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:

Daniel Brouwer, P.Eng.

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

Dan Brouwer Associates Ltd.

a holder of a Certificate of Authorization.

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 offices of the Association of Professional Engineers of Ontario (the "association") in Toronto. The association was represented by William D. Black of McCarthy Tétrault. Daniel Brouwer, P.Eng., and Dan Brouwer Associates Ltd. were represented by Angela Brouwer.

The Allegations

Counsel for the association advised the panel that the allegation of incompetence was withdrawn and the panel accepted the withdrawal. As such, the allegations against Daniel Brouwer, P.Eng., and Dan Brouwer Associates Ltd. as set out in the Revised Notice of Hearing dated February 3, 2004, were as follows:

It was alleged that Daniel Brouwer, P.Eng., ("Brouwer") was guilty of professional misconduct as defined in the *Professional Engineers Act (*the "Act"), and that Dan Brouwer Associates Ltd. ("Brouwer Associates") was guilty of professional misconduct as defined in the Act, the particulars of which were as follows:

1. Brouwer was first licensed as a professional engineer in the Province of Ontario on May 15, 1984.

2. Brouwer Associates is the holder of a Certificate of Authorization under the Act and first held a Certificate of Authorization as of March 11, 1994.

3. In or about March 1999, Mr. Lou Viola, president of the Technical Committee of the Residential Low Rise Forming Contractor Association of Metropolitan Toronto and Vicinity ("LRF"), contacted Brouwer and advised Brouwer that the LRF wanted two items:

(a) a design to provide a standard, thin, reinforced concrete footing to replace the normal 16" thick non-reinforced concrete footing; and

(b) an opinion as to whether a 15 MPa OBC concrete mix designed for a 6" slump would provide the necessary 20 MPa compressive strength requirement for the footings if the slump was kept to a maximum of 4" (100 mm). Brouwer immediately and clearly advised Mr. Viola that he was not capable of developing the requested design. It was then agreed that Brouwer would coordinate this project by attempting to locate an engineer who was capable of preparing the necessary design and that Brouwer would conduct tests and provide an opinion with respect to the issue as to the compressive strength of a 15 MPa OBC concrete mix.

4. Brouwer then contacted Derk Meyer, P.Eng., ("Meyer"), of Company A, whom he knew to be an experienced design engineer. Brouwer advised Meyer that the LRF wanted a design to provide a standard, thin, reinforced concrete footing to replace the typical 16" thick, non-reinforced concrete footings. Meyer expressed a willingness to prepare such a design and Brouwer faxed a purchase order to Meyer dated March 25, 1999. Meyer advised Brouwer that he was capable of preparing such a design.

5. On April 1, 1999, Brouwer faxed a design, prepared and stamped by Meyer, to the LRF, which design Brouwer did not stamp at that time.

6. On May 21, 1999, Brouwer faxed an opinion letter to the LRF, showing the results of 28-day testing with respect to 15 MPa OBC concrete mix and attaching the design prepared and stamped by Meyer.

7. On July 5, 1999, Brouwer sent a letter to the LRF advising them of the need for a geotechnical engineer to determine the soil type and bearing capacity of the soil when using the Meyer design.

8. On March 28, 2001, the secretary of the LRF asked Brouwer to update his opinion letter, his letters dated May 21 and July 5, 1999, and Meyer's design to current date.

9. In response, Brouwer changed the dates on all of the documents, including Meyer's design, to April 2, 2001. At that time, Brouwer stamped the 1999 design originally prepared by

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Meyer (having changed the date on the design to April 2, 2001). Brouwer failed to include a disclaimer, limitation or qualifying note beside his seal.

10. The design originally prepared by Meyer, originally sealed by Meyer and then sealed by Brouwer in 2001, did not comply with the requirements of the *Ontario Building Code* ("OBC") and CAN-CSA 23.2-94 (design of concrete structures) with respect to footing depth and shear resistance. Brouwer had no knowledge of any deficiencies or problems with the Meyer design until after May 7, 2002, when Brouwer was contacted about this matter by the association.

11. By letter to LRF dated August 22, 2001, the Metro Area Code Interpretations Committee raised concerns about the code compliance (or lack thereof) of the design originally prepared by Meyer, and now sealed by Brouwer and Meyer.

12. It appears that Brouwer and Brouwer Associates:

(a) signed and sealed a design for a thin, reinforced concrete footing that did not comply with the requirements of the OBC and CAN-CSA 23.3–94; and

(b) signed and sealed a drawing that was not actually prepared or checked by Brouwer.

13. The association engaged an independent expert to review this matter. Having reviewed the relevant materials, including the complaint, the design document and Brouwer's response to the complaint (*inter alia*) the expert initially made the following observations and conclusions (among others):

(a) The Meyer design sealed by Brouwer (as well as Meyer) did not appear to give any consideration of structural requirements in the design of the pad footing, such as punching shear, other than providing the protective three-inch cover between the reinforcing and soil. In the case of the design stamped by Meyer and Brouwer, the effective depth of the footing was approximately three inches for reasons set out below.

(b) The concrete below the reinforcement is not considered in the calculation of footing depth, as it is not considered to resist punching shear. As such, the design did not satisfy the basic requirement of the CSA standard. The expert's calculations revealed that the footing shown provides a shear resistance of only 69 per cent of the required capacity.

(c) It does not appear that Meyer actually completed a design to size the footing slab in March 1999 or that Brouwer actually checked Meyer's work for punching shear in April 2001.

(d) It is not clear whether Brouwer actually checked the design of the drawing dated April 2, 2001 (bearing the seal of Meyer dated March 31, 1999) prior to sealing it himself, and under the *Professional Engineers Act* Brouwer was not permitted to seal a document prepared by another engineer if he did not actually prepare, check or supervise the work.

14. Upon further review and following discussion with Brouwer, the association and its expert are satisfied that the 15 MPa OBC mix (as opposed to a standard 15 MPa mix) will provide sufficient strength if mixed and poured according to specifications, including a four-inch slump. The association and its expert also accept that Brouwer has appropriate expertise with respect to issues concerning concrete mix and strength.

15. The association and its expert remain concerned that the distinction between standard 15 MPa mix and 15 MPa OBC mix may not be apparent to some municipal building officials and contractors. The association does not dispute that a 15 MPa OBC mix can, when placed at a particular slump, meet or exceed a 28-day compressive strength of 20 MPa.

16. It was alleged that Brouwer and Brouwer Associates are guilty of professional misconduct as defined in section 28(2)(b) as follows:

"28(2)(b) A member of the Association or holder of a certificate of authorization, temporary licence or a limited licence may be found guilty of professional misconduct by the Committee if, …

(b) the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."

17. 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)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;

(c) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Plea of the Member and Holder of a Certificate of Authorization

Brouwer and Brouwer Associates pleaded guilty to professional misconduct, as defined by sections 72(2)(a) and 72(2)(e) of Regulation 941 under the *Professional Engineers Act*, in that they admitted the allegations of negligence and of improperly sealing a document. Brouwer and Brouwer Associates pleaded not guilty to professional misconduct as defined by section 72(2)(j) of Regulation 941 under the Act.

The panel conducted a plea inquiry and was satisfied that Brouwer's and Brouwer Associates' admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the association advised the panel that an agreement had been reached between the parties, which provided that the panel could treat the allegations of fact contained in the Revised Notice of Hearing dated February 3, 2004 as constituting an Agreed Statement of Facts ("ASF"). In addition, counsel for the association introduced into evidence the following exhibits:

Exhibit 2–Registrar's Certificate;

Exhibit 3–May 21, 1999 letter with attached drawings from Brouwer to L. Viola;

Exhibit 4–March 28, 2001 letter from LRF;

Exhibit 5–April 2, 2005 letter from Brouwer to LRF; and

Exhibit 6–February 24, 2003 letter from LRF to the association.

Counsel for Brouwer and Brouwer Associates introduced into evidence exhibit 7, an excerpt from the association's bulletins concerning the use of a seal.

Counsel for the association submitted that the ASF, exhibits 2 through 6, and Brouwer's plea supported a finding of professional misconduct against Brouwer and Brouwer Associates as defined in section 72(2)(a) and 72(2)(e) of Regulation 941 to the Act, and that, as well, the ASF and exhibits 2 through 6 also supported a finding of professional misconduct against Brouwer and Brouwer Associates as defined in section 72(2)(j) of Regulation 941 to the Act, specifically, that Brouwer and Brouwer Associates had engaged in unprofessional conduct.

Counsel for the defence argued that Brouwer was an expert on concrete with 21 years experience, mainly in the supervision of testing of construction materials. He has acted as an expert witness on concrete in court. He is not a structural designer. He advised the client of this at the beginning and undertook to find another engineer who could do this. He asked Meyer, who was already known to him to do this.

He was careful not to seal Meyer's drawing in 1999 when the drawing was first sent to LRF. These drawings (exhibit 3) were in LRF's possession for two years. In 2001, LRF asked him to update the drawings for the file to satisfy WHMIS requirements. He changed the dates to bring them up to date and stamped the drawing to record that he had done this. He failed to include a note or limitation stating that his seal covered the date change only.

LRF was at all times aware that the drawing was the responsibility of Meyer (see exhibit 6). Brouwer did not charge LRF for bringing the drawings up to date but did it as a favour to the client.

He was not aware of any deficiencies in the drawing until approached by the association in May 2002. He then called Meyer, who agreed there were deficiencies.

Brouwer did not agree with the concern of the association's expert, expressed in allegation 17 that the distinction between standard 15 MPa mix and 15 MPa OBC mix might not be apparent, as 15 MPa OBC mix was in common use in the Greater Toronto Area with about 100,000 loads used a year.

Decision

The panel deliberated and considered the ASF, exhibits 2 to 7, Brouwer's plea and the submissions of counsel for the parties, and found that the facts support a finding of professional misconduct and, in particular, found that Brouwer and Brouwer Associates committed an act of professional misconduct as defined in sections 72(2)(a) and 72(2)(e) of Regulation 941 to the Act, as alleged in the Revised Notice of Hearing in that they:

- **signed and sealed a design for a thin, reinforced concrete footing that did not comply with the requirements of the OBC and CAN-CSA 23.3-94;**
- **signed and sealed a drawing that was not actually prepared by Brouwer; and**
- **changed the dates on all of the documents, including Meyer's design, to April 2, 2001. At that time, Brouwer stamped the 1999 design originally prepared by Meyer (having changed the date on the design to April 2, 2001). Brouwer failed to include a disclaimer, limitation or qualifying note beside his seal.**

Further, the panel found that the facts did not support a finding of professional misconduct as defined in section 72(2)(j) of Regulation 941 under the Act.

Reasons for Decision

The panel considered the ASF, Brouwer's plea and exhibits 2 to 7, which substantiated the findings of professional misconduct.

The panel did not find Brouwer guilty of professional misconduct pursuant to section 72(2)(j), because the drawing in question contained two seals and one minor alteration. Brouwer's contention that the second seal was intended only to recognize that he had made a minor alteration to the original drawing (the date change), but that he had been negligent in not adding an explanatory note, was understood by the panel, which found that it was an error but not to an extent constituting unprofessional conduct as defined in the Act.

Penalty

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

1. that Brouwer be reprimanded and that the reprimand be recorded and maintained for one year on the Register;
2. that Brouwer write and pass the Professional Practice Examination ("PPE") within 12 months of the panel's decision; and
3. that Brouwer pay the association costs of the disciplinary proceeding fixed in the amount of $1,500 and payable forthwith.

Counsel for the association further advised that there was no agreement of the parties with respect to publication.

With respect to the issue of publication, counsel for the association advised that the association had, over a year ago, provided for more openness and therefore it was important that publication occur in order for there to be public accountability. Further, the fact that the association had specifically withdrawn the allegation of incompetence was a further fact that supported that there be publication.

Counsel for Brouwer submitted that Brouwer and Brouwer Associates agreed with the Joint Submission on Penalty but that with respect to publication, given that Brouwer was remorseful for his actions, was an expert in concrete, was 44 years old and had been an engineer for 19 years, there was nothing to be gained by publishing his name and that specific deterrence of Brouwer had already been met by the whole discipline process.

However, following questions from the panel, Brouwer changed his mind and through his counsel advised that he did want full publication of the decision, including his name.

Penalty Decision

The panel deliberated and accepted the JSP and accordingly ordered:

(a) that Brouwer be reprimanded and that the reprimand be recorded and kept on the Register for one year;

(b) that Brouwer write and successfully complete the Professional Practice Examination ("PPE") within 12 months from the date of this hearing;

(c) that Brouwer pay to the association costs of the disciplinary proceeding fixed in the amount of $1,500; and

(d) the Decision and Reasons of the panel be published with the name of Brouwer and Brouwer Associates in *Gazette*.

Reasons for Penalty Decision

The panel concluded that the proposed penalty was reasonable and in the public interest. Brouwer and Brouwer Associates had cooperated with the association and, by agreeing to the facts and a proposed penalty, had accepted responsibility for their actions and avoided unnecessary expense.

The written Decision and Reasons in this matter were dated June 3, 2005, and were signed by the Chair of the panel, Kam E. Elguindi, P.Eng., on behalf of the other members of the panel: James Dunsmuir, P.Eng., Colin Moore, P.Eng., J.E. (Tim) Benson, P.Eng., and Phil Maka, P.Eng.

Notice of Certificate of Authorization Suspension

Pursuant to his powers under section 15(8)(a) of the *Professional Engineers Act*, the Registrar has suspended the Certificate of Authorization of **Conengr Inc.** ("Conengr") of Etobicoke, Ontario, effective October 1, 2005. This action was taken because the Registrar, upon reasonable and probable grounds, is of the opinion that the past conduct of the person responsible for the operation of Conengr leads to the belief that Conengr would not engage in the business of providing professional engineering services in accordance with the law and with honesty and integrity. The suspension will remain in effect until allegations of professional misconduct against Conengr, and allegations of professional misconduct and incompetence against the responsible person, have been considered and disposed of by the Complaints and Discipline committees.

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:

Derk Meyer, P.Eng.

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

Company A

a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on April 5, 2004, at the offices of the Association of Professional Engineers of Ontario (the "association") in Toronto. The association was represented by William D. Black of McCarthy Tétrault. Derk Meyer, P.Eng., and Company A were represented by John W.T. Judson of Lerners LLP.

The Allegations

It was alleged that Derk Meyer, P.Eng., ("Meyer") was guilty of professional mis-

conduct and/or incompetence as defined in the *Professional Engineers Act* (the "Act"), and that Company A was guilty of professional misconduct as defined in the Act, the particulars of which were as follows:

1. Meyer was first licensed as a professional engineer in the Province of Ontario on March 11, 1987.

2. Company A was the holder of a Certificate of Authorization under the Act and first held a Certificate of Authorization as of February 2, 1970.

3. In or about March 1999, Meyer, on behalf of Company A, produced for Dan Brouwer Associates Ltd. ("Brouwer Associates") a design for a thin, reinforced concrete footing for residential construction. Drawing S1 was dated March 29, 1999, and sealed by Meyer on March 31, 1999. The drawing provided three sets of specifications for the design, based on three soil types.

4. This reinforced footing design sealed by Meyer was inadequate in that it did not comply with the requirements of the *Ontario Building Code* ("OBC") and CAN/CSA 23.3-94 (design of concrete structures) with respect to footing depth and sheer resistance.

5. In or about April 2001, Brouwer Associates, without the knowledge or consent of Meyer or Company A, provided the design drawing to the Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity ("LRF"). LRF subsequently provided the drawing to numerous building departments and officials.

6. On or about June 21, 2001, Meyer received a call from a building inspector with the City of Toronto concerning the footing design, advising that the design did not meet the OBC. Meyer reviewed the design, agreed that it did not comply with the OBC, and made revisions to the design.

7. Meyer then contacted Brouwer Associates, and forwarded to Brouwer Associates the revised design drawing, asking Brouwer Associates to revoke the previous footing design. Meyer neglected to put his seal and signature on the revised drawing.

8. It was admitted that Meyer:
(a) signed and sealed a design for a thin, reinforced concrete footing that did not comply with the requirements of the OBC and CAN/CSA 23.3-94;
(b) breached section 53 of Regulation 941 made under the *Professional Engineers Act* by failing to sign and seal a revised drawing; and
(c) acted in an unprofessional manner.

9. It was further admitted that Company A failed in its obligation to supervise Meyer and to review the design and, thus, acted in an unprofessional manner.

10. The association engaged an independent expert to review this matter. Having reviewed the relevant materials, including the complaint, the design document, and Meyer's response to the complaint (*inter alia)*, the expert reached the following conclusions (among other observations):
(a) Meyer's original design did not appear to give any consideration to structural requirements in the design of the pad footing, such as punching shear, other than providing the protective three-inch cover between the reinforcing and soil. Whereas the minimum pad thickness allowed by clause 15.7 of CAN/CSA 23.3-94 would have been six inches, the design stamped by Meyer and Brouwer Associates had an effective depth of footing of approximately three inches.
(b) The expert's calculations revealed that the footing shown in Meyer's original design shows a shear resistance that is only 69 per cent of the required capacity.
(c) The relatively light 15-m reinforcement provided in the original design is inadequate to serve as shear head reinforcement and appreciably increase shear resistance.
(d) Meyer did not sign or seal his revised drawing of March 29, 1999, sent to a building inspector from the City of Toronto in 2001, and was required to seal such work.

11. The parties agreed that the admissions above, including in particular the admissions set out in paragraph 8 above, constitute professional misconduct as defined in section 28(2)(b) as follows:

"28(2)(b) A member of the Association or holder of a certificate of authorization, temporary licence or a limited licence may be found guilty of professional misconduct by the Committee if, …

(b) the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."

12. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct were:
(a) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with the work being undertaken by or under the responsibility of the practitioner;
(b) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the *Code of Ethics*;
(c) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Decision

The panel was presented with an Agreed Statement of Facts, which is

represented in the above documentation and made findings of professional misconduct as described in paragraphs 12 and 13 above; however, the panel qualified its finding in relation to section 72(2)(j) of the Regulation in that it found the conduct or act to be "unprofessional" only.

Penalty

The panel was presented with a joint submission as to penalty. This joint submission was as follows:

(a) With respect to Meyer:
  (i) a recorded reprimand,
  (ii) a requirement that Meyer complete the advanced structural analysis examination and the Professional Practice Examination (both parts) within 12 months of the date of the hearing,
  (iii) if Meyer fails to complete these two examinations successfully within 12 months his licence would then be suspended for a three-month period and he would still have the obligation to complete the two examinations,
  (iv) a publication of the matter with names;

(b) With respect to Company A, there will be a reprimand that will be recorded for a period of 12 months only.

The panel then invited counsel to make submissions on the merit of two components of the presentation, as follows:

- the merits of requiring Meyer to write and pass an examination in structural engineering; and
- the merits of publication with names.

Penalty Decision

Having deliberated on the facts presented and the joint submission on penalty, the panel ordered:

a) With respect to Meyer:
  (i) that Meyer be reprimanded and that the reprimand be recorded by the Registrar for a period of two years;
  (ii) that Meyer be required to pass the Professional Practice Examination by April 30, 2005; failure to complete the examination by April 30, 2005 will result in the suspension of his licence for three months and a continuing obligation to pass the examination;
  (iii) that publication of the matter be with Meyer's name only and without reference to the name of Company A.

b) With respect to Company A:
  (iv) that Company A be reprimanded and the reprimand be recorded by the Registrar for a period of one year.

Considerations and reasons for departing from the agreed statement of penalty were as follows:

- There was no evidence that completion of the advanced structural analysis exam by Meyer would serve to enhance public safety. Evidence to the contrary was provided by the drawing submitted as evidence; the drawing was prepared by Company A and titled "Column Footing for Residential Construction."
- The Professional Practice Examination provides an appropriate specific deterrent to Meyer and will confirm his understanding of professional engineering practices.
- Specific deterrent to Meyer is also afforded by publication with names and by the licence suspension should he fail to pass the Professional Practice Examination.

The written Decision and Reasons in this matter were dated May 24, 2004, and were signed by the Chair of the panel, Anne Poschmann, P.Eng., on behalf of the other members of the panel: Roydon Fraser, P.Eng., Nick Monsour, P.Eng., Bill Walker, P.Eng., and William Rutherford, P.Eng.

Decision and Reasons– Stipulated Order

In the matter of a complaint regarding the conduct of:

A Member

of the Association of Professional Engineers of Ontario.

The Complaints Committee, in accordance with section 24 of the *Professional Engineers Act*, referred this matter to discipline by way of Stipulated Order, failing which the matter was to be referred to a hearing of the Discipline Committee.

In accordance with the Stipulated Order process, David W. Smith, P.Eng., ("Smith") a member of the Discipline Committee, was selected to represent the Discipline Committee as Chair of the Stipulated Order. Smith reviewed the available information relative to the com-

plaint and on March 11, 2004 met with the complainant and the member to allow each party an opportunity to review the facts relevant to the conduct of the member in this matter.

Background

This matter arose as a result of the following:

- At all relevant times, the member was a member of the Association of Professional Engineers of Ontario (the "association"). His company was the holder of a Certificate of Authorization.

- In 1998, the member was retained to provide engineering services on a project to be located in Pickering, Ontario. The project consisted of site works and a two-storey, 2300-m^2 building.

The intended schedule included a completion and commissioning date at the end of 1999 to coincide with the expiry of a lease at another location.

- The member and his company did not make submissions directly to the municipality, but as part of the project team, the company did prepare engineering drawings for the purpose of a building permit application. The drawings were sealed and signed by the member.

- The member admitted that the drawings were not marked as being "preliminary" or "not for construction." The member stated that the municipality would not accept drawings for permit applications if they were marked "preliminary." The member said that he was "not in the habit of marking drawings as preliminary."

- The municipality's building department receives drawings and other information in support of roughly 1000 building permit applications each year, which must be reviewed by a small staff. The municipality requires and relies upon the seal of engineering professionals to ensure compliance with applicable codes. This is a provincial requirement.

- On the General Review Commitment Certificate submitted to the municipality, the member signed as being responsible for the architectural, structural, mechanical, fire protection, and plumbing disciplines.

- In 1998 and 1999, drawings bearing the seal and signature of the member were submitted to the municipal building department for the purpose of approvals for site plan, foundation, building permit, etc. The building application was submitted on April 29, 1999.

- The municipality contended that an inordinate number of submissions and revisions were necessary, which required an unreasonable amount of staff time. Some drawings were rejected by the municipality as incomplete and insufficient for the purpose of ensuring compliance with the building code.

- Eventually, the municipality concluded that the drawings were not in accordance with the *Ontario Building Code* and retained the services of an external engineering firm to assist with its review of the drawings. The external firm found extensive errors and deficiencies in the drawings, and these were reported to the chief building official.

The inadequacies of the drawings were described by the external firm and the municipality as fundamental and "profound" and not just computational errors or incidental omissions.

- Although the complainant and the member had different versions as to why construction was authorized without a building permit, the city's concern regarding the lack of code compliance, including fundamental issues dealing with fire safety, resulted in the issuance of a Stop Work Order on June 13, 2000.

Decision and Reasons

There were matters of factual disagreement between the member and the complainant. Smith noted that there appeared to be issues, which potentially might impact on an assessment of the conduct of the member, and which could not be conclusively determined by the conversations in the meetings of March 11, 2004. Some of these items were as follows:

- the actual number of submittals and revisions, and how many of the iterations could be attributed to the actions of the member;

- the competence of the member to sign for the five building disciplines shown on the General Review Commitment Certificate;

- the extent to which the member might have been relying upon the municipal review process to identify the omissions and mistakes on his drawings; and

- the involvement of the member, if any, in the authorizing of construction without a building permit, in June of 2000, prior to the Stop Work Order.

However, Smith concluded that the following pertinent facts were not in dispute:

1. The preparation of the drawings for the proposed building and site works was relevant to the practice of professional engineering.

2. Although the member did not submit the drawings himself, he knew that the drawings would be used for the purpose of applying for permit approval from the municipality.

3. The member signed and sealed the drawings, and deliberately did not qualify the drawings as "preliminary" or "not for construction," even though he knew that the drawings were not complete.

4. The drawings as signed and sealed, even after a number of revisions,

were grossly deficient in terms of compliance with applicable codes and demonstration of adequate provision for fire safety.

Smith concluded further that the member's apparent intentions were not to act in a deliberately deceitful or dishonest manner when dealing with the municipality. The member's actions appeared to be motivated by the effort to advance the project for the benefit of his client. However, this did not, in any way, justify the member's actions. The member's engagement to assist the project team did not replace his obligations as a professional engineer in this province. He did not adequately manage the expectations of his client with respect to his public duty, and with respect also to his responsibilities when using his seal.

The fact that the member might have intended to revise drawings later, or that he was acting in the interests of his client, did not reduce the impact of his signing and sealing drawings with no indication that they were anything but drawings competently designed and safe for their intended use.

In the absence of a Notice of Hearing and a listing of formal allegations, the Stipulated Order process does not lead to a concise determination of guilt or innocence. However, Smith concluded that the actions of the member and his firm constituted a breach of section 72 of Regulation 941. Smith concluded also that the undisputed facts would likely support findings under subsections (a), (d) and (j) of section 72, described more fully as follows:

1. ***Section 72(2)(a)*: negligence: The assessment of the firm's submissions by the city indicated many deficiencies in the member's engineering, which led to the conclusion that his actions did not meet the standard of a reasonable and prudent practitioner. This conduct, therefore, meets the definition of negligence as set out in section 72(1).**

2. ***Section 72(2)(d)*: The review of the member's drawings by the external engineering firm confirmed the assessment of the municipal review staff that the drawings, which were signed by the member, were grossly deficient in terms of meeting the requirements of the *Ontario Building Code*. And, therefore, it is concluded that the member did not make responsible provision for complying with applicable codes and standards.**

3. ***Section 72(2)(j)*: Smith concluded that, having regard to all circumstances, the conduct of the member in this matter would reasonably be regarded by the engineering profession as unprofessional, but not as disgraceful or dishonourable.**

Penalty and Reasons

The purpose of the penalty in this matter, as in any case that comes before the Discipline Committee, is summarized as follows:

- specific deterrence to the member so that the conduct will not be repeated;
- general deterrence to discourage the conduct by like-minded individuals among the general membership of the association;
- rehabilitation of the member to reduce the likelihood that the conduct might be repeated in the future; and
- confirmation to the public of the openness of the association's discipline process.

In this case, Smith was guided by the precedent of a recent similar case, mitigated by the fact that the member had acknowledged that his conduct had not been acceptable, and had agreed to the Stipulated Order process, which, if successful, would save all parties the expense of a discipline hearing.

The terms of the penalty will only take effect on the signing of the Order by both parties. The penalty, which was proposed by Smith, and the reasons for the penalty, are summarized as follows:

1. ***The member is to write and pass the association's Professional Practice Examination within 12 months of the date of the Stipulated Order*. Smith felt that the preparation for the examination would reinforce to the member that his contractual obligations can never replace his duties to the public.**

2. ***Within two months of the date of the Stipulated Order, the member is to provide an undertaking, acceptable to the Registrar, that all engineering drawings and documents prepared in the member's office or under the member's supervision will be in accordance with section 53 of the* Professional Engineers Act, *and with section 9.2 of the association's* Guideline for Professional Practice. This section in the professional practice guideline deals with the use of the seal and, in particular, the need to qualify sketches and incomplete drawings as preliminary or not for construction. This was considered very relevant to this matter and, if the guideline had been followed by the member in 1999, his conduct would likely never have been the cause of a complaint.**

3. ***Within six months of the date of the Stipulated Order, the member is to pay costs in the amount of $2,000 to the association*. The member's acknowledgement of his conduct and his agreement to the Stipulated Order have resulted in the saving by all parties of costs, and therefore, the cost award is much less than what would normally be sought by the association in a discipline hearing.**

4. ***The Decision and Reasons will be published without names in the official journal of the association.*** **It is important that all association members, as well as stakeholders of the association, understand the implications of using the engineer's seal and the commitment of this association to serving and protecting the public interest.**

This Decision and Reasons document was dated May 2, 2005, and was signed by the Discipline Committee member, David W. Smith, P.Eng. The Stipulated Order document was dated May 8, 2005, and was signed by David W. Smith, P.Eng., and the member.

Notice of Licence Revocation– Hamzey A. Ali

On October 27, 2005, the licence of Hamzey A. Ali was revoked pursuant to an order of the Discipline Committee dated October 1, 2002. A summary of the Decision and Reasons arising from the discipline hearing involving Mr. Ali was published in the January/February 2004 edition of *Gazette*. As noted at that time, Mr. Ali's licence was suspended effective October 27, 2003, after the Divisional Court dismissed his appeal of the Discipline Committee's decision.

The penalty ordered against Mr. Ali included a requirement to write and pass four examinations within 24 months of the commencement of the suspension, or have his licence revoked. Mr. Ali made no effort to write and pass the examinations and therefore his licence has been revoked. Mr. Ali has advised PEO that his seal and licence certificate have been destroyed.

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 800-339-3716.

Anyone 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.

December 5-9, 2005

Mohammad Nasiruddin, P.Eng., and Jacques Whitford & Associates Limited (JWAL)

It is alleged that Nasiruddin is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Nasiruddin and JWAL 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, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
(d) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; 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.

January 9-13, 2006

Stephen P. Hamann, P.Eng., and Hamann Engineering

It is alleged that Hamann is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Hamann and Hamann Engineering 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)(c)*: failure to act to correct or report a situation that the practitioner believes may endanger the safety or welfare of the public;
(d) *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;
(e) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
(f) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience;
(g) *Section 72(2)(i)*: failure to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client; and
(h) *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.

January 23-26, 2006

Gordon L. Hird, P.Eng., and Integrated Design Services (London) Inc. (IDS)

It is alleged that Hird is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Hird and IDS 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, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;

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(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)(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.

February 27-March 3, 2006
Sotiros (Sam) Katsoulakos, P.Eng., and Micro City Engineering Services Inc. (MCES)
It is alleged that Katsoulakos is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Katsoulakos and MCES 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, by-laws 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;
(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.

March 27-31, 2006
Raikesh (Richard) Bedi, P.Eng.
It is alleged that Bedi is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Bedi 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)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; 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.

Gazette Email Address

Comments and feedback on items appearing in *Gazette* can be forwarded by email to: **gazette@peo.on.ca**. Publication of items received will be at the discretion of the editor and would appear in the Letters section of *Engineering Dimensions*. Comments and feedback will also be forwarded to the appropriate PEO committee for information.

PEO Introduces Alternative Dispute Resolution Mechanism for Complaints

Consistent with PEO's mandate to govern its members in order that the public interest is served and protected, the Regulatory Compliance department at PEO has introduced an Alternative Dispute Resolution (ADR) mechanism to deal with matters that might otherwise become formal complaints, but do not appear to relate to incompetence or issues relevant to public safety and welfare. This action by Regulatory Compliance was prompted by a recommendation contained in the *Report of the Admissions, Complaints, Discipline and Enforcement Task Force*, and was subsequently researched, developed and implemented by PEO staff.

PEO retained an ADR consulting firm to assist with the detailed design and implementation of the ADR process. Legal opinions were obtained to ensure that a voluntary ADR process would not conflict with any aspect of the *Professional Engineers Act* or associated Regulation. Training was provided to relevant PEO staff and the members of the Complaints Committee to facilitate the execution of the process.

The ADR process was formally launched on November 1, 2005. The following is an outline of the new ADR process.

Screening

When a complaint is first made to PEO, a representative of PEO staff will screen the complaint to determine whether it is an appropriate case to consider for ADR. Any case that:

- involves an allegation of incompetence as defined in the *Professional Engineers Act*;
- raises issues of public safety or welfare;
- involves an allegation of violence or raises any concerns about future violence;

- relates to incidents involving serious injury or death; or
- involves the catastrophic failure or collapse of a structure,

will not be placed in the ADR stream. PEO will reserve the right to remove any case from the ADR process at any time, if it appears to PEO to be in the public interest to do so.

For cases that are eligible to be placed in the ADR stream, PEO staff will provide written materials to the complainant that detail PEO's ADR process.

If the complainant wishes to request mediation, he or she will be required to complete and forward to PEO a Request for Mediation form, which outlines the nature of the complaint.

Upon receipt of the completed Request for Mediation form, PEO staff will review the completed form to determine that no additional issues have been raised that indicate the case should be streamed out of the ADR process.

If, upon reviewing the completed Request for Mediation form, PEO is satisfied that the case is appropriate for mediation, PEO will forward a copy of the Request for Mediation, along with written information about PEO's ADR process, to the PEO member.

The PEO member will have 10 days from the date upon which the member receives the Request for Mediation to advise PEO of his or her decision as to whether to participate in the mediation process. The PEO member will be deemed to have received the Request for Mediation 10 business days after the day on which PEO sent it via regular mail.

A matter may proceed to mediation only if both the complainant and the PEO member agree to participate.

Once the PEO member has consented to the mediation process, he or she will have 15 days to prepare and submit a written Response to Request for Mediation to the complainant and to PEO. In the Response to Request for Mediation, the member will be required to respond to all issues raised by the complainant and to identify any additional issues he or she might wish to address during the mediation. The member will forward his or her response directly to the complainant and to PEO.

Upon receipt of the member's Response to Request for Mediation, the complainant will have 15 days to prepare a reply, should he or she wish to do so. The complainant will be responsible for providing a copy of the reply to the member and to PEO.

Once again, PEO will have the right to review the Response to Request for Mediation and the reply, if any, to determine whether, in PEO's belief, any issue has been raised that would indicate that PEO should stream the case out of the ADR process.

Agreement to Mediate

Prior to a mediation commencing, the parties will be required to sign an Agreement to Mediate, which will set out the terms and conditions by which the mediation will be governed.

Without Prejudice/Confidentiality

Participation in the PEO ADR process will be without prejudice to either party. In the event that the mediation does not resolve the issues, statements made by either party during the mediation process will not be able to be considered or used subsequently as evidence by either the Complaints or Discipline committees.

The Agreement to Mediate will contain a confidentiality clause. The confidentiality clause will stipulate that the mediator is required to inform PEO about any information disclosed during the mediation which, in the mind of the mediator, raises or might raise a concern about public safety or welfare. The mediator will be entitled, at his or her sole discretion, to adjourn the mediation to advise PEO of information that might give rise to such a concern and to obtain PEO's guidance as to whether PEO needs to stream the case out of the ADR process.

Selecting Mediators

In locations where there are more than three roster mediators available, PEO will ask the complainant to select three mediators from the roster. PEO will then provide the member the list of three mediators and ask the member to rank them. PEO will then contact the first ranked mediator to discuss availability and suitability. Providing PEO is satisfied that the mediator is available within a reasonable time frame and there is no conflict of interest, he or she will be retained to mediate the case. If the mediator is not available, or if there is a conflict of interest, PEO will contact the next ranked mediator.

In locations where there are only two roster mediators, PEO will ask the complainant and the member to advise PEO separately of their preferences regarding the two mediators. If both parties choose the same mediator, PEO will contact that mediator to discuss availability and suitability. Providing PEO is satisfied the mediator is available within a reasonable time frame and there is no conflict of interest, he or she will be retained to mediate the case. If the mediator is not available or if there is a conflict of interest, PEO will contact the other mediator. If the parties select different mediators, PEO will decide which mediator to retain based upon his or her availability and ensuring that there are no conflicts of interest.

In locations where there is only one roster mediator available, PEO will ask the parties to accept that mediator, or to agree to select jointly another mediator in the local area who will agree to be bound by PEO's process.

If both the complainant and the member can agree on a mediator who is not on the roster of mediators, and that mediator agrees to be bound by PEO's process, the parties will be allowed to use that mediator.

Representation

Each party will be entitled to have a lawyer or agent represent them during the mediation. Other people may be present for the mediation, provided the other party and the mediator consent.

Documentation to Mediator

Once a mediator has been selected, he or she will be provided a copy of the completed Request for Mediation form, as well as the member's Response to the Request for Mediation and the complainant's reply, if any.

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Mediation Date

PEO will schedule the mediation for one full day on a date that is acceptable to both parties and the mediator.

The expectation is that the mediation will take place within 60 days of the date upon which the member has consented to participate in the mediation process.

Mediation Agreement

PEO will be provided a copy of any agreement arrived at through the mediation process.

Complainant's Right to Pursue a Formal Complaint

A complainant's decision to participate in a mediation process will not compromise the complainant's right to pursue a formal complaint. Any time limits that are typically imposed in the complaint process will be held in abeyance from the date on which the complainant indicates his or her intention to participate in mediation by completing the Request to Mediate form until the mediation is completed or either party abandons the process or PEO cancels it. However, if the mediation successfully resolves the issues, the complainant may not pursue a formal complaint against the PEO member regarding the resolved issues.

Mediator Compensation

PEO will compensate mediators at the rate of $2,000 a day, including preparation, but excluding disbursements, which shall not exceed $200 unless pre-authorized by PEO.

Bulletin/Newsletter

PEO may, if it wishes, prepare and distribute summaries of cases that have gone to mediation, including the terms of settlement, provided such summaries are published on an anonymous basis and all identifying information is removed.

Questions about the ADR process should be directed to Bruce Matthews, P.Eng., manager, complaints and discipline, at 416-840-1076, or 800-339-3716, ext. 1076, or by email to complaints@peo.on.ca.

Discipline Committee Introduces One-member Discipline Panels

Discipline matters, other than those related to the Stipulated Order process, are heard before a panel comprising five members of the Discipline Committee. It is the duty of these five professional engineers to hear and assess evidence, and to act as judges with respect to allegations of professional misconduct and incompetence made against licence and Certificate of Authorization (C of A) holders. In the majority of discipline cases, PEO negotiates plea agreements with the accused engineer and/or C of A holder in advance of the discipline hearing.

Plea agreements typically include an agreement on the relevant facts, a voluntary guilty plea to professional misconduct and/or incompetence, and a joint submission by the parties on the appropriate penalty. In a typical plea agreement situation, the discipline hearing lasts only a couple of hours. The discipline panel must still make a finding of guilt for the record and must agree that the jointly submitted penalty meets the objectives of deterrence and rehabilitation. In such circumstances, discipline panels receive advice from their independent legal counsel that they should not deviate from the jointly submitted penalty unless that penalty is so disproportionate to the offence that it would be contrary to the public interest and bring the administration of justice into disrepute.

Several Discipline Committee members have expressed the view that it appears wasteful to have a panel of five members participate in a discipline hearing where a plea agreement has been reached. Delays associated with coordinating schedules, plus travel and other costs involved in holding a hearing with five panel members, are difficult to justify for a plea bargain situation. While the relevant provisions of the *Professional Engineers Act* and the Discipline Committee Rules of Procedure do not provide for discipline hearings involving panels of fewer than five members, Regulatory Compliance staff at PEO were able to identify a means by which hearings involving plea agreements could be heard by a panel comprising a single Discipline Committee member.

The *Statutory Powers Procedure Act* (SPPA) is a piece of provincial legislation governing proceedings of tribunals, such as hearings of the discipline committees of regulatory bodies. Under section 4.2.1(2) of the SPPA, the chair of the Discipline Committee has discretion to assign a panel of fewer than five members, and as few as one member, to preside over a discipline hearing if the parties to the proceeding consent. This discretion exists regardless of the statutory requirement in the *Professional Engineers Act* for a five-member discipline panel. As long as PEO and the defendant agree to proceed with a panel of fewer than five, the chair of the Discipline Committee has the authority to make it so.

As a matter of operating policy, PEO will now seek consent from a defendant to have the matter heard before a panel comprising only one member of the Discipline Committee, if an agreement on facts, a voluntary guilty plea and a joint submission on penalty have been reached. Once such consent is received, PEO will advise the chair of the Discipline Committee that the parties consent to a single-member panel and request that he or she exercise the chair's discretion under the SPPA accordingly.

Several benefits will be achieved by implementing this new policy. First, PEO will have greater flexibility in scheduling discipline hearings where a plea agreement exists, because only one Discipline Committee member will be required. Second, the production of written decisions and reasons should take less time because draft versions will not have to be reviewed by other panel members. Last, the costs associated with holding a discipline hearing will be greatly reduced.

This new policy will take effect immediately. The first discipline hearing involving a single-member panel will have taken place by the time this edition of *Gazette* is published.