

months, failing which his licence shall be revoked.

4. **Remisz and RCEL shall pay costs to PEO in the amount of \$2,500 forthwith.**
5. **A summary of the Decisions and Reasons of the Discipline Committee to be published in Gazette, including reference to names.**

### Reasons for penalty decision

Considerable discussion took place with respect to the Joint Submission as to Penalty. Some members of the panel were concerned about the degree of the protection of the public that would be provided by the penalty without requiring that the holder undergo a practice review to the satisfaction of the association, or that the holder implement a quality assurance and quality management program. The panel also considered whether a reprimand on the permanent record (as opposed to a reprimand on the record for one year) was too severe for this misconduct.

The panel, through independent legal counsel, invited written submissions from the parties to address the concerns that had arisen respecting the adequacy of the penalty jointly proposed. The panel received written submissions from counsel for PEO and counsel for RCEL on the matter of the Joint Submission as to Penalty for RCEL. The panel also received additional legal advice from independent legal counsel (which was provided to the parties for comment).

Independent legal counsel and counsel for the parties reminded the panel that, in deciding whether to accept or reject a Joint Submission as to Penalty, the panel should be guided by the public interest. The panel should reject a joint submission only if it were of the view that the joint submission was inconsistent with the public interest, either because it failed to protect the public, or because it was oppressive or harsh to the member or the holder.

Counsel for PEO noted in his written response that, regardless of whether the reprimand is recorded on the register, a member of the public inquiring about

the discipline history of a member or a holder will be told by PEO the date of the hearing and the findings.

PEO counsel, in his written submission, noted that the facts and conduct admitted to are indicative of a deficiency of knowledge in relation to the member and not of quality assurance or quality management issues within RCEL, noting that PEO did not feel it was appropriate to seek terms of penalty beyond those that address the lack of knowledge, skill and judgment of the member.

Counsel for the holder stated, in his written submission, that the Joint Submission as to Penalty remains comfortably within the range of penalties appropriate under the circumstances and that a permanent reprimand as registered cannot be construed as disproportionate and contrary to the public interest.

Counsel for PEO submitted that it cannot be concluded by the panel that the Joint Submission as to Penalty is so disproportionate to the offence that it

would be contrary to the public interest or that it would bring the administration of justice into disrepute on the basis of the facts before the panel.

Independent legal counsel advised the panel that, so long as the joint submission is “in the range,” the panel should not, in the ordinary course, interfere with it. Counsel for the panel noted that both counsel for PEO and counsel for RCEL have properly identified the Court of Appeal authority that supports their written comments.

For the reasons set out above, the panel felt that the Joint Submission as to Penalty was fair and reasonable in this instance. The panel accepted the joint submission.

The written Decision and Reasons were dated March 4, 2008, and were signed by Glenn Richardson, P.Eng., as the chair on behalf of the other members of the discipline panel: Diane Freeman, P.Eng., Rishi Kumar, P.Eng., Anne Poschmann, P.Eng., and Derek Wilson, P.Eng.

## Decision and Reasons

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

**Cristian Radu Constantinescu, P.Eng.**

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

**Remisz Consulting Engineers Ltd.**

a holder of a Certificate of Authorization.

**T**his matter came on for hearing before a panel of the Discipline Committee on October 25, 2007 at the Association of Professional Engineers of Ontario (the association) in Toronto. The association was represented by Neil

Perrier of Perrier Law Professional Corporation. Cristian Radu Constantinescu, P.Eng., and Remisz Consulting Engineers Ltd. were represented by Todd Plant of Plant Quinn Thiele LLP. Scott C. Hutchison of Stockwoods LLP served as

independent legal counsel to the discipline panel.

## The allegations

1. It was alleged that Cristian Radu Constantinescu, P.Eng., (the member) and Remisz Consulting Engineers Ltd. (the holder) are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
2. “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.”
3. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
  - (a) *Section 72(2)(a)*: negligence as defined in 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, bylaws 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 act that is solely a breach of the Code of Ethics; 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.

## Plea by member and holder

The member and the holder admitted the allegations of professional misconduct. The panel conducted a plea inquiry and was satisfied that the member’s and holder’s admissions were voluntary, informed and unequivocal.

## Statement of Agreed Facts

1. Cristian Radu Constantinescu, P.Eng., (Constantinescu) was, at all material times, a member of the Association of Professional Engineers of Ontario.
2. Remisz Consulting Engineers Ltd. (RCEL) was, at all material times, the holder of a Certificate of Authorization to offer and provide to the public services that are within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure that its employees, including Constantinescu, carried on the practice of professional engineering in a proper and lawful manner. Constantinescu was one of the professional engineers responsible for the services provided by RCEL.
3. On or about August 2004, the City of Kingston (the city) received a building permit application for a proposed single-family residence. This application included a drawing sealed by Constantinescu for the full structural review of that residence dated August 12, 2004. A copy of the design drawing reviewed and sealed by Constantinescu was attached as Schedule 1 to the Statement of Agreed Facts. The residence was a production house/unit known as Civic Copenhagen, Model A, for a local builder,

Braebury Homes Corporation (Braebury). Upon review of these drawings, the city had concerns with the design of the structural elements of the residence.

4. On August 13, 2005, Jeff Gurnsey, C.E.T., building official of the city, issued a letter requesting additional information from Braebury on the project. The information included the following:
  - (a) confirmation of the front porch slab construction;
  - (b) confirmation of the size of the beams in the garage area;
  - (c) confirmation of the W150x22 in the living room/foyer area to support the second floor walls and veneer. Beam end support to be steel to masonry;
  - (d) some single teleposts in the basement are overloaded, clarification required;
  - (e) review of the floor joist spacing at the 14' 6" span in the basement; and
  - (f) roof truss details including:
    - (i) engineered truss design drawings,
    - (ii) truss layout diagram, and
    - (iii) lintel design for lintels supporting trusses over 32' 2" *Ontario Building Code* 9.23.12.3.(1)(d) and lintels with the girder truss bearing above.
5. Other alleged design deficiencies identified included the following:
  - (a) location of girder trusses not provided and therein not allowing for the effect of concentrated load reactions to be accounted for in the design of supporting elements;
  - (b) an exterior lintel is specified at the ground-floor morning room side wall to support the end of a girder truss and no specific size for this lintel is provided;
  - (c) steel beams supporting masonry veneer on the front elevation were supported on wood posts at two locations, contrary to the *Ontario Building Code* (9.20.5.1(1)). One of the multi-ply 2x4 wood posts in

- question was substantially below required strength; and
- (d) the second-floor beams supporting the front wall required a steel plate to support the brick veneer.
6. On or about August 23, 2004, Constantinescu provided the city with a memo to Braebury regarding the stamping process of Braebury Homes drawings. In that memo, he stated that, "The engineer's stamp on a drawing means that full structural review of that drawing has been completed, if not otherwise specified." This informed the city that Braebury Homes drawing(s) stamped by the Remisz engineers were a complete structural review. A "Steel Beams Connection Details" SO1 sketch/drawing was submitted to the city and no other information was provided.
  7. The Association of Professional Engineers of Ontario retained Robert E. Brown, P.Eng., (Brown) of Robert E. Brown and Associates Limited, Consulting Engineers, to conduct an independent third-party review of Constantinescu's sealed structural design drawing dated August 12, 2004. A copy of Brown's report dated May 8, 2006 was attached as Schedule 2 to the Statement of Agreed Facts.
  8. Constantinescu and RCEL retained Heinz Keller, P.Eng., (Keller) to conduct a review of the work of Constantinescu and RCEL. A copy of Keller's report dated October 17, 2007 was attached as Schedule 3 to the Statement of Agreed Facts.
  9. In respect to the expert reports referenced in paragraphs 7 and 8 above, the parties agree that the structural design drawing dated August 12, 2004 was deficient, as noted in paragraph 10 below.
  10. It was agreed that Cristian R. Constantinescu, P.Eng., and Remisz Consulting Engineers Ltd.:

- (a) provided a design that was not compliant with current *Ontario Building Code* requirements for the proposed single-family residence;
  - (b) provided structural designs and drawings, which include the overstressing of structural elements beyond allowable limits;
  - (c) failed to provide compliant subsequent structural information and details that were required by the City of Kingston; and
  - (d) acted in an unprofessional manner.
11. Constantinescu and RCEL stated, by way of mitigation, that the problems in relation to the work were exacerbated by a lack of communication among the builder, the city and RCEL.

### Decision

Upon reviewing the allegations and the evidence, the panel finds that the holder and the member are guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, and under sections 72(2)(a), 72(2)(b), 72(2)(d), 72(2)(g), and unprofessional conduct under 72(2)(j) of Regulation 941/90 under the Act.

### Reasons for decision

The panel accepted the Statement of Agreed Facts and the member and holder's admissions that substantiated the findings of professional misconduct. The panel noted that there was no disagreement about any element of the Statement of Agreed Facts in the submission by counsel for the association or in the submission by counsel for the member and holder. Paragraphs 4(a) to 4(f), inclusive, and paragraphs 5, 9 and 10(b) of the Statement of Agreed Facts, support the finding by the panel against the member and the holder under sections 72(2)(a), 72(2)(b) and 72(2)(g) of Regulation 941/90 under the Act. Paragraph 10(a) supports the finding under section 72(2)(d), and paragraphs 9 and 10 support the finding as unprofessional under section 72(2)(j) of Regulation

941/90 under the Act, against the member and the holder.

### Penalty decision

Counsel for the association and counsel for the holder provided the panel with a Joint Submission as to Penalty for the member and holder, dated October 22, 2007.

After considering the facts and the submissions from counsel for the holder, counsel for PEO and independent legal counsel, the panel unanimously accepted the Joint Submission as to Penalty, and ordered that:

1. **Constantinescu and RCEL shall be reprimanded and the fact of the reprimand shall be permanently recorded on the register.**
2. **Constantinescu shall write and pass the PEO Advanced Structural Analysis (98-Civ-B1) and Advanced Structural Design (98-Civ-B2) technical examinations (technical examinations) within 12 months, failing which his licence shall be suspended.**
3. **Constantinescu shall write and pass the technical examinations within 24 months, failing which his licence shall be revoked.**
4. **Constantinescu and RCEL shall pay costs to PEO in the amount of \$2,500 forthwith.**
5. **A summary of the Decisions and Reasons of the Discipline Committee to be published in Gazette, including reference to names.**

### Reasons for penalty decision

Considerable discussion took place with respect to the Joint Submission as to Penalty. Some members of the panel were concerned about the degree of protection of the public that would be provided by the penalty without requiring that the holder undergo a practice review to the satisfaction of the association, or that the holder implement a quality assurance and quality management program. The panel also considered

it likely that some miscommunication between Braebury and the member occurred, and discussed whether a reprimand on the permanent record (as opposed to a reprimand on the record for one year) was too severe for this misconduct, particularly since the misconduct related to a single drawing produced in 2004.

The panel, through independent legal counsel, invited further written submissions from the parties to address the concerns that had arisen respecting the adequacy of the penalty jointly proposed for the holder. The panel received further written submissions from counsel for PEO and counsel for RCEL on the matter of the Joint Submission as to Penalty for RCEL. The panel also received additional legal advice from independent legal counsel (which was provided to the parties for comment).

Independent legal counsel and counsel for the parties reminded the panel that, in deciding whether to accept or reject a Joint Submission as to Penalty, the panel should be guided by the public interest. The panel should only reject a joint submission if it were of the view that it was inconsistent with the public interest, either because it failed to protect the public, or because it was oppressive or harsh to the member or to the holder.

Counsel for PEO noted, in his written response, that regardless of whether the reprimand is recorded on the register, a member of the public inquiring about the discipline history of a member or holder will be told by PEO the date of the hearing and the findings.

PEO counsel, in his written submission, noted that the facts and conduct admitted to are indicative of a deficiency of knowledge in relation to the member and not of quality assurance or quality management issues within RCEL, noting that PEO did not feel it was appropriate to seek terms of penalty beyond those that address the lack of knowledge, skill and judgment of the member.

Counsel for the holder stated, in his written submission, that the Joint Submission as to Penalty remains comfortably within the range of penalties appropriate under the circumstances and that a permanent reprimand, as registered, cannot be construed as disproportionate and contrary to the public interest.

Counsel for PEO submitted that it cannot be concluded by the panel that the Joint Submission as to Penalty is so disproportionate to the offence that it would be contrary to the public interest or that it would bring the administration of justice into disrepute on the basis of the facts before the panel.

Independent legal counsel advised the panel that, so long as the joint submission

is “in the range,” the panel should not, in the ordinary course, interfere with it. Counsel for the panel noted that both counsel for PEO and counsel for RCEL have properly identified the Court of Appeal authority that supports their written comments.

For the reasons set out above, the panel felt that the Joint Submission as to Penalty was fair and reasonable in this instance. The panel accepted the joint submission.

The written Decision and Reasons were dated March 4, 2008, and were signed by Glenn Richardson, P.Eng., as the chair on behalf of the other members of the discipline panel: Diane Freeman, P.Eng., Rishi Kumar, P.Eng., Anne Poschmann, P.Eng., and Derek Wilson, P.Eng.

## Decision and Reasons

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

**Mohan Prasad Sharma, P.Eng.**

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

**Remisz Consulting Engineers Ltd.**

a holder of a Certificate of Authorization.

**T**his matter came on for hearing before a panel of the Discipline Committee on October 25, 2007 at the Association of Professional Engineers of Ontario (the association) in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Mohan Prasad Sharma, P.Eng., was not present and was not represented. Remisz Consulting Engineers Ltd. was represented by Todd

Plant of Plant Quinn Thiele LLP. Scott C. Hutchison of Stockwoods LLP served as independent legal counsel to the discipline panel.

### The allegations

1. It is alleged that Mohan Prasad Sharma, P.Eng., (the member) and Remisz Consulting Engineers Ltd. (the holder) are guilty of professional misconduct as defined in section