

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on September 28, 2004 at the Association of Professional Engineers of Ontario (the “association”) in Toronto. The association was represented by Bruce Matthews, P.Eng., manager, complaints and discipline. David E.J. Brouillette, P.Eng., was represented by Gary Gibbs of Steiber Berlach Gibbs.

### The Allegations

The allegations against David E.J. Brouillette, P.Eng., (“Brouillette”) stated in the fresh notice of hearing dated September 27, 2004 are as follows:

It is alleged that the member is guilty of professional misconduct as defined in the *Professional Engineers Act*, R.S.O. 1990, c. P-28 (the “Act”), the particulars of which are as follows:

1. David E.J. Brouillette, P.Eng., was first licensed as a professional engineer in the Province of Ontario on June 23, 1977.
2. In or about 1992, the Muskoka Board of Education (“MBE”) retained Paragon Engineering Ltd. (“Paragon”) to produce a storm water management (“SWM”) report and SWM plan drawing for the proposed Riverside School to be located in the town of Huntsville (“the town”), Ontario.
3. In July 1992, Paragon issued a SWM report and plan drawing for the Riverside School. Both documents bore the signed seal of Brouillette, an employee of Paragon, who at all material times was responsible for the project, dated July 29, 1992.

## 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:

**David E.J. Brouillette, P.Eng.**

a member of the Association of Professional Engineers of Ontario.

The Riverside School SWM report and plan drawing bore the following characteristics, which the MBE appeared not to notice and hence did not raise with Brouillette and Paragon:

- (a) The report did not include an adequate discussion as to how the one in 100-year storm flow would be accommodated to the North Muskoka River once it leaves the school property.
- (b) The report indicated that virtually the entire site drains in a southwesterly direction towards vacant property via sheet flow, whereas the contours of the SWM plan drawing indicated that a portion of the property drains towards a road to the east side of the property. The report omitted any mention or discussion of this apparent inconsistency.
- (c) The report and plan drawing proposed a drainage scheme, in which the post-development flows towards the property to the southwest would be greater than the pre-development flows.
- (d) The report and plan drawing proposed to direct a concentrated flow

to a neighbouring property through an assumed easement without clear or written agreement of the adjoining downstream property owner contrary to the requirements of the *Drainage Act*.

4. By letter on behalf of the MBE dated August 6, 1992, Paragon advised the District of Muskoka that an application was being made to the Ministry of Environment for approval of the storm water management features of the Riverside School property.
5. In early 1993, Mel Taylor (“Taylor”), president of 796577 Ontario, Limited, owner of a parcel of land adjacent to the south and west portion of the Riverside School property, retained Paragon to produce a storm report and plan drawing for a proposed residential development on the land. The development was to be known as Shellwood Acres.

At that time, Brouillette did not clearly and/or completely dis-

close to Taylor the fact that Paragon had been retained by MBE to provide the SWM report and plan drawing for the Riverside School project, in addition to providing SWM construction review services for that project.

6. In June 1993, Paragon issued a SWM report and SWM plan drawing for Shellwood Acres. Both documents bore the signed seal of Brouillette, dated June 23, 1993.
7. On November 7, 2001, Taylor met with Brouillette to discuss the drainage related issues affecting the Shellwood Acres subdivision. In a letter to Taylor, dated December 21, 2001, Brouillette responded to the issues as follows:
  - (a) With respect to the pavement cracking, Brouillette noted that the roadside drains were intended to provide drainage to the granular base layers only and that drainage of the sub-grade was beyond the scope of the original work.
  - (b) Regarding the flooding within certain lots on the Shellwood Acres property, Brouillette stated that the lots in question had been poorly graded and that drainage was not properly directed away from the residences. Brouillette noted that lot grading was the responsibility of the home builder.
  - (c) With respect to the impact of drainage from the Riverside School property, Brouillette stated that both the Riverside School and Shellwood Acres SWM report acknowledged the historical nature of drainage in the area. Brouillette noted that provision was made via easements to allow the Riverside School property runoff to reach the Muskoka River via the Shellwood

Acres property. Brouillette also noted that the SWM works at the Riverside School were unfinished until August 2001, at which time deficiencies were rectified. That should improve the situation with respect to drainage onto the Shellwood Acres property. Brouillette opined that the construction of the school did not have any appreciable influence on the high groundwater table that had been observed on the Shellwood Acres site.

### Agreed Facts

Mr. Gibbs, counsel for Brouillette, stated that the member agreed with the facts and allegations contained in the Fresh Notice of Hearing.

### Decision

The panel considered the agreed facts and concluded that Brouillette:

- (a) produced a SWM report and plan drawing for the Riverside School that contained incomplete information, deficiencies and omissions, which had the potential to result in an adverse impact on the Shellwood Acres property, if the easements anticipated by him were not confirmed;
- (b) failed to make prompt, clear and complete disclosure to Taylor that he had sealed and Paragon had provided the SWM design for the Riverside School and was providing site review services related to the drainage works for that property;
- (c) failed to appreciate that the flooding and drainage problems being experienced on the Shellwood Acres property could potentially be related to the SWM design for the Riverside School property; and

- (d) acted in an unprofessional manner.

**By reason of the above facts, the panel concluded that Brouillette is guilty of professional misconduct as defined in section 28(2) of the Act. The relevant sections of Regulation 941 to the Act are 72(2)(a), 72(2)(b), 72(2)(d), 72(2)(e), 72(2)(f) and 72(2)(j).**

### Reasons for Decision

The panel deliberated and unanimously accepted the agreed facts, which substantiated the findings of professional misconduct.

### Penalty

A joint submission as to penalty was made and provided as follows:

1. that Brouillette write and pass the Professional Practice Examination and the 98-Civ-B4 (engineering hydrology) examination within 18 months, failing which his licence would be suspended for 12 months or until such time as the examinations are written and passed, whichever is earlier. If both examinations are not written and passed following the 18 months plus the 12-month suspension, this matter will be returned to the Discipline Committee for further determination as to penalty.
2. that Brouillette receive a reprimand to be recorded on the Register of the association until such time that both examinations listed in paragraph one are successfully passed.
3. that Brouillette pay costs to the association in the amount of \$5,000.

Mr. Matthews, on behalf of the association, advised the panel that there was,

however, no agreement on penalty with respect to the issue of publication of the decision. In that regard, Mr. Matthews, on behalf of the association, asked the panel that the order be published with names in *Gazette*.

Mr. Gibbs, on behalf of Brouillette, submitted that this was not a case where publication with names in *Gazette* was warranted.

The panel deliberated and accepted the joint submission as to penalty with the additional requirement that the decision along with names be published in *Gazette*.

**Accordingly, the panel ordered that:**

- 1. Brouillette write and pass the Professional Practice Examination and the 98-Civ-B4 (engineering hydrology) examination within 18 months, failing which his licence would be suspended for 12 months or until such time as the examinations are written and passed, whichever is earlier. If both examinations are not written and passed following the 18 months plus the 12-month suspension, this matter will be returned to the Discipline Committee for further determination as to penalty;**
- 2. Brouillette receive a reprimand to be recorded on the Register of the association until such time that both examinations listed in paragraph one are successfully passed;**
- 3. Brouillette pay costs to the association in the amount of \$5,000; and**
- 4. The Decision and Reasons of the Discipline Committee be published in *Gazette* with names.**

### Reasons for Penalty

The panel considered the joint submission as to penalty and the submission from Mr. Matthews, on behalf of the association, that the decision along with names be published in *Gazette*.

The panel also took into account that the member cooperated in the hearing, acknowledging the allegations and taking responsibility for his actions. The panel concluded that the proposed penalty is reasonable and in the public interest.

It was decided that the Decision and Reasons be published in *Gazette* with

names to provide a deterrent to other engineers from acting in an unprofessional manner and to demonstrate that the association is fulfilling its principle object to serve and protect the public interest.

The written Decision and Reasons in this matter were dated October 18, 2004, and were signed by the Chair of the panel, L. Brian Ross, P.Eng., on behalf of the other members of the panel: Richard Emode, P.Eng., Santosh Gupta, P.Eng., Nick Monsour, P.Eng., and Albert Sweetnam, P.Eng.

## Decision and Reasons— Stipulated Order

In the matter of a complaint regarding the conduct of:

### Engineer A

a member of the Association of Professional Engineers of Ontario.

**T**he Complaints Committee in accordance with section 24 of the *Professional Engineers Act* (the “Act”) referred a complaint in the matter of Engineer A (the “member”) to be dealt with by way of the Stipulated Order process.

In accordance with the Stipulated Order process, Richard Weldon, P.Eng.,

a member of the Discipline Committee (“Discipline Committee member”) of the Association of Professional Engineers of Ontario (“PEO”), was selected by the Chair of the Discipline Committee to act as the Chair of the Stipulated Order process for the disposition of this matter. After reviewing the complaint and other related information, the Discipline