

Decision and Reasons

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on June 2, 2003 at the Association of Professional Engineers of Ontario in Toronto. The association was represented by John Abdo of Cassels Brock & Blackwell LLP. George Papadopoulos, P.Eng., was not represented by legal counsel.

The Allegations

The allegations against George Papadopoulos, P.Eng., (the “member”) in the Notice of Hearing dated February 20, 2003, included allegations of professional misconduct and incompetence. The allegation of incompetence was withdrawn by the association at the outset of the hearing.

Plea by Member

The member admitted to the allegations of professional misconduct as set out in the Agreed Statement of Facts set out below. The panel conducted a plea inquiry and was satisfied that the member’s admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the association and the

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

George Papadopoulos, P.Eng.

a member of the Association of Professional Engineers of Ontario.

member advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which provided as follows:

1. George Papadopoulos, P.Eng., (“Papadopoulos”) was first licensed as a professional engineer in the province of Ontario on October 25, 1973.
2. Papadopoulos is not and has never been the holder of a Certificate of Authorization issued pursuant to the Professional Engineers Act,

R.S.O. 1990, c. P.28 (the “Act”).

3. Gregory Ioannidis (“Ioannidis”) was, at all material times, the owner of a property located on Oxford County Road 29 in the Township of Blandford-Blenheim (the “township”). Ioannidis retained Papadopoulos in or about December 2001 to provide site plan drawings and structural drawings for a truck stop/restaurant project known as “Truckers Haven” to be built on the property.
4. Shortly thereafter, Ioannidis retained Christos Spathis (“Spathis”) to provide mechanical engineering services for the project and Zak Ghanim to provide architectural services. Ioannidis retained Spathis on the recommendation of Papadopoulos.
5. By letter to the township dated December 31, 2001, Ioannidis appointed Papadopoulos as his agent for the purposes of applying for the building permit for the project (Exhibit “A”).
6. On December 31, 2001, Papadopoulos signed and submitted a building permit application to the Township of Blandford-Blenheim (the “township”) building department, which included 10 drawings as follows:

Note from the Editor

Welcome to Gazette, a new department in *Engineering Dimensions*. For reasons relating to new Canada Post rules governing the mailing of publications, the content of the former, stand-alone newsletter called *Gazette* is being directly incorporated into *Engineering Dimensions* as a regular department. While the separate masthead is gone, the familiar blue tinting of the pages remains, as does its location at the centre of the magazine.

These changes will result in cost reductions of approximately \$25,000 per issue compared to the previous format. The editorial objectives/policy for the new department, however, will remain the same as they were for the *Gazette* newsletter (see May/June 2004 issue). Just think of it as the Regulatory Compliance news section of the magazine.

Bruce Matthews, P.Eng.

- (a) Dwg. S-1, Foundation Plan, dated December 15, 2001, and bearing the seal and signature of Papadopoulos dated December 15, 2001;
- (b) Dwg. S-2, Rebar Take Off, dated December 15, 2001, and bearing the seal and signature of Papadopoulos dated December 15, 2001;
- (c) Dwg. S-3, Rebar And Access Hatch Details, dated December 15, 2001, and bearing the seal and signature of Papadopoulos dated December 15, 2001;
- (d) Dwg. S-4, Window Lintel Plan, dated December 15, 2001, and bearing the seal and signature of Papadopoulos dated December 15, 2001;
- (e) Dwg. S-5, Roof Framing Plan, dated December 15, 2001, and bearing the seal and signature of Papadopoulos dated December 15, 2001;
- (f) Dwg. S-6, Notes, dated December 15, 2001, and bearing the seal and signature of Papadopoulos dated December 15, 2001;
- (g) Dwg. F-1, Floor Plan—Fire Alarm—Emergency Lighting—Exit Signs, dated December 15, 2001, and bearing the seal and signature of Papadopoulos dated December 15, 2001;
- (h) Dwg. M-1, Floor Plan Plumbing, dated December 2001, and bearing the seal and signature of Spathis dated December 2001;
- (i) Dwg. M-2, Floor Plan H.V.A.C., dated December 2001, and bearing the seal and signature of Spathis dated December 2001; and
- (j) Dwg. M-3, Kitchen Exhaust System, dated December 2001, and bearing the seal and signature of Spathis dated December 2001 (collectively Exhibit “B”).
7. Ioannidis provided the township with a “Confirmation of Commitment by Owner,” dated February 3, 2002, regarding design and field review services (Exhibit “C”). Papadopoulos had signed the Confirmation with respect to structural engineering and electrical engineering services. Spathis had signed the Commitment with respect to mechanical engineering services.
8. On February 21, 2002, on the basis of detailed drawings and specifications provided by Ioannidis, the Ministry of the Environment issued an amendment to their previously issued Certificate of Approval for the private sewage treatment facility associated with the project. The amendment formally deleted a condition on the original Certificate (Exhibit “D”).
9. The township issued a building permit on March 4, 2002 (Exhibit “E”). Construction on the underground drainage system started on or about May 16, 2002.
10. On May 16, 2002, Brian Hunt, resource planner for the Grand River Conservation Authority (“Hunt”), sent a letter by facsimile transmission to James Watson, C.E.T., chief building official for the township (“Watson”). In the letter, Hunt asked Watson to “check out” issues of fill and silt control for construction in the township. Hunt made specific mention that “the Truckers Haven site may need some site checking” (Exhibit “F”).
11. The township inspected the Truckers Haven site that same day. The township inspection report noted that material, such as culverts and plastic piping, had been delivered to the site.
12. Watson also wrote to Papadopoulos by letter dated May 16, 2002, regarding the requirements for mud mats and silt fences at the construction site (Exhibit “G”). These requirements were as per the Site Plan Agreement dated July 1, 2001. Watson asked Papadopoulos to ensure that the conditions of the Site Plan Agreement were complied with before any additional site work was done. Papadopoulos relayed this information to Ioannidis and informed him of the need to comply.
13. Construction of the truck stop/restaurant building started on or about June 12, 2002.
14. On June 12, 2002, the township telephoned Papadopoulos regarding a needed site inspection report for the drainage work on the Truckers Haven parking lot. Papadopoulos told the township to contact LGI Consulting Engineers Inc. (“LGI”), who had done the design for the parking lot drainage system. At the request of Ioannidis, Papadopoulos discussed with LGI an alternative to the storm interceptor specified on the drawings.
15. On June 14, 2002, the township inspected the Truckers Haven site. Papadopoulos and Ioannidis were on site at the time of the inspection. The township noted in its inspection report that Papadopoulos had authorized the addition of two pieces of rebar to the footings and had made the concrete pads a little larger than was indicated on the drawings. During the site inspection, the township and Papadopoulos had further discussions about various project issues, which included:
- (a) A water table problem had been encountered at the northeast corner and along the north side of the building. Papadopoulos indicated to the township that he would revise the footing detail and provide revised drawings bearing his seal;
- (b) The need for a soil engineer to examine the area where the sewage

- tank was to be installed. Papadopoulos relayed this to Ioannidis;
- (c) The requirement to install the silt fence and mud mats required by the Site Plan Agreement. Papadopoulos relayed this information to Ioannidis;
- (d) The fact that the construction project had not been registered with the Ministry of Labour as required under the *Occupational Health and Safety Act*. Papadopoulos relayed this information to Ioannidis;
- (e) The need for the parking lot drainage work performed to date to be approved by LGI. Papadopoulos relayed this information to Ioannidis;
- (f) The fact that the Ministry of the Environment and the County of Oxford would have to provide their approval before any changes were made to the design of the sewage system from that which was indicated on the permit drawings. Papadopoulos relayed this information to Ioannidis;
- (g) The fact that any changes to the permit drawings must be submitted to the township prior to the work being done. Papadopoulos relayed this information to Ioannidis; and
- (h) The requirement for Papadopoulos to submit his site inspection reports to date, as well as subsequent reports, to the township. Papadopoulos relayed this information to Ioannidis.
16. On June 20, 2002, the township inspected the site and again requested from Papadopoulos the information and documentation initially requested on June 14, 2002. Papadopoulos conveyed this to Ioannidis.
17. On June 21, 2002, the township contacted the Association of Professional Engineers of Ontario (“PEO”) and learned that Papadopoulos did not possess a Certificate of Authorization allowing him to offer and provide professional engineering services to the public (Exhibit “H”).
18. On or about June 27, 2002, Papadopoulos contacted PEO and requested information about the requirements for a Certificate of Authorization. PEO sent Papadopoulos a Certificate of Authorization application form that same day.
19. On July 3, 2002, the township observed that work was proceeding on the construction site and that none of the items of information and documentation requested on June 14, 2002, had been provided. On that basis, and in consideration of Papadopoulos’ lack of a Certificate of Authorization, the township issued an “Order to Comply with Act or Code” and a “Stop Work Order” against the project (Exhibit “I”).
20. In telephone conversations with Watson on July 4, 2002, and July 5, 2002, Watson advised Papadopoulos that the township could not accept any drawings, reports, etc. from him until the Certificate of Authorization had been issued.
21. On July 16, 2002, Papadopoulos hand delivered his Certificate of Authorization application to PEO (Exhibit “J”).
22. On or about July 23, 2002, Watson visited the project site and observed that the foundation wall was constructed using 10” concrete blocks, whereas the drawing specified 12” concrete block. He also observed that the mortar work on the foundation wall was sloppy, with numerous gaps and incomplete joints. He further observed that the rebar used in the concrete pads consisted of two 25mm bars and two 15mm bars, whereas the drawings specified four 25mm bars.
23. Papadopoulos agrees that he:
- (a) breached section 12(2) of the Act by offering and providing professional engineering services to the public while not in possession of a Certificate of Authorization;
- (b) signed the Confirmation of Commitment by Owner for electrical engineering work that he was not competent to perform by virtue of his training and experience;
- (c) sealed drawings for electrical engineering design work on fire alarms, emergency lighting and exit signs that did not conform to the requirements of the *Ontario Building Code*;
- (d) sealed drawings for electrical engineering design work on fire alarms, emergency lighting and exit signs which he was not competent to perform by virtue of his training and experience;
- (e) failed to submit written reports of deficiencies and conformity with plans as prescribed in section 78 of Regulation 941 made under the Act regarding the general review of construction from the start of construction on June 12, 2002, until June 21, 2002, when the township no longer accepted submissions from Papadopoulos;
- (f) authorized changes to the design of the footings to the project during construction without revising the drawings; and
- (g) acted in an unprofessional manner.
24. By reason of the facts set out above, Papadopoulos admits that he is guilty of professional misconduct as defined in section 28(2)(b) of the Act as follows:
- “28(2) A member of the Association or a holder of a certifi-

cate of authorization, a 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.”

25. The sections of the regulation, Regulation 941 to the Act, relevant to the alleged professional misconduct by Papadopoulos are:
- (a) *Section 72(2)(a)*: negligence, which is defined as an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
 - (c) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
 - (d) *Section 72(2)(g)*: breach of the act or regulations, other than an action that is solely a breach of the code of ethics;
 - (e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience;
 - (f) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all of the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Decision

The panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that the member committed an act of professional misconduct as alleged in paragraphs 24 and 25 of the Agreed Statement of Facts.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. The panel accepted the Joint Submission as to Penalty and accordingly orders as follows:

1. **That Papadopoulos' licence be suspended for a period of two months;**
2. **That Papadopoulos write and pass the Professional Practice Examination and PEO Technical Examination 98-Civ-B8 (Management of Construction), within 12 months from the date of the hearing, failing which it would become a condition and limitation on his licence that he not engage in the practice of professional engineering related to the general review of construction as contemplated by section 78 of Regulation 941 made under the *Professional Engineers Act*; this condition and limitation would remain in effect until such time as Papadopoulos writes and passes both exams;**

3. **That Papadopoulos receive a reprimand and the fact of the reprimand be recorded on the Register of the association;**
4. **That, within one year of the date of this hearing, Papadopoulos pay costs to PEO in the amount of \$5,000; and**
5. **That as required by section 28(5) of the Act, the findings and order of the Discipline Panel be published in detail, in the official publication of the association.**

The panel requested clarification from the association with respect to the proposed payment of costs to PEO in the amount of \$5,000 and, after due deliberation of the submission by counsel for PEO, agreed to accept the joint submission on costs. The panel accordingly orders as set out above.

The panel concluded that the proposed penalty is reasonable and in the public interest. The member has cooperated with the association and, by agreeing to the facts and the proposed penalty, has accepted responsibility for his actions.

The written Decision and Reasons in this matter were dated November 6, 2003, and were signed by the Chair of the panel, Gina Cody, P.Eng., on behalf of the other members of the Discipline Panel: James Dunsmuir, P.Eng., Santosh Gupta, P.Eng., Cam Mirza, P.Eng., and David Smith, P.Eng.

Note from the Regulatory Compliance Department

Papadopoulos waived his right of appeal in this matter, and the suspension of his licence was effective June 2, 2003. The cost award was paid on June 1, 2004. Because of health problems, Papadopoulos requested and was granted an extension to the time required to write the examinations.

Decision and Reasons

This matter came on for hearing before a panel of the Discipline Committee on June 17, 2003, at the Association of Professional Engineers of Ontario in Toronto. The association was represented by Michael Royce of Lenczner Slaght Royce Smith Griffin. Denis Bedard, P.Eng., was not present and was not represented by legal counsel.

The Allegations

In the Notice of Hearing dated April 24, 2002, it is alleged that Denis G. Bedard, P.Eng. (“Bedard” or the “member”) is guilty of professional misconduct as defined in sections 28(2)(a) and 28(2)(b) of the *Professional Engineers Act*, R.S.O 1990, Chapter P.28 in that he:

- (a) prepared and recommended the awarding of contracts for engineering services with the intention of defrauding the Government of the Northwest Territories (“GNWT”) for personal gain;
- (b) abused the power of his position as the municipal planning engineer for the GNWT in order to commit fraud;
- (c) failed to declare a conflict of interest in that he was to financially benefit from the contracts he was preparing and recommending for award on behalf of the GNWT;
- (d) recommended the award of an engineering services contract to a company that he knew, or ought to have known, was not authorized to offer or provide professional engineering services to the public; and
- (e) was found guilty of criminal offences relevant to his suitability to practise professional engineering.

Section 28(2) of the *Professional Engineers Act* provides that:

(2) A member of the Association or a holder of a Certificate of Authorization,

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

Denis Bedard, P.Eng.

a member of the Association of Professional Engineers of Ontario.

a temporary licence or a limited licence may be found guilty of professional misconduct by the committee if,

- (a) the member or holder has been found guilty of an offence relevant to suitability to practise, upon proof of such conviction;
- (b) 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 the alleged professional misconduct are:

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

closure 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, in particular, without limiting the generality of the foregoing, carrying out any of the following acts without making such a prior disclosure:

1. accepting compensation in any form for a particular service from more than one party,
 2. participating in the supply of material or equipment to be used by the employer or client of the practitioner,
 3. contracting in the practitioner's own right to perform professional engineering services for other than the practitioner's employer,
 4. expressing opinions or making statements concerning matters within the practice of professional engineering of public interest where the opinions or statements are inspired or paid for by other interests;
- (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; and
- (f) *Section 72(2)(m)*: meeting, counselling or assisting a person who is

not a practitioner to engage in the practice of professional engineering except as provided for in the Act or in the Regulations. R.R.O. 1990, Reg. 941, s.72.

Plea by the Member

Because neither Bedard nor counsel representing him was present, the chair directed that a plea of not guilty be entered on Bedard's behalf, and the hearing proceeded as a contested hearing.

Overview

The hearing arose as a result of an investigation in 1997 into alleged irregularities involving certain activities of Bedard, who was the municipal planning engineer in the Fort Simpson area office of the Department of the Ministry of Municipal and Community Affairs ("MMCA") of the Government of the Northwest Territories ("GNWT"). Bedard was at all material times a member of the Association of Professional Engineers of Ontario.

As a result of the GNWT investigation, criminal charges were laid against Bedard. He was committed to trial in the Supreme Court of the Northwest Territories on five counts. On November 17, 2000, he was found guilty on two counts and sentenced to two 15-month conditional sentences to be served concurrently.

Evidence

Michael Royce, counsel for the association, entered into evidence an Agreed Statement of Facts from the Supreme Court of the Northwest Territories between her Majesty the Queen and Denis Bedard. This included the following:

Background

Bedard was hired as a professional engineer by GNWT in 1991 and, as such, was bound by the Codes of Ethics of his professional associations. In 1995, he transferred to the Fort Simpson area office. He became a friend of Heino Zubke ("Zubke"), vice-president of Fred H. Ross and Associates Ltd.

("Ross") and a director of Kalaaq Corp. ("Kalaaq"). Kalaaq was not registered with Northwest Territories Association of Professional Engineers, Geologists and Geophysicists (NAPEGG) and was therefore not eligible to directly provide professional engineering services to the GNWT.

On December 2, 1997, Bedard was suspended from his position as a result of an internal investigation. On February 5, 1998, Bedard resigned effective the same day, to stop what he characterized as "slandering tactics" on the part of the audit investigators with his friends, and senior departmental and professional colleagues.

Wrigley Project

Bedard recommended awarding a \$20,000 contract to Kalaaq without competition to complete an "Environmental Assessment and Predesign-Sewage/Solid Waste site" at Wrigley.

Zubke, acting for Kalaaq, submitted an invoice for work done on the contract. The invoice was stamped "Completed as per service contract S C 355507" and stamped with Bedard's P.Eng. stamp. A cheque for \$20,000 was issued to Kalaaq. Bedard sent an invoice to Kalaaq for \$15,000 dated July 22, 1996. The invoice stated that Bedard had completed a preliminary design, prepared layout and site drawings, conducted soil sampling and prepared, stamped and certified final drawings. Kalaaq issued a cheque for \$15,000 to Bedard that he endorsed. Bedard received \$15,000 for what he held out to be his engineering services on a project that was neither completed nor even begun.

Bedard confirmed to the GNWT auditors that he prepared the contract specifications, recommended the contract be awarded to Kalaaq, received reports and recommended payment.

The general manager of the Local Development Corp. in Wrigley, Les Christopher, stated that he had never heard of Kalaaq or Bedard and that no consulting work was done on water and sewage projects in Wrigley in 1996.

Trout Lake Project

Bedard prepared a contract and specifications for the installation of a water filter system in Trout Lake at a cost of \$21,607.37. The contract was approved on July 24, 1996, and awarded to Ross without competition. It named Bedard as the contact person.

Zubke invoiced MMCA on July 24, 1996—the date of contract approval—for \$21,607.37 for the project. Bedard signed and stamped the contract as being inspected, installed and tested as per the contract, indicating that the inspection was on August 6, 1996. No water filter was ever installed.

The arrangement between Zubke and Bedard was that the funds would be used by Ross to buy two sophisticated computer colour printers, which would then be sent to Bedard.

Bruce Leblanc ("Leblanc") told police that sometime in the summer of 1996 Bedard asked him to pick up two colour printers in Yellowknife. Bedard told him one was for the Fort Rae office and the other was for the Fort Simpson office. Leblanc transferred one valued at \$8,500 to Bedard's vehicle and took the other to the Fort Rae office. About a year and a half later, after Bedard was suspended, he asked Leblanc to collect the printer from Bedard's residence in Fort Simpson. Ultimately, Bedard admitted to the RCMP that he had the printer in his home for about 18 months and had been using it for personal business pertaining to minor hockey.

Criminal Proceedings

On November 17, 2000, in the Supreme Court of the Northwest Territories in Yellowknife, Bedard pleaded guilty to two criminal charges. Madame Justice J.V. Schuler convicted him of breach of trust in connection with the duties of his office, contrary to section 122 of the Criminal Code, and defrauding the Government of the Northwest Territories, contrary to section 380(1)(a) of the Criminal Code.

In sentencing Bedard, Judge Schuler said in part:

“Mr. Bedard is 45 years old, divorced, the father of three children. He obtained his engineering degree in 1979 and worked teaching and as an engineer and consultant in Ontario. In 1991, he came north and worked as the municipal engineer for the Government of the Northwest Territories in Cambridge Bay, and then, from 1995 in Fort Simpson. After an audit revealed these offences, he was suspended and then resigned from that employment and worked for two years in Iqaluit as the town’s director of public works. In April of this year, he resigned from that position and is now the director of public works for the town of Calabogie, near Ottawa.

“The three character witnesses called by the defence, and the letter submitted from his supervisor in Iqaluit, all spoke well of Mr. Bedard and his work. The witnesses knew of no problems in his work; they knew of no personal problems. All spoke of his commitment to minor hockey and the time and effort he has spent on that community activity. He has been involved in other volunteer activities and was a volunteer member of the fire department in Cambridge Bay, and, according to Mr. Crossley’s evidence, on at least one occasion exhibited determination and bravery in trying to save the victims of a fire.

“Mr. Bedard spoke from counsel table and apologized to the court and his colleagues for what he had done. He said that he used the printer for minor hockey work, and that he had intended to do the work on the Wrigley contract but never got to it. He acknowledges that even if he had done the work the transaction was in breach of his obligations as a government employee and the guidelines of his profession.

“Sometimes, in this type of case, there is a clear motive or explanation for the offence. For example, people steal from or defraud their employer to support a lavish lifestyle or a gambling habit, or sometimes there are alcohol or drug or other problems in the background. The puzzling cases are the ones, as here, where there is no obvious motive or explanation.

“I do not put a lot of weight on Mr. Bedard’s intentions in this regard. He certainly knew that he was not entitled to the printer and the money and that he was doing wrong in endorsing as done work that was not, in fact, done. He made a good salary; his child and spousal support obligations were not out of the ordinary; and no personal or financial problems have been identified. So I have to wonder: Was it just greed? Was it perhaps a desire to see if he could just get away with it that motivated him? And I find I really can’t answer those questions on the evidence before me.”

Decision

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

Having considered the evidence and the onus and standard of proof, the panel finds that Bedard is guilty of professional misconduct as defined in sections 28(2)(a) and 28(2)(b) of the *Professional Engineers Act R.S.O 1990, c. P.28.*

The basis for this finding is:

- **Bedard was found guilty of two criminal offences (breach of trust and fraud), both of which are relevant to his suitability to practise as an engineer as set out in section 28 (2)(a) of the Act;**
- **Bedard failed to make reasonable provision for safeguarding of property of persons who may be affected by the work for which he was responsible, contrary to section 72(2)(b) of Regulation 941;**

- **Bedard failed to make reasonable provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by and under his responsibility, pursuant to section 72(2)(d) of Regulation 941; breach of the Act and Regulations contrary to section 72(2)(g) of Regulation 941;**
- **Bedard’s failure to make prompt, voluntary and complete disclosure of a direct interest that might be, or be construed as, prejudicial to his professional judgment in rendering service to the public, and to his employer by accepting compensation for his services from more than one party, participating in the supply of equipment to be used by his employer, contracting to perform professional engineering services for other than his employer, and expressing opinions or making statements where the opinions or statements are inspired or paid for by other interests, contrary to section 72(2)(i) of Regulation 941;**
- **Conduct by Bedard that would reasonably be regarded by the engineering profession as disgraceful, dishonourable and unprofessional contrary to section 72 (2)(j);**
- **Bedard’s conduct in assisting a person who is not a practitioner to engage in the practice of professional engineering pursuant to section 72(2)(m).**

Reasons for Decision

The panel heard evidence Bedard was convicted of two criminal acts and finds that these were relevant to the practice of engineering. Bedard approved two projects as

completed, where in each case no work had been done. In doing this he failed to safeguard the health of the community and the properties of the GWNT, his employer.

Bedard failed to disclose his personal interest in both the Wrigley and Trout Lake projects. He accepted compensation from Kalaq for the Wrigley Lake project.

Bedard acknowledged that the contract for the water system at Trout Lake was a scheme to obtain funds to buy two sophisticated colour printers. One of these printers was delivered to his house, where he kept it for about 18 months and used it for personal business involving minor hockey.

Bedard recommended awarding a contract to Kalaq knowing that Kalaq was not registered with NAPEGG and was

not eligible to provide professional engineering services.

The panel finds Bedard's actions would be regarded by the profession as disgraceful, dishonourable and unprofessional.

Penalty

The panel directs that Bedard's membership be revoked, that costs of \$2,500 be awarded to the association and that the decision of the Discipline Committee be published in full in the official journal of the association, with names.

Reasons for Penalty

The panel finds the evidence of Bedard's misconduct to be so serious

that his membership should be revoked. As a consequence, any future application for reinstatement after a period of two years will be directed by the Registrar to a panel of the Discipline Committee.

The panel finds an award of \$2,500 costs to be reasonable, considering that the member did not argue the case and unduly extend the proceedings.

The written Decision and Reasons in this matter were dated November 13, 2003, and were signed by the Chair of the panel, Tim Benson, P.Eng., on behalf of the other members of the Discipline Panel: Kam Elguindi, P.Eng., Phil Maka, P.Eng., Nicholas Monsour, P.Eng., and Don Turner, P.Eng.

Note from the Regulatory Compliance Department

Bedard did not appeal the Decision of the Discipline Panel. The cost award has yet to be paid.

Notice of Withdrawal of Allegations

At a discipline hearing held on May 5, 2004, PEO sought and obtained an order from a Discipline Panel authorizing PEO to withdraw allegations of incompetence and professional misconduct against Ping Guo, P.Eng., and Future Steel Buildings Intl. Corp. This was done pursuant to Rule 8.1 of the Rules of Procedure of the Discipline Committee.

The hearing date and the allegations against Guo and Future Steel had previously been published in the *Gazette* and on the PEO website. At no time were there any findings of incompetence or professional misconduct against Guo or Future Steel. This Notice of Withdrawal of Allegations is being published at the request of Guo.

Summary of Scheduled Discipline Hearings

This schedule is subject to change without public notice. For further information, contact PEO at 416-224-1100; toll free 1-800-339-3716.

Any person wishing to attend a hearing should contact the Complaints & Discipline Coordinator at extension 496.

All hearings commence at 9:30 a.m.

NOTE: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference

regarding the status, qualifications or character of the member or Certificate of Authorization (C of A) holder should be made based on the allegations listed herein.

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

September 7–10, 2004

Kwang-Ray Hsu, P.Eng.

It is alleged that Hsu is guilty of

incompetence as defined in Section 28(3)(a) of the *Professional Engineers Act*.

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

September 27–30, 2004

David E.J. Brouillette, P.Eng.

It is alleged that Brouillette is guilty of incompetence as defined in Section 28(3)(a) of the *Professional Engineers Act*.

It is alleged that Brouillette is guilty of professional misconduct as defined in Section 28(2)(b) of the *Professional Engineers Act*.

October 13–15, 2004

Mohammad R. Panahi, P.Eng. and Pancon Engineering Ltd.

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

Summary of Decision and Reasons

A hearing was convened before a panel of the Discipline Committee of the Association of the Professional Engineers of Ontario (“PEO” or the “association”) in the association’s offices on Wednesday, October 1, 2003. This hearing was convened to hear allegations of professional misconduct and incompetence against Wiktor Kwiatek, P.Eng. (hereinafter referred to as the “member”).

William Black of McCarthy Tétrault appeared as legal counsel for PEO. The member was not present and was not represented by legal counsel.

On convening the hearing at 9:30 a.m., the panel noted the member’s absence and directed that the hearing stand in recess until 10:00 a.m. to give the member further opportunity to attend the hearing.

The hearing resumed at 10:05 a.m. and continued in the member’s absence, as the panel was satisfied that the member had been given notice of the hearing (in the form of the Notice of Hearing dated May 8, 2003) and that the ends of justice did not dictate that the hearing be adjourned. PEO’s counsel fairly raised the issue of whether the proceedings should be adjourned to another date in order to permit the member to attend. However, on reviewing the exhibits on the motion for adjournment (the Affidavit of Service of the Notice of Hearing, the Notice of Hearing itself and correspondence between the member and PEO counsel), the panel concluded that even if the member’s letter could be construed as a request for an adjournment, his conduct subsequent to sending the letter to PEO suggested that he did not wish to attend the hearing in any event, so there would be no practical purpose in granting an adjournment.

The Allegations

The allegations of professional misconduct and incompetence against the member were set out in Appendix A to the Notice of Hearing and are summarized as follows:

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

Wiktor Kwiatek, P.Eng.

a member of the Association of Professional Engineers of Ontario.

1. In or about mid-2002, the Splash Nightclub (“Splash Club”) installed a wood sound barrier at the south perimeter of a patio on its property located at 4170 South Service Road in Burlington, Ontario. This sound barrier was required to be constructed as part of an agreement between Splash Club and the Corporation of the City of Burlington (the “city”). The city expected the sound barrier to be constructed in accordance with industry standards. The sound barrier wall was approximately 70 feet long, varying in height from 12 to 14 feet, and was reported to be framed with 8” x 8” posts, with 2” horizontal struts and 1” vertical slats.
2. In June 2002, at the request of the owner of the Splash Club, Kwiatek undertook to inspect the wood sound barrier to ensure its suitability for its intended purpose and to ensure its compliance with relevant standards. At this time, Kwiatek did not hold a Certificate of Authorization under the Act to offer and provide engineering services to the public.
3. In a sealed report dated June 18, 2002, which was submitted to the city, Kwiatek indicated that he had inspected the wood sound barrier wall and found it to be “structurally adequate, built in accordance with prevailing construction practice in Ontario.”
4. On July 9, 2002, a city by-law enforcement officer went, to the Splash Club and observed, at that time, that sections of the sound barrier had failed and were lying on the ground, apparently after being blown over by the wind.
5. On July 17, 2002, the city wrote to Kwiatek, enclosing a copy of the photograph showing pieces of the sound barrier lying on the ground. In this letter, the city requested a report from Kwiatek explaining the “discrepancy” between the fact of pieces of the sound barrier having failed and lying on the ground on the one hand, and Kwiatek’s report, which indicated that the sound barrier was “structurally adequate” on the other.
6. Kwiatek responded to the city’s July 17, 2002, letter by letter dated July 20, 2002. In this letter, Kwiatek purported to explain the “discrepancy” as follows:
 - (a) In order for the nightclub to operate on weekends, the wall had to be constructed and approved to meet a deadline of June 21, 2002;
 - (b) At the time of Kwiatek’s inspection, drawings and design details were not available, such that

Kwiatek conducted a visual inspection only;

- (c) Kwiatek stated that he had informed the owner orally that the wood sound barrier wall was adequate assuming normal wind velocity, but that there may be a problem if there was “excessive windstorm”;
 - (d) Kwiatek had no means to check the depth to which the main structural members (already built by that time) were embedded into the ground; and
 - (e) Kwiatek claimed that he was never asked to design or verify the design of the sound barrier wall.
7. It appears that Kwiatek:
- (a) breached subsection 12(2) of the Act by offering and/or providing professional engineering services to the public while not possessing a Certificate of Authorization under the Act;
 - (b) inappropriately proceeded to carry out an inspection of the sound barrier wall and provided a report in that regard, based on inadequate information;
 - (c) provided an inspection report that indicated that the sound barrier was structurally adequate when, in fact, the sound barrier was not structurally adequate;
 - (d) failed to have sufficient regard for the safety of the public;
 - (e) failed to indicate the limitations on his inspection report;
 - (f) failed to include in his inspection report the caution that he purports to have provided orally to the owner;
 - (g) failed to maintain the standards that a reasonable and prudent engineer would maintain in carrying out an inspection of the sound barrier and reporting thereon; and
 - (h) acted in an unprofessional manner.
8. By reason of the facts set out above, it is alleged that Kwiatek is guilty of incompetence as defined in Section 28(3)(a) of the Act as follows:

“28(3)(a) The Discipline Committee may find a member of the Association or holder of a temporary licence or limited licence to be incompetent if in its opinion,

(a) The member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer.”

9. In addition, it is alleged that Kwiatek is 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, 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.”

10. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:
- (a) Section 72(2)(a): “negligence”;
 - (b) Section 72(2)(b): “failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible”;
 - (c) Section 72(2)(d): “failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner”;

(d) Section 72(2)(g): “breach of the act or regulations other than an action that is solely a breach of the Code of Ethics”;

(e) Section 72(2)(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.”

11. In addition, it is alleged that Kwiatek has breached provisions of the Code of Ethics under Regulation 941.

Member’s Plea

In the member’s absence, the panel noted that the member was deemed to have denied the allegations and the hearing proceeded as a contested hearing.

The Evidence

PEO called three witnesses:

1. Dave McLellan, a by-law enforcement officer employed by the city;
2. Dan Mousseau, P.Eng., now retired, but formerly the city’s director of building and chief building official;
3. Alan Quaile, P.Eng., tendered by PEO as an expert witness in relation to wooden wall structures, structural engineering as it relates to those structures, and the member’s performance in this matter.

Decision

Having considered the evidence and the onus and standard of proof, the panel finds the member guilty of incompetence as defined in section 28(3)(a) of the Act and guilty of professional misconduct as defined in section 28(2)(b) of the Act and Regulation 941, sections 72(2)(a), (b), (d), (g), (h) and (j).

The panel also finds that the member is guilty of contravening the Code

of Ethics of the association contained in section 77 under Regulation 941 in that he breached his duty to public welfare by failing to have sufficient regard for the safety of the public.

Reasons for Decision

There is no question that the member offered an incorrect statement that the wooden barrier was structurally adequate. The member's letter of July 20, 2002, provides a partial explanation of the factors that led to that incorrect statement. In that letter, the member claimed that:

- He was under time pressure to meet a deadline;
- He did not have sufficient information about the actual construction; and
- He cautioned the club owner orally that the wall safety was not assured for a windstorm.

The panel accepted Mr. Quaille's expert opinion evidence that:

- None of the above arguments are consistent with accepted engineering practice. Accepted standards require that if a conclusion about safety is drawn on the basis of insufficient information, the report must explain whether and how the conclusion might be affected by the missing information.
- The member's caution to the club owner was not appropriate given that he had not at that time done a structural analysis and so had no concept of how unsafe the wood barrier actually was.

The panel reviewed the calculations of Kwiatek with the expert and found that they were grossly in error, and the structure woefully inadequate to withstand moderate winds.

Furthermore, the member breached the Act by providing professional engineering services to the club owner without a Certificate of Authorization.

With respect to the many failures alleged in the Notice of Hearing, the panel evaluated these in the context of the evidence placed before it and considered the conduct to be unprofessional.

This evidence, plus the member's apparently poor technical judgment to ensure the safety and welfare of the public, demonstrated that the member is unfit to carry out the responsibilities of a professional engineer.

Penalty

Counsel for PEO made submissions with respect to penalty. He requested revocation of the member's licence, considering the distinct lack of competence and professional misconduct the member had demonstrated. He further submitted that in the event that the panel was not inclined to revoke the member's licence, the panel should impose a licence suspension of not less than 24 months. In either case, PEO sought publication of the member's name in its publication. Further, counsel for PEO sought recovery of costs in the amount of \$10,000.

Penalty Decision

In considering the penalty, the panel considered its findings and

the possible consequences of the member's incompetence and professional misconduct and agreed with Mr. Black's submission that the evidence established that in the circumstances of this case of incompetence and professional misconduct, revocation of the member's licence was warranted. The panel therefore ordered:

- **revocation of Wiktor Kwiatek's licence, and**
- **publication in PEO's *Gazette*, with names, a summary of the allegations in the Notice of Hearing, and reasons for the decision.**

Considering his age and circumstances, the panel was reluctant to order the member to pay costs in the amount of \$10,000 as requested by PEO. In the circumstances, the panel declined to order the member to pay any of PEO's costs.

The written Decision and Reasons in this matter was dated November 18, 2003, and was signed by the Chair of the panel, Max Perera, P.Eng., on behalf of the other members of the Discipline Panel: Daniela Iliescu, P.Eng., Ken Lopez, P.Eng., Nick Monsour, P.Eng., and Ed Rohacek, P.Eng.

Note from the Regulatory Compliance Department

In accordance with Section 29(1) of the *Professional Engineers Act*, the revocation of Kwiatek's licence took effect immediately because he was found guilty of incompetence. Kwiatek did not appeal the decision of the Discipline Committee. Pursuant to Section 37(1) of the Act, Kwiatek will be eligible to apply for reinstatement of his licence as of November 19, 2005. Such an application would be decided by the Discipline Committee after holding a hearing with regard to the application.

