

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a single-member panel of the Discipline Committee on July 10, 2006 at the Association of Professional Engineers of Ontario (“PEO”) in Toronto. The member and representative of the Certificate of Authorization holder was present and was represented by Roy Stephenson and Brian Moher of Lerner LLP. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Christopher Wirth of Stockwoods LLP acted as independent counsel to the panel.

The Allegations

The allegations against Sotiros Katsoulakos, P.Eng. (“Katsoulakos”), and Micro City Engineering Services Inc. (“MCES”), as stated in Appendix A of the Notice of Hearing dated July 18, 2005, were as follows:

It is alleged that Sotiros Katsoulakos, P.Eng., is guilty of incompetence and Katsoulakos and Micro City Engineering Services Inc. are guilty of professional misconduct, the particulars of which are as follows:

1. Katsoulakos was at all material times a member of the Association of Professional Engineers of Ontario.
2. MCES was at all material times the holder of a Certificate of Authorization to offer and provide to the public services within the practice of professional engineering. Katsoulakos was the professional engineer responsible for the services provided by MCES.
3. In or about June 2004, Katsoulakos of MCES submitted stamped design drawings that were submitted to the Municipality of Southwest Middlesex (“SWM”) in support of an application for a building permit for a storage building. The proposed building was to be a self-service storage garage (“SSSG”) and was proposed as an addition to an existing car wash facility.

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The drawings, numbered 1 to 6, inclusive, were all dated May 21, 2004 and titled “Glencoe Carwash & Storage.” The drawings were stamped by Katsoulakos and dated 6-9-04. The titles of the drawings were:

- (a) General Notes, Site Plan, Front Perspective;
 - (b) Foundation Plan, Sections & Details, Foundation Notes;
 - (c) 1st Floor Plan, Sections & Details;
 - (d) Elevations, Sections & Details;
 - (e) Roof Plan, Cross Section & Details; and
 - (f) Electrical Plan, Plumbing Plan.
4. Rod Patterson, chief building official of SWM, claimed that the submitted drawings were designed in Michigan by a Michigan designer and then stamped by Katsoulakos without making revisions to meet the *Ontario Building Code* (OBC) requirements. Patterson alleged that Katsoulakos’ stamped design drawings violated the *Ontario Building Code*. As such, the building permit was not issued.
 5. Section 3.10 of the *Ontario Building Code* specifically deals with the requirements for a SSSG. Patterson

identified the following deficiencies on the submitted drawings:

- (a) Section 3.10.2.4.(7)—dead-end corridor not permitted;
 - (b) Section 3.10.2.4.(8)—no exit or emergency lighting shown;
 - (c) Section 3.10.2.7.(2)—two barrier-free washrooms required;
 - (d) Section 3.10.3.3.—no required fire alarm system shown;
 - (e) Section 3.10.3.4.(3)—no fire hydrant shown;
 - (f) Section 3.10.3.5.—no standpipe shown;
 - (g) Section 3.1.8.1.(2)—no closures shown;
 - (h) Section 3.1.11.5.(1)(A) & (B)—fire stopping not shown;
 - (i) Section 3.2.5.5. 3.2.5.6. 3.2.5.7.—no fire route shown;
 - (j) Section 3.2.5.17.(1)—portable fire extinguishers not shown;
 - (k) Concrete strengths for the slab on grade and exterior sidewalk were not properly specified;
 - (l) Roof loads due to snow drifting were not indicated; and
 - (m) Allowable soil bearing capacity was not shown.
6. PEO retained an independent expert to review Katsoulakos’ stamped design drawings. The expert’s findings are summarized as follows:

Decision and Reasons

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

Sotiros Katsoulakos, P.Eng.

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

Micro City Engineering Services Inc.

a holder of a Certificate of Authorization.

- (a) There is a conflict with the requirements of the *Ontario Building Code* Table 3.4.2.1.A. Two exits instead of one exit are required from the second floor;
- (b) The existing corridor on the ground floor is in conflict with OBC section 3.4.4.4., clauses 6 to 8;
- (c) No fire resistance rating for the second floor assembly is indicated;
- (d) The fire access route is less than 9 m wide, contrary to OBC section 3.10.3.4.(2);
- (e) There are no drawings or notes detailing the heating or ventilation requirements;
- (f) The roof design load shown on Sheet 2 of 6 at 1.52 kPa for live load does not appear to include loads due to snow drifting;
- (g) No design loads are given on the drawings for the elevated wood-framed floor supported by engineered floor joists;
- (h) There is a conflict in the required strength specified for slab on grade;
- (i) There is an error in the specification for the exterior sidewalk concrete;
- (j) No minimum soil bearing capacity for footing is shown;
- (k) A dead-end corridor is not permitted;
- (l) No exit or emergency lighting is shown;
- (m) Two barrier-free washrooms, not one, are required;
- (n) No required fire alarm system is shown;
- (o) No fire hydrant is shown;
- (p) No standpipe is shown;
- (q) No closures are shown on openings in fire separations;
- (r) Fire stopping of the “attic” space is not shown;
- (s) No fire route is shown on the site plan; and
- (t) No portable fire extinguishers are shown.
7. In summary, it appears that Katsoulakos and MCES:
- (a) provided a self-storage building design that did not meet the requirements of the *Ontario Building Code*;
- (b) sealed and signed drawings for a SSSG that contained errors, omissions and deficiencies;
- (c) stamped and signed design drawings prepared in the United States without making any revisions to meet the requirements of the *Ontario Building Code*; and
- (d) acted in a disgraceful, incompetent and unprofessional manner.
8. By reason of the facts aforesaid, it is alleged that Katsoulakos is guilty of incompetence as defined in section 28(3)(a) and Katsoulakos and MCES are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
9. “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.”
10. “Professional misconduct” is defined in section 28(2)(b) as:
 “The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.”
11. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
- (a) *Section 72(2)(a)*: negligence as defined at section 72(1): In this section “negligence” means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
- (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 reasonable provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of a practitioner;
- (d) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
- (e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner’s training and experience;
- (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.
- Counsel for the association advised that the association was not calling any evidence with respect to the allegations of incompetence set out in paragraphs 8 and 9 of the Notice of Hearing and was also withdrawing the allegations of professional misconduct under section 72(2)(h).
- Counsel for the association also advised the panel that he would be filing an Agreed Statement of Facts (“ASF”), including admissions to some of the allegations of misconduct.

Plea by the Member and Holder

Katsoulakos pleaded not guilty to incompetence. Katsoulakos and MCES admitted the allegations of professional misconduct set out in paragraphs 10 and 11 of the Notice of Hearing. Counsel for the association advised that the member had admitted guilt only under section 72(2)(a) and to unprofessional conduct under section 72(2)(j), but not to disgraceful or dishonourable conduct.

The panel conducted a plea inquiry and was satisfied that Katsoulakos’ and

MCES' admissions were voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the association advised the panel that agreement had been reached on the facts and introduced an ASF which provides as follows:

1. Sotiros Katsoulakos, P.Eng., was at all material times a member of the Association of Professional Engineers of Ontario.
2. Micro City Engineering Services Inc. was at all material times the holder of a Certificate of Authorization to offer and provide to the public services within the practice of professional engineering. Katsoulakos was the professional engineer responsible for the services provided by MCES.
3. In 2002, Jamie Pole ("Pole"), the owner of an existing car wash in Glencoe, Ontario, commissioned the preparation of six design drawings (collectively, the "Fournier Drawings") for a self-storage facility addition to the car wash. The drawings were prepared by Gerald Fournier, an architect licensed in Michigan. The Fournier Drawings, entitled "Glencoe Carwash & Storage," consist of:
 - (a) General Notes, Site Plan, Front Perspective (Sheet 1 of 6);
 - (b) Foundation Plan, Sections & Details, Foundation Notes (Sheet 2 of 6);
 - (c) 1st Floor Plan, Sections & Details (Sheet 3 of 6);
 - (d) Elevations, Sections & Details (Sheet 4 of 6);
 - (e) Roof Plan, Cross Section & Details (Sheet 5 of 6); and
 - (f) Electrical Plan, Plumbing Plan (Sheet 6 of 6).Copies of the final draft of the drawings are contained in PEO's document brief.
4. Shortly after the preparation of the Fournier Drawings, Pole submitted them to Rod Patterson ("Patterson"), chief building official at the time for

Southwest Middlesex, for his consideration. Patterson reviewed these drawings. Pole and Patterson met on multiple occasions over the next year to discuss the project, but Pole states that Patterson was never satisfied with the drawings and identified an evolving series of deficiencies. At Pole's request, Fournier revised the drawings on May 21, 2004 in an attempt to incorporate Patterson's recommendations. Despite the revisions, Pole states that Patterson continued to be critical of the drawings and would not issue a building permit for the project.

5. In or about June 2004, Katsoulakos and MCES were retained by Pole. Katsoulakos and MCES understood that their retainer was limited to providing a structural review of the Fournier Drawings. At all material times it was understood by Pole that Katsoulakos' review of the Fournier Drawings was strictly a structural review. Attached to this Statement of Agreed Facts as Appendix A is an invoice dated June 9, 2004, which Katsoulakos submitted to Pole at the time he handed over the sealed Fournier Drawings for a "structural review of sealed construction drawings for proposed renovations of existing car wash."
6. On June 9, 2004, Katsoulakos applied his engineering seal to the Fournier Drawings. Shortly thereafter, Pole submitted the stamped drawings to Patterson for the purpose of determining whether a building permit could be obtained for the project. Patterson then contacted Katsoulakos directly to discuss architectural deficiencies he had identified in the drawings, and Katsoulakos states that he told Patterson that his review of the drawings was limited to a structural review.
7. Pole and Patterson continued to discuss the adequacy of the drawings, with Patterson continuing to identify a number of deficiencies and refusing to issue a building permit.

Finally, in frustration, Pole decided not to proceed with the project and withdrew his application. A building permit was never granted for the proposed building, and the building was never built.

8. The parties accept as accurate the deficiencies in the drawings detailed in the report of Gerald R. Genge dated September 30, 2004 (Appendix B), as modified by his second report dated January 24, 2006 (Appendix C). The drawings contain the following errors and deficiencies:
 - (a) Section 3.10.2.4.(7)—dead-end corridor not permitted;
 - (b) Section 3.10.2.4.(8)—no exit or emergency lighting shown;
 - (c) Section 3.10.3.4.(3)—no fire hydrant shown;
 - (d) Section 3.1.8.1.(2)—no closures shown;
 - (e) Section 3.1.11.5.(1)(A) & (B)—fire stopping not shown;
 - (f) Section 3.2.5.5., 3.2.5.6., 3.2.5.7.—no fire route shown;
 - (g) Concrete strengths for the slab on grade and exterior sidewalk were not properly specified;
 - (h) Allowable soil bearing capacity was not shown;
 - (i) There is a conflict with the requirements of the *Ontario Building Code* Table 3.4.2.1.A. Two exits instead of one exit are required from the second floor;
 - (j) The existing corridor on the ground floor is in conflict with OBC requirements—section 3.4.4.4., clauses 6 to 8;
 - (k) No fire resistance rating for the second floor assembly is indicated;
 - (l) The fire access route is less than 9 m wide, contrary to OBC section 3.10.3.4.(2);
 - (m) There are no drawings or notes detailing the heating or ventilation requirements; and
 - (n) No design loads are given on the drawings for the elevated wood-framed floor supported by engineered floor joists.
9. The parties agree that Katsoulakos and Micro City Engineering Services Inc. failed to maintain the standards

that a reasonable and prudent practitioner would have maintained in the circumstances when Katsoulakos conducted a structural only review and then affixed his seal without qualification. They further agree that his conduct amounts to professional misconduct within the meaning of s.28(2)(6) of the *Professional Engineers Act* and sections 72(2)(a) and (j) of Regulation 941.

10. Neither Katsoulakos nor MCES have a prior discipline history with PEO.

The parties agreed that the allegation of incompetence was to be dismissed.

Counsel for the association stated that the issue for the panel to determine was whether sections 72(2)(b), 72(2)(d) and 72(2)(e) of Regulation 941 were relevant.

Section 72(2)(b) covers a 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. The member admitted in the ASF to stamping six of the Fournier Drawings. The Genge report, Appendix B of the ASF, detailed errors and deficiencies in these drawings related to emergency lighting, fire stopping, fire route, fire hydrants and dead-end corridors. In counsel's opinion, section 72(2)(b) must be a relevant consideration.

Section 72(2)(d) covers a 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 a practitioner. The sealing of the drawings was unqualified. By sealing without qualification, the member was representing to the public that he was taking responsibility for the complete design. Although his invoice included in the ASF stated that it was for a structural review only, a builder using the drawings would not be privy to this limited contractual agreement.

Further, the Genge report, which was accepted by both parties, noted several examples of failures to meet the *Ontario Building Code*.

Section 72(2)(e) refers to signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner. The member sealed all the drawings, including the electrical and plumbing plans. If the review was to be only structural, why were the plumbing and electrical drawings also stamped without qualification?

In response, counsel for the member stated that, in his opinion, it really did not matter which section of the regulation should be considered. The admitted error was that the member put his unqualified seal on all the drawings when he was engaged by the owner to do a limited structural review. The member failed to put that limitation clearly and unequivocally on the drawings.

With regard to section 72(2)(b), the panel should consider that the Genge report states that the building was never built. There was no risk to the public; there was, at best, a potential risk.

Section 72(2)(d) relates to a 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 a practitioner. The member sealed the drawings showing that he took responsibility. However, he and the owner knew he was only taking responsibility for the structural design. His error was in not qualifying his seal so that third parties would know he was only taking responsibility for the structural review.

Section 72(2)(e) is signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner. The member did check the structural drawings, but the problem lies with the non-structural drawings. If he had followed the association guidelines and qualified his stamp on the non-structural drawings, he would not have been appearing before a discipline panel.

In conclusion, counsel for the member argued it would be appropriate to find the member guilty only under sections 72(2)(a) and 72(2)(j).

Decision

The panel considered the ASF and found that the facts support a finding of professional misconduct and, in particular, found that Katsoulakos and MCES committed an act of professional misconduct as alleged in paragraphs 10 and 11 of the Notice of Hearing in that they breached the following provisions of Regulation 941:

- (a) **Section 72(2)(a): negligence as defined at section 72(1): In this section "negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;**
- (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 a practitioner;**
- (d) **Section 72(2)(e): signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner; 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 unprofessional.**

Reasons for Decision

The panel accepted the ASF and the Katsoulakos and MCES pleas, which substantiated the findings of professional misconduct.

Regarding section 72(2)(b), the Genge report described errors and deficiencies on the Fournier Drawings sealed by the member relating to emergency lighting,

fire stopping, fire routes, fire hydrants and dead-end corridors.

Regarding section 72(2)(d), the Genge report noted failures to meet the *Ontario Building Code*. The member had sealed the drawings without qualification signifying that he took responsibility for the complete design.

Regarding section 72(2)(e), the member sealed all six Fournier Drawings with his unqualified stamp, but undertook only a structural review.

Penalty

Counsel for the association provided the panel with a Proposed Submission as to Penalty. This provided as follows:

The parties jointly submit that the Discipline Committee make the following terms of order on penalty:

- (a) that Katsoulakos and MCES shall be reprimanded and the fact of the reprimand shall be recorded on the Register;
- (b) that there shall be publication of the proceedings in Gazette with names included;
- (c) that the Registrar shall be directed to place a restriction on the licence of Katsoulakos and the Certificate of Authorization of MCES, limiting their area of practice to structural engineering;
- (d) that the licence of Katsoulakos and the Certificate of Authorization of MCES shall be suspended for a period of four months, the said suspensions to commence on the date of the hearing;
- (e) that Katsoulakos shall write and pass the Professional Practice Examination (the "Examination") within 12 months of the discipline hearing, failing which his licence and the Certificate of Authorization of MCES shall be suspended;
- (f) that in the event that Katsoulakos fails to write and pass the Examination within the 24 months of the discipline hearing, his licence and the Certificate of Authorization of MCES shall be revoked; and
- (g) that Katsoulakos shall pay costs of the disciplinary proceedings fixed in the sum of \$5,000, to be paid

within 12 months of the date of the hearing.

Counsel advised the panel that clauses (c) and (d) were not agreed between the parties but the other clauses were agreed.

Counsel for the Association

Counsel for the association reminded the panel that clauses (a), (b), (e), (f) and (g) of the proposed penalty were agreed between the parties and amounted to a joint submission on penalty. At issue here were clauses (c) and (d), which were proposed by the association but not agreed to by the member. The agreed clauses were within the reasonable range and, in counsel's opinion, the panel should accept them.

The five principles of penalty the panel should consider included:

- protection of the public;
- maintenance of the reputation of the profession in the eyes of the public;
- general deterrence;
- specific deterrence; and
- rehabilitation.

It was the position of the association that the proposed penalty was appropriate considering the facts—the unqualified sealing of documents, including electrical plans that were not checked by the member—and the potentially serious consequences to the public when engineers stamp design drawings that have not been fully checked and verified. The panel must act in the public interest to ensure that the public was protected. This professional misconduct was serious, but there were mitigating circumstances. The member had admitted his professional misconduct and had an unblemished record to date.

The engineer's seal is one of the most valuable assets of the profession. An engineer's seal applied without qualification to design drawings is understood by the public generally to mean that the drawings have been completely checked, are in accordance with generally accepted engineering standards, and are in compliance with applicable laws and codes, such as the *Ontario Building Code*. Unqualified sealing of drawings not in accordance with generally accepted engi-

neering standards, nor in compliance with the *Ontario Building Code*, is a serious failure to maintain the standards of practice. An unqualified seal of deficient drawings seriously undermines the reputation of the profession.

The member applied his seal to drawings that were deficient both structurally and otherwise. He sealed electrical and plumbing plans that he had not checked, or did not check adequately. It was not in counsel's opinion a mitigating circumstance that he had contracted to only do a structural review.

As far as general and specific deterrents were considered, a recurring issue in recent discipline proceedings had been the unqualified use of an engineer's seal where the engineer had checked only a portion of the drawing.

The association must be seen to be acting strongly in these cases. It was fortunate that the building was never built, but that was not a mitigating circumstance.

The association proposed a restriction on the member's licence to limit his practice to structural engineering. The association understood that this was the area where the member was qualified to practise, that this was the nature of his practice, and would not inhibit his ability to practise. It would act to protect the public by limiting his practice to his area of expertise.

As far as costs were concerned, the agreed penalty would be only a fraction of the costs of the proceedings. It would, however, deflect some costs that would otherwise be born by the fee-paying members of the association.

Counsel for the Member

Counsel for the member also noted that the panel was obliged to act in the public interest, but it must also act judiciously according to both principle and precedent. After reviewing six association discipline cases, he found that the proposed penalty, including clauses (c) and (d), was not, in his opinion, the standard penalty. He noted that counsel for the association had not produced six cases where a member had done something similar to Katsoulakos and had been subjected to a four-month sus-

pension, or any suspension or restriction of his ability to practise.

Counsel for the member referred to a recent appeal decision by the divisional court. The divisional court said, "In this regard, by analogy to penalty within the criminal context, penalty should fit the crime relative to the circumstances before the court and the offence," and further "the imposition of penalty should relate to the offence, its gravity, and any facts which may apply in mitigation." Referring to an oral reprimand, the appeal court stated, "With these sanctions, we accept that such notice and recording in the Register of the association shall act as a general deterrent to others in the profession. Publication of the facts, and the fact that the member has been reprimanded, is serious and does act as a general deterrent."

Counsel for the association had referred to numerous cases of improperly applied seals. This may be so, but you will not prevent this problem by hanging one member out to dry.

Reviewing past Discipline Committee cases, counsel referred to a case heard in August 2001 where medical gas piping drawings were found to be in error and the misapplication could have had catastrophic consequences. The member was found to have committed an act of professional misconduct and to be incompetent. This was a very serious case with potential for harm to the public. The member was required to take and pass the Professional Practice Examination and pass a peer review and assessment. He was not suspended.

In the Schor case, heard in December 2004, the member sealed preliminary drawings that were also deficient. The member was reprimanded, required to take and pass the Professional Practice Examination and submit a written undertaking that he would only seal documents and drawings that were complete. Again, there was no suspension and no limitation of his licence to practise.

In the Brouwer case, in June 2005, the member was sealing someone else's drawings that did not comply with the

Ontario Building Code. Again, there was no suspension and no licence restriction.

In the Wong case, heard in June 2005, the member was retained to test masonry ties to determine their working load. He certified his results in a signed and sealed report. A subsequent expert report concluded the Wong tests did not satisfy the CSA standard. The member admitted guilt and there was a Joint Submission as to Penalty. There was no suspension and no condition put on the licence.

In the Wong case, the association argued that a reprimand was a serious penalty, particularly as the findings would be published with names. The association also argued that the penalty was in the range for a first offence with an admission of guilt, would contribute to both specific and general deterrence, and contribute to the rehabilitation of the member.

In the case of Kwan, argued in October 2005, he stamped a series of documents that did not comply with the *Ontario Building Code*. The work was ordered to be remediated and the member certified the work now met the standard, but it did not. Again, there was no suspension and no limitation on his licence.

In the Kahil case, argued in November 2005, the member took another engineer's seal and used it to seal documents. He also defrauded his employer. Again, there was a guilty plea, no suspension and no restriction of his licence.

The panel's finding as to penalty must be judicial, based on the facts presented at the hearing, and consistent with precedent. Many of the cases he had described for the panel were more serious than this case, but none that were considered to warrant a suspension or limitation of the member's licence.

Katsoulakos did understand the *Ontario Building Code*. In 1986, he graduated from the University of Toronto majoring in structural engineering in his final year. In June 2005, he wrote and passed the Designer Legal-2005 Building Code examination and the Small Buildings-2003 Building Code examination. He was now licensed in both

Ontario and Alberta and had been licensed in Newfoundland, Nova Scotia and New Brunswick. His special expertise was in structural engineering and he has been specializing in roof truss engineering and farm structures for 16 years.

He sealed about 30-50,000 drawings a year. Micro City Engineering Services Inc. was registered under section 2.17 of the *Ontario Building Code* to provide services for the classes of Buildings Structural, House and Small Buildings.

The panel should reject the association's request for a suspension and a restriction on the licence. It was not called for and would not be in keeping with its own precedents.

Penalty Decision

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

- (a) **that Katsoulakos and MCES shall be reprimanded and the fact of the reprimand be recorded on the Register;**
- (b) **that there shall be publication of the proceedings in Gazette with names included;**
- (c) **that Katsoulakos shall write and pass the Professional Practice Examination ("Examination") within 12 months of the discipline hearing, failing which his licence and the Certificate of Authorization of MCES shall be suspended;**
- (d) **that in the event that Katsoulakos fails to write and pass the Examination within 24 months of the discipline hearing, his licence and the Certificate of Authorization of MCES shall be revoked; and**
- (e) **that Katsoulakos shall pay costs of the disciplinary proceedings fixed in the sum of \$5,000, to be paid within 12 months of the date of the hearing.**

Reasons for Penalty

The panel found that both parties were ably represented and concluded that the agreed penalty is reasonable and in the public interest. Katsoulakos and MCES had cooperated with the association and,

by agreeing to the facts and a proposed penalty, had accepted responsibility for their actions and had avoided unnecessary expense to the association.

The panel determined that suspending the member's licence and the Certificate of Authorization of MCES would be a serious penalty exceeding those awarded by the association in previous comparable and more serious discipline cases. The panel found that both general and specific deterrents were adequately addressed by the other penalties. The panel further found that limiting the licence of the member and the Certificate of Authorization of MCES was not required, as the agreed clauses of the proposed penalty already provided sufficient deterrent.

The member signed a waiver of appeal and the oral reprimand was administered immediately following the hearing.

The written Decision and Reasons were dated January 18, 2007, and were signed by Nicholas Monsour, P.Eng., as the Chair of the panel, on behalf of the other members of the panel: J.E.(Tim) Benson, P.Eng., Santosh Gupta, P.Eng., Phil Maka, P.Eng., and Derek Wilson, P.Eng.

Notice of Licence Revocation— James B. Molnar

At a discipline hearing held on December 4, 2006, at the offices of the association in Toronto, the Discipline Committee ordered the revocation of the licence of James B. Molnar after finding him guilty of professional misconduct on the basis that he had been convicted of an offence that is relevant to his suitability to practise. The revocation order is subject to appeal. The Decision and Reasons of the Discipline Committee will be published in due course.

Decision and Reasons

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

Christopher M. Turek, P.Eng.

a member of the Association of Professional Engineers of Ontario.

This matter came on for hearing before a single-member panel of the Discipline Committee on October 23, 2006 at the Association of Professional Engineers of Ontario ("PEO") in Toronto. The member was present and was represented by Norm Keith of Gowling Lafleur Henderson LLP. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Christopher Wirth of Stockwoods LLP acted as independent counsel to the panel.

The Allegations

The allegations against Christopher M. Turek, P.Eng. ("Turek" or "the member"), in the Fresh Notice of Hearing dated August 29, 2006 are as follows:

It is alleged that Christopher M. Turek, P.Eng., is guilty of professional misconduct, the particulars of which are as follows:

1. Turek was at all material times a member of the Association of Professional Engineers of Ontario. At all material times, Turek was mine superintendent at Lac Des Iles Mines Limited located near Thunder Bay, Ontario (the "Mine").
2. On or about November 28, 2002, a procedure for the proper handling of High Density Polyethylene Pipe ("HDPP") for the purpose of connecting and disconnecting water/tailings line at the Mine was prepared by Richard Lofstrom (the "procedure"). The procedure dealt

with a methodology of connecting and disconnecting a pressurized water discharge line ("dewatering line") from a pump prior to relocating the pump. The pump was used to remove accumulated water from various locations at the bottom of an open pit mine.

3. On June 5, 2003, the procedure was reviewed and approved by Turek.
4. On or about February 11, 2004, Mark Desjardins, while opening a drain valve of the dewatering line in preparation for relocating a sump pump, sustained a serious injury when the dewatering line moved unexpectedly, hitting him on his lower left leg and dragging him approximately 25 feet ("Desjardins accident"). The pressure rating of the HDPP in question was 160 pounds per square inch (psi). It was determined that the actual pressure in the HDPP at all material times was 185 psi, more than 15 per cent over the rated value.
5. Following the Desjardins accident, an internal accident/incident investigation report (AIIR) was prepared ("Desjardins AIIR"). The Desjardins AIIR contained a list of causes of the accident, including the possible inadequacy of the procedure to prevent pipe movement, and failure to communicate the procedure with mine workers.

6. By reason of the aforesaid, it is alleged that Christopher M. Turek, P.Eng.:
- was negligent;
 - allowed the dewatering system to operate at pressures more than 15 per cent higher than the rated values for the HDPP;
 - authorized a procedure for connecting and disconnecting dewatering lines that did not specifically address the need to secure the lines/hoses before draining the HDPP; and
 - acted in an unprofessional manner.
7. By reason of the facts aforesaid, it is alleged that Christopher M. Turek, P.Eng., is guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28 as follows:
“(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 941/90 made under the said Act and relevant to this misconduct are:
- Section 72(2)(a)*: negligence as defined at section 72(1): In this section “negligence” means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - 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; 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.

Member’s Plea

The member admitted the allegations of professional misconduct set out in the Fresh Notice of Hearing. The panel con-

ducted a plea inquiry and was satisfied that the member’s admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the association and counsel for the member 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 the member and could be treated as an Agreed Statement of Facts (“ASF”).

Decision

The panel considered the ASF and found that the facts supported a finding of professional misconduct and, in particular, found that the member committed an act of professional misconduct as alleged in the Fresh Notice of Hearing.

Reasons for Decision

The panel reviewed and accepted the ASF and the member’s plea, which substantiated the finding of professional misconduct.

Penalty

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

- that the member shall be reprimanded and the fact of the reprimand shall be recorded on the Register;
- that there shall be publication of the proceedings with reference to names in Gazette;
- that the licence of the member shall be suspended for a period of two months, the said suspension to commence on the date of the hearing;
- that the member shall write and pass the Professional Practice Examination (the “Examination”) within 12 months of the discipline hearing, failing which his licence shall be suspended;
- that in the event that the member fails to write and pass the Examination

within 24 months of the discipline hearing, his licence shall be revoked; and

- that the member shall pay costs of the disciplinary proceedings fixed in the sum of \$2,000, to be paid within 12 months of the date of the hearing.

Penalty Decision

The panel accepted the JSP and accordingly ordered:

- that the member shall be reprimanded and the fact of the reprimand shall be recorded on the Register;
- that there shall be publication of the proceedings with reference to names in Gazette;
- that the licence of the member shall be suspended for a period of two months, the said suspension to commence on the date of the hearing;
- that the member shall write and pass the Professional Practice Examination (the “Examination”) within 12 months of the discipline hearing, failing which his licence shall be suspended;
- that in the event that the member fails to write and pass the Examination within 24 months of the discipline hearing, his licence shall be revoked; and
- that the member shall pay costs of the disciplinary proceedings fixed in the sum of \$2,000, to be paid within 12 months of the date of the hearing.

Reasons for Penalty

The panel concluded that the terms of the JSP are appropriate in light of the responsibilities assumed by the member on behalf of the company.

The written Decision and Reasons were dated January 18, 2007, and were signed by Don Turner, P.Eng., as the sole member of the panel.

This matter came on for hearing before a panel of the Discipline Committee on March 27 and 28, 2006 at the Association of Professional Engineers of Ontario (“PEO”) in Toronto. The member was present and was also represented by an agent. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Christopher Wirth of Stockwoods LLP acted as independent counsel to the panel.

The Allegations

At the outset of the hearing the member denied the allegations listed in the Notice of Hearing filed on March 27, 2006. However, on the morning of March 28, before the cross-examination of the association’s first witness had begun, the member appeared without his agent and the panel was advised that a resolution had been reached between the association and the member. As a result, the panel was provided with a Fresh Notice of Hearing and the hearing proceeded as an uncontested matter.

The contents of the Fresh Notice of Hearing are summarized as follows:

It is alleged that the member is guilty of professional misconduct, the particulars of which are as follows:

1. In or about late 1996, a freestanding 10-ton bridge crane was installed at an industrial facility in Ontario. The crane was designed and installed by the member’s employer, Company A. The crane column footings were designed by others. The length of this original crane installation was approximately 60 feet over two bays.
2. In or about early 1997, an addition to the building was constructed and the runways (rails) for the crane were to be extended into the addition. The rails were to be extended by three bays to make a total length of approximately 160 feet. The footings for the building addition and the extended crane rail support columns were designed by a third party, Engineer W, based on information and drawings supplied by the member and Company A.

Decision and Reasons

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

A Member

a member of the Association of Professional Engineers of Ontario.

3. After reviewing the information, Engineer W discovered that the loads used by Company A’s design were significantly lower than those he used in his calculations. A number of weeks later, when reviewing drawings that were sealed and submitted by the member, Engineer W found no bending moments were shown at the base of the crane columns. Engineer W subsequently provided corrections to the member’s drawings and provided the correct loads to comply with the requirements of the *Ontario Building Code*.
4. Between July and September 1997, the member, Engineer W and other related parties were involved in numerous exchanges of information and documents relating to the design of the original crane frame and footings, as well as the design of the proposed extension. Concerns were expressed by Engineer W and others outside of Company A regarding the adequacy of the design of the original crane and its footings, in addition to the proposed addition. Various repair and reinforcement ideas were suggested by various parties, including the member and others associated with Company A.
5. A meeting of all concerned parties was held on September 8, 1997 to resolve the issue of the adequacy of the crane frame and footing design.
6. In the end, the existing portion of the crane rail was modified by adding “K bracing” to the column frames, steel plates at the column bases of the steel structure, and adding new footings to the existing ones. The steel structure of the new addition was treated similarly.
7. By November 1997, the member was no longer employed by Company A.
8. PEO retained a third party expert to review the crane beams and columns designed by the member and others associated with Company A. As a result of that review, the expert concluded that the member’s design did not meet the *Ontario Building Code* requirements.
9. In summary, it appears that the member:
 - (a) provided inadequate column design for a free standing (cantilever) crane supporting structure;
 - (b) provided insufficient/underdesigned load components for the design of footings by others;
 - (c) suggested repair work that was not adequate and did not follow CSA A16.1 standard, or the static analysis and design of steel structures standard (CISC handbook);

- (d) failed to maintain the standards that a reasonable and prudent practitioner would maintain in carrying out design work in a professional manner; and
 - (e) acted in an unprofessional manner.
10. By reason of the facts aforesaid, it is alleged that the member is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
11. "Professional misconduct" is defined in section 28(2)(b) as:
- "The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."
12. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
- (a) *Section 72(2)(a)*: negligence as defined at section 72(1): In this section "negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - (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 a practitioner; and
 - (d) *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 pro-

fession as disgraceful, dishonourable or unprofessional.

Plea of the Member

The member admitted the allegations in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that his plea was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the association advised that the facts contained in the Fresh Notice of Hearing could be treated as an Agreed Statement of Facts ("ASF").

Decision

The panel deliberated and found the member guilty of professional misconduct as alleged in the Fresh Notice of Hearing.

Reasons for Decision

The panel accepted the member's plea which, along with the ASF, substantiated the panel's findings of professional misconduct.

Penalty Decision

The panel received a joint submission on penalty ("JSP"). Arguments were heard from counsel for the association and the member in respect to one aspect of penalty not included in the JSP, this being the issue of publication, with names, of the findings of the hearing.

After deliberating, the panel ordered:

- 1. that the member shall be reprimanded and the facts of the reprimand shall be recorded on the Register;**
- 2. that the member shall write and pass the Professional Practice Examination Parts A and B (the "Examination"), within 12 months of the date of the discipline hearing;**

- 3. that in the event the member fails to write and pass the Examination within 12 months of the date of the discipline hearing, his licence shall be suspended;**
- 4. that in the event the member fails to write and pass the Examination within 24 months of the date of the discipline hearing, his licence shall be revoked;**
- 5. the member shall pay costs of the proceeding fixed in the sum of \$1,750 within six months of March 28, 2006; and**
- 6. this matter shall be published in the official journal of the association in summary without names.**

Reasons for Penalty Decision

Items 1 through 5 of the penalty were accepted from the JSP, the panel finding no reason not to accept them.

In respect to Item 6 of the penalty, the panel considered that publishing without names was appropriate, as there was no evidence of a continuing danger to the public arising from the member's practice of engineering, the length of time that had elapsed since this incident, and the lack of any evidence of subsequent incidents of professional misconduct.

Following the hearing, the member waived his right to appeal and the panel administered an oral reprimand.

The written Decision and Reasons were dated June 7, 2006, and were signed by William Walker, P.Eng., as the Chair of the panel, on behalf of the other members of the panel: Kam El Guindi, P.Eng., Ravi Gupta, P.Eng., Santosh Gupta, P.Eng., Colin Moore, P.Eng., and Derek Wilson, P.Eng. It should be noted that El Guindi had to withdraw from the panel after the first day and hence was unable to participate in the panel's deliberation and decision in this matter.

Discipline Hearing Schedule

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

Anyone wishing to attend a hearing should contact the complaints and discipline coordinator at extension 1072.

All hearings commence at 9:30 a.m.

NOTE: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference regarding the status, qualifications or character of the licence or Certificate of Authorization holder should be made based on the allegations listed herein.

April 16-20, 2007

Daniel T. Orrett, P.Eng.

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

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

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

Notice of Licence Revocation—Tony Kahil

Pursuant to an order of the Discipline Committee dated November 16, 2005, the licence of Tony Kahil was revoked effective February 23, 2007, because he failed to write and pass the Professional Practice Examination with the specified timeframe. The Decision and Reasons of the Discipline Committee relating to this matter were published in the May/June 2006 edition of Gazette.

Gazette editorial objectives and policy

Gazette was first published in March/April 1982 as a means of highlighting the activities of the then department of legal and professional affairs. While that first issue included a brief note from the director of legal and professional affairs outlining the purpose and possible content for Gazette, there had never been a formal editorial policy or set of objectives for the publication.

In April 2004, the CEO/Registrar approved the following as the Gazette editorial objectives and policy:

- Gazette is a regular feature of *Engineering Dimensions*, which is the official journal of Professional Engineers Ontario (PEO). The manager, complaints and discipline at PEO serves as the editor of Gazette.
- Gazette is intended to highlight the activities of the Regulatory Compliance department in its administration of the relevant portions of the *Professional Engineers Act*, including complaints and discipline processes, enforcement against unlicensed practitioners, and Registration Committee processes.
- Pursuant to sections 28(4)(i), 28(5) and 28(6) of the Act, Gazette is the vehicle for the publication of findings and orders of the Discipline Committee, in detail or summary form, and with or without reference to names as ordered by the Discipline Committee. If the Discipline Committee does not specify summary or detail form in an order, the form of publication is at the discretion of the editor.
- Each issue of Gazette will include a schedule of Discipline Committee hearings, indicating the name of the licence holder and/or Certificate of Authorization holder facing disciplinary action and a summary of the allegations against them. At such time when Registration Committee hearings become open to the public, each issue of Gazette will also include a schedule of such hearings, including the name of the applicant and a summary of the circumstances resulting in the need for a hearing.
- Gazette will report the results, in summary form, of any hearings of the Registration Committee that were open to the public.
- Gazette will also include summaries of enforcement activities including the reporting of the results of any charges laid against individuals or corporations pursuant to sections 39, 40 and 41 of the Act.
- Gazette may report the results of any examination of PEO's procedures for the treatment of complaints that has been carried out by the Complaints Review Council pursuant to section 26(1) of the Act.
- Gazette may also include articles and information relating to regulatory matters that are considered relevant to professional engineers and the practice of professional engineering, including information and issues relating to compliance with demand-side legislation (e.g. *Ontario Building Code, Occupational Health and Safety Act*).

Call For Standing Offers—Independent Experts for Complaints and Discipline Matters

In order to reduce the time required to investigate complaints, PEO is streamlining its process for identifying and retaining the independent experts who are used to support certain complaint investigations. PEO would like to establish a cadre of pre-qualified independent experts, from a variety of engineering disciplines, who can be called upon to provide independent expert services on an as-required basis and on pre-agreed terms. To that end, PEO is issuing a Call for Standing Offers. Interested firms and individuals who meet the requirements detailed in the associated “Request for Proposal” document are invited to submit proposals to PEO to enter into standing offer agreements for the provision of independent expert services.

From time to time in the course of a complaint investigation, PEO will retain an independent expert to review the work of another practitioner and express an opinion with respect to any errors, omissions and deficiencies in that work. Independent experts are also asked to comment on the acceptable standard of practice for work of the type in question. If a formal complaint is filed with the Registrar, the independent expert may be asked to review and comment on the practitioner’s response to the complaint.

In situations where a complaint is referred to the Discipline Committee, the independent expert will likely be asked to provide further services, including review and comment on expert reports produced for the defence, and providing expert witness testimony during the discipline hearing.

In addition, in the absence of a complaint, if there is a situation where the Registrar believes on reasonable and probable grounds that a practitioner has committed an act of professional misconduct or incompetence, or that there is cause to refuse to issue or to suspend or

revoke a Certificate of Authorization, the Registrar may appoint one or more people to investigate whether such an act has occurred or whether there is such cause, and the person or people appointed shall report the result of the investigation to the Registrar (see section 33(1) of the *Professional Engineers Act*).

Minimum qualifications for independent experts:

- P.Eng. status in Ontario
- 15 years of experience in the designated engineering discipline;
- past experience giving testimony as an expert witness (in a court or before a tribunal); and
- clean discipline history (i.e. no findings of professional misconduct or incompetence in any engineering jurisdiction).

Additional desirable characteristics:

- consulting engineer designation by PEO; and
- membership in Consulting Engineers of Ontario.

Proposals for Standing Offers are sought in relation to the following engineering disciplines:

Civil—Structural (wood/concrete/steel/other)
 Civil—Municipal
 Civil—Geotechnical
 Civil—Transportation/Traffic
 Electrical—Power Engineering (generation/distribution/commercial-industrial use)
 Electrical—Control Systems
 Environmental—Soil and Groundwater
 Environmental—Water Supply and Wastewater Treatment
 Environmental—Drainage
 Geological—Mining/Resources

Mechanical—HVAC (residential/commercial/industrial)
 Mechanical—Machine Design

NOTE: This list reflects PEO’s most frequent demand for independent expert services. PEO will gladly consider standing offer proposals from qualified firms and individuals for services related to engineering disciplines not on this list.

To maximize flexibility, PEO anticipates entering into multiple standing offer agreements for each discipline listed.

For further information

The complete request for proposals document can be found on PEO’s website at www.peo.on.ca. Individuals and firms wanting to respond to this call for standing offers should first obtain and review the request for proposals, which includes various terms and requirements not detailed herein.

All individuals and firms interested in providing independent expert services to PEO, including those who have done so in the past, should respond to the call for standing offers to be considered for future work.

An information meeting will be held at PEO’s offices on **Thursday, April 12, 2007 at 1:30 p.m.** for all interested parties. Please contact Chetan Mehta, manager, purchasing, at 416-840-1084, email: cmehta@peo.on.ca, if you would like to attend or if you require additional information. Attendance at the information session is not a prerequisite for submitting a proposal.

Standing offer proposals are due at PEO no later than **Thursday, April 19, 2007 at 4:30 p.m.** Please see the request for proposals document for further information about quantities and format.