

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on October 25, 2007 at the Association of Professional Engineers of Ontario (the association) in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Wojciech Stanislaw Remisz, P.Eng., and Remisz Consulting Engineers Ltd. were represented by Todd Plant of Plant Quinn Thiele LLP. Scott C. Hutchison of Stockwoods LLP served as independent legal counsel to the discipline panel.

The allegations

1. It is alleged that Wojciech Stanislaw Remisz, P.Eng., (the member) and Remisz Consulting Engineers Ltd. (the holder) are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
2. "Professional misconduct" is defined in section 28(2)(b) as: "The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."
3. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
 - (a) *Section 72(2)(a)*: negligence as defined in section 72(1): In this section "negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;

Decision and Reasons

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

Wojciech Stanislaw Remisz, P.Eng.

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

Remisz Consulting Engineers Ltd.

a holder of a Certificate of Authorization.

- (c) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under the responsibility of a practitioner;
 - (d) *Section 72(2)(g)*: breach of the Act or regulation, other than an act that is solely a breach of the Code of Ethics; and
 - (e) *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.
2. Remisz Consulting Engineers Ltd. (RCEL) was, at all material times, the holder of a Certificate of Authorization to offer and provide to the public services that are 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 Remisz, carried on the practice of professional engineering in a proper and lawful manner. Remisz was one of the professional engineers responsible for the services provided by RCEL.
 3. On or about February 2005, the City of Kingston (the city) received a building permit application for a proposed single-family residence. This application included a drawing sealed by Remisz for the full structural review of that residence, dated July 24, 2004. A copy of the design drawings reviewed and sealed by Remisz was attached as Schedule 1 to the Statement of Agreed Facts. The residence was a production house/unit known as Civic Da Vinci, Models A and B, for a local builder, Braebury Homes Corporation (Braebury). Upon review of these drawings, the city had concerns with

Plea by member and holder

The member and the holder admitted the allegations of professional misconduct. The panel conducted a plea inquiry and was satisfied that the member's and holder's admissions were voluntary, informed and unequivocal.

Statement of Agreed Facts

1. Wojciech Stanislaw Remisz, P.Eng., (Remisz) was, at all material times, a member of the Association of Professional Engineers of Ontario.

the design of the structural elements of the residence.

4. Alleged design deficiencies identified by the city included the following:
 - (a) location of girder trusses not provided and therein not allowing for the effect of concentrated load reactions to be accounted for in the design of supporting elements;
 - (b) two windows on the front of Elevation "B" require special brick lintels because of the arched soffit and side-lights and no details were shown for these lintels;
 - (c) framing around the stair opening was unclear on the ground and second-floor level and framing indicated results in potentially dangerously low bending resistance to applied bending forces;
 - (d) supporting steel beams in the garage area were at different elevations and no detail to provide for this condition was shown on the drawings;
 - (e) a steel beam over the garage was supported on two teleposts at each end and no detail was shown for this unusual condition; and
 - (f) supporting masonry veneer on the front elevation was supported on the wood beam in the garage area.
5. On August 23, 2004, Cristian R. Constantinescu, P.Eng., of RCEL, provided the city with a memo to Braebury regarding the stamping process of Braebury Homes drawings. In that memo, he stated that, "The engineer's stamp on a drawing means that full structural review of that drawing has been completed, if not otherwise specified." This informed the city that Braebury Homes drawing(s) stamped by the Remisz engineers were a complete structural review.
6. The Association of Professional Engineers of Ontario retained Robert E. Brown, P.Eng., (Brown) of Robert E. Brown and Associates Limited, Consulting Engineers, to conduct an independent third-party review of Remisz's sealed structural design drawings dated July 24, 2004. A copy of Brown's report dated June 28, 2006 was attached as Schedule 2 to the Statement of Agreed Facts.
7. Remisz and RCEL retained Heinz Keller, P.Eng., (Keller) to conduct a review of the work of Remisz and RCEL. A copy of Keller's report dated October 17, 2007 was attached as Schedule 3 to the Statement of Agreed Facts.
8. In respect to the expert reports referenced in paragraphs 6 and 7, the parties agree that the structural design drawings dated July 24, 2004 were deficient, as noted in paragraph 9.
9. It is agreed that Wojciech S. Remisz, P.Eng., and Remisz Consulting Engineers Ltd.:
 - (a) provided a design that was not compliant with current *Ontario Building Code* requirements for the proposed single-family residence;
 - (b) provided structural designs and drawings, which included the overstressing of structural elements beyond allowable limits; and
 - (c) acted in an unprofessional manner.
10. Remisz and RCEL stated, by way of mitigation, that the problems in relation to the work were exacerbated by a lack of communication among the builder, the city and RCEL.

Decision

Upon reviewing the allegations and the evidence, the panel found that the holder and the member are guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, and under sections 72(2)(a), 72(2)(b), 72(2)(d) and 72(2)(g), and of unprofessional conduct

under 72(2)(j) of Regulation 941/90 under the Act.

Reasons for decision

The panel accepted the Statement of Agreed Facts and the member's and holder's admissions that substantiated the findings of professional misconduct. The panel noted that there was no disagreement about any element of the Statement of Agreed Facts in the submission by counsel for the association or in the submission by counsel for the member and holder. Paragraphs 8, 9(a), and 9(b) of the Statement of Agreed Facts support the finding by the panel against the member and the holder under sections 72(2)(a), 72(2)(b) and 72(2)(g) of Regulation 941/90 under the Act, paragraph 9(a) supports the finding under section 72(2)(d), and paragraphs 8 and 9 support the finding as unprofessional under section 72(2)(j) of Regulation 941/90 under the Act against the member and the holder.

Penalty decision

Counsel for the association and counsel for the holder provided the panel with a Joint Submission as to Penalty for the member and holder dated October 22, 2007. After considering the facts and the submissions from counsel for the holder, counsel for PEO and independent legal counsel, the panel unanimously accepted the Joint Submission as to Penalty, and ordered that:

1. **Remisz and RCEL shall be reprimanded and the fact of the reprimand shall be permanently recorded on the register.**
2. **Remisz shall write and pass the PEO Advanced Structural Analysis (98-Civ-B1) and Advanced Structural Design (98-Civ-B2) technical examinations within 12 months, failing which his licence shall be suspended.**
3. **Remisz shall write and pass the technical examinations within 24**

months, failing which his licence shall be revoked.

4. **Remisz and RCEL shall pay costs to PEO in the amount of \$2,500 forthwith.**
5. **A summary of the Decisions and Reasons of the Discipline Committee to be published in Gazette, including reference to names.**

Reasons for penalty decision

Considerable discussion took place with respect to the Joint Submission as to Penalty. Some members of the panel were concerned about the degree of the protection of the public that would be provided by the penalty without requiring that the holder undergo a practice review to the satisfaction of the association, or that the holder implement a quality assurance and quality management program. The panel also considered whether a reprimand on the permanent record (as opposed to a reprimand on the record for one year) was too severe for this misconduct.

The panel, through independent legal counsel, invited written submissions from the parties to address the concerns that had arisen respecting the adequacy of the penalty jointly proposed. The panel received written submissions from counsel for PEO and counsel for RCEL on the matter of the Joint Submission as to Penalty for RCEL. The panel also received additional legal advice from independent legal counsel (which was provided to the parties for comment).

Independent legal counsel and counsel for the parties reminded the panel that, in deciding whether to accept or reject a Joint Submission as to Penalty, the panel should be guided by the public interest. The panel should reject a joint submission only if it were of the view that the joint submission was inconsistent with the public interest, either because it failed to protect the public, or because it was oppressive or harsh to the member or the holder.

Counsel for PEO noted in his written response that, regardless of whether the reprimand is recorded on the register, a member of the public inquiring about

the discipline history of a member or a holder will be told by PEO the date of the hearing and the findings.

PEO counsel, in his written submission, noted that the facts and conduct admitted to are indicative of a deficiency of knowledge in relation to the member and not of quality assurance or quality management issues within RCEL, noting that PEO did not feel it was appropriate to seek terms of penalty beyond those that address the lack of knowledge, skill and judgment of the member.

Counsel for the holder stated, in his written submission, that the Joint Submission as to Penalty remains comfortably within the range of penalties appropriate under the circumstances and that a permanent reprimand as registered cannot be construed as disproportionate and contrary to the public interest.

Counsel for PEO submitted that it cannot be concluded by the panel that the Joint Submission as to Penalty is so disproportionate to the offence that it

would be contrary to the public interest or that it would bring the administration of justice into disrepute on the basis of the facts before the panel.

Independent legal counsel advised the panel that, so long as the joint submission is “in the range,” the panel should not, in the ordinary course, interfere with it. Counsel for the panel noted that both counsel for PEO and counsel for RCEL have properly identified the Court of Appeal authority that supports their written comments.

For the reasons set out above, the panel felt that the Joint Submission as to Penalty was fair and reasonable in this instance. The panel accepted the joint submission.

The written Decision and Reasons were dated March 4, 2008, and were signed by Glenn Richardson, P.Eng., as the chair on behalf of the other members of the discipline panel: Diane Freeman, P.Eng., Rishi Kumar, P.Eng., Anne Poschmann, P.Eng., and Derek Wilson, P.Eng.

Decision and Reasons

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

Cristian Radu Constantinescu, P.Eng.

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

Remisz Consulting Engineers Ltd.

a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on October 25, 2007 at the Association of Professional Engineers of Ontario (the association) in Toronto. The association was represented by Neil

Perrier of Perrier Law Professional Corporation. Cristian Radu Constantinescu, P.Eng., and Remisz Consulting Engineers Ltd. were represented by Todd Plant of Plant Quinn Thiele LLP. Scott C. Hutchison of Stockwoods LLP served as

independent legal counsel to the discipline panel.

The allegations

1. It was alleged that Cristian Radu Constantinescu, P.Eng., (the member) and Remisz Consulting Engineers Ltd. (the holder) are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
2. "Professional misconduct" is defined in section 28(2)(b) as: "The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."
3. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
 - (a) *Section 72(2)(a)*: negligence as defined in section 72(1): In this section "negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
 - (c) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under the responsibility of a practitioner;
 - (d) *Section 72(2)(g)*: breach of the Act or regulation, other than an act that is solely a breach of the Code of Ethics; and
 - (e) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all

the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Plea by member and holder

The member and the holder admitted the allegations of professional misconduct. The panel conducted a plea inquiry and was satisfied that the member's and holder's admissions were voluntary, informed and unequivocal.

Statement of Agreed Facts

1. Cristian Radu Constantinescu, P.Eng., (Constantinescu) was, at all material times, a member of the Association of Professional Engineers of Ontario.
2. Remisz Consulting Engineers Ltd. (RCEL) was, at all material times, the holder of a Certificate of Authorization to offer and provide to the public services that are 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 Constantinescu, carried on the practice of professional engineering in a proper and lawful manner. Constantinescu was one of the professional engineers responsible for the services provided by RCEL.
3. On or about August 2004, the City of Kingston (the city) received a building permit application for a proposed single-family residence. This application included a drawing sealed by Constantinescu for the full structural review of that residence dated August 12, 2004. A copy of the design drawing reviewed and sealed by Constantinescu was attached as Schedule 1 to the Statement of Agreed Facts. The residence was a production house/unit known as Civic Copenhagen, Model A, for a local builder,

Braebury Homes Corporation (Braebury). Upon review of these drawings, the city had concerns with the design of the structural elements of the residence.

4. On August 13, 2005, Jeff Gurnsey, C.E.T., building official of the city, issued a letter requesting additional information from Braebury on the project. The information included the following:
 - (a) confirmation of the front porch slab construction;
 - (b) confirmation of the size of the beams in the garage area;
 - (c) confirmation of the W150x22 in the living room/foyer area to support the second floor walls and veneer. Beam end support to be steel to masonry;
 - (d) some single teleposts in the basement are overloaded, clarification required;
 - (e) review of the floor joist spacing at the 14' 6" span in the basement; and
 - (f) roof truss details including:
 - (i) engineered truss design drawings,
 - (ii) truss layout diagram, and
 - (iii) lintel design for lintels supporting trusses over 32' 2" *Ontario Building Code* 9.23.12.3.(1)(d) and lintels with the girder truss bearing above.
5. Other alleged design deficiencies identified included the following:
 - (a) location of girder trusses not provided and therein not allowing for the effect of concentrated load reactions to be accounted for in the design of supporting elements;
 - (b) an exterior lintel is specified at the ground-floor morning room side wall to support the end of a girder truss and no specific size for this lintel is provided;
 - (c) steel beams supporting masonry veneer on the front elevation were supported on wood posts at two locations, contrary to the *Ontario Building Code* (9.20.5.1(1)). One of the multi-ply 2x4 wood posts in

- question was substantially below required strength; and
- (d) the second-floor beams supporting the front wall required a steel plate to support the brick veneer.
6. On or about August 23, 2004, Constantinescu provided the city with a memo to Braebury regarding the stamping process of Braebury Homes drawings. In that memo, he stated that, "The engineer's stamp on a drawing means that full structural review of that drawing has been completed, if not otherwise specified." This informed the city that Braebury Homes drawing(s) stamped by the Remisz engineers were a complete structural review. A "Steel Beams Connection Details" SO1 sketch/drawing was submitted to the city and no other information was provided.
 7. The Association of Professional Engineers of Ontario retained Robert E. Brown, P.Eng., (Brown) of Robert E. Brown and Associates Limited, Consulting Engineers, to conduct an independent third-party review of Constantinescu's sealed structural design drawing dated August 12, 2004. A copy of Brown's report dated May 8, 2006 was attached as Schedule 2 to the Statement of Agreed Facts.
 8. Constantinescu and RCEL retained Heinz Keller, P.Eng., (Keller) to conduct a review of the work of Constantinescu and RCEL. A copy of Keller's report dated October 17, 2007 was attached as Schedule 3 to the Statement of Agreed Facts.
 9. In respect to the expert reports referenced in paragraphs 7 and 8 above, the parties agree that the structural design drawing dated August 12, 2004 was deficient, as noted in paragraph 10 below.
 10. It was agreed that Cristian R. Constantinescu, P.Eng., and Remisz Consulting Engineers Ltd.:

- (a) provided a design that was not compliant with current *Ontario Building Code* requirements for the proposed single-family residence;
 - (b) provided structural designs and drawings, which include the overstressing of structural elements beyond allowable limits;
 - (c) failed to provide compliant subsequent structural information and details that were required by the City of Kingston; and
 - (d) acted in an unprofessional manner.
11. Constantinescu and RCEL stated, by way of mitigation, that the problems in relation to the work were exacerbated by a lack of communication among the builder, the city and RCEL.

Decision

Upon reviewing the allegations and the evidence, the panel finds that the holder and the member are guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, and under sections 72(2)(a), 72(2)(b), 72(2)(d), 72(2)(g), and unprofessional conduct under 72(2)(j) of Regulation 941/90 under the Act.

Reasons for decision

The panel accepted the Statement of Agreed Facts and the member and holder's admissions that substantiated the findings of professional misconduct. The panel noted that there was no disagreement about any element of the Statement of Agreed Facts in the submission by counsel for the association or in the submission by counsel for the member and holder. Paragraphs 4(a) to 4(f), inclusive, and paragraphs 5, 9 and 10(b) of the Statement of Agreed Facts, support the finding by the panel against the member and the holder under sections 72(2)(a), 72(2)(b) and 72(2)(g) of Regulation 941/90 under the Act. Paragraph 10(a) supports the finding under section 72(2)(d), and paragraphs 9 and 10 support the finding as unprofessional under section 72(2)(j) of Regulation

941/90 under the Act, against the member and the holder.

Penalty decision

Counsel for the association and counsel for the holder provided the panel with a Joint Submission as to Penalty for the member and holder, dated October 22, 2007.

After considering the facts and the submissions from counsel for the holder, counsel for PEO and independent legal counsel, the panel unanimously accepted the Joint Submission as to Penalty, and ordered that:

1. **Constantinescu and RCEL shall be reprimanded and the fact of the reprimand shall be permanently recorded on the register.**
2. **Constantinescu shall write and pass the PEO Advanced Structural Analysis (98-Civ-B1) and Advanced Structural Design (98-Civ-B2) technical examinations (technical examinations) within 12 months, failing which his licence shall be suspended.**
3. **Constantinescu shall write and pass the technical examinations within 24 months, failing which his licence shall be revoked.**
4. **Constantinescu and RCEL shall pay costs to PEO in the amount of \$2,500 forthwith.**
5. **A summary of the Decisions and Reasons of the Discipline Committee to be published in Gazette, including reference to names.**

Reasons for penalty decision

Considerable discussion took place with respect to the Joint Submission as to Penalty. Some members of the panel were concerned about the degree of protection of the public that would be provided by the penalty without requiring that the holder undergo a practice review to the satisfaction of the association, or that the holder implement a quality assurance and quality management program. The panel also considered

it likely that some miscommunication between Braebury and the member occurred, and discussed whether a reprimand on the permanent record (as opposed to a reprimand on the record for one year) was too severe for this misconduct, particularly since the misconduct related to a single drawing produced in 2004.

The panel, through independent legal counsel, invited further written submissions from the parties to address the concerns that had arisen respecting the adequacy of the penalty jointly proposed for the holder. The panel received further written submissions from counsel for PEO and counsel for RCEL on the matter of the Joint Submission as to Penalty for RCEL. The panel also received additional legal advice from independent legal counsel (which was provided to the parties for comment).

Independent legal counsel and counsel for the parties reminded the panel that, in deciding whether to accept or reject a Joint Submission as to Penalty, the panel should be guided by the public interest. The panel should only reject a joint submission if it were of the view that it was inconsistent with the public interest, either because it failed to protect the public, or because it was oppressive or harsh to the member or to the holder.

Counsel for PEO noted, in his written response, that regardless of whether the reprimand is recorded on the register, a member of the public inquiring about the discipline history of a member or holder will be told by PEO the date of the hearing and the findings.

PEO counsel, in his written submission, noted that the facts and conduct admitted to are indicative of a deficiency of knowledge in relation to the member and not of quality assurance or quality management issues within RCEL, noting that PEO did not feel it was appropriate to seek terms of penalty beyond those that address the lack of knowledge, skill and judgment of the member.

Counsel for the holder stated, in his written submission, that the Joint Submission as to Penalty remains comfortably within the range of penalties appropriate under the circumstances and that a permanent reprimand, as registered, cannot be construed as disproportionate and contrary to the public interest.

Counsel for PEO submitted that it cannot be concluded by the panel that the Joint Submission as to Penalty is so disproportionate to the offence that it would be contrary to the public interest or that it would bring the administration of justice into disrepute on the basis of the facts before the panel.

Independent legal counsel advised the panel that, so long as the joint submission

is “in the range,” the panel should not, in the ordinary course, interfere with it. Counsel for the panel noted that both counsel for PEO and counsel for RCEL have properly identified the Court of Appeal authority that supports their written comments.

For the reasons set out above, the panel felt that the Joint Submission as to Penalty was fair and reasonable in this instance. The panel accepted the joint submission.

The written Decision and Reasons were dated March 4, 2008, and were signed by Glenn Richardson, P.Eng., as the chair on behalf of the other members of the discipline panel: Diane Freeman, P.Eng., Rishi Kumar, P.Eng., Anne Poschmann, P.Eng., and Derek Wilson, P.Eng.

Decision and Reasons

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

Mohan Prasad Sharma, P.Eng.

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

Remisz Consulting Engineers Ltd.

a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on October 25, 2007 at the Association of Professional Engineers of Ontario (the association) in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Mohan Prasad Sharma, P.Eng., was not present and was not represented. Remisz Consulting Engineers Ltd. was represented by Todd

Plant of Plant Quinn Thiele LLP. Scott C. Hutchison of Stockwoods LLP served as independent legal counsel to the discipline panel.

The allegations

1. It is alleged that Mohan Prasad Sharma, P.Eng., (the member) and Remisz Consulting Engineers Ltd. (the holder) are guilty of professional misconduct as defined in section

28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

2. "Professional misconduct" is defined in section 28(2)(b) as:
"The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."
3. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
 - (a) *Section 72(2)(a)*: negligence as defined at section 72(1); In this section "negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
 - (c) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under the responsibility of a practitioner;
 - (d) *Section 72(2)(g)*: breach of the Act or regulation, other than an act that is solely a breach of the Code of Ethics; and
 - (e) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Plea by the member

The member was not present at the hearing, nor represented by counsel. The panel was satisfied that the member had notice of the time and place of the hearing. Counsel for the association indicated that the member was aware of the proceedings and would not be attending as he now resided outside the country. The panel entered a plea of not guilty on behalf of the member

in response to the allegations of professional misconduct as set out in the Amended Notice of Hearing dated July 4, 2007 and as further amended at the hearing by the association on October 25, 2007.

Plea by the holder

The holder was present and represented by counsel, and admitted the allegations of professional misconduct. The panel conducted a plea inquiry and was satisfied that the holder's plea was voluntary, informed and unequivocal.

Facts uncontested by the member

Counsel for the association indicated that he had been in communication with the member. The member was aware of the proceedings and of the penalty being sought by the association. Through counsel for the association, the member indicated that he did not contest the factual allegations made in the Notice of Hearing, but did not wish to plead guilty. In effect, the member did not contest what had happened, but left it to the Discipline Committee to assess whether those facts amounted to misconduct.

The holder and the association jointly presented a Statement of Agreed Facts in support of the plea. The material parts of that Statement of Agreed Facts set out the following:

1. Mohan Prasad Sharma, P.Eng., (Sharma) was, at all material times, a member of the Association of Professional Engineers of Ontario.
2. RCEL was, at all material times, the holder of a Certificate of Authorization to offer and provide to the public services that are 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 Sharma, carried on the practice of professional engineering in a proper and lawful manner. Sharma was one of the professional engineers responsible for the services provided by RCEL.
3. From February to June 2005, the City of Kingston (the city) received building permit applications for pro-

posed single-family residences. These applications included drawings sealed by Sharma of RCEL for the full structural design of the residences, dated February 2, 2005. A copy of the design drawings reviewed and sealed by Sharma was attached as Schedule 1 to the Statement of Agreed Facts. The residences were production houses/units for a local builder, Braebury Homes Corporation (Braebury). Upon review of these drawings, the city had concerns with the design of the structural elements of the residences.

4. On or about May 2005, Jeff Gurnsey, C.E.T., building official of the city, issued various letters requesting additional information from Braebury on the projects. The requested additional information included the following:
 - (a) truss drawing layouts;
 - (b) engineer's detail for window lintels where truss exceeds 32' 2";
 - (c) revised wood lintel for basement walkout; and
 - (d) revised drawings showing proposed double garage door in place of two single doors.
5. Other alleged design deficiencies identified by the city included the following:
 - (a) location of girder trusses not provided and therein not allowing for the effect of concentrated load reactions to be accounted for in the design of supporting elements;
 - (b) roof supporting beams over bathroom and bedroom not shown;
 - (c) posts supporting steel beam over morning room not shown;
 - (d) deficiency in the capacity of stair trimmer wood beam(s) at the ground floor;
 - (e) no structural loading indicated on the drawings;
 - (f) assumption that no roof loading exists on an exterior structural steel beam; and
 - (g) drawings and details provided were incomplete and not legible.
6. On or about August 23, 2004, Cristian R. Constantinescu, P.Eng., of

RCEL, provided the city with a memo to Braebury regarding the stamping process of Braebury Homes drawings. In that memo, he stated that, “The engineer’s stamp on a drawing means that full structural review of that drawing has been completed, if not otherwise specified.” This informed the city that Braebury Homes drawing(s) stamped by the Remisz engineers were a complete structural review.

7. The Association of Professional Engineers of Ontario retained Robert E. Brown, P.Eng., (Brown) of Robert E. Brown and Associates Limited, Consulting Engineers, to conduct an independent third-party review of Sharma’s sealed structural design drawings dated February 2, 2005. A copy of Brown’s report dated May 16, 2006 was attached as Schedule 2 to the Statement of Agreed Facts.
8. RCEL retained Heinz Keller, P.Eng., (Keller) to conduct a review of the work of RCEL. A copy of Keller’s report dated October 17, 2007 was attached as Schedule 3 to the Statement of Agreed Facts.
9. In respect to the expert reports referenced in paragraphs 7 and 8 above, the parties agree that the structural design drawings dated July 24, 2004 were deficient, as noted in paragraph 10 below.
10. It is agreed that Remisz Consulting Engineers Ltd.:
 - (a) provided a design that was not compliant with current *Ontario Building Code* requirements for the proposed single-family residences;
 - (b) provided structural designs and drawings that include the overstressing of structural elements beyond allowable limits;
 - (c) omitted structural supporting elements on sealed and final drawings;
 - (d) failed to provide complete and legible structural information and

details, which were required by the City of Kingston; and

- (e) acted in an unprofessional manner.
11. RCEL stated, by way of mitigation, that the problems in relation to the work were exacerbated by a lack of communication among the builder, the city and RCEL.
12. By reason of the aforesaid, it is agreed that Remisz Consulting Engineers Ltd. is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

Additional evidence and submissions at hearing

From February to June 2005, the City of Kingston received building permit applications, which included drawings sealed by Sharma of RCEL, for the full structural design of single-family residences to be constructed by Braebury Homes Corporation. The city subsequently notified Braebury that the city had concerns with the design of the structural elements of the residences.

The association retained Robert E. Brown and Associates Limited (Brown) in June 2005 to review the member’s sealed structural drawings. The report by Brown dated May 16, 2006 (Exhibit #2) identifies a number of deficiencies where the drawings did not meet the acceptable standards of engineering practice for the design of residential building projects. In addition, the report identifies one structural matter that did not comply with the *Ontario Building Code*.

Counsel for the holder provided a review of the association technical documentation undertaken by Keller Engineering Associates Inc., dated October 17, 2007. Some of the comments provided in this review were in agreement with facts in the Amended Notice of Hearing, and some comments were in disagreement. The panel was not provided an explanation of the differences between the reports. The panel noted that

a professional engineer signed the report by Keller.

The association expert witness

Counsel for the association called Robert E. Brown, P.Eng., and submitted details of his background and experience (Exhibit #3). Counsel for the holder advised the panel there was no objection to Brown being qualified as an expert witness.

The panel qualified Mr. Brown as an expert witness.

Brown told the panel he had reviewed the drawings and documentation provided and had concluded that there were a number of matters that did not meet the acceptable standard of engineering practice for residential buildings. In replying to questions from counsel for the association, Brown testified that paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.8 set out where the drawings did not meet the standard of engineering practice, and that paragraph 1.7 identified a violation of the *Ontario Building Code*.

In his reply to a question from the panel, Brown noted that the sentence in the conclusion that, “The general arrangement and presentation of information on the drawings is common in the industry, and is barely acceptable as a standard of engineering practice,” was limited to approving the form used in presenting the information in the document and was not intended to derogate from his report relating to the other deficiencies found or to the code violation.

Counsel for the holder had no objection to the conclusions Brown reached in his testimony. Counsel for the association read a portion of his correspondence with the member that demonstrated that the member understood and did not contest the facts in the Amended Notice of Hearing, including those based upon the report by Brown.

The panel noted that Brown sealed the report by Brown.

Counsel for the association advised the panel that full disclosure had been made to the member and holder. Counsel for the association provided the panel

an excerpt from his correspondence with the member that demonstrated the member had received the amended Notice of Hearing and the report by Brown, and the member understood the content of these documents.

Decision

Upon reviewing the allegations and the evidence, the panel finds that the holder and the member are guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, and contrary to sections 72(2)(a), 72(2)(b), 72(2)(d) and 72(2)(g), and of acting in an unprofessional manner contrary to 72(2)(j) of Regulation 941/90 under the Act.

Reasons for decision

Although the member was not present, nor represented by counsel, the panel noted that this was the choice made by the member. The panel felt the member had been treated fairly, and that he had been given a reasonable opportunity to respond to the allegations set out in the Amended Notice of Hearing and to the report by Brown. The panel took into account that the member did not provide any defence to the facts set out in the Amended Notice of Hearing or the report by Brown. In addition, the panel decided the further amendments at the hearing by the association, which only removed allegations of incompetence, did not reduce the degree of fairness afforded to the member.

The fact that the expert witness for the association testified that the member had not met the standard of engineering practice and the evidence provided in paragraphs 1.1 to 1.8, inclusive, of the report by Brown dated May 16, 2006 (and concurred with by Keller, Exhibit #2, at sections 5.3.1, 5.3.2, 5.3.3, 5.3.6 and 5.5.3) support the finding by the panel against the member with respect to sections 72(2)(a), 72(2)(b) and 72(2)(d) of Regulation 941/90 under the Act.

In addition, paragraph 1.7 of the Brown report supports the finding by the panel under section 72(2)(g) of Regulation 941/90, and paragraphs 5 and 8 in the Amended Notice of Hearing support the

finding of unprofessional conduct under 72(2)(j) against the member.

In receiving submissions from counsel for the association and counsel for the holder, the panel heard that there was no disagreement as to the facts set out in the Statement of Agreed Facts. In addition, based upon the correspondence between counsel for the association and the member, the panel was satisfied the member did not dispute the material facts as set out in the Amended Notice of Hearing.

Paragraphs 10(b) to 10(d), inclusive, of the Statement of Agreed Facts (Exhibit #2) support the finding by the panel against the holder with respect to sections 72(2)(a), 72(2)(b) and 72(2)(d) of Regulation 941/90 under the Act against the holder. In addition, paragraph 10(a) supports the finding under section 72(2)(g) of Regulation 941/90, and paragraph 10(a) to 10(e), inclusive, support the finding of unprofessional conduct under section 72(2)(j) of Regulation 941/90 against the holder.

Penalty decision

Counsel for the association and counsel for the holder provided the panel with a Joint Submission as to Penalty for the holder dated October 22, 2007. Counsel for the association read a portion of his correspondence with the member that demonstrated the member understood the terms of the association's submission as to penalty, and that he agreed with it.

The panel considered the facts and the submissions from counsel for the holder, counsel for PEO and counsel for the panel, and unanimously accepted the Joint Submission as to Penalty and ordered that with respect to the member:

- 1. Sharma shall be reprimanded and the fact of the reprimand shall be permanently recorded on the register.**
- 2. Sharma shall write and pass the PEO Advanced Structural Analysis (98-Civ-B1) and Advanced Structural Design (98-Civ-B2) technical examinations within 12 months, failing which his licence shall be suspended.**

- 3. Sharma shall write and pass the technical examinations within 24 months, failing which his licence shall be revoked.**

- 4. A summary of the Decision and Reasons of the Discipline Committee to be published in Gazette, including reference to names.**

With respect to the holder:

- 1. RCEL shall be reprimanded and the fact of the reprimand shall be permanently recorded on the register.**
- 2. RCEL shall pay costs to PEO in the amount of \$2,500 forthwith.**
- 3. A summary of the Decision and Reasons of the Discipline Committee to be published in Gazette, including reference to names.**

Reasons for penalty decision

Some members of the panel were concerned about the degree of protection of the public by the proposed penalty. The penalty does not require that the holder undergo a practice review to the satisfaction of the association, or that the holder implement a quality assurance and quality management program.

The panel, through independent legal counsel, invited written submissions from the parties to address the concerns that had arisen respecting the adequacy of the penalty jointly proposed for the holder. The panel received written submissions from counsel for PEO and counsel for RCEL on the matter of the Joint Submission as to Penalty for RCEL. The panel also received additional legal advice from independent legal counsel (which was provided to the parties for comment).

Independent legal counsel and counsel for the parties reminded the panel that, in deciding whether to accept or reject a Joint Submission as to Penalty, the panel should be guided by the public interest. The panel should only reject a joint submission if it were of the view that the joint submission was inconsistent with the public interest, either because it failed

to protect the public, or because it was oppressive or harsh to the member or the holder.

In his written submission, PEO counsel noted that the facts and conduct admitted to are indicative of a deficiency of knowledge in relation to the member and not of quality assurance or quality management issues within RCEL, noting that PEO did not feel it was appropriate to seek terms of penalty beyond those that address the lack of knowledge, skill and judgment of the member.

Counsel for the holder stated, in his written submission, that the Joint Submission as to Penalty remains comfortably within the range of penalties appropriate under the circumstances and that a permanent reprimand as registered cannot be construed as disproportionate and contrary to the public interest.

Counsel for PEO submitted that it cannot be concluded by the panel that the Joint Submission as to Penalty is so disproportionate to the offence that it would be contrary to the public interest or that it would bring the administration of justice into disrepute on the basis of the facts before the panel.

Independent legal counsel advised the panel that, so long as the joint submission is "in the range," the panel should not, in the ordinary course, interfere with it. Counsel for the panel noted that both counsel for PEO and counsel for RCEL have properly identified the Court of Appeal authority that supports their written comments.

For the reasons set out above, the panel felt that the Joint Submission as to Penalty was fair and reasonable in this instance. The panel accepted the joint submission.

The written Decision and Reasons were dated March 4, 2008, and were signed by Glenn Richardson, P.Eng., as the chair on behalf of the other members of the discipline panel: Diane Freeman, P.Eng., Rishi Kumar, P.Eng., Anne Poschmann, P.Eng., and Derek Wilson, P.Eng.

Discipline hearing schedule

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

Any person wishing to attend a hearing should contact the tribunal office at extension 1083.

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

May 20-21, 2008

Daniel R. Piescic, P.Eng., and Piescic Engineering Inc. (PEI)

It is alleged that Piescic is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Piescic and PEI are 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, bylaws 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 regulation, other than an act that is solely a breach of the Code of Ethics; and
- (e) *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.

May 26-27, 2008

Paul S.C. Lim, P.Eng., and P. Lim & Associates Limited (PLAL)

It is alleged that Lim is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Lim and PLAL are 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, bylaws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
- (d) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner; and
- (e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience.

June 3, 2008

Vincenzo M. Ferraro, P.Eng., and Daley Ferraro Associates Engineering Services (DFAES)

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

- (a) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under the responsibility of the practitioner.

Notice of licence suspension

At a discipline hearing that concluded on April 1, 2008, at the offices of the association in Toronto, the Discipline Committee found *Mohamad Farooq, P.Eng.*, guilty of professional misconduct and ordered that his licence be suspended for a period of 24 months. The finding of professional misconduct and the suspension order are both subject to appeal.

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

Enforcement explained

Q. I retired from my job recently, but my employer offered me the chance to do a few hours of work every week helping out with the review of shop drawings and general review onsite when necessary. I will be required to seal some documents and reports. I won't often be at my employer's premises. I know I still need to maintain my licence, but do I require a Certificate of Authorization (C of A) for this arrangement?

A. In this particular case, no, but in slightly different circumstances, the answer would be yes. The number of clients you have and the amount of work you do have no bearing on whether you need a C of A. We have insisted on a C of A for a company that had a single client, and we have taken enforcement proceedings against members without a C of A who used their seal on one occasion.

First, let's look at the law. The requirement for a Certificate of Authorization is found in section 12(2) of the *Professional Engineers Act*:

"No person shall offer to the public or engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a Certificate of Authorization." [emphasis added]

In both cases, the section refers to "the public." PEO has published a guideline explaining that the public means anyone an engineer has an arm's length relationship with, and includes individuals, companies and governments—just about everyone except an engineer's direct employer.

Section 12(9) of the Act is equally clear about how much work qualifies you to need a C of A:

"For the purposes of [section 12], proof of the performance of one act in the practice of professional engineering on one occasion is sufficient to establish engaging in the practice of professional engineering." [emphasis added]

If you are going to be doing professional engineering, rather than working in a field such as project management, PEO has to determine whether you are an employee or a contractor. Unfortunately, what the two parties agree to call the rela-

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

March/April 2008 enforcement statistics	Total inquiries	117
	Major enforcement files opened	9
	Job advertisers contacted	1
	Existing business names reviewed	56
	New corporate names reviewed	5
	Enforcement matters reported	12
	From professional engineers	7
	From other	4
	From staff	1
	Daily Commercial News inquiries	1
Internet searches	8	
Self-employed engineers contacted	25	

tionship is not the only thing that will affect PEO's decision. There is no "bright line" test to determine whether an engineer is an employee or a contractor. Instead, we use a series of hallmarks that distinguish employees from contractors, and come to a conclusion based on that assessment. Let's apply some of these hallmarks to this engineer's case and see what we find:

- Employees don't promote their services like contractors do.
- Employees only work for one person; contractors work for many.
- Employees are reimbursed for expenses; contractors claim them on their taxes.
- Employees get a paycheque every week without having to prompt anyone; contractors have to send invoices.
- Employees work in their employer's offices; contractors work from their own offices.
- Employers set working hours for employees; contractors work their own hours.
- Employers give employees benefits and pay their withholding and payroll taxes.

- Employees have subordinates paid for by their employer; contractors pay their subordinates themselves.
- Employees do their own work; contractors hire others to help them out.
- Employees have to get permission to go on vacation, but get paid for it, while contractors go on vacation when they want, but can't expect to be paid.
- Employers direct their employees whenever they want, but a contractor controls the direction of his or her own work.

Therefore, despite the fact that this relationship has some hallmarks of independent employment, this engineer is still an employee of the company he works for, at least for our purposes. If you have some doubt about whether you will be treated as an employee or contractor, get in contact with PEO's enforcement staff for an opinion.

Steven Haddock is PEO's enforcement representative. If you have any questions or concerns about a possible enforcement matter, contact PEO's Enforcement Hotline, 416-224-9528 or 800-339-3716, ext. 1444.

