COMPILED BY BRUCE MATTHEWS, P.ENG.

Summary of 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:

Vinodbhai Patel, P.Eng.

a member of the Association of Professional Engineers of Ontario.

This matter came on for hearing before a panel of the Discipline Committee from May 24 through 27, 2005, at the offices of the Association of Professional Engineers of Ontario in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Vinodbhai Patel, P.Eng., was represented by Roger Chown, P.Eng., of Carroll Heyd Chown.

The Allegations

The allegations against Vinodbhai Patel, P.Eng., ("Patel") in the Notice of Hearing dated November 4, 2004, included incompetence and professional misconduct, the particulars of which are summarized as follows:

1. Patel was at all material times a member of the Association of Professional Engineers of Ontario ("PEO"). At all material times, Patel did not hold a Certificate of Authorization issued by PEO.

2. On September 3, 2002, Cougar Automation Technologies Inc. ("CAT") retained Patel as a contract "project manager/senior control engineer" for two projects.

3. On September 4, 2002, Patel executed an agreement of employment ("Contract of Employment") with CAT that provided, among other things, that Patel "would determine technical strategies utilized by a project and work as the architect for projects, defining interfaces and high-level operational items." The Contract of Employment was for a period of four months commencing on September 9, 2002. One of the two projects Patel was to be involved in involved the upgrading of safety equipment in a Parmalat Canada ("Parmalat") warehouse located in Mississauga, Ontario.

4. Also in September 2004, Patel received documents related to the Parmalat project that set out the scope of services to be provided by Patel for the project, including that he would: 1) be responsible for completing the electrical design based on the proposed functional solution, ensuring that the design satisfied safety requirements; 2) be responsible for identifying any deficiencies in the proposed functional solution that would render the final solution as non-compliant to the *Occupational Health and Safety Act*, Industrial Regulation 851, or any common safety expectations; and 3) stamp the electrical design changes that were made by Patel as part of the safety upgrade project.

   The scope of services set out above was provided to Patel by CAT at the outset of the project. Patel was also provided with project documentation, including the Warehouse Safety Upgrade Proposal, supplemental proposals and a functional description. Patel was instructed that it was imperative that the intent implied by these documents be adhered to, especially with respect to safety.

5. On September 24, 2002, Patel toured the Parmalat facility. CAT provided instructions to Patel on matters related to safety requirements and provided relevant Allen-Bradley Safety Components manuals.

6. On September 30, 2002, Patel conducted a design review and a second site visit for functional determination.

7. On October 1, 2002, Patel reviewed the hydraulic circuitry. Patel had been advised that the hydraulic circuit would require bleed valves to ensure the hazardous pallet grip fingers would stop in sufficient time for compliance with light curtain distance calculations. However, the draft drawing prepared by Patel did not show any details of the hydraulic bleed valves.

8. On October 10, 2002, Patel reviewed the wiring requirements of the existing Emergency-stop/Master Control Relay circuitry. However, Patel's draft design did not provide circuitry for stopping the motors in the Catwalk, Level Up or Cross Dock area in the event of an Emergency-stop. The motor Emergency-stop capability was routed from remote racks to the main controller only through software over

a communications network. This was in violation of basic safety principles. Further, the *Occupational Health and Safety Act* and the *Regulations for Industrial Establishments*, R.R.O. 1990, Reg. 851, and the requirements of EN 954-1, *Safety of Machinery–Safety related parts of control systems, Category 3*, required that the Emergency-stop devices be hard-wired and not affected by, or routed through, the programmable system.

9. By letter to CAT dated November 4, 2002, Patel submitted his resignation with an effective date of November 7, 2002.

10. On November 4, 2002, Patel provided draft drawings that he identified as being virtually complete. CAT later identified incomplete items.

11. During the week of November 11, 2002, CAT conducted a detailed review of the project. CAT identified numerous deficiencies in Patel's draft design, which resulted in non-compliance with the *Occupational Health and Safety Act* and the *Regulations for Industrial Establishments*, R.R.O. 1990, Reg. 851 and the requirements of EN 954-1, *Safety of Machinery–Safety related parts of control systems, Category 3*.

12. There were other concerns regarding Patel and his draft design, including complaints from parts distributors that Patel frequently changed items on the purchase order, failure to identify wiring termination points, and impractical panel layout.

13. Also on November 11, 2002, CAT conducted a preliminary review with Patel regarding the deficiencies. Patel was unable to address the deficiencies and unable to explain details of his draft design. CAT determined that Patel's draft designs were not in a state that could be implemented.

14. During the week of November 11, 2002, CAT conducted a detailed review of the project. The complete electrical drawing package was redesigned by CAT in order to meet the installation deadline of November 16, 2002.

15. By letter to Patel dated December 17, 2002, CAT expressed dissatisfaction with Patel's services and indicated that the deficiencies in Patel's draft design had damaged CAT's relationship with Parmalat.

16. By letter to Patel dated January 10, 2003, CAT indicated that Patel had not met the terms of the Contract of Employment. CAT proposed a meeting with Patel on January 23 or 28, 2003 to resolve the outstanding issues that resulted from the non-fulfillment of the terms of the Contract of Employment.

17. A third party review of the CAT complaint was conducted by Stantec Consulting Ltd. ("Stantec"). Stantec issued a report dated August 20, 2003 that identified numerous deficiencies in Patel's draft design, which resulted in non-compliance with the *Occupational Health and Safety Act* and the *Regulations for Industrial Establishments*, R.R.O. 1990, Reg. 851 and the requirements of EN 954-1, *Safety of Machinery–Safety related parts of control systems, Category 3*.

18. In summary, it appeared that Vinodbhai Patel, P.Eng.:

(a) breached section 12(2) of the *Professional Engineers Act* by offering and providing professional engineering services when not in possession of a Certificate of Authorization;
(b) provided a draft safety system design for the Parmalat Canada warehouse facilities that failed to meet the requirements of the *Occupational Health and Safety Act* and Industrial Establishments Regulation 851;
(c) provided a draft safety system design for the Parmalat Canada warehouse facilities that contained errors, omissions and deficiencies;
(d) undertook work he was not competent to perform;
(e) failed to maintain the standards that a reasonable and prudent practitioner would maintain in carrying out a contract in a professional manner; and
(f) acted in a disgraceful and unprofessional manner.

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

20. 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;
(d) *Section 72(2)(g)*: breach of the Act or regulation, 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 profes-

sional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Plea by Member

Patel originally denied the allegations of professional misconduct and incompetence. However, on May 27, 2005, Patel changed his plea and admitted to the allegations of professional misconduct as defined by sections 72(2)(a), 72(2)(d), 72(2)(g) and 72(2)(j) as set out in paragraph 20 above and as agreed jointly by counsel for the association and counsel for Patel. The panel conducted a plea inquiry and was satisfied that Patel's plea was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the association advised the panel that agreement had been reached on the facts and that the facts as set out in paragraphs 1 through 17 above could be treated as an Agreed Statement of Facts as Patel was pleading "no contest" to those facts.

Decision

After deliberation, the panel unanimously accepted Patel's plea and accordingly found Patel guilty of professional misconduct as defined by sections 72(2)(a), 72(2)(d), 72(2)(g) and 72(2)(j), under Regulation 941.

Reasons for Decision

The panel accepted the Agreed Statement of Facts and Patel's plea, which substantiated the findings of professional misconduct.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon and that the association was satisfied that the Joint Submission was fair and reasonable and was in line with similar cases. Counsel for Patel advised that all matters were agreed.

After deliberation, the panel unanimously accepted the Joint Submission as to Penalty, as amended and dated May 27, 2005, and therefore the panel ordered:

1. **that Patel receive an oral reprimand and that the fact of the reprimand be recorded on the Register of the association until the successful completion of the examinations or equivalent course mentioned in paragraphs 3 and 4 below;**

2. **that the licence of Patel be suspended for a period of one month, effective May 27, 2005;**

3. **that Patel write and pass both parts of the Professional Practice Examination ("PPE") (being Part A and Part B) within 18 months from May 27, 2005;**

4. **that Patel write and pass the 98-Elec-B3 Advanced Control Systems examination ("ACS"), or take and pass an equivalent advanced control systems course at an accredited Canadian university (such course to be approved in advance by the association), within 18 months from May 27, 2005;**

5. **in the event that Patel fails to successfully complete the PPE and ACS (or equivalent course) within the prescribed time set out in paragraphs 3 and 4, his licence is to be again suspended until such time as he successfully completes the PPE and ACS;**

6. **in the event that Patel fails to successfully complete the PPE and ACS (or equivalent course) within 30 months from May 27, 2005, his licence shall be revoked;**

7. **that Patel pay costs to the association fixed in the amount of $10,000, such costs to be paid within 30 months of May 27, 2005; and**

8. **that a summary of the Decision and Reasons of the Discipline Committee be published, including reference to names, in the official publication of the association.**

Reasons for Penalty

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

Waiver of Right to Appeal

Counsel for Patel advised the panel that Patel will not be appealing the decision of the panel and a waiver of appeal was filed with the panel, following which the panel delivered the oral reprimand.

The written Decision and Reasons in this matter were dated July 4, 2005, and were signed by the Chair of the panel, Phil Maka, P.Eng., on behalf of the other members of the panel: Monique Frize, P.Eng., Derek Wilson, P.Eng., Seimer Tsang, P.Eng., and Santosh Gupta, P.Eng.

Notice of Licence Revocation–Marc Le Maguer

At a discipline hearing held on January 9, 2006, at the offices of the association in Toronto, the Discipline Committee ordered the revocation of the licence of **Marc Le Maguer** 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:

William C. Wong, P.Eng.

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

Construction Testing Laboratories Limited

a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on April 25, 2005, at the offices of the Association of Professional Engineers of Ontario in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. William C. Wong, P.Eng., and Construction Testing Laboratories Limited were represented by Amar P. Singh of Singh Lynn LLP.

The Allegations

The allegations against the member, William C. Wong, P.Eng., and Construction Testing Laboratories Limited, as stated in the Fresh Notice of Hearing dated April 22, 2005, were as follows:

It is alleged that William C. Wong, P.Eng., (hereinafter "Wong") and Construction Testing Laboratories Limited (hereinafter "CTLL") are guilty of professional misconduct, the particulars of which are as follows:

1. Wong was at all material times a member of the Association of Professional Engineers of Ontario.

2. CTLL 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. Wong was the professional engineer responsible for the services provided by CTLL.

3. In 1992, Fero Corporation (hereinafter "Fero"), a masonry tie manufacturer located in Edmonton, Alberta, issued a product brochure for Slotted Block-Ties (Type I), which contained performance and dimensional data for that product.

4. On July 27, 1998, Wong, then manager of CTLL in Mississauga, received a verbal request from Blok-Lok Ltd. (hereinafter "Blok-Lok") to perform laboratory testing of Blok-Lok masonry ties in order to determine working loads and serviceability parameters (free play and deflection) associated with the masonry ties.

5. CTLL issued report SF98-03 to Blok-Lok dated August 4, 1998, which was sealed and signed by Wong on February 23, 1999 (hereinafter "SF98-03, Version 1"). Wong reported that all testing of masonry ties was performed according to CSA Standard A370-94, *Connectors for Masonry* (hereinafter the "CSA Standard"). Wong further concluded that the assembled Blok-Lok "tie system" met load, deflection and free play requirements of the CSA Standard.

6. CTLL Report SF98-03, Version 1, contained a "Materials List" that stipulated under "Structural Backing" that "L" brackets were fastened to a 2" x 2" x 0.125" hollow steel section with 1/4" bolts as opposed to the requirements of the CSA Standard clause 12.2.1.

7. CTLL Report SF98-03, Version 1, included tables for load test data where failures were identified as follows: "L" brackets that buckled under compression tests and the slots in the "L" brackets that deformed under tensile tests. CTLL Report SF98-03, Version 1, failed to include measured Maximum Displacement Values as required by the CSA Standard.

8. Table No. 1 of CTLL Report SF98-03, Version 1, *Recommended Design Loads and Deflections of Slotted Ties Manufactured by Blok-Lok Ltd.*, established values for free play, deflection, design load and design load deflection. The notes in Table No. 1 represent that a safety factor value of 3.0 was used when there is no basis for application of a safety factor value of 3.0 in the relevant CSA Standard.

9. In Note iv of Table No. 1 of CTLL Report SF98-03, Version 1, it was asserted that the design values contained in Table No. 1 were "based on test results utilizing 16 GA. T304 ST. STL slotted L-Plate two steel self-tapping screw fasteners, measuring 0.211" in diameter with 1.5" long shanks for

the 1/4" diameter holes on the slotted L-plate, and a 3/16" diameter T304 ST. STL V-tie. The fasteners were screwed into an 18 gauge 6" steel stud with 1/2" Dens-Glass Gold Drywall sheathing between the stud (steel channel) and slotted L-plate." While the above noted wall construction is of poor design, the test procedures noted are otherwise generally consistent with the CSA Standard.

10. Another version of CTLL Report SF98-03, Version 1, also dated August 4, 1998 (hereinafter "SF98-03, Version 2"), was distributed by Blok-Lok within the masonry construction industry, along with its product brochure featuring BL-407 masonry ties. These ties were depicted in the Blok-Lok brochure as having a vertical adjustability of 11/2". CTLL Report SF98-03, Version 2, also bearing Wong's seal, included data tables that differed from those of CTLL Report SF98-03, Version 1. These differences included a factor of safety, reported measurements, recommended design load and deflection, and a different test configuration. CTLL Report SF98-03, Version 2, further included a data table that contained unrealistic measured maximum deflection values for such materials, thereby suggesting an error in testing.

11. Note iv of Table No. 1 of CTLL Report SF98-03, Version 2, asserted that the design values contained were "based on test results utilizing 16 GA. T304 ST. STL slotted L-Bracket, and a T304 stainless steel brick tie measuring 4.76 mm in diameter, 80 mm long with 40 mm long embedment legs. The L-Bracket was mounted onto a 2" x 2" x 0.125" thick hollow steel section using 1/4" steel bolts, in order to simulate an incompressible backing." The above noted testing by Wong and CTLL, as set out in Note iv of CTLL Report SF98-03, Version 2, is not in compliance with the CSA Standard.

12. Note iv of CTLL Report SF98-03, Version 2, represents that different testing and methodology was utilized by Wong and CTLL to arrive at the same values as those contained in CTLL Report SF98-03, Version 1 (as particularized in paragraphs 6 to 9 above).

13. Blok-Lok distributed copies of CTLL Report SF98-03, Version 2, and related product information to, amongst others, designers of wall systems in Ontario.

14. On August 25, 1998, Wong and CTLL issued a signed and sealed report BL98-05 for Blok-Lok's 8" Corrugated Block Ties (hereinafter "BL98-05"). Blok-Lok distributed CTLL Report BL98-05, accompanying its brochure for BL-507 masonry ties having a 50 mm vertical adjustment length. As in the two versions of CTLL Report SF98-03, CTLL Report BL98-05 included a conclusion, indicating that the assembled Blok-Lok "tie system" met load, deflection and freeplay requirements of the CSA Standard.

15. On April 8, 1999, Blok-Lok requested that Wong and CTLL provide a comparison of design and physical tests between the corrugated/slotted block ties made by Blok-Lok and those made by Fero.

16. In a sealed and signed report BL99-01 to Blok-Lok dated April 8, 1999 (hereinafter "BL99-01"), Wong and CTLL concluded that "the two ties should provide equivalent field performance and service life." The comparison parameters used included: free play, deflection, design load, thickness of certain sections, height, embedment length and overall length of the ties. CTLL Report BL99-01 was subsequently made available to the industry by Blok-Lok.

17. In a letter to Wong dated September 8, 1999, Michael Hatzinikolas, P.Eng. (hereinafter "Hatzinikolas"), president of Fero, made comments regarding CTLL Reports SF98-03 and BL99-01, which included:

(a) Fero connectors were "superior for both field performance and service life," and each component and each feature on the component were engineered not only to have met the CSA Standard, but also exceeded its minimum requirements in most instances;
(b) one of the Fero connector features missed in the evaluation by Wong was the opening holes on the connectors, which were engineered to minimize thermal bridging;
(c) if Wong were more familiar with masonry connectors, he would have recognized that the reduction in thermal bridging was to minimize condensation on the connection to the backup structure that lies inside the insulation. Such condensation could leave the connection vulnerable to deterioration with a consequence of significant reduction in service life. Hatzinikolas contended that this one feature alone invalidated Wong's conclusion of equivalent service life;
(d) Fero connectors had been tested with masonry assemblies by modelling the testing arrangements as suggested by the CSA Standard. By contrast, CTLL's testing was very limited; and
(e) that load capacity of connectors related to the assembly and not to the individual pieces and that the governing mechanism of failure was at times the pull-out strength from the masonry assembly at the critical location within the wall.

18. In the same letter of September 8, 1999, Fero requested that Wong and CTLL advise Blok-Lok by September 20, 1999, in writing, that he was withdrawing his certification of equivalence and that CTLL's tests on Blok-Lok connectors met only certain minimum CSA Standard requirements and did not compare with the superior features of Fero connectors. Furthermore, Fero required CTLL to obtain a listing of industry persons and companies that

received the equivalency certification report and to write to each by registered mail by the end of October 1999, withdrawing that certification. Wong and CTLL failed or refused to comply with Fero's requests.

19. On January 6, 2000, upon another verbal request by Blok-Lok, Wong and CTLL agreed to provide testing and evaluation services for another of its non-conventional adjustable box tie products.

20. In a sealed report BL00-03 to Blok-Lok dated January 17, 2000 (hereinafter "BL00-03"), Wong included comments with respect to testing and test results, such as:
(a) The testing was performed according to the CSA Standard;
(b) The adjustable box "tie system" as assembled met the "load deflection requirements of CSA 370-94;" and
(c) All of the ties tested exceeded the ultimate tensile strength requirement of 1000 N.

21. CTLL Report BL00-03 listed the following materials for the test assemblies: six brick box ties, three sets of "L" hook connectors, and a concrete slab used to anchor the ties in order to "realistically simulate" the loads acting on the "tie connector system."

22. In CTLL Report BL00-03, Wong provided performance test tables with a "34 mm Leg Length" notation. Wong also included the type of failure noted for compression tested ties as "L-hook Buckled," along with incremental load and maximum load and displacement data for the ties tested in tension and the ties tested in compression. CTLL Report BL00-03 went into circulation together with the System 2000 brochure issued by Blok-Lok.

23. In or about April 2000, Hatzinikolas requested that Gary R. Sturgeon, P.Eng. (hereinafter "Sturgeon"), a code development engineer for Masonry Canada in Alberta, provide comments on CTLL Report BL00-03.

24. By letter dated April 19, 2000, Sturgeon concluded that CTLL's test did not satisfy the CSA Standard and that it was not appropriate for Wong to conclude that the non-conventional adjustable box ties satisfied the requirements of the CSA Standard. Non-compliance with the CSA Standard noted by Sturgeon included:
(a) The sampling size taken by Wong and CTLL in their load and free play tests was inadequate (CSA Standard clauses 12.1.3 and 12.4.2);
(b) Wong did not clearly state if the position of maximum adjustment was tested nor indicate if the requirements of CSA Standard clause 8.3.2.4 were met; and
(c) Cavity width, having an effect on stiffness and strength of the ties under compression, was unavailable.

25. In summary, it appears that Wong, and CTLL:
(a) with respect to CTLL Report SF98-03, Versions 1 and 2:
    (i) did not correctly load the test specimen as the surcharge load was omitted and without an explanation,
    (ii) failed to test the specimens at the required number of positions of adjustability, thus failing to test for different modes of failure,
    (iii) utilized a test configuation that did not reflect as-built conditions or closely simulate loading under service conditions,
    (iv) represented that it utilized different testing and methodology to arrive at the exact same values for free play, deflection, design load and design load deflection in the two versions of CTLL Report SF98-03,
    (v) stated that the factor of safety utilized in Version 1 of CTLL Report SF98-03 was 3.0, a factor of safety that is unrecognized by, and non-compliant with, the CSA Standard,
    (vi) did not clearly report the mode of failure for compression tests as "Material Failure" or "Elastic Buckling," resulting in confusion regarding the appropriate factor of safety to be applied (i.e. 2.0 versus 4.0),
    (vii) while utilizing a factor of safety of 2.0 in CTLL Report SF98-03, Version 2, have not made it clear how they calculated a load design value of 0.79 kN,
    (viii) in Table 2 of CTLL Report SF98-03, Version 2, the deflection at maximum load is either not reported or reported incorrectly,
    (ix) the two versions of CTLL Report SF98-03 exclude a statement cautioning the user against attachment of the "L" bracket to steel stud walls, and
    (x) the reports are incomplete, potentially misleading and contain errors that could result in walls that are under-designed and not safe;
(b) with respect to CTLL Report BL98-05:
    (i) failed to correctly load the sample as no surcharge note was noted to be applied to the brick wall without any rationale being provided for the omission,
    (ii) failed to test the specimens at the required number of positions representing the full range of adjustability, resulting in incomplete testing,
    (iii) failed to report the cavity width,
    (iv) did not clearly report the mode of failure for compression tests as "Material Failure" or "Elastic Buckling," resulting in confusion regarding the appropriate factor of safety to be applied (i.e. 2.0 versus 4.0),
    (v) while utilizing a factor of safety of 2.0, have not made it clear how they calculated a recommended load design value of 1.0 kN, and
    (vi) the report is incomplete, potentially misleading and contains

errors that could result in walls that are under-designed and not safe;

(c) with respect to CTLL Report BL99-01, reported that corrugated/slotted block ties made by Blok-Lok and those made by Fero should provide equivalent field performance and service life, despite the fact that several design values were different and Wong and CTLL had not assessed "field performance" but, instead, only assessed a limited set of loading conditions;

(d) with respect to CTLL Report BL00-03:
  (i) reported that tests had been conducted in accordance with CSA Standard A370 despite the following:
    (a) having calculated a variance factor (psi) for free play, compression and tension after performing only six test samples when the CSA Standard requires that 10 samples be used, and
    (b) not having loaded the sample in compliance with the CSA Standard in that no wall assembly was constructed, no test of embedment was made, and only the metal components of the required wall assembly were tested,
  (ii) failed to calculate recommended design load in accordance with the CSA Standard, but reported a material failure load only, resulting in an overstatement of compliance of the tie with the standard,
  (iii) failed to clearly report the mode of failure for compression tests as "Material Failure" or "Elastic Buckling," resulting in confusion regarding the appropriate factor of safety to be applied (i.e. 2.0 versus 4.0),
  (iv) failed to test the specimens at the required number of positions of adjustability thus failing to test for different modes of failure, and
  (v) the report is incomplete, potentially misleading and contains errors that could result in walls that are under-designed and not safe;

(e) incorrectly reported that the tie products met the requirements of the CSA Standard, when they knew, or ought to have known, that neither the testing nor the design requirements of the CSA Standard were met in full;

(f) failed to comply with the CSA Standard by improperly and inaccurately performing tests and reporting incomplete results that they knew, or ought to have known, would be relied upon by designers for masonry wall design;

(g) inappropriately issued two versions of SF98-03, which provided different sets of design and test data, without indicating a revision;

(h) concluded that Fero and the Blok-Lok ties were equivalent without considering such factors as differences in reported safe loads, thermal bridging and failure behaviour; and

(i) acted in an unprofessional manner.

By reason of the aforesaid, the Association of Professional Engineers of Ontario alleged that Wong and CTLL were guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

26. "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."

27. 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;

(d) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; 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.

Counsel for the association advised that the association was not seeking a finding with respect to section 72(2)(h).

Plea by Member and Holder

Wong and CTLL admitted all of the allegations set out in paragraphs 1 to 27 in the Fresh Notice of Hearing. The panel conducted a plea inquiry and was satisfied that their admission was voluntary, informed and unequivocal.

Decision

The panel deliberated and found that the facts support a finding of professional misconduct and, in particular, found that Wong and CTLL committed an act of professional misconduct as alleged in the Fresh Notice of Hearing. Specifically, the panel found that Wong and CTLL were guilty of professional misconduct as set out in sections 72(2)(a), 72(2)(b), 72(2)(d) and 72(2)(j) of Regulation 941. The panel made no finding as to section 72(2)(h).

Reasons for Decision

The panel accepted Wong's and CTLL's plea and admission of the facts as set out

in the Fresh Notice of Hearing, which substantiated the panel's findings of professional misconduct. In particular, the panel's finding of professional misconduct as set out in section 72(2)(a), section 72(2)(b) and section 72(2)(d), are based upon the facts set out in:

(a) paragraph 25(a) of the Fresh Notice of Hearing and, in particular, paragraph 25(a)(x);

(b) paragraph 25(b) of the Fresh Notice of Hearing and, in particular, paragraph 25(b)(vi);

(c) paragraph 25(d) of the Fresh Notice of Hearing and, in particular, paragraph 25(d)(v); and

(d) paragraphs 25(e), 25(f), 25(g), 25(h) and 25(i).

The panel's finding of professional misconduct as set out in section 72(2)(j) is based upon the facts set out in paragraph 25 and, in particular, paragraph 25(i) of the Fresh Notice of Hearing.

Joint Submission on Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty ("JSP") had been agreed upon. The panel confirmed that the JSP was accepted by Wong and CTLL. The JSP provides as follows:

1. a reprimand of both the member, Wong, and the Certificate of Authorization holder, CTLL, and that the reprimand be recorded on the Register;

2. that Wong shall write and successfully complete the Professional Practice Examinations, Parts A and B (the "examinations") within 12 months of the date of the order;

3. that in the event Wong fails to write and successfully complete the examinations within the 12-month period commencing on the date of the order of the Discipline Committee, that the licence of Wong shall be suspended until such time as he writes and passes the examinations;

4. that Wong's designation of "Consulting Engineer," and the permission of CTLL to use the consulting engineer's title, shall be suspended until Wong has written and successfully completed the examinations;

5. that in the event Wong fails to write and successfully complete the examinations within 24 months from the date of the order, his licence to engage in the practice of professional engineering shall be revoked; and

6. that Wong and CTLL shall pay costs of the disciplinary proceeding fixed in the sum of $4,000 within 12 months of the date of the hearing (April 25, 2005).

Neither counsel for the association nor counsel for Wong and CTLL submitted further evidence.

Counsel for the association noted that the panel should accept the JSP without change and submitted that the facts of the matter supported such a decision. Furthermore, counsel for the association submitted that the misconduct by Wong and CTLL was significant in scope, involved a number of reports over time that fell below the standards for such reports, which may have resulted in under-designed walls being constructed. Counsel for the association submitted that the penalty was within the appropriate range and took into account the mitigating circumstances whereby Wong admitted the allegations and cooperated with the investigators for the association (thereby reducing the costs to investigate and prosecute this matter). Counsel for the association submitted that Wong's behaviour demonstrated a level of understanding of the seriousness and acknowledgement of the misconduct.

Counsel for the association submitted that a reprimand is a serious penalty that will significantly impact Wong and CTLL, in particular since the findings will be published with names in accordance with the guidelines for the Discipline Committee. Counsel for the association noted that this was the first time Wong and CTLL had been before a panel.

Counsel for the association cited the applicable case law that sets out the approach for the panel to consider the JSP. In particular, to reject the JSP the panel would have to believe that the penalty would be contrary to the administration of justice to the point that it would bring it into disrepute or would create a miscarriage of justice. Counsel for the association noted that accepting the JSP would benefit the potential victims, the witnesses and the association. In addition, Counsel submitted that this included even minor changes to the JSP.

Counsel for the association summarized that the penalty is within the range for a first offence with an admission of guilt and that it would fulfill all of the requirements for a penalty, in particular, to protect the reputation of the profession, contribute to the specific deterrence and to general deterrence amongst members of the profession, and contribute to the rehabilitation of Wong.

Counsel for Wong and CTLL submitted that Wong expresses remorse for his actions, that Wong has suffered professionally and personally as a result of those actions, and that Wong will continue to bear the consequences in the future.

Counsel for Wong and CTLL submitted that Wong has learned a valuable lesson and Wong pledged that this will be the last time that he is placed in this position. Counsel for Wong and CTLL submitted that Wong agrees to the publication of the decision of the panel with names.

Independent legal counsel for the panel advised the panel that it has the discretion to accept or reject the JSP. Independent legal counsel submitted that the panel should accept it for the following reasons: It is based upon the work of experienced counsel and that it addressed and strikes an appropriate balance between the actions by Wong and CTLL and the consequences of those actions.

In addition, independent legal counsel advised the panel that it must have good cause to reject or vary a JSP and that such good cause must be that the panel believes that accepting it would bring justice into disrepute or otherwise not be in the public interest. Independent legal counsel noted that the benefits of accepting the JSP were to the member, the association and to the public. Independent legal counsel submitted that he considered the penalty to be within the appropriate range.

Counsel for the association agreed with the advice by the independent legal counsel and counsel for Wong and CTLL stated that he had nothing further to add.

Penalty Decision

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

1. **that both Wong, and the Certificate of Authorization holder, CTLL, be reprimanded, and that the reprimand be recorded on the Register;**

2. **that Wong shall write and successfully complete the Professional Practice Examinations, Parts A and B (the "Examinations") within 12 months of the date of the order;**

3. **that in the event Wong fails to write and successfully complete the examinations within the 12-month period commencing on the date of the order of the Discipline Committee, the licence of Wong shall be suspended until such time as he writes and passes the examinations;**

4. **that Wong's designation of "Consulting Engineer," and the permission of CTLL to use the consulting engineer's title, shall be suspended until Wong has written and successfully completed the examinations;**

5. **that in the event Wong fails to write and successfully complete the examinations within 24 months from the date of the order, his licence to engage in the practice of professional engineering shall be revoked;**

6. **that Wong and CTLL shall pay costs of the disciplinary proceeding fixed in the sum of $4,000 within 12 months of the date of the hearing (April 25, 2005); and**

7. **that the decision of the panel be published with names.**

Reasons for Penalty

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

Wong waived his and CTLL's right to appeal and, following the hearing, the panel administered an oral reprimand.

The written Decision and Reasons in this matter were dated June 23, 2005, and were signed by the Chair of the panel, David Robinson, P.Eng., on behalf of the other members of the panel, Kam El Guindi, P.Eng., Nick Monsour, P.Eng., Glenn Richardson, P.Eng., and Seimer Tsang, P.Eng.

Summary of 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:

Mohammad R. Panahi, P.Eng.

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

Company A

a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on October 14 and 15, 2004, at the offices of the Association of Professional Engineers of Ontario in Toronto. The association was represented by John Abdo of Cassels Brock & Blackwell LLP. Mohammad R. Panahi, P.Eng., and Company A were represented by David Waterhouse of Forbes Chochla LLP.

The Allegations

The allegations of professional misconduct against Mohammed Panahi, P.Eng., ("Panahi") and Company A were stated in the amended Notice of Hearing dated October 14, 2004, and can be summarized as follows:

1. Panahi was first licensed as a professional engineer in the province of Ontario on June 3, 1996, and Com-

pany A has been the holder of a Certificate of Authorization since November 19, 1999.

2. Since approximately 1990, a Toronto-area Condominium Corporation ("TCC") had retained Company B as its consulting engineers for a variety of building repair and rehabilitation projects. In May of 1997, Company B proposed, and TCC accepted, a four-year "strategic plan" to TCC for exterior wall repairs.

3. Between 1998 through 2000, Company B acted as a consultant for TCC for the exterior wall repair projects. In this role, Company B prepared designs and specifications for the wall repairs and tendered the work to various contractors.

4. Included in the specifications prepared by Company B was a February 5, 1998 document, which represented the first year of work of the four-year plan. This work was awarded to Contractor A and was completed on or about August 12, 1998. Company B provided field review services during the execution of that work.

5. TCC decided to tender the final three years of wall repair work as a single contract. Company B was retained to prepare the design and specifications, which included a June 10, 1998 document under Project No. 1982195.00. This work was awarded to Contractor B. While repair work was carried out in 1999 and 2000, work scope changes resulted in no work being done in 2001. Company B provided field review services during the execution of the work in 1999 and 2000.

6. In or about July 2002, TCC retained Panahi and Company A as consultants for further exterior wall repair work. Shortly thereafter, Panahi and Company A issued tender documentation to Contractor B to enable them to submit a bid for the work. The documentation issued by Panahi and Company A included specifications and drawings prepared by Company B in 1998. Specifically, Panahi and Company A utilized the Company B specifications and drawings, and the Company B name and logo were left on those documents. Panahi and Company A neither sought nor obtained permission from Company B to utilize the specifications and drawings.

7. After Contractor B was invited to bid, TCC asked Panahi and Company A to obtain a bid from Contractor A. By fax to Contractor A dated July 25, 2003, Panahi and Company A requested a quotation and made reference to the documentation prepared by Company B for the earlier work done by Contractor A.

8. On or about July 31, 2002, Contractor A contacted Company B regarding the specifications referenced by Panahi and Company A. Company B noted that they had no involvement in any 2002 wall repair project for TCC.

9. It appears that Panahi and Company A:
(a) utilized specification documents and drawings prepared by Company B without seeking or obtaining consent to do so;
(b) failed to advise their client as to the implications and/or limitations in using four-year-old documents and drawings prepared by another firm; and
(c) acted in an unprofessional manner.

10. By reason of the facts set out above, it is alleged that Panahi and Company A are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act* ("the Act") as follows:

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

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

11. The sections of Regulation 941 to the Act relevant to the alleged professional misconduct by Panahi and Company A are:
(a) *Section 72(2)(a)*: negligence, which is defined as an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
(b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible; and
(c) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all of the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Plea of the Member and Holder of a Certificate of Authorization

Panahi and Company A denied the allegations set out in the amended Notice of Hearing.

The Evidence

Counsel for the association called two witnesses:

Evidence of Witness A, P.Eng.

Witness A, P.Eng., testified that he was a principal with Company B and was the building project manager for the Toronto office. Much of its practice deals with the building envelope and the restoration of buildings, often after water penetration. TCC projects were about one-third of their projects.

TCC had water ingress problems for many years. Company B was asked to

investigate and recommend repairs. In 1996, TCC decided it was time to make repairs and these were done in 1996 and 1997. Company B was retained to do financial planning connected with further repairs and Witness A was directly involved from 1997 onwards.

In January 1998, Company B submitted a proposal to TCC for remedial work to be done during that year. This was to repair individual panels and to control water penetration and limit brick damage. Detailed specification tender documents were issued in February. The contract was awarded to Contractor A, who completed the work in 1998.

In the summer of 1998, the TCC board decided to complete the rest of the three-year plan, and in June the contract was awarded to Contractor B. Company B provided field review services.

Further work on the west wall was planned for 1999 but was only partially completed. The board of TCC decided not to proceed further. Late in 2000 the possibility of further work was discussed but Company B was not retained. They parted on friendly terms.

In 2002, Witness A received a phone call from Contractor A about a request from Company A for a quote on repair work on the southwest corner of TCC. This request referred to the fact that Company B designed and tendered the work in 1999 and referred to the general requirements prepared by Company B.

Witness A had no previous knowledge of Company A nor of any work being tendered by TCC. He was confused and surprised by the reference to Company B specs. The Company B specifications did not refer to the southwest corner, but the south wall was a mirror image of the north wall. He considered the request to be informal.

Witness A discussed this unusual request with his senior principals, and in August 2002 Witness A wrote to the board of directors of TCC advising them that Company A was soliciting bids using Company B design documents from 1999. He copied the letter to the local municipality, advising them that the drawings Company A referred to were not current and had not been stamped by a P.Eng. As Company B was not providing services to TCC and had no knowledge of the work contemplated, they would be unable to stamp any drawings. Witness A also copied this letter to PEO and Company A.

He testified he was concerned about protecting Company B and its reputation, and the owner who might be lacking a proper review. He was also concerned about protecting the public.

He had no response from Company A to his letter. It was common in the industry to ask permission to review documents. He considered this case to be an anomaly. He considered Company A was acting below the normal standards of integrity.

He was contacted by PEO, who explained the complaint process. Company B was eventually retained by TCC and panels in the west and southwest walls were replaced.

Cross-examination by Defence Counsel

Counsel for Panahi and Company A ("Waterhouse") noted that when testifying, Witness A frequently said "it appears." It seemed that most of Witness A's actions resulted from his assumptions based on the fax from Company A to TCC. He then wrote a letter to all parties and waited for response. Witness A testified he did not phone anyone at TCC to check his assumptions. Waterhouse suggested that, given his concerns, it would have been prudent to call Panahi or someone at TCC to determine their intentions. Witness A agreed.

Witness A testified that he wrote the letter to TCC with a copy to PEO, expressing his concerns with the intent of triggering an investigation by the complaints department of the association. He didn't believe he needed to further investigate what the facts really were before laying a complaint. He believed that decision was best left to the association. He further testified that a short time after writing his letter, he had a brief conversation with the president of TCC, who mentioned that he had asked for a price from Contractor B and Panahi had asked for a price from Contractor A. It was clear to Witness A then that the intention was to proceed with the work and that the information was not just for financial planning.

Witness A agreed that the allegations stating that certain work was awarded to Contractor A were not true. It referred to Contractor A and should have referred to Contractor B. The allegations also claimed that "the documentation issued by Panahi and Company included specifications and drawings prepared by Company B in 1998." Witness A agreed that this was not correct, but that Panahi's fax did refer to the Company B specifications and drawings. He agreed that he had inferred from the fax soliciting a price that this was the first step in undertaking the work. He had no other information of TCC's intentions or what Panahi's role in the project might be. If the intent was only to solicit a price, it might not be necessary to obtain permission from Company B to utilize the specifications and drawings. Witness A further testified that he had no information that Panahi had received a copy of, or had seen the specifications prepared by, Company B.

Re-examination by Counsel for the Association

Responding to questions by Abdo, Witness A testified that the formal complaint he signed for the association was based on his best, honest knowledge and understanding of what was happening at the time. He was aware that Panahi and Company A would have the opportunity to set out their position in response to his allegations. He received a copy of that response.

He did not know what Panahi's future involvement would be in the brick panel repair work. The statement "should you have any questions, please do not hesitate to contact our office" in the fax from Company A led him to assume such questions would be about the start date for the work and the extent of the work. It was clear to him that Company A expected to be involved in subsequent aspects of the work.

Responding to questions from the panel members, Witness A testified:

- Various areas of the building walls were sampled in Company B's original investigation to determine the

amount of deterioration. Based on this, the work was prioritized so the most serious deterioration was dealt with first. The decision as to which panels were replaced and the extent of the repairs was based on the actual conditions revealed.

- The Company B drawings and specifications became the property of TCC. As the client, they had the right to go to Company A for a quote.
- It was common practice to speak to competitors asking for information about their documents. If Company A had called him he would have shared his information with them.
- He was not aware of any work that had been done using Company B's drawings and specs.
- He did not know whether the Company B specs and drawings were sent out under Company A's name.

Evidence of Witness B

Witness B testified that he was a vice president at Contractor A. His responsibilities included project management and contract administration of building restorations, such as condominiums and residential and commercial property. He was familiar with TCC and was aware of the work done in 1998.

He did not previously know Panahi. He received Panahi's fax of July 25, 2002 and had a brief phone call–about 5 minutes–with him. He understood the condominium was experiencing leakage in the southwest corner and wanted to proceed with the work. He did not prepare any specifications and drawings.

Panahi referred to previous specifications and documents. A building permit would be needed for the work to proceed and up-to-date drawings and specifications would be needed to get this. He was asked to provide a quote and schedule in four days.

The implication was that the price was needed quickly for discussion with the condominium board. The request for a schedule suggested to him that the work would go ahead; it was not just a request for budget for financial planning purposes.

It was unusual in his experience to be asked to refer to another consultant's documents. It was also unusual to be asked to provide a price per panel with setup and take down costs. It seemed likely to him that Panahi had the Company B documents.

He expressed his concerns to his colleagues in the office. He felt it was a professional courtesy to phone Company B to tell them about a request for prices. He considered that Panahi had limited information. In the same situation with a different consultant he would have made the same decision to call them. He was uncomfortable with the situation, did not know Panahi, and decided not to quote.

Responding to questions from the panel members, Witness B testified:

- A normal time for a quote for tender was two to three weeks but could be less.
- The Company B specs and drawings were on file in his office.
- He often declined work if he was not comfortable with the owner.
- Formal tenders were not always required. You quoted and got the work or did not. He understood the condominium board would make the decision on price. He anticipated Panahi would supervise the work.
- It was standard practice to include disclaimers in quotes.
- He always visited the site before quoting.

This concluded the evidence on behalf of the association.

Counsel for the defence called the following witnesses:

Evidence of Panahi

Panahi testified that he graduated in 1993 with a Bachelor of Engineering degree in civil engineering. He started Company A in 1995. Its practice was in building science, especially environmental issues, plus project management and building management. Eighty per cent of its work was with condominium corporations.

He had been responsible for several projects at TCC. He was engaged to inspect the swimming pool, and to report and make recommendations. He investigated the garage and made recommendations for renovation. He also investigated exposed shear walls that were suffering from deterioration and prepared specifications and documents for their repair.

In July 2002, during a meeting with the property manager ("PM") for the TCC, the president of TCC walked in. He mentioned that the residents were complaining of leaks and he had asked Contractor B for a quote to repair these. The PM was concerned that the board should have more than a single quote and asked Panahi to get a quote from Contractor A as a favour. The president gave Panahi some information and he phoned Contractor A after work asking for a quote. Contractor A asked for a written request. The PM told him to go ahead, and so he sent a fax asking for a quote. Witness B phoned him asking about the role of Company B in this project, and later informed the board of directors of TCC that Contractor A was not interested.

He was shocked to receive a copy of the letter of complaint from Witness A to PEO. He was merely asked to get a quote. He was not asked for advice and did not receive any retainer. He never had a phone call from Witness A about the project. If he had been asked by TCC to take on the project, he would have done his own investigation with recommendations and prepared specifications and documents.

Cross-examination by Counsel for the Prosecution

Responding to questions from counsel for the association, Panahi testified:

- He received no fee for asking for the quote from Contractor A.
- The president and the PM asked him to get a quote. It was obvious to him that TCC wanted to proceed with the work. He never saw the Company B specs and documents and did not check them. He did not review Company B's work and did not satisfy himself that the Company B recommendations were okay.
- If he had been engaged to take on the project, he would have discussed it with the board of directors, either asking Company B to review their documents or he would have made his own study.
- He agreed he asked for a quotation based on Company B's work without ever reviewing its recommendations.
- He did not see the quote from Contractor B.
- He had worked on similar projects. He could have priced the project based on experience, but the directors would not have accepted that.

Asked why he stated in his fax to Contractor A, "If you have any questions etc.," rather than directing questions to the board, he replied he was doing a favour for the condominium. He would receive the quote and communicate it to the board.

Panahi was asked if it was appropriate to get a quote based on four-year-old documents. He could ask for a quote not based on Company B's designs. How could he answer questions from Contractor A if he had not seen the Company B documents?

Panahi replied that he had an unwritten policy and could show evidence that he would have done his own investigations and prepared specifications. This included asking if the previous consultant had been paid.

Evidence of Witness C

Witness C testified that he lived at TCC and had lived there for over 20 years. He had been on the board of directors since 1991, and been president for 12 years.

There were five directors on the board and they met monthly. The board relied heavily on their property manager, who got the major quotes on which the board made the decisions.

Company B had provided the board with a four-year strategic plan to minimize the leakage problems. Panahi was previously involved in various projects for the condominium. Originally, he worked for another company that surveyed the garage and recommended repairs. Panahi left that company during the project. He was later engaged to investigate and report on repairs to the pool and also the shear walls. He was frequently on the site.

Cross-examination by Counsel for the Association

Witness C testified:

- Panahi was never their building engineer. He was aware that the repairs had to go ahead.
- The second quote was simply to pacify the other board members.

Answering questions from the panel members, Witness C testified:

- He was not aware of the responsibilities of a professional engineer.
- Contractor B provided a written quote dated July 22, 2002. The quote refers to Company B specs and drawings dated February 5, 1998.

This concluded the evidence called on behalf of the defence.

Final Argument

Counsel for the association stated that the issue was the behaviour of Panahi. The evidence showed work needed to be done to stop leaks in the building. It was clear to Panahi that the work was going to be done. It did not matter that he was asked to get a price as a favour. He was asked as a professional engineer. He should have respectfully declined to simply do it as a favour.

To base the request for a quote on Company B's specs and documents was improper. He didn't know how old they were, didn't know which sections of the building they covered, and didn't explain the limitations to the TCC board. He was negligent in failing to carry out his obligations to his client. He did not phone Company B to ask when they had done this work. He could have simply turned it back to the president. The amended Notice of Hearing states, "It appears that Panahi and Company A utilized specification documents and drawings prepared by Company B…" The defence argued Panahi "referred" to them but did not "use" them. He suggested that this was common sense use.

With regard to his failure to advise the client as to the limitations of using four-year-old documents, Panahi didn't even know they were four years old. He failed to advise his client they would need a building permit. There was no evidence that it was common practice to submit a quote based on someone else's work. Panahi never responded to the original letter from Witness A. Evidence that he was just getting information for a reserve fund calculation was not persuasive. He could have calculated that from his own expertise.

In his submission, the evidence had proved the allegations in the amended Notice of Hearing. Panahi had failed to maintain the standards that a reasonable practitioner would maintain in the circumstances, failed to make reasonable provision for safety when the work was being carried out, and his conduct would reasonably be regarded as unprofessional.

Counsel for Panahi argued that Panahi simply asked for a quote. His evidence was clear–he just asked for a price. He understood what the process should be but wasn't hired to do that. He was merely asked to get a price.

Witness A made assumptions. If his assumptions had been correct, there was a problem. But he was wrong and admitted he was wrong. There was no public safety issue in getting a price quote. Wit-

ness B agreed in his evidence there was no need to get Company B's consent in a costing exercise.

There was no breach of the *Code of Ethics* at all. The whole case got off on the wrong foot caused by a knee-jerk response from Company B and Contractor A. It was unfortunate no one picked up the phone to find out the facts. There was no public safety issue. The matter had been taken out of all proportion. There was no support for a charge of disgraceful, dishonourable or unprofessional conduct.

Witness A chose to start the complaint process. It was taken out of all proportion. The discipline proceedings were inappropriate. The matter was a tempest in a teapot.

In reply, counsel for the association pointed out the work was actually carried out; it was not just a pricing exercise. He agreed with defence counsel that there are degrees of offence, but the degree of misconduct counts towards the penalty.

Independent legal counsel to the discipline panel advised that the panel's decision must be based only on the evidence heard at the hearing. The association bore the onus of proving the case, and the more serious the charge the more cogent must be the evidence.

To prove professional misconduct, the panel should consider each of the three sections of Regulation 941 quoted in the amended Notice of Hearing.

In considering the charge of negligence, the panel should bear in mind the standard of practice in the profession and the circumstances. In considering the charge in section 72(2)(j), the panel should note that they were asked only to consider unprofessional, not disgraceful or dishonourable, conduct. They should test this against what they believed the profession would consider to be unprofessional conduct.

Decision

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

Having considered the evidence and the onus and standard of proof, the panel found Panahi and Company A not guilty of all the allegations in the amended Notice of Hearing dated October 14, 2004.

Reasons for Decision

Witness C's testimony was clear that Panahi and Company A were not, and never were, engaged to do the work, nor did they issue tender documentation to Contractor B. Witness C personally obtained a quote directly from Contractor B. Witness A, the complainant, admitted that the Notice of Hearing was in error in that regard.

The panel heard no evidence that Panahi was ever engaged to obtain a second quote from Contractor A. Witness B testified that he assumed from the urgency of the request that the work would go ahead shortly and that Panahi would be supervising it. Witness A testified that he assumed that Panahi was engaged to supervise the project. Witness C testified that he met Panahi by chance and asked him to get a price quote from Contractor A as a favour. The panel found Witness C's testimony convincing.

With regard to the charge of negligence under section 72(2)(a), the panel accepted the testimony of Witness C and Panahi that the former asked the latter to obtain a price quote as a favour. While Panahi might have been wiser to decline this, he may well have perceived this as a possible business opportunity in that he might later be offered an engagement to supervise the work. The panel finds this is slim evidence to support a charge of negligence. The panel therefore makes a finding of not guilty.

The prosecution argued that as Panahi and Company A were retained as consultants, they should have reviewed the drawings and documents to ensure they were up to date and appropriate for the work. By failing to do this, they were failing to make reasonable provision for the safeguarding of life, health, or property. However, the evidence was clear that the assumption that Panahi and Company A had been retained was not correct. Panahi was merely asked to get a price so the board could make a decision and move ahead. Witness C's evidence was that he had no intention of retaining Panahi for this project. Panahi's evidence was that if he had become involved, he would have advised TCC to ask Company B to bring the documents up to date, or done his own investigation. The panel finds no clear and cogent evidence to support the allegation of professional misconduct as defined by section 72(2)(b) in Regulation 941 and therefore finds Panahi and Company A not guilty.

The allegation relating to section 72(2)(j) of Regulation 941 related to behaviour as having regard to all the circumstances would be considered to be unprofessional. The evidence presented did not contain sufficient reasons supporting an allegation of unprofessional conduct.

The Chair then advised the defendant that section 28(6) of the Act allows the defendant to request publication of the panel's findings that the allegations were unfounded. Counsel for Panahi stated that they were asking for the findings to be published.

Claim for Costs

Counsel for Panahi asked the panel to consider awarding costs to Panahi under section 28(7) of the Act. He submitted that the commencement of proceedings was unwarranted, and that the evidence showed that it was understood before the hearing began that Panahi had a very limited retainer. Despite the fact that the defence had not had to call their expert witness, the fees involved amounted to at least $15,000.

Counsel for the association agreed that section 28(7) provided that the panel "may" order costs if convinced that the commencement of the proceeding was unwarranted. The panel would need to find that the Complaints Committee was wrong to refer the matter to the Discipline Committee. It was not sufficient that the member be found not guilty; there must be a complete absence of merit or substance to the Complaints Committee's decision to refer the matter. In the submission, there were legitimate issues in dispute, the Complaints Committee was justified in referring it, and the procedure was justified.

In reply, counsel for Panahi stated that the referrals from the Complaints Committee and the subsequent Notice of Hearing were supported by allegations of fact that were not true. If the matter had been properly investigated, he believed the proceedings would not have been begun. There must be some obligation on the association to get the facts before initiating a proceeding.

Independent legal counsel to the discipline panel advised that the wording of section 28(7) is very specific. The panel must be of the opinion that the commencement of proceedings was unwarranted. What the panel should evaluate was whether it should have been clear to the Complaints Committee that the allegations were not warranted based on the information given to them. Issues such as differences in evidence before the panel were not relevant. The question of whether to award costs, and to what extent, was entirely within the panel's discretion but only after reaching a decision that the Complaints Committee was unwarranted in referring the matter to a Discipline Panel.

Decision of the Panel

The panel found that the Complaints Committee's decision to refer the matter to the Discipline Committee was warranted, based on the materials before the committee. It therefore decided not to award costs.

The panel ordered that the proceedings be published in the official journal of the association with Panahi's name but without naming others.

The written Decision and Reasons in this matter were dated August 18, 2005, and were signed by the Chair of the panel, Nick Monsour, P.Eng., on behalf of the other members of the panel: J.E. (Tim) Benson, P.Eng., Aubrey Friedman, P.Eng., Ken Lopez, P.Eng., and Don Turner, P.Eng.

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.

Any person 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 member or Certificate of Authorization holder should be made based on the allegations listed herein.

John S. Ivanyi, P.Eng., and Conengr Inc.
April 12-14, 2006

It is alleged that Ivanyi is guilty of incompetence as defined in section 28(3)(b) of the *Professional Engineers Act*. It is alleged that Ivanyi and Conengr 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)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
(c) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
(d) *Section 72(2)(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;
(e) *Section 72(2)(k)*: failure by a practitioner to abide by the terms, conditions or limitations of the practitioner's licence, provisional licence, limited licence, temporary licence or certificate; and
(f) *Section 72(2)(m)*: permitting, counselling or assisting a person who is not a practitioner to engage in the practice of professional engineering except as provided for in the Act or the regulations.

John H. Vincent, P.Eng., and 509228 Ontario Ltd. (doing business as J.H. Vincent Services)
May 24-26, 2006

It is alleged that Vincent is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Vincent and J.H. Vincent Services 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, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
(d) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; 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.

G

Odessa Man and his Company Fined for Illegally Providing Professional Engineering Services

On December 21, 2005 at the Provincial Offences Court in Napanee, Ontario, Martin Scott Mack, a resident of the town of Odessa in the county of Lennox and Addington, and his company, 1382614 Ontario Ltd. (carrying on business as Concord Homes), were convicted of breaching the *Professional Engineers Act* and fined $6,000, plus a victim impact surcharge of $1,500. The breach related to the provision of professional engineering services without a licence or a Certificate of Authorization.

Neil Perrier, legal counsel for Professional Engineers Ontario (PEO), told the court that the Loyalist Township Building Department had advised PEO that in June 2004 Mr. Mack's company had provided a drawing to the Building Department bearing a professional engineer's seal. The drawing was in support of a building permit application for the construction of a residence in the town of Odessa. The drawing was specifically related to the design of a lintel over a garage. Building officials initially became suspicious when they found the drawing in question bore a date of August 2000. Further, the Building Department noted that the title block on the drawing appeared to have been whited-out and a different address added. Subsequent investigations by both PEO and the Building Department revealed that the drawing was provided to the Building Department without the prior knowledge or consent of the professional engineer who had prepared and sealed the drawing for an unrelated project some years earlier. Charges were subsequently laid by PEO.

Mr. Mack has never been licensed by PEO and his company has never held a Certificate of Authorization issued by PEO. Mack and his company pleaded guilty to the offence. Her Worship D. Doelman convicted them and imposed the fine after hearing joint submissions from the respective legal counsels with respect to penalty. Two other related charges were withdrawn by PEO.

The success of this prosecution was due to the vigilance of the staff of the Building Department of Loyalist Township in reporting this matter to PEO and their subsequent cooperation throughout the investigation of this matter. As a result of several incidents over the past few years where members' seals have been misused in a similar fashion, PEO has written to the Ontario Building Officials Association requesting that to minimize the possibility of future misuse of engineers' seals, building officials request original seals and signatures on engineering drawings presented to them for building permit purposes.

Allegations of incompetence–a serious matter to PEO

Incompetence is defined under section 28(3) of the *Professional Engineers Act* as follows:

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

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

(b) the member or holder is suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member or holder that the member or holder no longer be permitted to engage in the practice of professional engineering or that his or her practice of professional engineering be restricted. R.S.O. 1990, c. P.28, s. 28 (3); 2001, c. 9, Sched. B, s. 11 (37)."

Allegations of incompetence can be determined only by the Discipline Committee at the conclusion of a discipline hearing. PEO Council, the Executive Committee or the Complaints Committee can direct the Discipline Committee to hold a hearing into an allegation of incompetence. It becomes PEO's burden to prove the allegation during the discipline hearing.

Since the definitions of incompetence suggest that the individual is unfit to carry out the responsibilities of a professional engineer or should no longer be permitted to engage in the practice of professional engineering, PEO takes allegations of incompetence very seriously. It is clear that individuals who have been found by the Discipline Committee to be incompetent should, as a minimum, have their licences suspended until such time as they can demonstrate that they are qualified or able to resume practice as professional engineers. In certain circumstances, revocation of the licence may be required in order to serve and protect the public interest.