

## Decision and Reasons

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on October 28, 2003, at the Association of Professional Engineers of Ontario in Toronto.

### The Allegations

The allegations against John S. Ivanyi, P.Eng., Vasil Riskovski, P.Eng., and Conengr Inc., as stated in the Fresh Notice of Hearing dated October 27, 2003, were as follows:

It is alleged that Vasil Riskovski, P.Eng. ("Riskovski") and John S. Ivanyi, P.Eng. ("Ivanyi") are guilty of professional misconduct and/or incompetence as defined in the *Professional Engineers Act* (the "Act") and that Conengr Inc. ("Conengr") is guilty of professional misconduct as defined in the Act, the particulars of which are as follows:

1. Riskovski was first licensed as a professional engineer in the Province of Ontario on January 7, 2000.
2. Ivanyi was first licensed as a professional engineer in the Province of Ontario on July 27, 1984.
3. Ivanyi is designated as a consulting engineer under the Act, and was first so designated on November 18, 1988.
4. Conengr has been a holder of a Certificate of Authorization under the Act since September 1993.
5. In April 1999, the homeowner at 35 Beechwood Drive in the City of Toronto built a concrete block wall immediately adjacent to the property line between his house and that of his neighbour, Anthony Barkas, at 37 Beechwood Drive. This construction of the concrete block wall was undertaken without engineering design drawings or a building permit.

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

**John S. Ivanyi, P.Eng.,  
and Vasil Riskovski, P.Eng.**

members of the Association of Professional Engineers  
of Ontario and

**Conengr Inc.**

a holder of a Certificate of Authorization.

6. The wall consists of a western segment of 8" thick x 8' long x 32" to 48" high for use as a planter, and an eastern segment of 8" x 7' x 1' to 4' as support to a concrete deck corridor.
7. Mr. Barkas believed (and continues to believe) that this is a retaining wall that requires a building permit based on drawings sealed by a professional engineer, and that both segments of the wall, which stand 4' above his front deck and an above-ground gas pipeline, are unsafe and create a hazardous condition for his family and his property.
8. Mr. Barkas expressed this view (through counsel) to the City of Toronto by letter dated January 21, 2000, which led to officials from the City Building Department visiting the site.
9. The City Building Department officials generated a memo dated February 21, 2000, arising from their inspection of the wall, indicating that it was non-structural, consisting of loose concrete blocks, and that the footing had no frost protection. It appears that the city found the situation not to be dangerous at that time but did not preclude the possibility of a problem developing in the future, given that the construction practice involved in the construction of the wall was unconventional.
10. In a letter dated February 29, 2000, concerning the wall, the city requested the owner to submit a report from a professional engineer attesting to the structural condition and adequacy of the wall.
11. In or about April 2000, John Ivanyi and Associates Inc. (now Conengr) was engaged by the owner of 35 Beechwood Drive (the "client") to issue a report.
12. In a report on the letterhead of John Ivanyi and Associates Inc. dated April 6, 2000, which they jointly signed but only Ivanyi sealed, Riskovski and Ivanyi concluded that the two-segment wall was "safe and acceptable."

13. By letter dated October 11, 2000, to Ivanyi, Mr. Barkas raised various concerns regarding the safety of the wall and subsequently made repeated requests for a response.
14. By further letter dated February 2, 2001, to Ivanyi, Mr. Barkas further requested a review of pertinent comments from the city and from Terraprobe Limited ("Terraprobe"), a geotechnical and environmental engineering consultant firm for the Toronto and Region Conservation Authority ("TRCA"), which had reviewed the wall in question. Terraprobe stated in a report dated November 15, 2000, that "there are some loosely stacked pre-cast blocks between the two houses on numbers 35 and 37 on the west side that, if dislodged, present a danger to the patio area of number 37; these blocks should be secured better." In a meeting on February 5, 2001, with both owners and representatives of TRCA, the city indicated that it was accepting and relying upon the report from Riskovski and Ivanyi and therefore was not taking any further steps relative to the wall in issue.
15. Mr. Barkas continues to believe that safety issues still exist, as the entire wall has shifted and the eastern segment no longer supports the deck corridor above, thus representing a continuing hazard for 37 Beechwood Drive.
16. Riskovski has since disclosed that, in expressing the conclusion that the wall in question was "safe and acceptable," Riskovski and Ivanyi had relied on information from the client concerning the depth of footing and the existence of re-bars. Riskovski confirmed that he and Ivanyi were not able to confirm this information received from the client without any further investigation of the site condition, including digging, and accordingly accepted and relied upon this information from the client without undertaking such further investigation. Riskovski also advises that it was agreed with their client that further monitoring of the condition of the wall should be provided on an ongoing basis (periodically) but that these monitoring conditions unfortunately were not stated in the April 6, 2000 letter signed and sealed by Ivanyi and signed by Riskovski.
17. Riskovski confirms that by letter dated October 11, 2000, Mr. Barkas sent Ivanyi and Riskovski detailed information and photographs of the wall taken at various stages during its construction.
18. Riskovski advises that upon reviewing the photographs in particular, he recognized that there were discrepancies between the situation depicted in the photographs as compared to the information that he and Ivanyi had received from the client.
19. Specifically, Riskovski advises that variation existed with respect to rebar, tie-backs and the depth of the footings. Riskovski went so far as to say that, in light of what he saw in the photographs, he felt that he had been "misled by the distorted information provided by [his] client."
20. Riskovski advises that he and Ivanyi discussed the situation and the issue of whether or not to inform their client concerning the information received from Mr. Barkas and/or to meet with Mr. Barkas at the property.
21. At the beginning of December 2000, Riskovski and Ivanyi visited Mr. Barkas' property and again reviewed the wall from there. Based on this review of the wall, further discussions with Mr. Barkas and further review of the photographs, Riskovski states that he and Ivanyi recognized that irregularities existed and promised to Mr. Barkas that they would accordingly withdraw their certification or, alternatively, attempt to remedy these problems with their client, the owner of 35 Beechwood Drive.
22. At the end of November and the beginning of December 2000, Riskovski prepared two letters (dated November 28, 2000, and December 4, 2000) withdrawing the certification set out in the letter signed and sealed by Riskovski and Ivanyi dated April 6, 2000. In these draft letters, Riskovski described the variations in the actual site condition from the information provided by the client and set out the basis of the proposed withdrawal of the statements contained in the April 6, 2000 letter.
23. Riskovski advises that he signed the letters, forwarded them to Ivanyi for his review, approval and further action, and asked Ivanyi to forward the letters on to the client. Riskovski advises that Ivanyi reviewed and signed the letter dated November 28, 2000, but did not send the letter immediately to the client, advising that he would instead provide additional review of the wall.
24. Riskovski advises that the other letter, dated December 4, 2000, remained on Ivanyi's desk for a number of weeks without being signed or sent to the client.
25. Riskovski advises that when he reminded Ivanyi about the letter to be signed and sent, Ivanyi told him that Riskovski should leave the matter to Ivanyi and that Ivanyi would take care of it.

26. Riskovski advises that he and Ivanyi received further letters from Mr. Barkas in the early part of 2001 requesting a response and that upon receipt of these letters, Riskovski discussed again with Ivanyi the need to correct the opinion set out in the letter of April 6, 2000, and to inform their client concerning the necessary remedial work.
27. According to Riskovski, Ivanyi finally revised and signed a letter dated January 29, 2001, and faxed it to their client at the beginning of February 2001.
28. Riskovski says that he had a discussion with their client following the client's receipt of that letter, in which the client was extremely upset and in which Riskovski attempted to explain the rationale for withdrawing the opinion contained in the letter of April 6, 2000.
29. Ultimately, the client stated that he would deal directly with Ivanyi rather than having further discussions with Riskovski.
30. Riskovski then learned that Ivanyi had decided, and had advised the client, that he would be standing by the opinion issued on April 6, 2000.
31. Subsequently, Riskovski found a letter from Ivanyi, incorrectly dated January 29, 2001, stating that he was retracting the letter that had been sent to the client a few days prior (i.e. the letter raising the concern about the April 6, 2000 opinion). This new letter, which had been prepared by Ivanyi, included both Ivanyi's name and Riskovski's name, even though Riskovski did not share this view and had never signed the letter.
32. Shortly after these events, Riskovski decided to leave the company.
33. On December 5, 2002, Riskovski wrote to the City of Toronto, East York District, and to the chief building official of the City of Toronto, East District, with copies of each letter sent to Ivanyi, advising those officials about his serious concerns regarding the April 6, 2000 letter and the condition of the concrete block wall.
34. Finally, Riskovski confirms that the situation, to his knowledge, remains the same as previously and that necessary remedial work remains to be done on the walls in issue.
35. It appears that Riskovski, Ivanyi and Conegr:
- (a) failed to conduct a thorough review and complete inspection of the wall for the purposes of issuing a report, specifically by failing to observe or investigate a lack of footing for the eastern segment of the wall and a lack of re-bar, as well as by failing to request comments from the neighbour whose property was affected;
  - (b) issued a report concluding that the wall was "safe and acceptable" when they knew or ought to have known that that conclusion, subsequently relied on by the City of Toronto, was false, erroneous and misleading;
  - (c) failed to recognize concerns regarding the safety of the wall with excessive storm water accumulation, at least in the long term, and failed to recognize that this condition was in violation of the *Ontario Building Code* and required prompt solution;
  - (d) failed to respond to Mr. Barkas' concern regarding the unsafe condition of the wall generally and as a result of the potential impact of rainstorms;
  - (e) knowingly allowed an unsafe or potentially unsafe condition to continue, notwithstanding specific knowledge about unconventional and unsafe building practices utilized in the construction of the wall; and
  - (f) acted in an unprofessional and unethical manner.
36. The Association of Professional Engineers of Ontario (the "association") engaged an independent expert to review this matter. Having reviewed the relevant materials and having attended on the site to inspect the condition, the expert concluded, among other things, as follows:
- (a) that the wall is not safe and should be repaired or replaced;
  - (b) that a short section of the wall near the northwest corner of 35 Beechwood Drive is in particularly poor condition;
  - (c) that while immediate collapse is not likely, the expert recommends that remedial action be taken within the next six months;
  - (d) that the wall shows a number of deficiencies that the expert believes were apparent when the wall was inspected by Riskovski and Ivanyi;
  - (e) that the construction photographs taken by Mr. Barkas for a section of the wall indicate that there are only a few vertical reinforcing bars within the wall thickness and that the wall footing is located at a shallow depth rather than 4' below grade as required by good practice;
  - (f) that the footings for the easterly section of the wall, supporting a walkway slab leading to the rear yard of 35 Beechwood Drive are partially exposed and have virtually no earth cover to provide frost protection;
  - (g) that the April 6, 2000 report is deficient in several areas, including:
    - (i) the wall is described as "newly built" at a time when it was approximately one year old,
    - (ii) reinforcement in the wall is described in some detail in circumstances in which such reinforcement could not have been determined from the site reviews,

- (iii) both sections of the wall are described as being “safe and acceptable” with only a minor qualification about the type of planting to be used;
- (h) that Riskovski and Ivanyi appear to have relied on information supplied by the client regarding details of the wall construction and that since most of this information could not be verified by visual inspection at the time of the site visit, the report ought to have been carefully qualified to state which items were actually seen and which were assumed based on information provided by the client;
- (i) Ivanyi and Riskovski knew or ought to have known that the city would rely on their report and that accordingly the lack of qualification in the report means that the report does not meet an acceptable standard of practice;
- (j) that the reports dated November 28, 2000, and December 4, 2000, withdraw the “safe and acceptable” opinion expressed in the April 6, 2000 report and that any change in the opinion regarding safety should have been copied by Riskovski and Ivanyi to the city immediately.
37. By reason of the facts set out above, it is alleged that Riskovski, Ivanyi and Conengr are guilty of professional misconduct as defined in section 28(2)(b) of the Act as follows:

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

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

38. 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 responsible provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
- (c) *Section 72(2)(c)*: failure to act to correct or report a situation that the practitioner believes may endanger the safety or the welfare of the public;
- (d) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with the work being undertaken by or under the responsibility of the practitioner;
- (e) *Section 72(2)(g)*: breach of the act or regulations other than an action that is solely a breach of the Code of Ethics;
- (f) *Section 72(2)(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.

In addition, it is alleged that the conduct by Riskovski and Ivanyi is in breach of various provisions of the Code of Ethics of the association.

Counsel for the association advised that in connection with the allegation of a breach of section 72(2)(j) of Regulation 941, the position of the association was that the conduct was unprofessional and the association was not asking for a finding that the conduct was disgraceful or dishonourable.

### Plea

Ivanyi on his own behalf and on behalf of Conengr admitted to the allegations of professional misconduct set out in paragraph 38 of the Fresh Notice of Hearing. Riskovski also admitted to the

allegations in paragraph 38, save for the allegation of breach of section 72(2)(g) of Regulation 941.

The panel conducted a plea inquiry and was satisfied that the members’ and Conengr’s admissions were voluntary, informed and unequivocal.

### Agreed Facts

Counsel for the association, counsel for Riskovski, and Ivanyi 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 Riskovski, Ivanyi and Conengr, subject to the following:

In the case of Riskovski, counsel for the association and counsel for Riskovski agreed that the facts as stated in the Fresh Notice of Hearing should be amended as follows:

- (a) *Paragraph 22*—The letter dated April 6, 2000 was signed only by Riskovski and signed and sealed by Ivanyi.
- (b) *Paragraph 35(b)*—The report was prepared, not issued, and was signed by both Riskovski and Ivanyi but sealed only by Ivanyi.
- (c) *Paragraph 35(d), 35(e) and 36(j)*—Association counsel acknowledged that Riskovski did take some steps to deal with the problem of the unsafe wall and Ivanyi’s failure to follow up, although those steps were insufficient.
- (d) *Paragraph 35(f)*—Association counsel accepted that Riskovski did not act in an unethical manner.

In the case of Ivanyi, Ivanyi advised the panel that the facts as stated in the Fresh Notice of Hearing should be amended as follows:

- (a) *Paragraph 17*—Ivanyi suggested that the information received was limited, not detailed, in that no engineering reports were received.



- (b) *Paragraph 36(f)*—Ivanyi disputed the allegation that the footings for the easterly section of the walls supported a walkway slab. Riskovski took issue with this and advised the panel that section 36(f) was accurate from his perspective. Association counsel took no position.
- (c) Ivanyi also introduced into evidence a letter recently sent to the client dated October 7, 2003.

Association counsel also introduced into evidence some of the documents referred to in 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 Ivanyi, Conengr and Riskovski are guilty of professional misconduct as defined in section 28(2)(b) of the Act. The sections of Regulation 941 made under the Act relevant to the professional misconduct of Ivanyi, Conengr and Riskovski are as follows:**

- (a) ***Section 72(2)(a): negligence;***
- (b) ***Section 72(2)(b): failure to make responsible provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;***
- (c) ***Section 72(2)(c): failure to act to correct or report a situation that the practitioner believes may endanger the safety or the welfare of the public;***
- (d) ***Section 72(2)(d): failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with the work being undertaken by or under the responsibility of the practitioner;***

- (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 unprofessional.***

**In addition, with respect to Ivanyi:**

- (f) ***Section 72(2)(g): breach of the act or regulations other than an action that is solely a breach of the Code of Ethics.***

## Reasons for Decision

Throughout, Ivanyi and Riskovski acted on behalf of John Ivanyi and Associates Inc., now Conengr.

With regard to section 72(2)(a) of the Regulation, “Negligence,” both Ivanyi and Riskovski failed to properly investigate the wall by conducting a thorough and complete inspection prior to issuing their report dated April 6, 2000 and failed to properly and carefully qualify their report by identifying what items were seen and what facts were assumed.

With regard to section 72(2)(b) of the Regulation, both Ivanyi and Riskovski issued a report on April 6, 2000 that was erroneous with respect to the adequacy of the wall and thereby did not make a responsible provision for the safeguarding of the property at both 35 and 37 Beechwood Drive. In addition, Ivanyi's letter dated January 29, 2001, did not make responsible provision for the safeguarding of these properties as it supported the conclusion of the April 6, 2000 report that the wall was safe, though the condition of the wall and photographs of its construction were evidence that overwhelmed this conclusion.

With regard to section 72(2)(c) of the Regulation, both Ivanyi and Riskovski failed to immediately correct their report of April 6, 2000, which may have endangered the safety or welfare of the public. After receipt of additional information (letter from Barkas dated October 11, 2001), Ivanyi revised his conclusion with respect to the study of the wall but then retracted

the conclusion. Riskovski did push to get the corrective action in place by Ivanyi; however, there is no evidence that Ivanyi advised the city or responded to the concerns of Mr. Barkas or that Ivanyi acknowledged that there was a situation that may have endangered the safety of the public.

Ultimately, Riskovski informed the City of Toronto of his serious concerns regarding the April 6, 2000 report by letter dated December 2002.

With regard to section 72(2)(d) of the Regulation, both Ivanyi and Riskovski failed to take responsible provisions for complying with the *Ontario Building Code* in connection with work by stating in their report dated April 6, 2000, that the wall was safe, when it was not.

With regard to section 72(2)(g) of the Regulation, both Ivanyi and Conengr breached the *Professional Engineers Act* by issuing a letter dated January 29, 2001, to their client that contained Riskovski's name but was not signed by him and that provided an engineering opinion that was not shared by Riskovski.

## 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 makes an order as follows:

### *Ivanyi/Conengr*

- Ivanyi and Conengr are to provide advice to the client and the relevant official from the city that the retaining wall must be reinforced or replaced in order to meet required standards. This letter must be in addition to the letter already sent by Ivanyi to the client (Exhibit 11).**
- Ivanyi and Conengr are to appear before the panel to be reprimanded and the fact of the reprimand is to be recorded on the Register.**
- Ivanyi's licence is to be suspended for two months from the date of the hearing.**

4. **Within 12 months of the date of the hearing, Ivanyi is to write and successfully pass parts A and B of the Professional Practice Examination.**
5. **Within 12 months of the date of the hearing, Ivanyi and Conengr must pay costs to the association in the amount of \$3,000.**
6. **If Ivanyi fails to meet the conditions in paragraphs 4 and 5 set out above, Ivanyi's licence is to be suspended for an additional six months. This does not impact on the obligation to pay costs, which remains in place.**
7. **Ivanyi's designation as a consulting engineer is suspended for the duration of the suspension of his licence.**
8. **The panel's decision is to be published in *Gazette*, together with the name of Ivanyi and Conengr.**

#### *Riskovski*

1. **Riskovski is to appear before the panel to be reprimanded and the fact of the reprimand is to be recorded on the Register.**
2. **Riskovski's licence is to be suspended for a period of one month, but the suspension is itself suspended on the following two conditions:**
  - (a) **Within 12 months of the date of the hearing, Riskovski writes and successfully passes parts A and B of the Professional Practice Examination.**
  - (b) **Within 12 months of the date of the hearing, Riskovski pays costs to the association in the amount of \$2,000.**
3. **The panel's decision is to be published in *Gazette*, together with the name of Riskovski.**

#### Reasons for Penalty Decision

The panel accepted the joint submission as to penalty in that the proposed penalty met the three common goals of protection of the public interest and public safety, specific deterrence and general deterrence. The goal of protection of the public interest and public safety is achieved by administering penalties that are in line with penalties awarded for similar breaches of the *Professional Engineers Act* and satisfied the panel's judgment that the penalty was appropriate in this case.

The goal of specific deterrence was achieved by awarding the penalty of licence suspension, writing of exam, and payment of costs, which relays to the members that this conduct was not acceptable. Different penalties were given to the two members to reflect the severity of their actions.

Specifically, Ivanyi and Riskovski did not immediately advise their client, the neighbour and the City of Toronto of the results of their analysis of the information in the letter dated October 11, 2001, that the wall was unsafe.

Riskovski did attempt to remedy the situation and ultimately did advise the client that the wall was unsafe and this

was a key factor for the less severe penalties awarded to him.

The goal of general deterrence was achieved by the publication with names as a means of informing the profession that similar conduct would not be acceptable.

In addition, the panel considered the advice of its independent legal counsel, who advised the panel, in front of the parties to this matter, that although the panel is entitled to accept or reject any joint submission as to penalty, the courts have held that a joint submission as to penalty should not be rejected or varied lightly unless there is some good reason to do so. Specifically, counsel advised that the panel should not depart from a joint submission unless the proposed penalty is so disproportionate to the offence that it would be contrary to the public interest or bring the administration of justice at the association into disrepute.

The written Decision and Reasons in this matter were dated September 23, 2004, and were signed by the Chair of the panel, Glenn Richardson, P.Eng., on behalf of the other members of the panel: James Dunsmuir, P.Eng., Barry Hitchcock, P.Eng., Colin Moore, P.Eng., and Anne Poschmann, P.Eng.

## Decision and Reasons

In the matter of a discipline hearing under the *Professional Engineers Act* and in the matter of an application by:

**Nunzio J. Pinelli**

for the issuance of a licence pursuant to sections 37, 37(2) and 37(3) of the *Professional Engineers Act*.

**T**his matter came on for hearing before a panel of the Discipline Committee on January 15, 2004, at the Association of

Professional Engineers of Ontario (the "association") in Toronto with respect to the application by Nunzio J. Pinelli for the issuance of a licence. Mr.

Pinelli's licence had been revoked on June 20, 2000 (see the July/August 1998, November/December 1999 and January/February 2001 editions of *Gazette*) and this application was being made pursuant to section 37 of the *Professional Engineers Act*.

The Hearing commenced at 10:00 a.m. on January 15, 2004. Bruce Matthews, P.Eng., manager, complaints & discipline for the association, appeared on behalf of the registrar. Pinelli was not represented by counsel.

### The Evidence

Pinelli was sworn in and testified on his own behalf. Pinelli was questioned by the panel and cross examined by Matthews.

Mr. Matthews reported that the following terms of the penalty from the prior disciplinary action against Pinelli had not been met and the associated costs were long overdue:

1. attendance at and successful completion of three Part B (Elective) Examinations from the Canadian Council of Professional Engineers ("CCPE") examination syllabus on each area of practice of Pinelli's choice and the association's Professional Practice Examination;
2. payment of \$630 in examination fees;
3. payment for the Practice Review in the amount of \$2,280.71;
4. payment of costs to the association in the amount of \$2,000.

Pinelli testified under oath that personal and financial difficulties prevented him from fulfilling the conditions and writing the examinations. He had to find employment in the United States to support his family, making it difficult if not impossible to arrange to meet the imposed conditions. Pinelli had submitted letters dated July 19, 1999 and May 30,

2000, requesting extensions to the time limits set on the conditions. Pinelli's seal had also been returned to the association.

Pinelli then moved that the hearing be postponed to provide him with an opportunity to bring witnesses and written references before the panel.

The panel withdrew to consider Pinelli's request for postponement. The panel reconvened the hearing and denied the request for postponement, and the hearing continued.

Matthews reported that Pinelli had earlier submitted a cheque for \$630, as payment for the examinations, and had subsequently stopped payment on the cheque. This, along with the cost of the Practice Review (\$2,280.71) and the earlier hearing (\$2,000), made for a total of \$4,910.71 owing to the association by Pinelli. Mr. Pinelli acknowledged these unpaid costs and stated that he was now in a position to pay in full.

### Decision

**Having considered the evidence available to it, the panel is of a majority opinion, upon reasonable grounds, that the applicant meets the requirements and qualifications of the *Professional Engineers Act* and the regulations and would engage in the practice of professional engineering with competence and integrity. Accordingly, the panel directs the Registrar to issue a licence to the applicant upon his meeting the following conditions:**

1. **Pinelli to successfully complete three Part B Examinations from the CCPE syllabus for mechanical engineering, plus the Professional Practice Examination, after which the use of Pinelli's licence be limited to the practice of mechanical engineering;**
2. **Pinelli to pay the sum of \$4,910.71 to the association within 60 days from the date of this decision;**

3. **Pinelli to provide three written references pertaining to his professional competency and good character;**
4. **Pinelli's seal to remain with the association until all conditions are met and the licence is issued; and**
5. **following two years from the date of the reinstatement of licence, a practice review of projects completed by Pinelli subsequent to reinstatement to be conducted by the association at Pinelli's expense.**

### Reasons

The majority of the panel accepted Pinelli's explanation for being unable to fulfill the conditions set by the previous panel. The panel believed Pinelli's current employment and personal situation now provided him with the opportunity to meet the conditions for the reinstatement of a licence. The panel accepted Pinelli's statement that he is prepared to show good faith by paying the overdue sum of money owed to the association. It was also accepted that his recent employment as a construction superintendent has given him some additional practical experience, which should be beneficial to him as a licensed professional engineer.

### Publication

The panel directs that the Decision and Reasons be published with names in *Gazette*, in the association's official publication, since the previous case revoking Pinelli's licence was also published with names.

The written Decision and Reasons in this matter were dated March 6, 2004, and were signed by the Chair, Don Turner, P.Eng., on behalf of the other members of the discipline panel: Richard Emode, P.Eng., Ravi Gupta, P.Eng., Jim Lucey, P.Eng., and Phil Maka, P.Eng.

## Note from the Regulatory Compliance Department

On May 4, 2004, one day before the expiry of the 60-day period noted in the Decision and Reasons, Pinelli contacted the association and requested alternative payment terms to pay the monies owed to the association. Specifically, Pinelli requested payment in weekly instalments of \$500. Pinelli noted that while he did have the total amount available, he had two daughters graduating and needed the money for "gifts and parties."

By letter dated June 2, 2004 the panel granted Pinelli's request and directed him to provide post-dated cheques to the association no later than June 7, 2004. Due to an unannounced address change, Pinelli did not receive the June 2, 2004 letter. The letter was provided to him under cover of a separate letter dated July 29, 2004, and Pinelli was given until August 13, 2004 to provide the post-dated cheques.

On August 12, 2004, Pinelli provided the association with three post-dated cheques, each in the amount of \$500. All three of those cheques were returned by Pinelli's bank due to insufficient funds and, as of September 9, 2004, no additional cheques had been provided by Pinelli.

Due to Pinelli's failure to meet the terms and conditions established by the Discipline Panel, the Registrar will not be issuing a licence to him.

## Summary of Scheduled Discipline Hearings

This schedule is subject to change without public notice. For further information contact PEO at 416-224-9528; toll free 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 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](http://www.peo.on.ca).

### January 10-13, 2005 (Postponed from September 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*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or

property of a person who may be affected by the work for which the practitioner is responsible;

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

- (d) *Section 72(2)(g)*: breach of the Act or 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; and

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

### February 7-11, 2005

**Bruce A. Brown, P.Eng., and Bruce A. Brown Associates Limited (BABAL)**

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

- (a) *Section 72(2)(a)*: negligence;

- (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;

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

- (d) *Section 72(2)(f)*: failure of a practitioner to present clearly to the practitioner's employer the consequences to be expected from a deviation proposed in work, if the professional engineering judgment of the practitioner is overruled by non-technical authority in cases where the practitioner is responsible for the technical adequacy of professional engineering work;

- (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; and

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

### February 22-24, 2005

**Tony E. Kahil, P.Eng.**

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

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

- (b) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;

- (c) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the Code of Ethics;

- (d) *Section 72(2)(i)*: failure to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client; and

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