to all members that the association must ensure that there is no danger to the public at any time. Royce stated that members must always take adequate steps in their procedures and checking practices to ensure that engineering works are designed to comply with all applicable codes in order to ensure public safety.

Counsel for McCavour and MEL acknowledged that the Joint Submission was fair and that McCavour and MEL had already initiated appropriate steps to avoid a reoccurrence. Gibbs noted that McCavour and MEL accepted full responsibility and did not blame junior staff. Gibbs advised that McCavour and MEL had a demanding client who wanted fast results. As a result, McCavour and MEL tried to get ahead. Gibbs noted that McCavour and MEL in hindsight were aware that they should have ceased work for Mega.

A majority of the panel accepted the Joint Submission as to Penalty and accordingly ordered:

1. **That the licence of McCavour be suspended for a period of two months effective June 1, 2003;**

2. **That McCavour be reprimanded and the fact of the reprimand be recorded on the register of the association;**

3. **That MEL be reprimanded and the fact of the reprimand be recorded on the register of the association for a period of 12 months;**

4. **That McCavour write and pass the Professional Practice Examination (PPE) within the next 12 months, failing which his licence again be suspended until such time as the PPE has been written and passed, or for a period of 18 months, whichever is less. If the PPE has not been written and passed at the end of 18 months of additional suspension, then McCavour's licence is to be revoked;**

5. **That it shall henceforth be a term, condition and limitation on the licence of McCavour and the Certificate of Authorization of MEL that they not engage in the practice of professional engineering with respect to multi-storey, axial, load-bearing, steel stud structures, with the exception of structures listed in Part 9 of the OBC that are less than three storeys in height;**

6. **That within 60 days of the date of the hearing, McCavour and MEL shall file with the Registrar a written corporate policy/procedure acceptable to the Registrar, with respect to the completeness of drawings submitted for permit application, so as to ensure that problems of the kind in this case would not recur, together with evidence that the policy/procedure has been submitted to all professional engineers employed by MEL;**

7. **That costs in the amount of $2,500 in total be paid by McCavour and MEL to the association within six months of the date of the hearing;**

8. **Because of the suspension noted in item 1 above, publication with names is required under s. 28(5) of the Act.**

Reasons for Penalty

The panel concluded that the proposed penalty is reasonable and in the public interest. McCavour and MEL have cooperated with the association and, by agreeing to the facts and a proposed penalty, have accepted full responsibility for their actions.

The panel determined that had it not been for the diligence primarily of the Town of Markham Building Department, there could have been a potential danger to the public. The fact that this particular superstructure design was not built did not influence the panel's deliberations.

The panel notes that McCavour and MEL have the right to apply to the association for the removal of the term, condition and limitation specified in paragraph 5 of the panel's order.

The written Decision and Reasons in this matter were dated July 18, 2003, and were signed by the Chair of the panel, Ken Lopez, P.Eng., on behalf of the other members of the Discipline Panel: Tom Ellerbusch, P.Eng., Daniela Iliescu, P.Eng., Jim Lucey, P.Eng., and Derek Wilson, P.Eng.

Note from the Regulatory Compliance Department

McCavour and MEL waived their right of appeal in this matter and the Discipline Panel administered the reprimand at the conclusion of the hearing. The fact of the reprimand and the term, condition and limitation on the licence and Certificate of Authorization have been recorded on the Register of the association. McCavour and MEL submitted the required policies/procedures on June 24, 2003, and these were found to be acceptable to the Registrar. McCavour and MEL paid the $2,500 cost award in November 2003. McCavour wrote and passed the Professional Practice Examination in December 2003.

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

of the Association of Professional Engineers of Ontario and

Company Z

a holder of a Certificate of Authorization

BETWEEN

The Association of Professional Engineers of Ontario and

A Member and Company Z

Summary of Decision and Reasons

This matter came for hearing before a panel of the Discipline Committee on February 4, 2003, at the Association of Professional Engineers of Ontario (PEO) in Toronto. Both the association and the member were represented by legal counsel.

The Allegations

The allegations against the member and Company Z as stated in the Fresh Notice of Hearing dated January 31, 2003, are summarized as follows:

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

1. The member was at all material times a member of the Association of Professional Engineers of Ontario and was at all material times designated by the Council of the Association of Professional Engineers of Ontario as a consulting engineer.

2. Company Z 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 the member, carried on the practice of professional engineering in a proper and lawful manner. The member was the professional engineer responsible for the services provided by Company Z. Company Z had permission at all material times from the Council of the Association of Professional Engineers of Ontario to use the "consulting engineers" title.

3. In or about January 2000, a Condominium Corporation (CC) initiated a roofing project for approximately half of its townhouse units. The project was initiated because of various concerns that included deteriorated asphalt shingles, deteriorated brickwork below the openings in the eaves, defective stucco coating and defective flashings above the roofs, water penetration and ice damming complaints. The CC requested a quotation from Company Z for consulting engineering services related to the roofing project.

4. On January 14, 2000, the member, who is President of Company Z, submitted a quotation to the CC. The quotation was signed by the President of the CC, on May 1, 2000.

5. On March 1, 2000, Company Z issued tender documentation, including specifications and drawings to three roofing companies, Roofer 1, Roofer 2 and Roofer 3. The closing date and time for bid submission was March 9, 2000, at 2 p.m. The tender documentation required that any bid be "accompanied by the Bid Bond in the

amount of ten thousand dollars ($5,000).” (sic)

6. On March 8, 2000, Company Z issued Addendum No. 1 to the bid documents. This addendum reduced the scope of work by eliminating the complete replacement of the gutters and downspouts and specifying that only “damaged sections” be replaced.

7. After Addendum No. 1 was issued, but prior to the closing date and time for bid submissions, Company Z allegedly issued a oral directive subsequently termed Addendum No. 2 to each of the contractors at the request of the CC. This addendum deleted the replacement of the metal cap flashing on the dividing walls. A written version of Addendum No. 2 was never issued.

8. The three roofing companies each submitted a bid in response to the tender. However, the Roofer 1 and Roofer 3 bids made reference to only one addendum. The Roofer 2 bid did not include a bid bond and the Roofer 1 bid included a bid bond of only $2,500. The Roofer 1 bid bond erroneously named another corporation as the obligee, instead of the CC.

9. On March 17, 2000, Company Z submitted its tender analysis report to the CC. The report stated that each of the bids was reviewed thoroughly, however, no mention was made of the addenda discrepancy. Furthermore, the Roofer 2 bid was not disqualified based on the lack of a bid bond and the Roofer 1 bid was listed as having satisfactorily submitted a bond in spite of the deficient amount and incorrect obligee. The Company Z report recommended that the contract be awarded to Roofer 3, which was the lowest price bidder. The Roofer 3 bid referenced only one addendum and its price schedule included an arithmetic error that was not caught by Company Z. The error was in the contractor’s favour in the amount of $1,200.

10. On March 22, 2000, Roofer 3 and the CC entered into a contract for the work. The contract was in the Standard Construction Document CCDC 2 form and indicated a contract price of $251,022, which was the amount from Roofer 3’s bid. Article A-3 of the contract noted that the March 1, 2000, bid documents prepared by Company Z formed part of the contract documents.

11. On May 1, 2000, Company Z issued its first inspection report. The report was based on eight separate site visits by the member and Company Z during the month of April. The report concluded that based on the site visits, the installation of the new roofing assembly was being carried out in general compliance with the repair specifications and drawings.

12. Also on May 1, 2000, Company Z submitted to the CC the first invoice from Roofer 3, dated April 29, 2000. The invoice was in the amount of $127,149.51 and was approved by Company Z.

13. The CC began to have concerns regarding the completeness and quality of the work performed by Roofer 3. After receipt of the Roofer 3 invoice, the CC retained Engineer Y to review the work of Roofer 3 and Company Z in relation to the roofing project. By letter dated May 16, 2000, Engineer Y notified Company Z that he might be reviewing work performed by Company Z.

14. On May 17, 2000, Company Z signed the Certificate of Substantial Performance for the project.

15. On May 31, 2000, Company Z issued its second inspection report. The report was based on six separate site visits by the member and Company Z during the month of May. It was noted that by May 17, 2000, the work was complete and that Roofer 3 had demobilized off the site. The report concluded that based on the site visits, the installation of the new roofing assembly was being carried out in general compliance with the repair specifications and drawings.

16. On June 1, 2000, Company Z issued its final inspection report, which was based on a May 26, 2000, site visit by the member and Company Z. During the site visit, the Property Manager for the CC submitted a list of problems with the repaired roofs including leakage. The Company Z final inspection report identified several deficiencies to be corrected by Roofer 3. Company Z had not previously noted these deficiencies.

17. On June 2, 2000, the Property Manager for the CC wrote to the member and Company Z regarding Roofer 3’s invoice. The Property Manager noted that none of the metal cap flashing had been replaced on the roofs, and asked for a credit prior to any release of payment.

18. Company Z responded by fax on June 2, 2000, noting that the metal cap flashing had been deleted from the scope of work after consultation with the CC Property Manager. Company Z advised the CC to pay the approved invoice or risk having Roofer 3 place a lien against the property.

19. On June 5, 2000, the CC sent a fax to the member and Company Z acknowledging their response and requesting a meeting to discuss and resolve the issues of work scope and the quality and completeness of the work performed by Roofer 3. The CC requested documentation in support of the alleged changes in scope, along with other documentation and information.

20. On June 8, 2000, the member and Company Z faxed the CC a copy of

Addendum No. 1, which included a minor change in the specifications and a complete replacement of the price schedule table. The fax also included a copy of a March 16, 2000, letter from Roofer 3 confirming that the replacement of the metal cap flashing was not included in its price. This was supposedly to confirm the oral Addendum No. 2.

21. Representatives from Company Z, Engineer Y and the CC met on June 14, 2000, to discuss the roofing project.

22. On June 15, 2000, Company Z faxed the CC the second invoice from Roofer 3. The invoice was in the amount of $57,789.22 and was approved by Company Z. This amount reflected credits by Roofer 3 for the various deficiencies identified during the May 26, 2000, site visit and the June 14, 2000, meeting. The fax also included the Statutory Declaration by Roofer 3 and the Clearance Certificate from the Workplace Safety & Insurance Board.

23. Also on June 15, 2000, Engineer Y wrote to the member and Company Z to confirm that they were not prepared to recommend to the CC that any payments be released to Roofer 3 until the deficiencies and other issues discussed during the June 14, 2000, meeting had been addressed.

24. In a June 16, 2000, fax to the CC, reviewed by the member, Company Z provided information about the project, including details regarding the two addenda. The fax also addressed the bid bond discrepancy that wasn't reported in the tender analysis report, the arithmetic error in Roofer 3's price schedule and other issues of dispute.

25. In a June 19, 2000, fax to the CC, the member and Company Z expressed disappointment that the CC had retained another consultant. The member and Company Z affirmed that they were the consultant of record for the roofing project and that they would not be responsible for decisions made by the CC without the advice of, or contrary to the advice of, Company Z.

26. Between June 21, 2000, and July 11, 2000, the CC retained the services of Roofer 4 on four occasions to effect repairs to various roofs and downspouts covered by the contract with Roofer 3. The total cost of these repairs was $1,334.29.

27. On August 2, 2000, Engineer Y issued a report to the CC, which was based on three site visits and inspections carried out during July 2000 and included numerous photographs. The report documented a variety of deficiencies, some of which related to work done by Roofer 3 and some of which related to incomplete work. Engineer Y concluded that based on the various deficiencies identified, the roofing work done by Roofer 3 was "generally poor" and that "extensive repair work" was required. Engineer Y suggested that it might be more economical for the CC to replace the entire roofs rather than to correct the various deficiencies.

28. On September 22, 2000, representatives of the CC, Roofer 3 and Engineer Y attended at the site to discuss the findings of the August 2, 2000, Engineer Y report and to inspect the roofs. In their site meeting report, Roofer 3 acknowledged five areas of deficiencies that were included in the scope of work and eight areas of deficiencies that were outside the scope of work. The deficiencies that were within the scope of work included several items that Company Z had reported as completed in their May 1, 2000, and May 31, 2000, inspection reports.

29. In an October 3, 2000, letter to the legal counsel for the CC, Engineer Y commented on the Roofer 3 site meeting report. Engineer Y disputed the limited scope of deficiencies and remedies proposed by Roofer 3.

30. On or before November 21, 2000, the CC retained Engineer Y to solicit bids to repair or replace the roofs. Engineer Y obtained four bids, each offering separate prices for repairing the roofs and for the complete replacement of the roofs. The lowest price for complete roof replacement was $157,398. To date, however, the roof has not been replaced nor has any further repair work been undertaken.

31. In summary, it is alleged that the member and Company Z:

a) failed to conduct a thorough review of the tenders and hence failed to protect the interests of the CC;
b) produced a tender analysis report that contained errors and omissions when they knew, or ought to have known, that the CC would rely upon the report as being accurate;
c) conducted site inspections that failed to recognize deficiencies and/or deviations from the scope of work and/or specifications;
d) issued site inspection reports claiming that the work was being carried out in general conformance with the specifications and drawings when they knew, or ought to have known, that it was not;
e) failed to maintain the standards that a reasonable and prudent consulting engineer would maintain in the circumstances; and
f) acted in an unprofessional manner.

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

Plea by Member and Company Z

The member and Company Z admitted the allegations of professional misconduct and admitted the accuracy of the factual allegations as set out in the Notice of Hearing.

Agreed Facts

Counsel for the association advised the panel that agreement had been reached on the facts and allegations as set out in the Fresh Notice of Hearing and this was confirmed by counsel for the member and Company Z.

Decision

The panel considered the agreed facts and finds that the facts as set out in the Fresh Notice of Hearing support a finding of professional misconduct and, in particular, finds that the member and Company Z committed acts of professional misconduct as alleged in the Notice of Hearing and that the member and Company Z are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, c. P. 28 (the Act), and in particular guilty of negligence pursuant to section 72(2)(a) and as defined in section 72(a), and failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules as set out in section 72(2)(d) and unprofessional conduct as defined in section 72(2)(j) of Regulation 941 made under the Act.

The member, through his counsel, confirmed unconditionally, the accuracy of the description of his actions and the extent to which these constituted unprofessional conduct. PEO counsel supported this position completely.

Penalty

Counsel for the association 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 that:

(a) The member will be admonished, with that admonishment to be recorded on the Register for a period of 12 months;

(b) Company Z will be reprimanded, with that reprimand to be recorded on the Register for a period of 12 months;

(c) The member will within one year write the 98-Civ-B8 examination;

(d) If the member fails that examination, his Consulting Engineer designation and Company Z's Permission To Use the Consulting Engineer title will be suspended forthwith until the member passes the examination;

(e) If the member does not write and pass the examination within one year, his licence to practise engineering will be suspended for a period of three months and his Consulting Engineer designation and Company Z's Permission To Use the Consulting Engineer title will be suspended forthwith until the member passes the examination;

(f) Company Z will submit to PEO a written explanation of protocols and procedures to the satisfaction of the Registrar within 60 days relating to Company Z's construction management practice in order to avoid a recurrence of similar situations;

(g) The Decision and Reasons of the Discipline Committee will be published without names.

The panel is satisfied that the penalty agreed to by the defendant and by the PEO is of a severity that is consistent with the agreed upon actions by the defendant and extent of professional misconduct occasioned by these actions. The panel, upon reviewing the agreed facts, supported by assertions from PEO counsel and the member's counsel as well as comments from the member, is satisfied that the described professional misconduct is a consequence of inattention to professional duty, rather than deliberate disregard of acceptable standards of professional practice.

The written Decision and Reasons in this matter was dated June 19, 2003, and was signed by the Chair of the Panel Lawrence McCall, P.Eng., on behalf of the members of the Discipline Panel: Santosh Gupta, P.Eng., John Reid, P.Eng., Michael Wesa, P.Eng., and Derek Wilson, P.Eng.

Note from the Regulatory Compliance Department

The member and Company Z waived their right of appeal in this matter and the Discipline Panel administered the admonishment and reprimand at the conclusion of the hearing. The fact of the admonishment and reprimand were recorded on the Register of the association. Company Z submitted the required protocols and procedures on April 1, 2003, and these were satisfactory to the Registrar. The member wrote and passed the 98-Civ-B8 (Management of Construction) examination in May 2003

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

of the Association of Professional Engineers of Ontario and

Company A

a holder of a Certificate of Authorization

BETWEEN

The Association of Professional Engineers of Ontario and

A Member and Company A

Decision and Reasons

The panel heard this matter on November 19, 20 & 21, 2002, at the Association of Professional Engineers of Ontario in Toronto. Both the association and the member were represented by legal counsel.

The Allegations

The allegations of professional misconduct and incompetence set out in the Notice of Hearing dated April 12, 2002, and filed as Exhibit 1 can be summarized as follows:

1. That the member and Company A are guilty of professional misconduct as defined in Section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28. (Act) in that he/they:

(a) failed to make responsible provision for complying with applicable codes and standards in the design of a suspended, reinforced concrete floor slab, in that the slab did not meet the requirements of sections 4.1, 4.3.3, 9.3.1.9 and 9.13.1.4 of the *Ontario Building Code* (OBC) and did not meet the requirements of sections 7.8.1, 7.8.3, 9.5 and 13.1(a) of CAN/CSA-A23.3-M84;

(b) carried out a structural investigation and/or offered opinions that failed to meet the standards of practice that a reasonable and prudent practitioner would maintain in the circumstances;

(c) issued a report relating to a structural investigation, which report failed to meet the standards of practice that a reasonable and prudent practitioner would maintain in the circumstances, in that it contained material omissions and deficiencies and specifically in that it failed to identify various violations of the OBC;

(d) failed to make prompt, voluntary and/or complete disclosure of the member's and Company A's interests in the slab design that might affect or prejudice their professional judgment relative to their assessment of problems with the residence in question;

(e) failed to make prompt, voluntary and/or complete disclosure of their interests as a consultant to Client 1 that might be construed as prejudicial to the exercise of professional judgment relative to their engagement by Client 2 to refute the findings of another consultant engaged by Client 1;

(f) breached confidentiality between client and engineer by providing two different law firms with information obtained during their inspection conducted on behalf of Client 1 when they knew that these firms represented defendants in the lawsuit initiated by Client 1; and

(g) acted in a dishonourable and/or unprofessional manner.

2. That the member is guilty of incompetence as defined in section 28(3)(a) of the Act, in that in light of the aforementioned actions, he displayed a lack of knowledge, skill or judgment to an extent that demonstrates that he is unfit to carry out the responsibilities of a professional engineer.

Counsel for the association advised that the association was not calling any evidence with respect to the allegations set out in paragraph 25, section 72(2)(h) in the Notice of Hearing, "Undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience."

Plea of the Member and Holder

The member and Company A denied the allegations set out in the Notice of Hearing.

Overview

The hearing arose as a result of the member's involvement in the design of a suspended garage floor slab and subsequent structural reviews of the same house. The member was at all material times a member of the Association of Professional Engineers of Ontario. Company A, in which the member is a principal, was at all material times a holder of a Certificate of Authorization from the Association of Professional Engineers of Ontario.

In 1987, the member prepared a structural design for a suspended concrete floor slab in the garage of a house. He had no other involvement in the design or construction of the house. The member prepared the design for the house designer on behalf of the homeowner. The member was an acquaintance of the original homeowner and the house designer and a friend of the framer.

In 1993, the member undertook a structural review of the house for the second owner, Client 1, in order to identify structural and exterior cladding deficiencies. He prepared a report dated November 5, 1993. Client 1 hired the member because of cracking she had noted in the walls of the house and because she had noticed his stamp on the drawing of the garage floor slab. The member undertook this work after having disclosed to Client 1 his relationship with the previous owner and the framer.

Some time after the Company A report was prepared, a lawyer representing the original owner contacted the member for further information about the report he had prepared for Client 1. At that time, Client 1 was in the process of suing the original owner, the builder and the township. The member responded to the lawyer without first contacting Client 1.

Company B prepared a structural deficiency report for Client 1 after the Company A report was prepared. The Company B report was critical of the design of the suspended garage floor slab and identified various other deficiencies in the structure and construction of the house in question. Lawyers representing the township, which was also being sued by Client 1, later contacted the member. The member undertook a formal engagement for these lawyers (Client 2) to review the Company B report on the condition of the Client 1 residence.

The member admitted that his design called for the reinforcing steel, used in the design of the garage floor slab to resist shrinkage and thus shrinkage cracking, to be on 24-inch centres not 500mm (20 inches) as the OBC requires.

Other issues of concern to the panel arising from the allegations are:

(a) Did the member understand Client 1 wanted to use his report for litigation? Did the member write the report bearing this in mind?

(b) What was the status of the client/engineer relationship between the member and Client 1 at the various stages of the matters in issue before the panel?

The Evidence

The association called two witnesses, Client 1 and Engineer A, an expert witness retained by the association.

Counsel for the defendant called two witnesses, Engineer X and the member. Engineer X provided expert testimony about the report prepared by the member and the second engineering report prepared by Company B.

The chronological order of events in the case and the pertinent evidence is as follows:

1. In 1987, the member was engaged to design the suspended floor slab of a garage in a residential house. The design was undertaken on behalf of the owner, who is an acquaintance of the member. The framer of the house is also a friend of the member.

2. In 1988, the house was built.

3. In 1991, Client 1 bought the home and became the second homeowner.

4. By 1993, Client 1 had discovered that the house had significant problems including moisture in the walls, water leaking into the windows and the basement, and cracking in some walls. In April, she contacted the member to review these problems.

5. In May of 1993, the member made a visit to the house as a courtesy and orally indicated to Client 1 what he suspected the problems were.

6. In July of 1993, the evidence of Client 1 is that she told the member that she needed a detailed report of all structural deficiencies for litigation purposes. The member maintained throughout the hearing that he did not know that the report he was preparing for Client 1 was intended for litigation purposes. Client 1 had detailed notes and submitted them as evidence on her behalf.

7. These notes indicate on several occasions that she had told the member the report was needed for litigation purposes. The panel did not hear evidence of whether these notes were prepared as the events occurred or if the notes were prepared at a later date. Counsel for the association referred to them as "contemporaneous" without comment from counsel for the defence.

8. In August of 1993, at the request of Client 1, the member prepared a proposal for the structural investigation of the house. His proposal stated that he would review the house for all structural and exterior deficiencies

and that the report could be used by Client 1 to solicit quotations for repairs from contractors. A flat fee of $850 was quoted. The proposal did not indicate that the report would be prepared for litigation purposes. The wording of the proposal contradicted the evidence of Client 1 that she had asked that costs be provided in the report. If she did ask for this from the member, the proposal is clear that costs would not be provided.

9. In September of 1993, the member carried out a structural investigation. During his visit to the house, he looked at the garage slab for the first time with Client 1. He told her he had designed the slab. He gave his opinion that there was a shrinkage crack in the slab, but this would not affect the structural strength.

10. A preliminary report was issued by the member on behalf of Company A in October 1993 and the final report was issued on November 5, 1993. The final report contained no cost estimates. The report did refer to some deficiencies that are building code violations. The proposal did not offer to identify building code violations.

The evidence of Engineer A, expert witness for the association, was that the report prepared by the member was substandard. It was Engineer A's opinion that there were omissions in the member's report.

The Company A report did not provide cost estimates but should have for litigation purposes and the report did not identify all building code violations. Engineer A stated that a report for litigation purposes should contain all building code violations. Again, the member maintained that he had no knowledge that the report was being prepared for litigation purposes.

In April of 1994, Client 1 engaged a home inspection firm to perform a general home inspection. Their report identified many problems but contained no cost estimates.

In February of 1995, a lawyer contacted the member in writing and indicated that his firm was representing the original owner of the house in a lawsuit being brought against them by Client 1. The letter from this lawyer indicated that they had reviewed the report that the member had prepared for Client 1 and asked the member further questions about the property. The questions related to the possibility that some of the work that Client 1 had done to the house could have indeed caused some of the cracking that was noted.

The panel heard from the member that he replied to the letter in writing on April 1 of 1995. The member admitted that he did not contact Client 1 to advise her of this letter or the fact that he was responding to it. He stated that the lawyer told him during a phone call that they would subpoena his evidence if he failed to respond to their questions.

The member maintains that this was the first time that he was made aware of the fact that there was litigation going on regarding the property and that his report was being used for that purpose.

In June of 1995, Company C was engaged by Client 1 to review the centre wall of the house. Company C issued a report in July of 1996 indicating serious problems with the construction of the centre wall. As counsel for the member did not have the opportunity to examine the author of the Company C report, the panel did not regard it as testimony from an expert witness. However, this report was unchallenged by defence counsel and was clearly influential in changing the member's opinion of the need to strengthen the centre bearing wall.

Subsequently, in August of 1995, the member and Client 1 met to discuss the centre wall. Following that meeting, the member summarized his oral comments in writing to Client 1. Following that, Client 1 sent the member a written account of their meeting for his signature. The items in her account of the meeting are somewhat different from the items in the member's summary. Subsequent to the request from Client 1 that the member sign her account, the member expanded upon some of her comments, providing greater detail and suggestions. Most of these comments centred around structural improvements required to the centre bearing wall. The original report prepared by the member indicated that the centre bearing wall of the house was structurally adequate to support the required design loads.

In September of 1997, Client 1 engaged Company B to perform a detailed structural evaluation of her house. The report prepared by Company B is critical of the design of the suspended floor slab of the garage and suggests there are serious structural deficiencies with the design of this slab. There are other deficiencies identified in the Company B report that were not identified in the member's original report to Client 1.

These other deficiencies include overspanned wood lintels in a basement wood stud bearing wall and the need for reinforcing of the centre bearing wall of the house on the upper floor levels.

In August of 1998, the member was engaged by a legal firm (Client 2), which was representing the township. The township was also named in a lawsuit brought by Client 1. The member was specifically retained to review the Company B report that Client 1 had commissioned and make comments about the deficiencies noted in the Company B report.

The member testified that he felt compelled to undertake this review, as the Company B report was critical of his structural design of the garage floor slab. At this point, the member was aware that Client 1 had engaged other engineers to review her house and he felt that he was no longer bound to act on her behalf.

Issue of Inadequate Garage Floor Slab Design

The member always maintained that the floor slab design was safe. The Company B report prepared on behalf of Client 1 suggested the slab design was unsafe and that reinforcement was necessary. Engineer X's testimony on behalf of the member clearly showed errors in the Company B report on the analysis of the designed slab. Thus, the evidence was that the slab design was structurally safe, but there was not enough reinforcing steel to resist shrinkage and subsequent cracking. The member admitted that the spacing of the reinforcing steel to control shrinkage cracks did not meet the building code requirement.

The testimony of the association's expert witness, Engineer A, was that the spacing of the reinforcing steel in the longitudinal direction of the floor slab was too wide. It was his opinion that the slab was structurally safe, but could encounter excessive shrinkage cracking due to the excessive spacing of the reinforcing steel.

Engineer A also had other concerns with respect to the amount of detail provided on the original design drawing for the slab.

Structural Report Prepared by the Member

Engineer A's assessment of the Company A report of November 5, 1993, was that it was not up to the standard for a structural investigation and report as he described it in his report on page 8 of Exhibit 13.

Engineer A's opinion was that it was "skimpy." It was not of an acceptable level for litigation purposes. There was not enough detail and no cost estimates were given. Engineer A's evidence was also that the member was probably competent to perform the work.

The Company C report prepared on behalf of Client 1 raised serious concerns and issues with the centre bearing wall in the house. This issue was discussed in the member's report to Client 1, but the member's assessment was there were no major problems with the centre bearing wall. The member did eventually write a letter to Client 1 suggesting ways that the centre bearing wall could be structurally reinforced. This was after being confronted with the Company C report.

Conflicts of Interest

The evidence the panel heard about conflicts of interest included opinions of Engineer A that:

(a) The member should not have undertaken the initial structural review of the house as he was responsible for the design of the suspended garage floor slab,

(b) The member should not have responded to a letter from a lawyer representing the original house owner who was being sued by Client 1,

(c) The member should not have undertaken an engagement to work on behalf of the law firm representing the township, which was also being sued by Client 1, after having worked for Client 1.

The member admitted that he should have contacted Client 1 before answering the letter from the lawyers representing the original owners. The member's evidence was that he did immediately disclose to Client 1 that he knew the original owner and framer.

The panel heard from Client 1 that she originally contacted the member because of his stamp on the original house drawings. Thus, Client 1 must have known initially that the member was involved with the design of at least part of the house.

The panel heard that Client 1 hired three other firms to assess the condition of her home subsequent to the report prepared by the member. At some point, the member's relationship with Client 1, as that of confidentiality for one's client, must have terminated. During questioning of Client 1 by the panel, she indicated that the member was her engineer until her insurance company hired Company C on her behalf. The hiring of Company C occurred after the member had responded in writing to the inquiry by the lawyers acting on behalf of the original owner.

Under cross-examination, the member indicated that he told Client 1 in September of 1993 that he designed the garage floor slab. However, his proposal to undertake the structural investigation work was provided to her in August of 1993. Further, the member indicated that if he thought that he was in a conflict of interest position, he would have withdrawn completely from the work. Yet, when the member was made aware of litigation after receiving a letter from the lawyer representing the previous owner, he did not completely withdraw, but responded to the letter. Further, this response was without the knowledge of Client 1.

The member's evidence was also that his report prepared for Client 1 was in accordance with his proposal. His proposal clearly stated that he would provide the report to her so that she could solicit cost estimates from contractors. The member's proposal does not mention that the purpose of the report is for litigation use.

Decision

The association bears the onus of proving the allegations in accordance with the standard of proof set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977) 15 O.R. (2d) 477. The standard of proof applied by the panel, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be clear and convincing and based upon cogent evidence accepted by the panel. The panel also recognized that the more serious the allegation to be proved, the more cogent must be the evidence.

In this case, the panel considered the allegation of the deficiencies in the garage floor slab design, deficiencies in the preparation of the structural report and the several conflicts of interest as serious, but not a threat to the health and safety of the public.

Having considered the evidence and the onus and standard of proof, the panel finds that the member is not guilty of incompetence as defined in section 28(3)(a) of the Act but is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28. and outlined in paragraphs 20(a), (b), (c), (f) and (g) of the Notice of Hearing.

In particular, the member committed the following:

1. **Undertook the design of a suspended concrete floor slab for a garage that specified excessive spacing for reinforcing steel to control shrinkage cracking;**

2. **Prepared a structural review report that contained errors and omissions;**

3. **Breached his responsibility to his client by responding to a lawyer's letter about his report to the client, without the client's knowledge;**

4. **Under the circumstances above, acted in a manner that the panel finds to be unprofessional.**

Accordingly, the panel finds that the member is guilty of professional misconduct. In particular, the panel finds that the member was negligent in that he failed to meet the standards of a reasonable and prudent engineer contrary to section 72(2)(a) of Regulation 941; failed to make responsible provision for complying with applicable standards and codes, contrary to section 72(2)(d) of Regulation 941; and that the member's conduct having regard to all the circumstances, would reasonably be regarded by the engineering profession as unprofessional, pursuant to section 72(2)(j) of Regulation 941. The panel finds that the member is not guilty of a breach of sections 72(2)(b), 72(2)(h) and 72(2)(i) of Regulation 941.

The panel finds that Company A is also guilty of professional misconduct in that the member carried out much of the work at issue on behalf of Company A. In particular, the panel finds that Company A was negligent in that it failed to meet the standards of a reasonable and prudent practitioner contrary to section 72(2)(a) of Regulation 941; and that Company A's conduct having regard to all the circumstances, would reasonably be regarded by the engineering profession as unprofessional, pursuant to section 72(2)(j) of Regulation 941. The panel finds that Company A is not guilty of a breach of sections 72(2)(b), 72(2)(d), 72(2)(h) and 72(2)(i) of Regulation 941.

Reasons for Decision

As the panel heard no evidence suggesting the member was incompetent, the panel finds him not guilty. At no time did the panel find that public safety was in jeopardy.

It is uncontested that the spacing for the reinforcing steel in the garage floor slab (for controlling shrinkage cracking) did not meet the OBC. This may have allowed excessive cracking, which might cause greater serviceability problems and potential damage to the slab or the room below the garage. Accordingly, the panel finds that the member is guilty of failing to comply with applicable codes and standards.

The drawing showing the design of the reinforced garage slab–Exhibit 3, bears the member's stamp. There is no reference to Company A, nor did the panel hear evidence of whether the member was acting as an individual or on behalf of Company A. Accordingly, the panel finds Company A not guilty of failing to comply with applicable codes and standards.

The expert witness agreed the slab was adequate to meet the design loads. The shrinkage cracking might have occurred even if the reinforcing had met the OBC. Accordingly, the panel finds that the member is not guilty of endangering the public or the owner of the property.

With respect to the issue of whether the structural review carried out by the member and the subsequent report failed to meet the standards of practice, the panel first had to decide whether or not the member was aware that his report was to be used for litigation. The panel heard evidence from Client 1 that she had requested cost estimates in the report because the report was to be used for litigation. The panel, however, was not satisfied that the evidence was clear and convincing on this point. There were conflicting opinions in the testimony. The panel heard that Client 1 intended the report to be used for litigation, but the panel did not find clear and convincing proof that the member understood this.

Client 1 had the opportunity to review a preliminary copy of the report and there was no evidence that she had concerns with the lack of cost estimates in the report. Further, the evidence of Client 1 was that she sought quotations from contractors upon receiving the report. Finally, the proposal sent to Client 1 from the member stated that the report could be used to gather quotations by contractors.

The panel considered the evidence of the association's expert witness, but was not convinced that the member was aware the report was for litigation purposes.

Notwithstanding the above, the panel found that the structural report did contain significant errors and omissions. In the member's structural comments of June 22, 1993, he states "We have no comment on the centre bearing wall since we did not enter the attic space for a visual inspection of the exposed frame." In his proposal of August 30, 1993, he says the investigation "... will involve a visual examination of the exterior and interior finishes as available from the attic, basement, living areas and the exterior ...." In his report of October 1993 the member stated "The centre wall is structurally adequate to support the required design loads." He also noted that the horizontal joints in the wall might be expected to permit cracking.

The Company C report identified serious problems in the centre bearing wall. The member's letter summarizing comments made at a meeting between the member and Client 1 in August of 1995 and subsequent additional comments in September 1995, clearly indicate that the member felt that there could be a need to reinforce this wall. The evidence speaks for itself as the member recommended that the wall be reinforced after hearing of the Company C opinion.

The panel finds that the member's investigation and report failed to meet the standards of practice that a reasonable and prudent practitioner would maintain in the circumstances. Accordingly, the panel finds the member guilty of negligence.

The member was clearly acting on behalf of Company A. The proposal was made on Company A letterhead and the report was a Company A report. Accordingly, the panel finds Company A guilty of negligence.

With respect to allegations that the member failed to make prompt disclosure

to the many different parties involved, the panel found that he was not guilty of failing to provide prompt disclosure to Client 1 originally, as he did disclose immediately his personal relationships with the former owner and framer. Further, Client 1 admitted she called him initially because of his stamp on the drawing.

Thus, the panel finds that Client 1 must have been aware of the member's part in the original design of at least one component of the house. Although the panel found that the member's disclosure to Client 1 orally in September, 1993, after his proposal in 1993, was not ideal in that the disclosure could have been made earlier and should have been made in writing, the panel did not find this error to be sufficient to warrant a finding of a breach of section 72(2)(i) of Regulation 941.

With respect to failure to make prompt disclosure to both lawyers who had contacted him about the house, the panel finds the member not guilty in that both lawyers already knew of his involvement before contacting him. However, the panel finds that the member did breach his duty of confidentiality to Client 1 by discussing work he had done for Client 1 with lawyers without her consent or knowledge.

In the first instance with the correspondence with the lawyer representing the former owner, in April of 1995, the member should clearly have sought the permission of Client 1.

However, in the second instance, undertaking the engagement with Client 2, the panel finds that by this time it is not clear that the member was still in a client-engineer relationship with Client 1. Client 1's evidence even suggested that he was no longer her engineer when Company C was engaged on her behalf. Thus, the panel finds that the member may have shown poor judgment in agreeing to do work for Client 2 but finds he did not breach his duty of confidentiality to his client by providing information obtained during his inspection of the Client 1 residence to a law firm.

The panel, considering all the evidence, but giving particular weight to the panel's findings with respect to the member's structural investigation and the Company A report and the breaching of his duty of confidentiality to his client, finds the member's conduct to have been unprofessional.

The panel also finds Company A's conduct to have been unprofessional.

Penalty Decision and Reasons

The panel reconvened on June 26, 2003, to hear submissions as to penalty.

Penalty Decision

The panel makes the following order as to penalty:

1. In accordance with section 28(4)(e) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28. (the Act), that the member's licence and Company A's Certificate of Authorization be subject to the following restrictions:

(a) That the member and Company A accept periodic practice inspections for a period of 12 months by an independent expert who has had no prior involvement with this case, selected by the Registrar and satisfactory to the panel, who will review projects undertaken by the member and Company A on a quarterly basis. The review is to audit policies and procedures for working with clients, work completed and report preparation. The outcome of the review must demonstrate that the member and Company A are operating in an ethical and professional manner, to the satisfaction of the independent expert and the panel. If this Discipline panel has any concerns about the outcome of the review, the report will then be provided to the parties and an opportunity for further submissions will be made before any final decision is made by the panel. All costs for the practice review are to be paid for by the member and Company A.

(b) That within 90 days of the date of receipt of the penalty decision, the member and Company A shall submit to the Registrar written corporate policies and procedures, acceptable to the Registrar, with respect to Conflict of Interest and Confidentiality, together with evidence that the policies and procedures have been communicated to all employees of Company A.

2. In accordance wth section 28(4)(d) of the Act, that there be a term, condition and limitation on the licence of the member that the member successfully write and pass both parts of the Professional Practice Exam within 12 months from the date of the penalty hearing.

3. In accordance with section 28(4)(j) of the Act, that the member and Company A jointly reimburse the association for costs in the amount of $7,500. This amount to be paid within 12 months from the date of the penalty hearing.

4. In accordance with section 28(4)(i) of the Act, that the findings and order of this panel with reasons be published in detail without names in the official publication of the association.

5. In the event that the member and Company A fail to satisfactorily comply with paragraphs 1-3 of this order as set out above, the panel orders that:

(a) the licence of the member, including the member's "Consulting Engineer" designation and Company A's permission to use said designation, be suspended for a period of six months;

(b) Company A's Certificate of Authorization be suspended for a period of six months;

(c) the findings and order of the panel with reasons be published in detail with names in the official publication of the association; and

(d) that the member and Company A comply with the order set out in paragraph 3 above and jointly reimburse the association for costs in the amount of $7,500 jointly.

Reasons for Penalty Decision

Counsel for the association and for the member argued for widely different penalties based on the panel's findings of guilt. Counsel for the association, considered:

- **a six-month licence suspension;**
- **a requirement to write and pass the Professional Practice Examination and the Advanced Structural Examination within 12 months;**
- **suspension of the member's designation as a Consulting Engineer until the examinations are passed;**
- **a reprimand recorded on the register;**
- **a requirement to write policy procedures for Company A within 90 days; and**
- **and payment of $25,000 costs to the association to be appropriate.**

Counsel for the member and Company A argued for a maximum suspension of one month to be suspended until writing and passing the Professional Practice Examination within 18 months, and then totally suspended. He also proposed an award of costs to the member as the member was found not guilty of many of the original charges.

The panel in considering these arguments was not satisfied that either of these approaches provided a suitable balance of general and specific deterrence and the improvement of the member's practice to prevent any future such occurrences.

The panel regarded the actions of the member as unprofessional. The panel agreed with the assertions of counsel for the association that this was a serious case and that the member did not accept responsibility for his actions until, in some instances, he was confronted with an opposing view or evidence to suggest that he was wrong. The member demonstrated a lack of appreciation for conflicts of interest in the engineer/client relationship.

The panel concludes that a practice review is a better approach to protect the public and educate the engineer than the entirely punitive suspension and reprimand. Thus the practice review for the period of 12 months is necessary to ensure that the member appreciates and understands the circumstances where conflicts of interest can arise and to ensure that the member understands the requirements of a structural review.

The requirement to successfully complete and pass the PEO Professional Practice Exam is considered a necessary requirement in light of the apparent disregard for conflicts of interest displayed by the member. It was noted that the member obtained his licence prior to the requirement for passing the Professional Practice Examination and has never written the examination.

The requirement to submit to the Registrar written corporate policies and procedures, acceptable to the Registrar, with respect to Conflict of Interest and Confidentiality is required given the member's position that certain actions were not a conflict of interest when the panel found they clearly were.

Counsel for the association proposed that the member be required to write the Advanced Structural Analysis examination. The panel found that the member was not guilty of incompetence and the association's expert witness stated that the member was probably competent. The panel therefore finds the requirement to pass this examination unnecessary.

Counsel for the association was clear that the association incurred significant costs in investigating and prosecuting the member and that the member failed to mitigate these costs by agreeing to facts in advance of the hearing, that were subsequently admitted during the hearing. This contributed to a greater cost for the association to undertake the hearing. Counsel argued that in these circumstances awarding costs of $25,000 would be appropriate. Counsel for the member was of the opinion that the member incurred significant costs in preparing his defence, that the member was found not guilty of many of the allegations against him, and that the panel should consider awarding costs to the member.

The panel noted that the member had agreed to a stipulated hearing that would have resulted in less cost to both parties. However the complainant, Client 1, rejected this approach. The panel determined that an assessment of $7,500 in costs to be paid to the association is in order given that the member failed to mitigate the costs of the hearing when he could have done so without prejudice to his defence. The panel considered the member's counsel's request for costs and accepted the advice of independent legal counsel and accordingly is not prepared to make an order that the association pay costs to the member or Company A.

Publication of the findings without names in the association publication is necessary to act as a general deterrent for the profession.

In the event that the member and Company A fail to satisfactorily comply with the orders above, the panel has determined that it is necessary to suspend the member's licence and Company A's Certificate of Authorization to ensure that the member is fully aware that his actions were unacceptable. Publication of the findings with names in the association publication is then a requirement under section 28(5) of the Act.

The written Decision and Reasons in this matter was dated June 3, 2003, and the written penalty Decision and Reasons was dated September 30, 2003, and both were signed by J.E. (Tim) Benson, P.Eng., on behalf of the members of the Discipline Panel: William A. Rutherford, P.Eng., David W. Smith, P.Eng., Richard Weldon, P.Eng., and Derek Wilson, P.Eng.

Summary of Scheduled Discipline Hearings

This schedule is subject to change without public notice. 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 Certificate of Authorization (C of A) holder should be made based on the allegations listed herein.

Further details regarding the allegations against the members and C of A holders listed below can be found on PEO's website at www.peo.on.ca.

May 25–28, 2004
Timothy E. Leier, P.Eng., and Walters Consulting Corporation (WCC)
It is alleged that Leier is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Leier and WCC are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

June 7–10, 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*.

NOTE: The "Delta Engineering" noted above is not the Markham-based firm 728401 Ontario Limited, which operates as "Delta Engineering Services."

July 7, 2004
Victor M. Rosa, P.Eng.
It is alleged that Rosa is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Rosa is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

September 7–10, 2004
Kwang-Ray Hsu, P.Eng.
It is alleged that Hsu is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Hsu is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

September 27–30, 2004
David E.J. Brouillette, P.Eng.
It is alleged that Brouillette is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Brouillette is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

October 13–15, 2004
Mohammad R. Panahi, P.Eng., and Pancon Engineering Ltd.
It is alleged that Panahi is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Panahi and Pancon are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

Notice of Licence Resignation

On March 22, 2004, Victor F. Wilcox resigned his licence and returned his seal and licence certificate to PEO. At the same time, Barrie Inspection & Engineering Limited (BIEL) closed its Certificate of Authorization, returned its certificate and undertook to legally change its name to remove the reference to "engineering." In addition, Wilcox and BIEL provided PEO with a written irrevocable undertaking that they would never again apply for a professional engineer licence or engage in the practice of professional engineering in Ontario or any other Canadian jurisdiction. Wilcox and BIEL also paid costs to PEO in the amount of $3,000.

In return for these actions, PEO sought and obtained, on the same date, an order from the Discipline Committee allowing PEO to withdraw the allegations of incompetence and professional misconduct against Wilcox and BIEL that were set out in a Notice of Hearing dated June 20, 2003. The order was sought pursuant to Rule 8 of the Discipline Committee Rules of Procedure. At no time did Wilcox or BIEL admit to any incompetence or professional misconduct.

Notice of Suspension

At a Discipline Hearing held on April 14, 2004, at the offices of the association in Toronto, the Discipline Committee suspended the licence of **William Tessler, P.Eng.** and the Certificate of Authorization of **Sonterlan Corporation**, for a period of two months, commencing April 15, 2004.

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

Gazette Editorial Objectives/Policy

Gazette was first published in March/April 1982 as a means of highlighting the activities of the then Department of Legal and Professional Affairs. While that first issue included a brief note from the Director of Legal and Professional Affairs outlining the purpose and possible content for *Gazette*, there has never been a formal editorial policy or set of objectives for the publication–until now.

Given PEO's focused role as the regulator of the engineering profession, and given last year's organizational restructuring within PEO, it was decided that the editorial objectives and/or policy for *Gazette* should be formalized. An initial draft was prepared by the Editor and subsequently reviewed by the PEO management team.

In April 2004, the CEO/Registrar approved the following as the *Gazette* Editorial Objectives/Policy:

- *Gazette* is a regular supplement to *Engineering Dimensions*, which is the official journal of Professional Engineers Ontario (PEO). The Manager, Complaints & Discipline at PEO serves as the Editor of *Gazette*.

- *Gazette* is intended to highlight the activities of the Regulatory Compliance department in its administration of the relevant portions of the *Professional Engineers Act*, including the complaints and discipline processes, enforcement against unlicensed practitioners, and Registration Committee processes.

- Pursuant to sections 28(4)(i), 28(5) and 28(6) of the Act, *Gazette* is the vehicle for the publication of findings and orders of the Discipline Committee, in detail or summary form and with or without reference to names as ordered by the Discipline Committee. If the Discipline Committee does not specify summary or detail form in an order, the form of publication will be at the discretion of the Editor.

- Each edition of *Gazette* will include a schedule of Discipline Committee hearings, indicating the name of the licence holder and/or Certificate of Authorization holder facing disciplinary action and a summary of the allegations against them. At such time when Registration Committee hearings become open to the public, each edition of *Gazette* will also include a schedule of such hearings, including the name of the applicant and a summary of the circumstances resulting in the need for a hearing.

- *Gazette* will report the results, in summary form, of any hearings of the Registration Committee that were open to the public.

- *Gazette* will also include summaries of enforcement activities including the reporting of the results of any charges laid against individuals or corporations pursuant to sections 39, 40 and 41 of the Act.

- *Gazette* may report the results of any examination of PEO's procedures for the treatment of complaints that has been carried out by the Complaints Review Councillor pursuant to section 26(1) of the Act.

- *Gazette* may also include articles and information relating to regulatory matters that are considered relevant to professional engineers and the practice of professional engineering, including information and issues relating to compliance with demand-side legislation (e.g. *Ontario Building Code, Occupational Health and Safety Act*.)

Anyone having questions about the *Gazette* Editorial Objectives/Policy, or any aspect of *Gazette*, may contact the editor, Bruce G. Matthews, P.Eng., at 1-800-339-3716, or 416-224-9528, ext. 474, or by e-mail at bmatthews@peo.on.ca.