

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on January 9, 2006 at the Association of Professional Engineers of Ontario (“PEO”) in Toronto. The member was present and was represented by Morris Chochla of Forbes Chochla LLP. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Johanna Braden of Stockwoods LLP acted as independent counsel to the panel.

The Allegations

The allegations against Hamann were set out in the appendix to the Fresh Notice of Hearing dated November 28, 2005.

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

1. Hamann was at all material times a member of the Association of Professional Engineers of Ontario. At all material times Hamann was also the holder of a Certificate of Authorization to offer and provide to the public services within the practice of professional engineering and was responsible for supervising the conduct of his employees and taking all reasonable steps to ensure that his employees, including himself, carried on the practice of professional engineering in a proper and lawful manner. Hamann was the professional engineer responsible for the services he provided.
2. In or about July 2002, Mark Parete (“Parete”), the owner of a residence located at 7 Donald Avenue, Toronto, Ontario, retained Ken Davis, P.Eng. (“Davis”), to inspect damage at the residence caused by foundation settlement and to recommend remedies.

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:

Stephen D. Hamann, P.Eng.

a member of the Association of Professional Engineers of Ontario and a holder of a Certificate of Authorization.

3. Davis determined that piers would have to be installed under portions of the east, west and south foundation walls in order to prevent further settlement and subsequent damage to the building. The loading data required to design the pier installation was prepared in a drawing, S2, dated July 26, 2002.
4. Davis proceeded to prepare a design drawing, S1, dated August 13, 2002, locating 29 Chance helical piers (screw-in style) under sections of the foundation walls and four tie-back rods running from the rear foundation wall to the front of the house. Both drawings S1 and S2 were submitted to the City of Toronto, Department of Building and Inspection (“Building Department”) in support of a building permit.
5. By letter dated August 2, 2002, Davis obtained a quotation of \$43,950 from EBS Engineering & Construction for the proposed work and presented the quotation to Parete. Parete was of the opinion that the Davis design was overly conservative, the number of piers was excessive, and the quotation submitted was too expensive.
6. In or about September 2002, Parete retained AGS Associates Inc. to prepare a geotechnical report for 7 Donald Avenue.
7. AGS submitted its report dated September 27, 2002, bearing the engineering seal of George K. Bell, P.Eng. The report indicated that the allowable bearing capacity of the ground where piers would be installed was 1500 kPa. The report further indicated that repairs to a retaining wall on the property were critical to the success of the pier installation.
8. By letter dated October 22, 2002, Bob Hayter (“Hayter”), owner of a construction company known as ABM Canada Structural (“ABM”), offered Parete an alternate type of pier system (ABM Canada pier–push style) at an installed cost of \$35,000 plus GST. Parete decided to award the contract to ABM. Davis expressed concerns over the load-carrying capacity of the ABM pier.
9. Hayter and ABM had a four-year working relationship with Hamann.
10. On November 12, 2002, two building permits were issued by the Building Department.
11. By letter dated November 25, 2002, Davis resigned from the project and provided written advice to Gabe

- Faraone, City of Toronto, West District, wherein he stated that ABM's structural engineer (Hamann) would be taking over responsibility for the project. Davis stated that his drawings originally submitted for permit would not necessarily apply to the ABM style of pier.
12. Hamann prepared a new set of drawings (S1.1, S2.1, S3.1) sealed on November 26, 2002, which detailed the construction of 29 ABM piers and four tie backs. These drawings and a set of load calculations sealed and signed by Hamann were received by the Building Department on December 17, 2002.
 13. On November 27, 2002, Hamann executed a General Review Commitment Certificate ("Certificate") required by the Building Department as part of the permit issuance process, undertaking the general review of the construction of the building in accordance with "...the performance standards of the Professional Engineers of Ontario to determine whether the construction is in general conformity with the plans, drawings...specifications and other documents...that form the basis of the issuance of the building permit or any other changes authorized by the Chief Building Official." At the time of the execution of the Certificate, Hamann was unaware who had applied for the permit (i.e. Parete or ABM).
 14. The Certificate stipulated that Hamann, among other things, shall:
 - (a) make periodic visits to the site to determine, on a random sampling basis, whether the work was in general conformity with the plans and specifications of the building;
 - (b) record deficiencies found during site visits and provide the client, the contractor and the owner with written reports of the deficiencies and the actions that must be taken to rectify the deficiencies;
 - (c) review reports of independent inspection and testing companies called for in the plans and specifications and which pertain directly to the work being reviewed.
 15. Construction on the building commenced in or about late August or early September 2003. It was anticipated by Hamann that the work on the building would take approximately one month.
 16. On or about September 4 and 5, 2003, the owner, Parete, contacted Hamann and expressed concerns regarding the slow pace of the work being performed by the contractor, ABM. As a result of the telephone conversation, Hamann was made aware that work had commenced on the building. There was no further contact with Hamann between September 4 and 5, and December 16, 2003. Hamann made no visits to the building in September, October or November 2003 for the purpose of determining whether the work was in general conformity with the plans and specifications or to record deficiencies.
 17. It was not until December 16, 2003 that Hamann first attended the building for a site review. Hamann made that site visit after a request by the contractor, ABM.
 18. At the time of Hamann's first site visit on December 16, 2003, the foundation work had been completed and was covered. Hence, Hamann was unable to make any personal observations of the foundation work that had been done by the contractor.
 19. ABM staff represented to Hamann that the number of piers originally specified in Hamann's design drawing were not installed because the foundation's cracks had been reduced to less than 1/4" with the installation of only 21 piers. ABM staff also advised Hamann that the tie-backs on the south wall had been deemed unnecessary to straighten the wall.
 20. Hamann relied wholly or substantially on the representations of ABM when he issued "Field Review Report No. 1" to the attention of Hayter without affixing his engineering seal, although his engineering seal was affixed to the attached revised structural drawing. The engineering seal that was affixed to the revised S2.1 drawing was dated November 26, 2002, the date the original drawing had been sealed. Under "Observations and Comments," Hamann noted that he had been advised that the number of piers had been reduced from 29 to 21 and tie-backs had been eliminated. Hamann further noted that all wall cracks and wall horizontal shift had been reduced to less than 1/4".
 21. On December 17, 2003, in a letter addressed to the Chief Building Official, City of Toronto, Hamann certified that the work performed on the building had been carried out in general accordance with his structural drawings and the *Ontario Building Code*. Hamann did not affix his engineering seal to the certificate.
 22. Hamann had not personally observed the installation of any of the piers nor had he reviewed the pier driving records from the contractor, in the preparation of Field Review Report No. 1 and his certification that the work on the building had been carried out in general accordance with his structural drawings and the *Ontario Building Code*. However, the pier driving records had been requested by Hamann. The records were not received.
 23. Shortly after December 17, 2003, ABM went out of business and its owner, Hayter, could not be located.

24. Subsequent to the completion of work by ABM in December 2003, Parete noted that cracks in his walls had not been closed to less than 1/4" as he had inferred from Hamann's field review of December 16, 2003. The outdoor brickwork showed vertical open joints in excess of 1". Parete documented the condition of the brickwork in a series of photographs taken on April 18, 2004. Later in April 2004, Parete hired a contractor to repair the exterior brickwork of his residence.
25. Hamann takes the position that his reference to wall cracks being closed to less than 1/4" was meant to be a reference only to the horizontal shift in the bricks and not the vertical open joints which were, in places, in excess of 1".
26. Hamann was advised that cracks had reappeared in or about June in the repaired exterior brick work and that Parete had reason to believe that only 19 piers had been installed under his foundations instead of 21, as certified by Hamann.
27. By reason of the facts aforesaid, it is alleged that Stephen D. Hamann, P.Eng.:
- (a) failed to reduce to writing the scope of his retainer and work with ABM, contrary to good practice recommendations contained in PEO's professional practice guidelines and the *Guideline for Professional Engineers Providing General Review of Construction as Required by the Ontario Building Code*;
 - (b) issued reports and other documents relevant to his engineering work that were not sealed in compliance with section 53 of Ontario Regulation 941/90 made pursuant to the PEA;
 - (c) executed a General Review Commitment Certificate without knowing who had applied for the building permit (i.e. Parete, the owner, or ABM, the contractor);
 - (d) failed to recognize and disclose to Parete a potential conflict of interest in acting as the contractor's engineer and the reviewing engineer under the terms of the General Review Commitment Certificate;
 - (e) failed to adhere to his professional obligation under the terms of the General Review Commitment Certificate to make periodic visits to the site, on a random sampling basis, to determine whether the work was in general conformity with the plans and specifications for the building and to record deficiencies and provide the owner with written reports of the deficiencies;
 - (f) had not personally observed the installation of any of the piers, nor had he reviewed the pier driving records from the contractor in the preparation of Field Review Report No. 1 and his certification that the work on the building had been carried out in general accordance with his structural drawings and the *Ontario Building Code*;
 - (g) executed a certificate that the work on the building had been carried out in general conformity with his revised structural drawings and the *Ontario Building Code* without having observed the installation of the piers, the piers as installed, or having reviewed the pier driving records, and relied wholly on the representations of the contractor;
 - (h) included the reduction of required piers and the elimination of the four tie backs required in the original design, without having observed the installation of the piers, the piers as installed, or having reviewed the pier driving records;
 - (i) issued a certificate of completion report to the City of Toronto, Department of Building and Inspection, without affixing his engineering seal to the certificate;
 - (j) affixed his seal to a certificate of completion report that he knew or ought to have known was incomplete; and
 - (k) acted in an unprofessional manner.
28. By reason of the facts aforesaid, it is alleged that Stephen D. Hamann, P.Eng., is guilty of professional misconduct and/or breaches of the Code of Ethics and that Hamann Engineering is guilty of professional misconduct as defined in sections 28(2) and 28(3) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28 as follows:
- Professional misconduct
- (2) A member of the Association or a holder of a certificate of authorization, a temporary licence, a provisional 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. R.S.O. 1990, c. P.28, s. 28(2); 2001, c. 9, Sched. B, s. 11(36).
29. The sections of Regulation 941 made under the Act and relevant to the alleged professional misconduct are:
- 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. R.R.O. 1990, Reg. 941, s. 72(1); O. Reg. 657/00, s. 1(1).
- (2) For the purposes of the Act and this Regulation, "professional misconduct" means:
- (a) *Section 72(2)(a)*: negligence;
 - (b) *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;
 - (c) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
 - (d) *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 serv-

ice to the public, to an employer or to a client;

- (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. R.R.O. 1990, Reg. 941, s. 72(2); O. Reg. 657/00, s. 1(2); O. Reg. 13/03, s. 19.

78. The following are prescribed as performance standards with respect to the general review of the construction, enlargement or alteration of a building by a professional engineer as provided for in the building code made under the *Building Code Act*:

1. The professional engineer, with respect to the matters that are governed by the building code, shall,
 - (i) make periodic visits to the site to determine, on a random sampling basis, whether the work is in general conformity with the plans and specifications for the building;
 - (ii) record deficiencies found during site visits and provide the client, the contractor and the owner with written reports of the deficiencies and the actions that must be taken to rectify the deficiencies;
 - (iii) review the reports of independent inspection and testing companies called for in the plans and specifications and which pertain directly to the work being reviewed...
4. In paragraph 1, "plans and specifications" means a plan or other document which formed the basis for the issuance of a building permit and includes all changes thereto that were authorized by the chief official as defined

in the *Building Code Act*. R.R.O. 1990, Reg. 941, s. 78.

Single-Member Panel

Pursuant to section 4.2.1(2) of the *Statutory Powers Procedure Act*, the parties consented to having this matter determined by a one-person panel of the Discipline Committee.

Plea by Member

Hamann admitted the allegations set out in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the member's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

Neil Perrier ("Perrier"), counsel for PEO, confirmed to the panel that Hamann had admitted to the allegations in the Fresh Notice of Hearing. Appendix A to the Fresh Notice is therefore a statement of facts that have been agreed by both parties.

Decision

The panel reviewed the allegations set out in the Fresh Notice of Hearing, and considered the plea in which Hamann admitted the allegations.

The panel concluded that the allegations, admitted by the member, support findings of negligence and professional misconduct as set out in paragraphs 28 and 29 of the appendix to the Fresh Notice of Hearing.

Penalty

Perrier advised the panel that a Joint Submission as to Penalty had been agreed upon by both parties.

The Joint Submission as to Penalty provides as follows:

1. that Hamann be reprimanded;
2. that the fact of the reprimand be recorded on the Register;
3. there will be publication of the proceedings with the name of the member in Gazette;

4. that Hamann shall write and pass the following examinations:
 - (i) Professional Practice Examination,
 - (ii) 98-Civ-B8 Management of Construction.
 hereinafter collectively referred to as the "Examinations;"
5. in the event that Hamann does not write and pass the Examinations within 12 months of the date of this hearing, his licence will be suspended until the Examinations are passed;
6. in the event that Hamann does not write and pass the Examinations within 24 months of the date of this hearing, his licence shall be revoked; and
7. that Hamann pay the costs of the proceeding fixed in the sum of \$5,000 within 90 days of the date of this hearing.

Penalty Decision

The panel reviewed the terms of the Joint Submission and the submissions of both parties and found no reason to depart from the Joint Submission. The panel believes that the penalty serves the purposes of general and specific deterrence, and is appropriate in light of the conduct admitted by the member.

Accordingly, the panel orders the following:

1. **that Hamann be reprimanded;**
2. **that the fact of the reprimand be recorded on the Register;**
3. **there will be publication of the proceedings with the name of the member in Gazette; and**
4. **that Hamann shall write and pass the following examinations:**
 - (i) **Professional Practice Examination,**
 - (ii) **98-Civ-B8 Management of Construction.**

hereinafter collectively referred to as the “Examinations;”

5. in the event that Hamann does not write and pass the Examinations within 12 months of the date of this hearing, his licence will be suspended until the Examinations are passed;

6. in the event that Hamann does not write and pass the Examinations within 24 months of the date of this hearing, his licence shall be revoked; and
7. that Hamann pay the costs of the proceeding fixed in the sum of

\$5,000 within 90 days of the date of this hearing.

The written Decision and Reasons in this matter were dated February 9, 2006, and were signed by David Smith, P.Eng., as the Chair and sole member of the panel.

This matter came on for hearing before a single-member panel of the Discipline Committee on Monday, January 23, 2006 at the Association of Professional Engineers of Ontario in Toronto (the “association”). All parties were present and were represented by legal counsel or agents.

The Allegations

The allegations against Engineer A, Engineer B, Company A and Company B were as follows:

1. In or about January 2001, Company C prepared an engineering proposal and received a purchase order from a client (the “Client”) for a proposed expansion to their facility. Company C then prepared architectural, structural, mechanical and electrical design drawings for the project.
2. In or about June 2001, tender packages were issued for the proposed expansion, and road and building permit applications were also prepared at the same time.
3. In or about July 2001, the proposed office/plant expansion project was cancelled by the Client.
4. In or about September 2002, the Client approached Company C to submit a fee proposal for a revised smaller proposed expansion project. Company C could not meet the Client’s schedule and Company C understood that the Client would go elsewhere to obtain engineering services for the revised project.

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:

Engineer A and Engineer B

members of the Association of Professional Engineers of Ontario, and

Company A and Company B

holders of Certificates of Authorization.

5. In or about December 2002, Company C released electronic copies of their original project drawings to the Client. A Transfer of Files on Electronic Media was signed by the Client before the drawing files were released.
6. In or about October 2003, Company C obtained a copy of the architectural and structural project drawings for the revised proposed project prepared, sealed and signed by Engineer A (“A Drawings”). It was evident that the A Drawings contained substantial elements of duplication of the original Company C project drawings with proposed revised size reductions. The A Drawings were not adequately reviewed prior to being signed and sealed by Engineer A to address the design contained in the aforesaid duplication.
7. In or about October 2003, Company C obtained a copy of the mechanical and electrical project drawings for the revised proposed project prepared, sealed and signed by Engineer B (“B Drawings”). It was evident that the B Drawings contained substantial elements of duplication of the original Company C project drawings with proposed revised size reductions. The B Drawings were not adequately reviewed prior to being signed and sealed by Engineer B to address the design contained in the aforesaid duplication.
8. It is alleged that Engineer A:
 - (a) signed and sealed final drawings that were not actually prepared or adequately checked by him;
 - (b) acted in an unprofessional manner. By reason of the facts aforesaid, it was alleged that Engineer A and Company A are guilty of professional misconduct as defined in section

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

9. It is alleged that Engineer B:
- (a) signed and sealed final drawings that were not actually prepared or adequately checked by him;
 - (b) acted in an unprofessional manner. By reason of the facts aforesaid, it was alleged that Engineer B and Company B are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

10. "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."

The sections of Regulation 941 made under the said Act and relevant to this misconduct are:

- (a) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
- (b) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Plea by Member and/or Holder

Engineer A, Engineer B, Company A and Company B admitted the allegations against them as set out in the Fresh Notice of Hearing, except for the allegation of a breach of section 72(2)(e) of Regulation 941. The panel conducted a plea inquiry and was satisfied that their admissions were voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the association advised the panel that it was agreed that the facts in the Fresh Notice of Hearing could be considered as an Agreed Statement of Facts ("ASF").

Decision

The panel considered the pleas and the ASF and found that the facts support a finding of professional misconduct and, in particular, found that Engineer A, Engineer B, Company A and Company B committed acts of professional misconduct as alleged in the Fresh Notice of Hearing, namely, breaches of sections 72(2)(e) and 72(2)(j) of Regulation 941.

Reasons for Decision

The panel accepted the pleas, which, together with the facts contained in the ASF, supported the findings of professional misconduct.

With respect to section 72(2)(e) of Regulation 941: "Signing and sealing a final drawing, specification, plan, report, or other document not actually prepared or checked by the practitioner," in accepting the guilty plea of not adequately checking the work, the view of the panel was that not checking the work is a breach of section 72(2)(e) of Regulation 941. The final drawings, signed and sealed by Engineer A and Engineer B, contained information and details from the drawings originally prepared by Company C, which were provided by the client. Engineer A and Engineer B did not communicate with the engineer who had prepared them, and admitted that information was used without it being checked.

Penalty

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

The parties to this proceedings, the Association of Professional Engineers of Ontario, Engineer A, Engineer B, Company A and Company B jointly submit that the Discipline Committee should make the following terms of order on penalty:

1. that Engineer A, Engineer B, Company A and Company B be reprimanded;
2. that the fact of the reprimand be recorded on the Register;

3. that there be publication of a summary of discipline proceedings in Gazette;
4. that Engineer A and Engineer B shall write and pass the Professional Practice Examination ("PPE") within 12 months of the date of the hearing;
5. in the event that Engineer A or Engineer B does not write and pass the PPE within 12 months of the date of the hearing, that member's licence shall be suspended;
6. in the event that Engineer A or Engineer B does not write and pass the PPE within 24 months of the date of the hearing, that member's licence shall be revoked; and
7. that Engineer A, Engineer B, Company A and Company B shall each pay the costs of the proceeding fixed in the sum of \$1,500, for a total of \$6,000.

Counsel for the association also advised that there was no agreement as to the length of time the fact of the reprimand would be recorded on the Register, nor was there agreement as to whether publication in Gazette would be with or without names.

Counsel for the association submitted that the fact of the reprimand should be recorded on the Register for an unlimited period of time and that publication of a summary of the discipline proceedings be published in Gazette with names. Counsel for Engineer A, Engineer B and Company B submitted that the fact of the reprimand should only be recorded on the Register for six to nine months, while counsel for Company A submitted that for his client it should only be for one to two months.

With respect to publication in Gazette, all defence counsel submitted that publication should be without names.

Penalty Decision

The panel accepted the JSP and accordingly ordered:

1. that Engineer A, Engineer B, Company A and Company B be reprimanded;
2. that the fact of the reprimands be recorded on the Register for a period of six months from the date of the hearing;
3. that there be publication of a summary of discipline proceedings in Gazette with no reference to names;
4. that Engineer A and Engineer B shall write and pass the Professional Practice Examination (“PPE”) within 12 months of the date of the hearing;
5. in the event that Engineer A or Engineer B does not write and pass the PPE within 12 months of the date of the hearing, that member’s licence shall be suspended;
6. in the event that Engineer A or Engineer B does not write and pass the PPE within 24 months of the

date of the hearing, that member’s licence shall be revoked; and

7. **that Engineer A, Engineer B, Company A and Company B shall each pay the costs of the proceeding fixed in the sum of \$1,500, for a total of \$6,000.**

Reasons for Penalty

The engineers and companies were found guilty of professional misconduct for signing and sealing final drawings that contained information of another engineer’s notes without contacting him or checking the work done by him. There was no evidence presented that there was deception, and there was no risk to the public as a result of their actions. The JSP was accepted.

With respect to the decision that the reprimand shall be recorded on the Register for a period of six months, this dispute was confined to the engineers involved and there was not a risk to the public or the profession.

Further, Engineer A, Engineer B, Company A and Company B had no prior allegations made against them, and have successful practices.

With respect to the decision that publication in Gazette be without reference to names, even though this hearing was open to the public, no one was present to observe. Further, the penalty agreed to is appropriate and will serve as a deterrent to others that, prior to reviewing another engineer’s work, it is necessary to communicate one’s involvement in a project.

The lesson to be learned by this case is valid for all engineers without the names being published. Submissions were accepted, on previous cases, where names were omitted when published in Gazette.

The terms of the penalty are appropriate considering the seriousness of this case.

Lastly, it appears there is a need for clarification guidelines concerning situations when work is transferred from one consulting engineer to another.

Following the hearing, Engineer A, Engineer B, Company A and Company B each waived their right to appeal and the reprimand was administered.

The written Decision and Reasons in this matter were dated May 4, 2006, and were signed by Don Turner, P.Eng., as the Chair and sole member of the panel.

ENFORCEMENT

Order obtained against former professional engineer for unlicensed work

On September 21, 2006, in the Ontario Superior Court of Justice in Toronto, Professional Engineers Ontario (PEO) obtained an order against Wiktor Kwiatek, 76, of Toronto, ON, for engaging in the practice of professional engineering while not being licensed. Kwiatek’s licence was revoked in October 2003 at the conclusion of a discipline hearing (see *Gazette, Engineering Dimensions*, September/October 2004).

PEO brought the application after receiving information that Kwiatek had

used a facsimile of a professional engineer’s seal to approve a crane inspection report at a project in Mississauga, ON. The crane had been erected despite there being visible cracks in the structure, and resulted in a stop work order from the Ontario Ministry of Labour. The ministry brought charges against Kwiatek, who was later convicted for contravening the *Occupational Health and Safety Act*. Subsequent investigation revealed that Kwiatek had sealed approximately 60 other inspection reports after his licence was revoked, and had also sealed a stormwater management report for a site plan submitted to the City of Brampton.

The Honourable Justice Hoilett of the Ontario Superior Court of Justice declared that Kwiatek had breached several sections of the *Professional Engineers Act*. Kwiatek has been ordered to refrain from

engaging in the practice of professional engineering, and from holding himself out as engaging in the practice of providing to the public in Ontario services that are within the practice of professional engineering. He has also been ordered to refrain from using the terms “engineer,” “professional engineer” or “P.Eng.,” as an occupational or business designation until such time as he satisfies the requirements for professional engineering licensure in Ontario and is granted a licence by PEO. He was further ordered to return his seal, or any seal in his possession resembling the seal of a licensed professional engineer, to PEO and to refrain from using any seal containing the words “engineer,” “professional engineer,” “engineering,” or any abbreviation or variation thereof. Kwiatek was also ordered to pay costs to PEO in the amount of \$2,500.

ENFORCEMENT

Order obtained against Barrie-area contractor for using restricted title

On September 21, 2006, an order under the *Professional Engineers Act* was obtained by Professional Engineers Ontario (PEO) in the Ontario Superior Court of Justice against Antonio Salazar and his company, Christonbel Enterprises Ltd., of Barrie, ON, for using the restricted title “engineer” on his company’s business cards. Salazar has never held a licence as a professional engineer in Ontario, and Christonbel Enterprises Ltd. has never held a Certificate of Authorization.

PEO brought the application after receiving information from a homeowner in Kitchener, ON, who had hired Christonbel Enterprises to perform renovations to his home under the mistaken belief that Salazar was a professional engineer. Salazar had used the title “civil engineer” on his business card, although he did not hold a licence with PEO.

After reviewing the affidavit evidence, the Honourable Justice Hoilett of the Ontario Superior Court of Justice declared that Salazar and Christonbel Enterprises Ltd. had breached several sections of the *Professional Engineers Act*. Salazar has been ordered to refrain from engaging in the practice of professional engineering, or from holding himself out as engaging in the practice of providing to the public in Ontario services that are within the practice of professional engineering. He has also been ordered to refrain from using the terms “civil engineer,” “professional engineer” or “P.Eng.,” as an occupational or business designation

until such time as he satisfies the requirements for professional engineering licensure in Ontario and is granted a licence by PEO.

Christonbel Enterprises has been ordered to refrain from offering or providing to the public in Ontario services that are within the practice of professional engineering unless and until it obtains a Certificate of Authorization from PEO. It has also been ordered to refrain from using the title “civil engineer,” “professional engineer,” “P.Eng.,” or any abbreviation or variation thereof as an occupational or business designation in Ontario unless and until it obtains a Certificate of Authorization from PEO.

Salazar and Christonbel Enterprises have also agreed to pay PEO’s costs in this matter in the amount of \$2,500.

Anyone wishing to check whether an individual is licensed as a professional engineer in Ontario can check the Members’ Directory on the PEO website, www.peo.on.ca, or contact PEO at 416-224-1100, ext. 1086.

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

November 22, 2006

Kwang-Ray Hsu, P.Eng.

It is alleged that Hsu is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Hsu is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

November 23-24, 2006

Bradley J. Kalus, P.Eng., and The Greer Galloway Group Inc. (GGG)

It is alleged that Kalus and GGG are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

December 5-6, 2006

Francis P. Sim, P.Eng.

It is alleged that Sim is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Sim is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

December 11-13, 2006

Donald B. Smith, P.Eng., and DBS Projects Ltd. (DBS)

It is alleged that Smith is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Smith and DBS are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

February 26-March 2, 2007

Rene G. Caskanette, P.Eng., and Caskanette & Associates (C&A)

It is alleged that Caskanette is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Caskanette and C&A are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

February 26-March 2, 2007

Jeffrey D. Udall, P.Eng.

It is alleged that Udall is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Udall is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.