

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on September 28, 2004 at the Association of Professional Engineers of Ontario (the “association”) in Toronto. The association was represented by Bruce Matthews, P.Eng., manager, complaints and discipline. David E.J. Brouillette, P.Eng., was represented by Gary Gibbs of Steiber Berlach Gibbs.

The Allegations

The allegations against David E.J. Brouillette, P.Eng., (“Brouillette”) stated in the fresh notice of hearing dated September 27, 2004 are as follows:

It is alleged that the member is guilty of professional misconduct as defined in the *Professional Engineers Act*, R.S.O. 1990, c. P-28 (the “Act”), the particulars of which are as follows:

1. David E.J. Brouillette, P.Eng., was first licensed as a professional engineer in the Province of Ontario on June 23, 1977.
2. In or about 1992, the Muskoka Board of Education (“MBE”) retained Paragon Engineering Ltd. (“Paragon”) to produce a storm water management (“SWM”) report and SWM plan drawing for the proposed Riverside School to be located in the town of Huntsville (“the town”), Ontario.
3. In July 1992, Paragon issued a SWM report and plan drawing for the Riverside School. Both documents bore the signed seal of Brouillette, an employee of Paragon, who at all material times was responsible for the project, dated July 29, 1992.

Decision and Reasons

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

David E.J. Brouillette, P.Eng.

a member of the Association of Professional Engineers of Ontario.

The Riverside School SWM report and plan drawing bore the following characteristics, which the MBE appeared not to notice and hence did not raise with Brouillette and Paragon:

- (a) The report did not include an adequate discussion as to how the one in 100-year storm flow would be accommodated to the North Muskoka River once it leaves the school property.
- (b) The report indicated that virtually the entire site drains in a southwesterly direction towards vacant property via sheet flow, whereas the contours of the SWM plan drawing indicated that a portion of the property drains towards a road to the east side of the property. The report omitted any mention or discussion of this apparent inconsistency.
- (c) The report and plan drawing proposed a drainage scheme, in which the post-development flows towards the property to the southwest would be greater than the pre-development flows.
- (d) The report and plan drawing proposed to direct a concentrated flow

to a neighbouring property through an assumed easement without clear or written agreement of the adjoining downstream property owner contrary to the requirements of the *Drainage Act*.

4. By letter on behalf of the MBE dated August 6, 1992, Paragon advised the District of Muskoka that an application was being made to the Ministry of Environment for approval of the storm water management features of the Riverside School property.
5. In early 1993, Mel Taylor (“Taylor”), president of 796577 Ontario, Limited, owner of a parcel of land adjacent to the south and west portion of the Riverside School property, retained Paragon to produce a storm report and plan drawing for a proposed residential development on the land. The development was to be known as Shellwood Acres.

At that time, Brouillette did not clearly and/or completely dis-

close to Taylor the fact that Paragon had been retained by MBE to provide the SWM report and plan drawing for the Riverside School project, in addition to providing SWM construction review services for that project.

6. In June 1993, Paragon issued a SWM report and SWM plan drawing for Shellwood Acres. Both documents bore the signed seal of Brouillette, dated June 23, 1993.
7. On November 7, 2001, Taylor met with Brouillette to discuss the drainage related issues affecting the Shellwood Acres subdivision. In a letter to Taylor, dated December 21, 2001, Brouillette responded to the issues as follows:

- (a) With respect to the pavement cracking, Brouillette noted that the roadside drains were intended to provide drainage to the granular base layers only and that drainage of the sub-grade was beyond the scope of the original work.
- (b) Regarding the flooding within certain lots on the Shellwood Acres property, Brouillette stated that the lots in question had been poorly graded and that drainage was not properly directed away from the residences. Brouillette noted that lot grading was the responsibility of the home builder.
- (c) With respect to the impact of drainage from the Riverside School property, Brouillette stated that both the Riverside School and Shellwood Acres SWM report acknowledged the historical nature of drainage in the area. Brouillette noted that provision was made via easements to allow the Riverside School property runoff to reach the Muskoka River via the Shellwood

Acres property. Brouillette also noted that the SWM works at the Riverside School were unfinished until August 2001, at which time deficiencies were rectified. That should improve the situation with respect to drainage onto the Shellwood Acres property. Brouillette opined that the construction of the school did not have any appreciable influence on the high groundwater table that had been observed on the Shellwood Acres site.

Agreed Facts

Mr. Gibbs, counsel for Brouillette, stated that the member agreed with the facts and allegations contained in the Fresh Notice of Hearing.

Decision

The panel considered the agreed facts and concluded that Brouillette:

- (a) produced a SWM report and plan drawing for the Riverside School that contained incomplete information, deficiencies and omissions, which had the potential to result in an adverse impact on the Shellwood Acres property, if the easements anticipated by him were not confirmed;
- (b) failed to make prompt, clear and complete disclosure to Taylor that he had sealed and Paragon had provided the SWM design for the Riverside School and was providing site review services related to the drainage works for that property;
- (c) failed to appreciate that the flooding and drainage problems being experienced on the Shellwood Acres property could potentially be related to the SWM design for the Riverside School property; and

- (d) acted in an unprofessional manner.

By reason of the above facts, the panel concluded that Brouillette is guilty of professional misconduct as defined in section 28(2) of the Act. The relevant sections of Regulation 941 to the Act are 72(2)(a), 72(2)(b), 72(2)(d), 72(2)(e), 72(2)(f) and 72(2)(j).

Reasons for Decision

The panel deliberated and unanimously accepted the agreed facts, which substantiated the findings of professional misconduct.

Penalty

A joint submission as to penalty was made and provided as follows:

1. that Brouillette write and pass the Professional Practice Examination and the 98-Civ-B4 (engineering hydrology) examination within 18 months, failing which his licence would be suspended for 12 months or until such time as the examinations are written and passed, whichever is earlier. If both examinations are not written and passed following the 18 months plus the 12-month suspension, this matter will be returned to the Discipline Committee for further determination as to penalty.
2. that Brouillette receive a reprimand to be recorded on the Register of the association until such time that both examinations listed in paragraph one are successfully passed.
3. that Brouillette pay costs to the association in the amount of \$5,000.

Mr. Matthews, on behalf of the association, advised the panel that there was,

however, no agreement on penalty with respect to the issue of publication of the decision. In that regard, Mr. Matthews, on behalf of the association, asked the panel that the order be published with names in *Gazette*.

Mr. Gibbs, on behalf of Brouillette, submitted that this was not a case where publication with names in *Gazette* was warranted.

The panel deliberated and accepted the joint submission as to penalty with the additional requirement that the decision along with names be published in *Gazette*.

Accordingly, the panel ordered that:

- 1. Brouillette write and pass the Professional Practice Examination and the 98-Civ-B4 (engineering hydrology) examination within 18 months, failing which his licence would be suspended for 12 months or until such time as the examinations are written and passed, whichever is earlier. If both examinations are not written and passed following the 18 months plus the 12-month suspension, this matter will be returned to the Discipline Committee for further determination as to penalty;**
- 2. Brouillette receive a reprimand to be recorded on the Register of the association until such time that both examinations listed in paragraph one are successfully passed;**
- 3. Brouillette pay costs to the association in the amount of \$5,000; and**
- 4. The Decision and Reasons of the Discipline Committee be published in *Gazette* with names.**

Reasons for Penalty

The panel considered the joint submission as to penalty and the submission from Mr. Matthews, on behalf of the association, that the decision along with names be published in *Gazette*.

The panel also took into account that the member cooperated in the hearing, acknowledging the allegations and taking responsibility for his actions. The panel concluded that the proposed penalty is reasonable and in the public interest.

It was decided that the Decision and Reasons be published in *Gazette* with

names to provide a deterrent to other engineers from acting in an unprofessional manner and to demonstrate that the association is fulfilling its principle object to serve and protect the public interest.

The written Decision and Reasons in this matter were dated October 18, 2004, and were signed by the Chair of the panel, L. Brian Ross, P.Eng., on behalf of the other members of the panel: Richard Emode, P.Eng., Santosh Gupta, P.Eng., Nick Monsour, P.Eng., and Albert Sweetnam, P.Eng.

Decision and Reasons— Stipulated Order

In the matter of a complaint regarding the conduct of:

Engineer A

a member of the Association of Professional Engineers of Ontario.

The Complaints Committee in accordance with section 24 of the *Professional Engineers Act* (the “Act”) referred a complaint in the matter of Engineer A (the “member”) to be dealt with by way of the Stipulated Order process.

In accordance with the Stipulated Order process, Richard Weldon, P.Eng.,

a member of the Discipline Committee (“Discipline Committee member”) of the Association of Professional Engineers of Ontario (“PEO”), was selected by the Chair of the Discipline Committee to act as the Chair of the Stipulated Order process for the disposition of this matter. After reviewing the complaint and other related information, the Discipline

Committee member met with the member on March 10, 2004 to allow the member the opportunity to offer any explanation and/or defence for his actions and conduct.

The complaint alleged that the member:

- (a) in August 2002, while employed by Company A as a manager, provided an electronic copy of a Company A PowerPoint presentation to a representative of Company B. The PowerPoint presentation contained proprietary and confidential information about Company A's "lean manufacturing" processes; and
- (b) further, in August and September 2002, the member, operating as Engineer A Consulting, offered and provided services to Company B regarding the measurement and three-dimensional modeling of parts produced by Company B. In offering and providing these services, the member utilized the facilities and equipment of Company A, including a specialized measuring device. The member had not sought nor received Company A's permission to use the facilities and equipment, nor did he bring the Company B business opportunity to the attention of Company A.

The complaint further alleged that in doing the above, the member:

- (a) breached section 12(2) of the *Professional Engineers Act* by offering and providing professional engineering services to the public while not in possession of a Certificate of Authorization;
- (b) failed to make prompt, voluntary and/or complete disclosure of his interests in Company B and

Engineer A Consulting that might be construed as prejudicial to his professional judgment relative to his employment by Company A;

- (c) failed to advise Company A of his external consulting activities;
- (d) failed to advise Company B of the fact that he was a regular, full-time employee of Company A and of any attendant limitations on his ability to provide services to Company B;
- (e) removed valuable capital equipment from his employer's premises without permission;
- (f) made unauthorized use of his employer's equipment and facilities for personal gain;
- (g) conducted the business affairs of Engineer A Consulting during his regular employment hours at Company A; and
- (h) acted in a disgraceful, dishonourable and/or unprofessional manner.

The Discipline Committee member, in the meeting with the member, reminded him that this was his opportunity to offer an explanation and/or defence for his actions and conduct, and that if he did not accept the resultant Stipulated Order, the matter would proceed to a full Discipline Hearing before a panel of the Discipline Committee.

The member, in providing an explanation, stated that:

1. He did provide a copy of a Company A PowerPoint presentation to a representative of Company B. The member indicated this presentation had been provided to another Company A client previously, that he

received no compensation for providing the presentation to Company B, and that the recipient of the presentation in no way competes with Company A but could potentially be a customer of Company A.

2. He had provided an oral quotation to Company B for Company A to perform the measurement work, but Company B found the quote to be too high. The member also indicated he had provided quotations for many other smaller projects on his own previously, as did other managers at Company A (as opposed to funneling all quotations to the sales and marketing department at Company A).
3. He did provide services to Company B regarding the measurement and three-dimensional modeling of parts produced by Company B.
4. He did not inform company officers about this work.
5. The components worked on were for furniture and this work was not engineering work.
6. He did utilize Company A equipment for this work, primarily on weekends, at his home.
7. He did not ask permission to use the equipment, but did not try to conceal his activities.
8. While a minor amount of company time was spent undertaking this work, he has also worked 50-, 60- and 70-hour weeks for Company A without being paid overtime.
9. His contact at Company B is a former employee of Company A, so was obviously aware of his permanent employment there.

10. He was in negotiations with other Company A shareholders, including the complainant, about a buy-out strategy and the possibility of forming a new company to work in conjunction with Company A during these events.

The Discipline Committee member considered the available information and the explanations of the member and found the following information to be significant:

- (a) Confidential data and financial information was contained in the PowerPoint presentation given to Company B by the member.
- (b) The member did not receive compensation for providing the PowerPoint presentation to Company B.
- (c) The member carried out the work as indicated in the complaint, but did not try to conceal his activities. The member at the time had full access to the equipment and building at any time of the day or night and could readily have chosen to conceal his activities.
- (d) The member appeared to have displayed poor judgment in offering to perform and then undertaking the work as Engineer A Consulting, without fully disclosing, in writing to Company B, his relative position in Engineer A Consulting and as an employee at Company A.
- (e) The member appeared to have displayed poor judgment in not disclosing to Company A, in writing, the formation of the firm, Engineer A Consulting, and the fact that he was offering services to, and performing services for, Company B.

(f) The member appeared to have displayed poor judgment in taking company equipment off the premises and using company equipment, without first seeking consent to do so.

(g) The member had already begun negotiations with other company shareholders, including the complainant, about a buyout strategy and the possibility of forming a new company to work in conjunction with Company A during these events.

Based upon the foregoing, the parties have agreed:

THAT there is no basis to believe that Engineer A offered and provided professional engineering services to the public while not in possession of a Certificate of Authorization; and

THAT there is a basis to believe that Engineer A would be found guilty of professional misconduct and has breached sections of Ontario Regulation 941, specifically:

- (a) *Section 72(2)(i)(4)*: contracting in the practitioner's own right to perform professional engineering services for other than the practitioner's employer;
- (b) *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;
- (c) *Section 77(3)*: a practitioner shall act in professional engineering matters for each employer as a faithful agent or trustee and shall regard as confidential information obtained by the practitioner as to

the business affairs, technical methods or processes of an employer and avoid or disclose a conflict of interest that might influence the practitioner's actions or judgment;

(d) *Section 77(5)*: a practitioner who is an employee-engineer and is contracting in the practitioner's own name to perform professional engineering work for other than the practitioner's employer must provide the practitioner's client with a written statement of the nature of the practitioner's status as an employee, and the attendant limitations on the practitioner's services to the client must satisfy the practitioner that the work will not conflict with the practitioner's duty to the practitioner's employer. A practitioner must also inform the practitioner's employer of the work.

The Discipline Committee member, after careful review of all the provided information, has offered, and the parties have agreed to, the following Stipulated Order:

1. **That the member must write and pass the Professional Engineers of Ontario Professional Practice Exam within six months of signing this order. If the member fails to do so, the member's licence shall be suspended for a period of three months.**
2. **That the member must reimburse his former employer, Company A, in the amount equal to half the fee charged for his services to Company B, namely, \$1,900. If the member fails to do so within six months of signing this order, the member's licence shall be suspended for a period of three months.**

3. That an article be published in the official journal of the association, without reference to names or identifying features.

This Decision and Reasons document was dated April 2, 2004 and was signed by the Discipline Committee member, Richard Weldon,

P.Eng. The Stipulated Order document was dated April 12, 2004 and was signed by Richard Weldon and Engineer A.

Decision and Reasons—Stipulated Order

In the matter of a complaint regarding the conduct of:

Engineer X

a member of the Association of Professional Engineers of Ontario, and

Company X

a holder of a Certificate of Authorization.

The Complaints Committee in accordance with section 24 of the *Professional Engineers Act* (the “Act”) referred a complaint in the matter of Engineer X (the “member”) and Company X to be dealt with by way of the Stipulated Order process.

In accordance with the Stipulated Order process, Gina P. Cody, P.Eng., a member of the Discipline Committee (“Discipline Committee member”) of the Association of Professional Engineers of Ontario (“PEO”) was selected by the Chair of the Discipline Committee to act as the Chair of the Stipulated Order process for the disposition of this matter. After reviewing the complaint and other

related information, the Discipline Committee member met with Engineer X on September 15, 2004, to allow the member the opportunity to offer any explanation and/or defence for his actions and conduct.

The complaint alleged as follows:

1. By letter to Company A dated May 9, 2003, Architect B engaged Company A to conduct a peer review of a set of structural drawings and to provide comments. These structural drawings were dated March 19, 2003 and were prepared by Company X for the alteration and addition to a proposed restau-

rant in Toronto, and were signed and sealed by Engineer X.

2. Architect B indicated to Company A in the same letter that the review of the drawings was for the sole benefit of the landlord of the restaurant property and requested that a written report be submitted.
3. By fax to Architect B dated May 12, 2003, Company A indicated that they were required to inform Company X of this peer review of structural drawings in order to complete the noted work. Company A also attached their confirmation of assignment form for Architect B to review and sign. Architect B signed the confirmation of assignment on the same date and returned it to Company A by fax.
4. By letter to Engineer X dated May 13, 2003, Company A indicated that they had been retained by Architect B to conduct a peer review of the proposed renovations to the restaurant in Toronto. Company A also indicated in the same letter that the notification was being sent as a courtesy.
5. By letter to Architect B dated May 21, 2003, Company A provided a review summary with comments.

6. During the structural drawing reviewing process, Company A discovered that some of the design details contained in Company X drawings, dated March 19, 2003, were either similar or identical to Company A standards of the time. By way of example, an engineer at Company A used certain specific Company A drawings for a project of similar size. The similarities included drawing title, dimension, instructions and pattern of hatching.
7. Company A carried the copyright symbol and the following notation: "2002 <Company A>. Must be returned upon request. Reproduction of these drawings, specifications, related documents and designs in whole or in part is strictly forbidden without the prior written permission of <Company A>."
8. Company A alleged that 15 Company X design details were identical to those of Company A (a list was provided).
9. It is alleged that Engineer X and Company X:
 - (a) signed, dated and sealed drawings and technical specifications for the restaurant project that were partly or mostly copied from Company A drawing files without authorization;
 - (b) utilized copies of Company A design files to form the basis for the preparation of Company X's drawings and technical specifications for the project;
 - (c) inappropriately used material and technical specifications from Company A drawings, and represented the material as Company X's material;

- (d) knew or ought to have known that their drawings and technical specifications for the project contained information obtained improperly from Company A;
- (e) violated copyright laws;
- (f) failed to maintain the standards that a reasonable and prudent practitioner would maintain in carrying out the design project; and
- (g) acted in a disgraceful, dishonourable and/or unprofessional manner.

The Discipline Committee member, in the meeting with the member, reminded him that this was his opportunity to offer an explanation and/or defence for his actions and conduct, and that if he did not accept the Stipulated Order, the matter would proceed to a full Discipline Hearing before a panel of the Discipline Committee.

The member, in providing an explanation, stated that:

1. He had no knowledge of the drawings being a copy of Company A drawings until he received a call from Company A.
2. He was told by the draftsman who prepared the drawings that, based on his experience, he could improve the details prepared by Engineer X, and that draftsman prepared the drawings for him.
3. He was not aware that these details were prepared for other firms.
4. He was not aware that the draftsman had worked for Company A.
5. In the future, he would never include the details provided by

any draftsman in his drawings without verifying the source and ensuring that they can be incorporated and/or used with his material.

The Discipline Committee member considered the available information and the explanations of the member and found the following information to be significant:

1. The member had no reason to believe that the drawings prepared by the draftsman were copied from Company A drawings.
2. The member did not personally prepare the details.
3. Upon receiving a phone call from Company A regarding the details, the member called them back and apologized for what had happened.
4. The member appeared to have displayed concern regarding the work prepared by his draftsman.

Based upon the foregoing, the parties have agreed:

THAT there is no basis to believe that Engineer X was in breach of the *Professional Engineers Act* and the Regulations made under the Act.

The Discipline Committee member, after careful review of all the provided information, has offered, and the parties have agreed to, the following Stipulated Order:

1. **that there be no further action taken related to this matter; and**
2. **that an article be published in the official journal of the association, without reference to names or identifying features, on the subject of copyright laws and the fact that engineers should ensure materials**

prepared by draftspeople for them are not copied from other restricted sources.

This Decision and Reasons document was dated October 12, 2004 and was signed by the Discipline Committee member, Gina

Cody, P.Eng. The Stipulated Order document was dated December 30, 2004 and was signed by Gina Cody, P.Eng., and Engineer X.

Notice of Licence Suspension

Pursuant to an October 28, 2003 order of the Discipline Committee, the licence of **John S. Ivanyi** has been suspended for a period of six months, effective April 1, 2005. This suspension arises as a result of Ivanyi's failure to write and pass the Professional Practice Examination and to pay \$3,000 in costs to PEO within the timeframe established by the Discipline Committee in its order. Details regarding the order can be found in the Decision and Reasons arising from the associated discipline hearing, which were published in the November/December 2004 *Gazette*.

Summary of Scheduled Discipline Hearings

This schedule is subject to change without public notice. For further information contact PEO at 416-840-1072; toll free 800-339-3716, ext. 1072.

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

All hearings commence at 9:30 a.m.

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

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

May 24-27, 2005

Vinodbhai Patel, P.Eng.

It is alleged that Patel is guilty of professional misconduct as defined

in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
- (c) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
- (d) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by

- virtue of the practitioner's training and experience; and
- (f) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

June 7-9, 2005

Nicholas M. Upton, P.Eng.

It is alleged that Upton is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Upton is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person

who may be affected by the work for which the practitioner is responsible;

- (c) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
- (d) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
- (f) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.