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The Discipline Committee of the Association of Professional Engineers of Ontario

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, Chapter P. 28

And in the matter of a complaint regarding the conduct of

Robert De Berardis, P.Eng.

a member of the Association of Professional Engineers of Ontario and

De Berardis Associates Incorporated

a holder of a Certificate of Authorization

BETWEEN

The Association of Professional Engineers of Ontario and

Robert De Berardis, P.Eng., and De Berardis Associates Incorporated

Summary of Decision and Reasons

This matter came for hearing before a panel of the Discipline Committee on April 17, 2003, at the Association of Professional Engineers of Ontario in Toronto. The association was represented by William Black of McCarthy Tétrault LLP, and Robert De Berardis, P.Eng. (“De Berardis”) and De Berardis Associates Incorporated (“DBA”) were represented by Marlon Roefe, barrister and solicitor.

The Allegations

The allegations against De Berardis and DBA in the Fresh Notice of Hearing dated April 17, 2003, are summarized as follows:

It is alleged that De Berardis and DBA are guilty of professional misconduct as defined in the *Professional Engineers Act* (the “Act”), the particulars of which are as follows:

1. De Berardis was first licensed as a professional engineer in the Province of Ontario on September 11, 1985. DBA at all material times held a Certificate of Authorization under the Act.
2. On April 18, 1997, the Town of Richmond Hill (the “town”) received a building permit application from Randy and Carolyn Peek (the “owner”) for a two-storey single family dwelling (the “dwelling”) to be built at 17 Edgar Avenue in Richmond Hill, Ontario. The permit application included a set of 10 drawings produced by DBA. Each of the 10 drawings was dated March 1997 and bore the seal and signature of De Berardis dated April 12, 1997. Each of the 10 drawings indicated that they were “issued for permit application.”

3. Between May 27, 1997, and August 11, 1997, there were numerous exchanges of correspondence and telephone calls amongst the owner, De Berardis and officials from the town regarding design details and calculations pertaining to the structure of the dwelling. During this time, De Berardis and DBA made several additional submissions to the town in support of the building permit application.
4. In the course of this activity, it appears that De Berardis and DBA:
 - (a) submitted a design and drawings to the town for a building permit application that contained multiple errors, omissions and deficiencies;
 - (b) sealed drawings that were not in accordance with the requirements of the OBC;
 - (c) sealed drawings that were inadequate for building permit application and/or construction;
 - (d) failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances by failing to respond adequately to concerns expressed by the town regarding various aspects of the design;
 - (e) relied upon the building officials for the town to advise as to how to correct deficiencies that were identified by the town;
 - (f) failed to properly check design calculations done by an assistant before submission to the town; and
 - (g) breached section 53 of Regulation 941 made under the Act by failing to seal and sign design calculations submitted in support of a building permit application.
5. PEO engaged an independent expert engineer to review this matter and to comment on the conduct of De Berardis and DBA. Having conducted a detailed analysis and review, the expert stated various conclusions, including the following:
 - (a) De Berardis and DBA appeared to have been cooperative in providing information requested from time to time by the town;
 - (b) A review of handwritten notes from DBA indicates that it is likely that not all design calculations were performed by De Berardis and a review of the file reveals that not all the submitted calculations were stamped by De Berardis, and that De Berardis appears to have stamped some of the calculations without thorough review and in an apparently haphazard fashion;
 - (c) When prompted by the town, De Berardis appeared to have been able to make calculations and size members to meet loading and deflection criteria. Improvement at the second submission was obvious, although even at that stage some of the calculations and some of the design assumptions showed significant errors and bring into question the competence of the engineer;
 - (d) The roof structure as shown on the original drawings was observed by the expert to be an example of incompetence. Much of the roof was inadequately braced, and seriously overloaded, and the subsequent attempts by De Berardis and DBA to correct these problems showed that De Berardis and DBA did not appear to understand the mechanics of load transfer from the roof to the foundation;
 - (e) Many changes to the original drawings were submitted by facsimile, not all these changes were reflected in the second submission of drawings and changes were made to the drawings after final building permit submission. This failure to monitor and control changes in the documentation must inevitably have compromised the engineer's ability to control cost, to certify the contractors' compliance with the permit drawings, and to verify completion of the work;
 - (f) The building department acted in good faith and gave the engineer fair and ample opportunity to review the design, correct the drawings and submit substantiating calculations. The engineer acted in a casual fashion and was able to eliminate most of the numerous errors and correct the structural design and drawings only with help, suggestions and guidance from the town and ultimately only after the town threatened to stop work on the project;
 - (g) The expert concluded that the engineer either grossly underestimated the amount of work required to complete the project, or chose to undertake work of a type and complexity with which De Berardis and DBA were unfamiliar and inexperienced; and
 - (h) The expert concluded that were it not for the patience, advice and prompting from the building department engineer at the town, the building permit would never have been issued, or the structure would have been defective and the building would have been unsafe.
6. The expert also identified other design concerns, which had not been raised by the town.
7. By reasons of the facts set out above, it is alleged that De Berardis and DBA are guilty of professional misconduct as defined in section 28(2)(b) as follows:

“28(2) 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.”
8. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:
 - ◆ *Section 72(2)(a)*: “negligence”;
 - ◆ *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”;
 - ◆ *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”;

- ◆ *Section 72(2)(e)*: “signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner”;
- ◆ *Section 72(2)(g)*: “breach of the Act or Regulations other than an action that is solely a breach of the Code of Ethics”;
- ◆ *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” (with respect to “unprofessional” conduct only).

Plea by Member and Holder

De Berardis and De Berardis Associates admitted the allegations of professional misconduct set out in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the Member’s and Holder’s admissions were voluntary, informed and definite.

Agreed Facts

Counsel for the association advised the panel that agreement had been reached on the facts as set out in the Fresh Notice of Hearing and that those facts could be treated as an Agreed Statement of Facts. Mr. Roefe, however, had some comments with respect to the Agreed Facts.

The Member also responded to questions from the panel concerning the applicability of Part 9 of the *Ontario Building Code*. There were only some elements of the dwelling that were outside of Part 9 of the OBC. The Member also advised that normally he would have had more direct involvement in the project, but personal and professional issues, including the break-up of his firm, drew his attention away. He felt that the associate who was working on the drawings was competent. Counsel for the association advised that he took no issue with the additional information provided by Mr. Roefe and the Member.

During the course of the panel’s deliberations, an additional question was raised with respect to the allegation of a breach of section 72(2)(g), of Regulation 941, and in particular, the breach of

section 53 of Regulation 941, which requires every member who provides to the public a service that is within the practice of professional engineering, to sign, date and affix the member’s seal to every final drawing, specification, plan, report, etc. The association took the position that the documents referred to in paragraphs 8, 12 and 17 of the Fresh Notice of Hearing required a seal. The Member did not admit that all documents referred to required a seal, but did not resile from his admission that he breached section 72(2)(g) of the Regulation as admitted in paragraph 30(g) of the Fresh Notice of Hearing.

Decision

The panel considered the Agreed Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that the Member and Holder committed an act of professional misconduct as alleged in the Fresh Notice of Hearing. Accordingly, the panel finds that De Berardis and DBA are guilty of professional misconduct as defined in s. 28(2)(b) of the Act. The sections of Regulation 941 made under the Act relevant to the 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)*: “assigning or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by 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)(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” (with respect to “unprofessional” conduct only).

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. However, the parties were unable to reach agreement regarding publication and made separate submissions on that subject.

Counsel for the association pointed out that this was the association’s first open hearing in light of changes to the legislation and that this represented a healthy new era of transparency and public accountability at the association. In accordance with the fact that the hearing was open, counsel submitted that it was important that accurate information be made available to the public and that there should be publication with names.

Counsel for the Member acknowledged the need to protect the public interest, but advised the panel that publication of the Member’s name would hinder his ability to continue to act as an expert witness and that he might be asked to resign from cases on which he was currently working. The Member had no other complaints outstanding and no lawsuits alleging negligence. Counsel for the Member suggested that if the Member posed a genuine risk, that would be disclosed in the inspection report which would come back to the panel. Counsel also relied on three decisions of the Committee where decisions were published without names.

In response, counsel for the association stated the three decisions referred to by the Member were all rendered in an era when proceedings were presumptively closed at the association.

Penalty Decision

The panel accepted the Joint Submission as to Penalty and accordingly orders:

1. That De Berardis and De Berardis Associates (“DBA”) be reprimanded, and that the reprimand against De Berardis and DBA shall be recorded on the Register for 12 months;
2. That De Berardis write and pass both parts of the Professional Practice Examination (“PPE”) within a period of 12 months from the date of the hearing, failing which his licence would be suspended for a period of three months and, at the same time, it would become a term and condition of De Berardis’ licence that he would not engage in the practice of professional engineering relating to structural matters for residential dwellings. The term and condition would remain in effect until such time as De Berardis writes and passes the PPE;
3. That De Berardis and DBA be subject to a practice inspection under the following terms:
 - (a) the practice inspection will be carried out by an independent expert to be named by the Registrar and who will provide a report to the Registrar, the chair of Discipline Panel and De Berardis at the conclusion of the inspection,
 - (b) the practice inspection will be limited to not less than three and not more than six projects of a scope or nature similar to that which was the subject of this hearing (to be agreed upon between De Berardis and the independent expert named by PEO),
 - (c) the practice inspection shall be completed and the report submitted within six months from the date of the hearing,
 - (d) after review of the independent expert’s inspection report, the Discipline Panel may, upon making a determination that the inspection report evidenced incompetence or additional professional misconduct on the part of De Berardis or DBA, and after providing De Berardis and DBA an opportunity to respond to this determination, order additional penalty action against De Berardis and DBA or

- (e) determine that further penalty action shall be waived,
- (e) the Discipline Panel shall make the determination noted in (d) no later than three months after the receipt of the report, and
- (f) the cost of the practice inspection shall be paid by De Berardis and DBA;
4. That De Berardis’ Consulting Engineer designation and DBA’s permission to use the Consulting Engineers title be suspended effective one month from the date of the hearing. The suspensions will continue until such time as the independent expert report noted in item (3) has been reviewed and dealt with by the Discipline Panel in accordance with the terms set out in item (3) and further penalty action has been waived; and
5. That there be no order with respect to costs.

With respect to the question of publication, the Discipline Panel orders:

That, if the Discipline Panel makes a determination that the inspection report evidences incompetence or addi-

tional professional misconduct on the part of De Berardis or De Berardis Associates, there will be a publication of the Decision and Reasons with reference to names. If the Discipline Panel finds no such evidence, the Decisions and Reasons are to be published without reference to names.

The panel concluded that the proposed penalty is reasonable and in the public interest. De Berardis and De Berardis Associates have cooperated with the association and, by agreeing to the facts and a proposed penalty, have accepted responsibility for their actions.

With the question of publication, the panel is content to await the outcome of the inspection report. If that inspection report evidences incompetence or additional professional misconduct on the part of De Berardis or De Berardis Associates, there will be publication of the panel’s decision, with reference to the name of De Berardis and De Berardis Associates.

The written Decision and Reasons in this matter were dated April 14, 2003, and were signed by the Chair of the panel, Jag Mohan, P.Eng., on behalf of the other members of the Discipline Panel: Roydon Fraser, P.Eng., Nick Mon-sour, P.Eng., Bill Rutherford, P.Eng., and Albert Sweetnam, P.Eng.

Note from the Regulatory Compliance Department

While De Berardis and DBA did not formally waive their right of appeal in this matter, they did agree to accept an oral reprimand from the Discipline Panel at the conclusion of the hearing, on a without prejudice basis, and accept the suspension of De Berardis’ Consulting Engineer designation and DBA’s permission to use the Consulting Engineers title effective May 17, 2003. De Berardis wrote and passed the Professional Practice Examination in August 2003.

In May 2003, PEO retained an expert to carry out the practice inspection. The expert issued a report dated September 24, 2003. On December 10, 2003, the Discipline Panel made a determination that the report contained evidence of incompetence on the part of De Berardis. The panel reconvened on June 2, 2004, and, after hearing submissions from the legal counsel for PEO and for De Berardis and DBA, ordered further penalty action against De Berardis and DBA. The additional penalty action included: a requirement to write and pass the 98-Civ-B1 (Advanced Structural Analysis) and 98-Civ-B2 (Advanced Structural Design) examinations, accepting an undertaking from De Berardis not to engage in the practice of professional engineering with respect to wood frame- and wood truss-related construction until such time as the two examinations have been passed, and payment of costs to PEO in the amount of \$5,000. The decision regarding the additional penalty action is still subject to appeal.

Pursuant to the original penalty order, publication has included reference to names and the suspension of De Berardis’ Consulting Engineer designation and DBA’s permission to use the Consulting Engineers title continue.

The Discipline Committee of the Association of Professional Engineers of Ontario

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, Chapter P. 28

And in the matter of a complaint regarding the conduct of

C. Marc Bailey, P.Eng.

a member of the Association of Professional Engineers of Ontario

BETWEEN

The Association of Professional Engineers of Ontario and

C. Marc Bailey, P.Eng.

Decision and Reasons

This matter came for hearing before a panel of the Discipline Committee on Tuesday, May 13, 2003, at the Association of Professional Engineers of Ontario in Toronto. The association was represented by Michael Royce of Lenczner Slaght Royce Smith Griffin, and C. Marc Bailey, P.Eng. ("Bailey") was represented by David Waterhouse of Forbes Chochla Trebuss Aikins Kohn.

The Allegations

The allegations against C. Marc Bailey in the Fresh Notice of Hearing dated May 8, 2003, were as follows:

Appendix "A"

It is alleged that C. Marc Bailey, P.Eng. ("Bailey") is guilty of incompetence and professional misconduct, the particulars of which are as follows:

1. Bailey was at all material times a member of the Association of Professional Engineers of Ontario.
2. In October, 1997, A-D Engineering Group Ltd. ("A-D") was hired by a building contractor, HB&R Carpentry Ltd., to provide structural engineering services with respect to the redesign of a residential building structure from conventional walls to be constructed pursuant to Part 9 of the *Ontario Building Code* ("OBC"), to a proprietary form system known as the AAB insulated forms system. The original structural design and drawings had been prepared by Wm. C.K. Leung, P.Eng. ("Leung"). The project was managed and engineered by Bailey, who was at all material times an employee-associate of A-D. The calculations underlying the design were carried out by Bailey or by one Mervin Morris under Bailey's supervision.
3. The original design of the structure was for a bungalow with a loft and a full basement. An attached garage was to have no basement underneath. The site sloped toward the rear of the house and the original plans indicated that the rear wall of the basement would be only partially backfilled.
4. During the development of the design, it was decided to incorporate a full sub-basement in the house and a single basement beneath the garage. The design prepared by Bailey incorporated these changes. Bailey marked up the Leung drawings, leaving the Leung seal intact, and also created additional drawings.
5. Construction of the structure was carried out pursuant to the plans prepared by Bailey, but, as soon as the front wall of the structure was backfilled, the structure deformed, taking on a curved shape.
6. The structure in question was non-standard in several ways, in that it incorporated engineered I-joists and engineered wood trusses; its footing arrangement fell outside the tables of Part 9 of the OBC; its exterior walls were to be constructed using the AAB system; and its full sub-basement resulted in backfill heights exceeding Part 9 limitations, all with the result that the structural members and their connections were required by section 9.4.1.1 of the OBC to be designed in conformance with Part 4 of the OBC.
7. Because the structure in question was on a sloping site with two storeys of backfill at the front face and a walk-out at the rear, it was essential that Bailey satisfy himself that the building, among other things:
 - (a) had an adequate factor of safety against sliding toward the unloaded side;
 - (b) had adequate restraint at each floor so that these floors could not be caused to shift or bow in the horizontal plane; and
 - (c) had adequate construction details shown in the drawings.
8. The design of the structure in question prepared by or under the supervision of Bailey omitted any consideration of overall restraint for the walls and the soil that they retained and in particular omitted a check of the safety against sliding and the ability of the floor diaphragm and shear walls to resist lateral deflection, all in violation

- of acceptable engineering practice and sections 4.1.1.3(1) and 4.1.1.7(1) of the OBC.
9. Furthermore, when the deformation of the building was noted, Bailey attended at the site and prepared a December 20, 1997, report, in which he noted the horizontal deflection, curling of joists and opening of plywood seams, but concluded that soil placement was the sole cause of deformation, and expressed the opinion that the structure was capable of withstanding the horizontal pressures of the backfill.
 10. In expressing this opinion, Bailey failed to conduct an analysis of the building's resistance to lateral pressures, which would have disclosed that the floor at the upper basement had been severely overstressed under the soil pressures and the design shear load in the diaphragm was approximately eight to 10 times the factored shear resistance offered by the construction.
 11. In summary, it is alleged that Bailey with respect to the structure in question:
 - (a) signed and sealed design drawings and specifications prepared by a subordinate without having adequately reviewed them;
 - (b) failed to make reasonable provision for the safeguarding of life, health or property; and
 - (c) failed to make responsible provision for complying with Part 4 of the OBC.
 12. By reason of the facts aforesaid, it is alleged that Bailey is guilty of incompetence as defined in section 28(3)(a) and of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
 13. "Incompetence" is defined in section 28(3)(a) as: "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 demon-
- strates the member or holder is unfit to carry out the responsibilities of a professional engineer."
14. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
 - ◆ *section 72(2)(a)*: "negligence";
 - ◆ *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;
 - ◆ *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;
 - ◆ *section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
 - ◆ *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.
- Appendix "B"**
- It is alleged that C. Marc Bailey, P.Eng. ("Bailey") is guilty of incompetence and professional misconduct, the particulars of which are as follows:
1. Bailey was at all material times a member of the Association of Professional Engineers of Ontario.
 2. With respect to a building addition at Cericola Farms Ltd. in Bradford, Ontario, Bailey reviewed, signed and sealed architectural drawing A-4A, Second Floor Wall Schedule.
 3. The said architectural drawing was deficient and defective in that:
 - (a) the drawing contained insufficient information required to complete construction of the structure; and
 - (b) the drawing made no or inadequate allowance for compliance with fire code regulations.
4. In summary, it is alleged that Bailey with respect to the project in question:
- (a) reviewed, signed and sealed "architectural" drawings that he was not competent to do by virtue of his training and experience; and
 - (b) failed to make responsible provision for complying with applicable codes and standards.
5. By reason of the facts aforesaid, it is alleged that Bailey is guilty of incompetence as defined in section 28(3)(a) and of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
6. "Incompetence" is defined in section 28(3)(a) as: "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."
7. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
- ◆ *section 72(2)(a)*;
 - ◆ *section 72(2)(b)*;
 - ◆ *section 72(2)(d)*;
 - ◆ *section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
 - ◆ *section 72(2)(j)*.
- Appendix "C"**
- It is alleged that C. Marc Bailey, P.Eng. ("Bailey") is guilty of incompetence and professional misconduct, the particulars of which are as follows:
1. Bailey was at all material times a member of the Association of Professional Engineers of Ontario.

2. In July 1995, A-D Structural Engineering Ltd. ("A-D") contracted with Details Architectural Design Inc. to provide structural engineering services for the renovation of an existing structure representing a major change of use of the building. A major portion of the work was to design long span trusses that would permit the removal of interior columns from a light industrial building in order that the building could be used for skating rinks and other recreational uses. The new trusses were to be positioned above the existing flat roof in alignment with the main supporting beams below. The project was managed and engineered by Bailey.
3. Drawings for the trusses and associated reinforcement were sealed by Bailey on November 3, 1995. On November 17, 1995, Bailey made a site visit to review the steel erection and on or about that time learned that the Siporex deck over the inline skating area was considerably heavier than the weight he had used in his design. He also discovered that water was ponding on the roofs.
4. Bailey therefore prepared reinforcement details for the new trusses supporting the Siporex and delivered these details on November 21, 1995. He also found that the cross bracing provided by his design was inadequate and prepared a detail for additional bracing on or about November 20, 1995.
5. In preparing structural drawings 950722-1 and 950722-2 with respect to the said project, Bailey failed to account for the extra dead load attributable to the use of Siporex panels in carrying out his design work, with the result that the trusses had to be reinforced after they had been installed.
6. Furthermore, the design loads shown on drawing 950722-1 did not allow for wind loading on the trusses.
7. In addition, Bailey:
 - (a) designed a bracing system that could accentuate deformation and buckling stresses in the truss chords;
 - (b) after discovering a problem with the lateral bracing, designed additional bracing that did not comply with the requirements of the OBC;
 - (c) prepared a bracing design which did not adequately account for the unsupported length requirements of the top chords and left them overstressed;
 - (d) used a computer model for analysis which was erroneous;
 - (e) designed a suspension system that could not be used to lift the roof off the column;
 - (f) prepared a design which omitted details of how to connect the new support system to the existing beams;
 - (g) failed to require that engineered shop drawings be provided for the trusses and connections to the existing structures;
 - (h) designed footing extensions that could not safely support their intended loads;
 - (i) failed to require that engineered shop drawings be provided; and
 - (j) prepared documentation that omitted information that would be required to properly sequence the work and prevent unwanted deformation, all of which violated sections 4.1.1.3(1) and 4.1.1.7(1) of the OBC.
8. In summary, it is alleged that Bailey with respect to the structure in question:
 - (a) undertook work which, by virtue of his training and experience, he was not competent to perform;
 - (b) failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - (c) signed and sealed drawings which he knew, or ought to have known, were incomplete relative to the purposes for which they were intended;
 - (d) failed to make responsible provision for complying with the OBC;
 - (e) failed to make reasonable provision for the safeguarding of life, health and property of his client and his client's customers; and
 - (f) failed to report a situation that he knew, or ought to have known, may endanger the safety of the public.
9. By reason of the facts aforesaid, it is alleged that Bailey is guilty of incompetence as defined in section 28(3)(a) and of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
10. "Incompetence" is defined in section 28(3)(a) as: "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".
11. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
 - ◆ section 72(2)(a);
 - ◆ section 72(2)(b);
 - ◆ section 72(2)(d);
 - ◆ section 72(2)(h); and
 - ◆ section 72(2)(j).

Appendix "D"

It is alleged that C. Marc Bailey, P.Eng. ("Bailey") is guilty of incompetence and professional misconduct, the particulars of which are as follows:

1. Bailey was at all material times a member of the Association of Professional Engineers of Ontario.
2. Bailey certified drawings A-2 and A-4 with respect to a proposed addition and renovation for an industrial building in Tottenham, Ontario.
3. The said drawings were incomplete and inadequate in that, among other things:
 - (a) framing members were largely not identified;
 - (b) there was no indication as to the appearance and structure of the new and existing roof;
 - (c) there was no information with respect to snow accumulation;
 - (d) there was no information with respect to mechanical loads;

- (e) there was no information with respect to lintels;
- (f) there was no information with respect to any bracing;
- (g) there was no information as to the reinforcement for roof and wall openings;
- (h) foundation details were largely not identified;
- (i) there was no indication as to the existing structure;
- (j) there was no indication as to the nature of the tower referred to;
- (k) there were no elevations, sections, details or notes;
- (l) the drawings did not identify what kind of addition was being proposed in terms of occupancy, use and so on;
- (m) there were no underlying calculations;
- (n) there was no indication that Bailey had even visited the site.

4. In summary, it is alleged that Bailey with respect to the structure in question:

- (a) signed and sealed drawings which he knew, or ought to have known, were incomplete relative to the purposes for which they were intended;
- (b) signed and sealed drawings that were not actually checked by him; and
- (c) undertook work which, by virtue of his training and experience, he was not competent to perform.

5. By reason of the facts aforesaid, it is alleged that Bailey is guilty of incompetence as defined in section 28(3)(a) and of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

6. "Incompetence" is defined in section 28(3)(a) as: "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."

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

- ◆ section 72(2)(a);
- ◆ section 72(2)(b);
- ◆ section 72(2)(d);
- ◆ section 72(2)(e); and
- ◆ section 72(2)(j).

Appendix "E"

It is alleged that C. Marc Bailey, P.Eng. (hereinafter referred to as "Bailey") is guilty of incompetence and professional misconduct, the particulars of which are as follows:

1. Bailey was at all material times a member of the Association of Professional Engineers of Ontario.
2. In or about September 1997, A-D Structural Engineering Ltd. ("A-D") was hired by Bicorp Design Management Ltd. to provide structural engineering services with respect to a three-unit industrial building in Newmarket, Ontario. The project was managed and engineered by Bailey, who carried out portions of the design himself and supervised the work of Mervin Morris with respect to other aspects of the design.
3. Following construction, the masonry support beams or lintels at the front and rear of the building deflected and twisted excessively when partially loaded.
4. A review of the design of two typical beams (W18x45 beam for 60' span at line C and W16x26 beam for 30' span at line G) demonstrated that neither of these beams was structurally adequate. It would appear that the beam size was selected on the assumption that continuous lateral support would be provided for the top flange and that adequate torsional restraint would be provided for the eccentric loads, when in fact the structural arrangement did not provide for any lateral or torsional support along the length of the beams, with the result that the beams were overstressed under their own weight, in violation of sections 4.1.1.3(1) and 4.1.1.7(1) of the OBC.

5. In summary, it is alleged that Bailey:

- (a) failed to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
- (b) signed and sealed drawings prepared by a subordinate without having adequately reviewed them;
- (c) failed to make responsible provision for complying with the OBC; and
- (d) failed to make reasonable provision for the safeguarding of life, health and property of his client and his client's customers.

6. By reason of the facts aforesaid, it is alleged that Bailey is guilty of incompetence as defined in section 28(3)(a) and of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

7. "Incompetence" is defined in section 28(3)(a) as: "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."

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

- ◆ section 72(2)(a);
- ◆ section 72(2)(b);
- ◆ section 72(2)(d);
- ◆ section 72(2)(e); and
- ◆ section 72(2)(j).

Plea by Member

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

Agreed Facts

Counsel for the association and counsel for Bailey advised the panel that agreement had been reached on the facts and that

the factual allegations as set out in the Fresh Notice of Hearing were accepted as accurate by Bailey.

Decision

The panel considered the Agreed Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that Bailey committed an act of professional misconduct and, in particular, that he breached the following provisions of Regulation 941:

1. *Section 72(2)(a)*: negligence as defined at section 72(1), as particularized in Appendices A-E of the Fresh Notice of Hearing. 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;
2. *Section 72(2)(b)*: failing 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, as particularized in Appendices A-E of the Fresh Notice of Hearing;
3. *Section 72(2)(d)*: failing 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, as particularized in Appendices A-E of the Fresh Notice of Hearing;
4. *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner, as particularized in Appendices A, D and E of the Fresh Notice of Hearing;
5. *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practition-

er’s training and experience, as particularized in Appendices B, C and D of the Fresh Notice of Hearing;

6. *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, as particularized in Appendices A-E of the Fresh Notice of Hearing.

The panel also finds that the facts support a finding of incompetence and finds that Bailey is incompetent as alleged in Appendices A-E of the Fresh Notice of Hearing.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. The Member’s submission regarding penalty provided detailed information on the Member’s working conditions and events that negatively influenced his professional judgment and subsequent actions. In this submission, the Member unequivocally acknowledged the unsatisfactory nature of his professional actions, and the potential of such actions to adversely affect public safety.

The panel’s independent legal counsel raised a concern with respect to one element of the Joint Submission. This issue was raised with the parties and an amendment to the Joint Submission as to Penalty was agreed upon.

Penalty Decision

The panel accepted the Joint Submission as to Penalty as amended and accordingly orders:

1. That Bailey’s licence be suspended until such time as Bailey successfully passes a practice inspection of his current engineering practice, under the terms described below, or, subject to any further order of the Discipline Panel, for a maximum period of 24 months, after which if the practice inspection has

not been successfully passed, Bailey’s licence would be revoked;

2. That Bailey write and pass the following PEO examinations within 12 months of the date of the hearing: the Professional Practice Examination (PPE), 98-Civ-B1 (Advanced Structural Analysis), and 98-Civ-B2 (Advanced Structural Design), failing which, his licence would again be suspended until such time as he passes these examinations, or for a maximum period of 18 months, after which, if the exams have not been passed, Bailey’s licence would be revoked;
3. That Bailey’s Consulting Engineer designation be suspended until such time as the practice inspection noted in (1) has been successfully passed and the exams noted in (2) have been written and passed;
4. That Bailey receive a reprimand and the fact of the reprimand be recorded on the Register of the association;
5. That Bailey pay costs to PEO in the amount of \$10,000.

Practice inspection details:

- i) the practice inspection will be carried out by an independent expert to be named by the Registrar, who will provide a report to the Registrar, Bailey and the Discipline Panel at the conclusion of the inspection;
- ii) the practice inspection will be limited to not less than 10 and not more than 15 structural engineering projects carried out by Bailey since 1998, being a representative sample of the type of work undertaken by him since that time (selection of projects for review will be at the sole discretion of the independent expert);
- iii) after review of the independent expert’s inspection report, the Discipline Panel will either order additional penalty action against Bailey, or determine that the practice inspection has been successfully passed;

- iv) **the Discipline Panel shall make the determination noted in (iii) no later than two months after the receipt of the report; and**
- v) **the cost of the practice inspection shall be paid by Bailey.**

At any time after four months from the date of the hearing, Bailey will have the right to bring a motion before the Discipline Panel, in accordance with Rule 4 of the Rules of Procedure of the Discipline Committee, in respect of the timely conduct of the practice inspection and requesting reinstatement of his licence.

The panel concluded that the proposed penalty is reasonable and in the public interest. Bailey has cooperated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions. The penalty as described in detail in the foregoing is acceptable to the panel because it:

- (a) imposes significant sanctions on the Member, consistent with the serious nature of the possible consequences of Bailey's conduct. It clearly demonstrates to the Member as well as to all other members, the extent to which the association is obliged to act to protect public safety, as this can be influenced by actions of members/holders of Certificates of Authorization; and
- (b) provides a structured course of action to direct Bailey to perform at an acceptable level of professional practice. This

includes personal ability as well as practice performance. Practice supervision is intended to reinforce the need to avoid commitment to work beyond Bailey's ability.

The written Decision and Reasons in this matter were dated September 24, 2003, and were signed by the Chair of the panel, Lawrence McCall, P.Eng., on behalf of the other members of the Discipline Panel: Monique Frize, P.Eng., Santosh Gupta, P.Eng., Barry Hitchcock, P.Eng., and Nick Monsour, P.Eng.

Note from the Regulatory Compliance Department

Bailey waived his right of appeal in this matter and the Discipline Panel administered the reprimand at the conclusion of the hearing. The practice inspection was successfully passed as of December 19, 2003, and Bailey's licence was reinstated at that time. Bailey wrote and passed the Professional Practice Examination in December 2003. The costs have been paid and, as at press time, PEO is awaiting the results of the two technical exams written by Bailey.

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 C of A holder should be made based on the allegations listed herein.

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

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*. Note: A prior listing of these allegations included an allegation that Panahi was guilty of incompetence. This was an error. At no time in relation to this matter has there been an allegation that Panahi was guilty of incompetence. PEO regrets the error.

Odessa Man Fined for Illegally Providing Professional Engineering Services

Tony Blackett, a resident of the town of Odessa, in the county of Lennox and Addington, was fined \$6,250, including a victim impact surcharge, in Napanee Provincial Offences Court on May 19, 2004, for providing professional engineering services without being licensed. Tony Blackett is not, nor has he ever been, licensed by PEO.

In Ontario, under the *Professional Engineers Act*, a public, protection statute, only those individuals and companies who are licensed by the Association of Professional Engineers of Ontario (PEO) may offer or provide professional engineering services to the public.

Mark Polley of the law firm of McCarthy Tétrault, who represented PEO, told the court that the Loyalist Township Building Department advised PEO that Blackett provided two drawings bearing professional engineers' seals in June 2003, in support of a building permit application for construction of a residence in the town of Odessa, without the prior knowledge and consent of the professional engineers.

The charges against Blackett resulted from the findings of an investigation by PEO.

Blackett pleaded guilty to the offence. Her worship Doelman convicted Blackett of a breach of the *Professional Engineers Act* and imposed the fine after hearing submissions with respect to penalty from counsel for PEO and Blackett. Two similar charges were withdrawn.

The Discipline Committee of the Association of Professional Engineers of Ontario

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, Chapter P. 28

And in the matter of a complaint regarding the conduct of

Engineer A

a member of the Association of Professional Engineers of Ontario and

Company A

a holder of a Certificate of Authorization

BETWEEN

The Association of Professional Engineers of Ontario and

Engineer A and Company A

Decision and Reasons

This matter came before a panel of the Discipline Committee on May 6, 2003, at the Association of Professional Engineers of Ontario in Toronto. The association, the member and the Certificate of Authorization holder were all represented by legal counsel.

The Allegations

The allegations against Engineer A and Company A in the Fresh Notice of Hearing dated May 5, 2003, were as follows:

1. It is alleged that Engineer A and Company A are guilty of professional misconduct as defined in the *Professional Engineers Act* (the "Act").
2. That Engineer A and Company A are guilty of professional misconduct as defined in section 28(2)(b) as follows: "28(2) 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."

3. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- ◆ *Section 72(2)(a)*: "negligence";
- ◆ *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"; and
- ◆ *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" (with respect to "unprofessional" only.)

4. Specifically, it is alleged that: Engineer A and Company A:

- (a) sealed a design for a two-cell and a one-cell concrete box culvert, which drawing was known to be incomplete and/or had not been checked for structural adequacy, without making it clear that these sealed designs were not intended to be submitted for permit purposes and, as such, failed to maintain the stan-

dards that a reasonable and prudent practitioner would maintain in the circumstances;

- (b) sealed a drawing that failed to make responsible provision for complying with applicable standards and codes with respect to the design of the two-cell and a one-cell concrete box culvert;
- (c) on a particular date, signed and sealed a drawing for the culvert design that was not intended to be final, was not intended to be submitted to a municipal official, and that contained errors and omissions with respect to reinforcement and detail; and
- (d) subsequently signed and sealed a drawing for the culvert design that was not intended to be final, was not intended to be submitted to a municipal official, and that contained errors and omissions with respect to reinforcement and detail.

Plea by Engineer A and Company A

Engineer A and Company A admitted the allegations of professional misconduct set out in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the admission was voluntary, informed and unequivocal.

Agreed Facts

Counsel for the association and counsel for Engineer A and Company A advised the panel that agreement had been reached on the facts and that the factual allegations as set out in the Fresh Notice of Hearing were accepted as accurate by all parties.

Decision

The panel considered the Agreed Facts and found that the facts support a finding of professional misconduct and, in particular, that Engineer A and Company A committed an act of professional misconduct as alleged in the Fresh Notice of Hearing.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. The parties had agreed that the Joint Submission represented an appropriate resolution of this matter.

The submission made by PEO counsel was that clearly Engineer A was taken advantage of by his client and that the first two drawings stamped were not intended to be submitted for approval, but were intended for cost estimating purposes. The client submitted the stamped and signed drawings without Engineer A's knowledge.

Engineer A admitted he stamped the drawings prematurely and should have marked them for costing purposes only.

The submission made by counsel for Engineer A and Company A was that there was never an intention to deceive and that Engineer A received no gain from the premature submission of drawings, undertaken by the client.

Penalty Decision

The panel accepted the Joint Submission as to Penalty and accordingly ordered:

- (i) that Engineer A and Company A be reprimanded and that the fact of the reprimand in the case of Company A be recorded on the Register for a period of three months;**

- (ii) that Engineer A write and pass the Professional Practice Examination (for greater clarity that examination is in two parts and Engineer A would be expected to write and pass both parts) within 12 months of the date of the hearing, failing which his licence would be suspended. His licence suspension would continue until he passes the PPE, up to a maximum period of two years, after which time his licence would be revoked;**

- (iii) that the finding and order of the Discipline Committee would be published in the *Gazette* in detail, but without reference to names and identifying details (noting, of course, that if the suspension in item (ii) takes place, publication with names would be required under section 28(5) of the Act);**

- (iv) that Engineer A will obtain and file a letter from his client confirming the circumstances described by Engineer A, namely that his client submitted the sealed design drawing to the municipal official without the knowledge or permission of Engineer A; and**

- (v) that Engineer A will give a written undertaking to PEO to the effect that from this point forward he will not seal any materials without knowing the precise purpose for which the materials in issue will be used and, to the extent that he seals drawings that are not to be submitted for purposes of building permit or construction, he will make it clear by recording a qualification to that effect on the face of the drawing in issue.**

Reasons for Decision

The panel found the Agreed Facts to be clear and Engineer A to be sincere in his admission of guilt to the allegations.

Engineer A and Company A have cooperated with the association and, by agreeing to the facts and a proposed penalty, have accepted responsibility for their actions.

The panel found that Engineer A was taken advantage of by his client, but should have known when it is appropriate to stamp a drawing or mark a drawing that is not intended to be submitted for approval.

The panel found that the penalty:

1. Sends a message to the profession to deter members of the profession from engaging in similar misconduct, through the publication of the facts in the *Gazette*;
2. Will be a specific deterrence to Engineer A and Company A through the reprimand;
3. Will assist in the remediation/rehabilitation of Engineer A and Company A through the PPE examination, undertaking to improve his practice, and communication with the developer; and
4. Recognizes the seriousness of the discipline proceedings and the expense to the member.

The panel concluded that the proposed penalty was reasonable and in the public interest.

The written Decision and Reasons in this matter were dated August 13, 2003, and were signed by the Chair of the panel, William Walker, P.Eng., on behalf of the other members of the Discipline Panel: James Dunsmuir, P.Eng., Colin Moore, P.Eng., Richard Weldon, P.Eng., and Michael Wesa, P.Eng.

Note from the Regulatory Compliance Department

Engineer A and Company A waived their right of appeal in this matter and the Discipline Panel administered the reprimand at the conclusion of the hearing. Engineer A and Company A subsequently complied with all terms of the penalty order.