

use of such reports, especially by the complainant, is too great.

Comments from Regulatory Compliance Staff

Comments from Regulatory Compliance staff were encapsulated in a briefing note provided to Council. Staff fundamentally supported the views of the Complaints Committee as expressed in the May 24 memo. Staff noted the views of the ACDE Task Force as found on page 35 of its report:

"It is my considered opinion that there is nothing wrong with the processes relating to complaints and discipline as they are found in the Act" and "... no other changes to the complaints and discipline processes in the Act are necessary to provide processes that will serve PEO's purposes."

On the subject of early notification and ACDE Task Force recommendations 5.1.8 and 5.1.9, it was staff's view that adoption of the recommendations was a policy matter and went beyond the requirements of natural justice. Staff was of the opinion that the disclosure associated with ACDE recommendation 5.1.8 was not "required in connection with the administration of" the *Professional Engineers Act* and hence presented a problem with respect to the confidentiality provisions of section 38 of the Act.

In addition, staff noted that implementing the disclosure specified in ACDE recommendation 5.1.8 would result in increased costs and longer processing times for complaints and that this would be an administrative burden with no corresponding benefit in PEO's service and protection of the public interest.

On the subject of the disclosure of expert reports, staff noted the potential for inappropriate use of such reports. Staff further noted that even one inappropriate use could jeopardize PEO's ability to retain experts in the future. Staff was of the opinion that the "precautions" identified by the CRC would be ineffective in dissuading a complainant from making inappropriate use of an expert report commissioned by PEO.

Council Motions

The CRC report was on the agenda of the June 24, 2005 Council meeting. Following a presentation regarding the complaints process by Bruce Matthews, P.Eng., man-

ager, complaints & discipline, there was discussion about the CRC's recommendations and the Committee's and staff's views on those recommendations. Most of the discussion centred on the recommendations pertaining to early notification and expert report disclosure.

At the conclusion of the discussion, Council passed the following motions:

- 1) **That Council recommend that the Complaints Committee establish internal guidelines for the processing of complaints by December 31, 2005, and to annually review such guidelines and report on compliance beginning in 2006, in accordance with section 8 of the Complaints Review Councillor's report.**
- 2) **That Council recommend training for the Complaints Committee on the writing of reasons in much the same manner as the Registration Committee and the Discipline Committee receive such training, to be implemented by December 31, 2006.**

- 3) **That Council direct Regulatory Compliance staff to explore the introduction of a quality assurance program, such as the ISO system or equivalent, to the complaints process, as a discrete unit of PEO's activities and to report to Council by June 30, 2006.**

- 4) **That Council endorse the current approach of the Complaints Committee toward early complaint notification, as described in the May 24, 2005 memorandum from the Chair of the Complaints Committee.**

- 5) **That Council recommend to the Complaints Committee that it examine and consider the issues and implications related to the disclosure of expert reports, and that it revise its associated procedures and practices accordingly and that it report back to Council by Council's December 2005 meeting.**

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:

Engineer A

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

Company A

holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on May 5, 2004 at

the Association of Professional Engineers of Ontario (the "association") in Toronto. The association was repre-

sented by Michael Royce of Leczner Slaght Royce Smith Griffin. Engineer A and Company A were represented by legal counsel.

The Allegations

The allegations against Engineer A (the “member”) and Company A, a holder of a Certificate of Authorization, as stated in the Fresh Notice of Hearing dated April 20, 2004 were as follows:

1. The member was at all material times a member of the Association of Professional Engineers of Ontario.
2. Company A 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 and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure that its employees, including the member, carried on the practice of professional engineering in a proper and lawful manner. The member was one of the professional engineers responsible for the services provided by Company A.
3. On or about August 2, 2000, the owner and operator of a farm in central Ontario ordered from Company B the components of a cold-formed steel building for farm equipment storage, which the owner planned to erect himself from the components in order to provide storage space on his farm.
4. The building in question would consist of thin-walled panels and would be 32 feet wide, 56 feet long and 18 feet high.
5. On or about August 15, 2000, Company B delivered the components of the building, together with a detailed construction and foundation manual (hereinafter referred to as the “manual”) to the owner’s farm.
6. Also delivered to the owner by Company B on or about August 15, 2000 was an assembly drawing for the building numbered 00-416, dated August 8, 2000 and bearing the signed seal of the member, five section drawings, and an order form that contained the rubber-stamped statement “Snow Load Approval” initialled by a professional engineer employed by Company B.
7. On or about October 16, 2000, the owner received a building permit to install the building.
8. Within approximately a month thereafter, the owner, with the assistance of friends and relatives, erected the sides, roof structure and front wall of the building on a concrete slab that had apparently been constructed in accordance with specifications set out in the manual. The owner, however, had not completed the end walls or the grouting.
9. On or about February 9, 2001, the building collapsed. After dealing with his insurer concerning the collapse, the owner contacted Company B on or about February 23, 2001 and thereafter on several occasions, advising Company B of the collapse of the building and seeking redress with respect thereto.
10. Obtaining no satisfactory response from Company B, the owner contacted the member on or about April 23, 2001 to advise of the collapse and to inquire about the allowance made for snow load in the building design. The member advised that the snow load capacity had been 27 lbs. per square foot. After reviewing the contract and photographs provided by the owner, the member advised that snow load was the cause of the failure of the building.
11. Neither the member nor anyone on behalf of Company A at any time attended at the owner’s farm to observe the building on the building site.
12. It is alleged that the member and Company A:
 - (a) provided a professional engineering opinion on the cause of the collapse without any site investigation;
 - (b) failed to demonstrate the standard of care that a reasonable and prudent practitioner would have demonstrated under the circumstances; and
 - (c) acted in an unprofessional manner.
13. By reason of the facts aforesaid, it is alleged that the member and Company A are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act* (the “Act”), R.S.O. 1990, c. P.28.
14. 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)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Counsel for the association advised that the association was not calling any evidence with respect to the allegations, as set out in paragraphs 1 to 14, Appendix “A,” of the Fresh Notice of Hearing.

Plea of the Member and Holder

The member agreed that the facts set out in the Fresh Notice of Hearing were correct except for paragraph 12(b), which the member denied.

With respect to paragraph 14, the member denied guilt under section 72(2)(a), and pleaded guilty only to being unprofessional pursuant to 72(2)(j).

Overview

The hearing arose as the result of the member providing design services under Company A to Company B, a company that provides manufactured buildings. Building components supplied by Company B to the owner and operator of a farm collapsed during construction being carried out by the owner.

The owner, being unable to contact anyone from Company B, contacted the member about two months following the collapse. After reviewing the contract and photographs provided by the owner, the member gave advice as to the snow load capacity and that snow load was the cause of the collapse. The member did not visit the site to determine this opinion. Shortly before the hearing, the member visited the site and concluded that the opinion originally given was correct.

The case was about the member not visiting the site before giving a professional opinion.

The Evidence

In his opening statement, counsel for the association outlined the nature of the member's guilty plea. Paragraphs 1 to 11 and 12(a) and (c) are all admitted. Paragraph 12(b) is not admitted, paragraph 14, 72(2)(j) is admitted only regarding "unprofessional" and 72(2)(a) is not admitted. The panel was satisfied that the member's admissions were voluntary, informed and unequivocal.

Counsel emphasized that the case was about the member not visiting the site before giving a professional opinion. Counsel maintained that the fact that the opinion was correct and that no harm or damage resulted from this opinion was irrelevant. The fact that the member visited the site just prior to the hearing was an admission that a site visit should have been made prior to giving the original opinion. Counsel further maintained that the fact that the original opinion still stands as correct should have no bearing. Counsel stated that the issue was: "Did the member fail to exercise the stan-

dard of care expected of a professional engineer practitioner?"

Counsel for the defendant called the member as a witness. Evidence was provided that the member was 65 years old, has had a Certificate of Authorization under Company A for 20 years and has not been previously disciplined. The member agreed that a site visit was not made prior to giving the original opinion. The member did, however, attend the site in the week prior to the hearing. The member noted during that visit that another large building about 200 feet away from the building in question had an impact on the snow load and a bearing on the collapse (in the member's opinion). The original opinion that snow load caused the collapse was confirmed as correct.

The panel questioned the member on a number of points to gain a clear understanding of all the evidence.

Counsel for the association said, regarding paragraph 12(b), that based on the facts, the member's behaviour was not only unprofessional but negligent. He added that it was clear that it was not reasonable for an engineer to simply look at photos and give an opinion. Also, if it was felt that there was no need for a competent engineer to go to the site, why wait until a disciplinary panel is called and then attend the site?

Counsel for the defendant stated that the member had acknowledged unprofessional conduct, but did not agree with the concept of negligence (more an "error in judgement" or inappropriate vs. negligent). The member had only been notified about two months following the collapse. At this time, the conditions had changed in that there was no snow on the site. Counsel stated that the member was not retained by either the owner or Company B to investigate or offer an opinion. According to counsel, the member provided his opinion based upon the member's experience and general knowledge of the structural system. Counsel said that the later visit was "after the fact," was irrelevant in common law, and the member's findings were consistent with his original opinion.

Counsel for the association noted this was not a civil suit, so did not have to link negligence with damage, and only the former applies.

Independent legal counsel advised the panel that the burden of proof rests with the association, based on a "balance of probabilities," and that courts say the more serious the charge the more cogent evidence is needed, i.e. the evidence must be "clear and convincing" based upon the facts presented. As to whether the member failed to exercise the standard of care expected of a reasonable professional engineer practitioner, he noted that the member admitted to some facts, and that damage or harm is not a factor.

Decision

The panel considered the agreed facts and the fact in dispute under paragraph 12(b) and found that the facts and evidence support a finding of professional misconduct relevant to the practice of professional engineering that, having regard to the circumstances, would reasonably be regarded by the engineering profession as unprofessional.

The section of Regulation 941 made under the Act relevant to the panel's findings is Section 72(2)(j).

The panel did not find that the association had submitted clear and convincing evidence for a finding of negligence.

Reasons for Decision

The facts that were agreed upon by both the association and the member, and in consideration that the member admitted acting in an unprofessional manner, supported a finding of unprofessional conduct.

The fact that the report of the building collapse was not received by the member until about two months following the collapse was considered as a reasonable basis for not visiting the site at that time, since conditions would have changed in the interim. On this basis, the panel did not support a finding of negligence.

Penalty

The panel deliberated and made the following order as to penalty:

- 1. That the member be reprimanded and the fact of the reprimand be recorded by the Registrar of the association.**

2. That the member write and pass the Professional Practice Examination within a period of 18 months from the date of the hearing.
3. That the member pay costs in the amount of \$3,000 to the association.
4. That the finding and order of the Discipline Committee be published in *Gazette* in detail, but withholding reference to names.

Reasons for Penalty

The panel considered the submissions of counsel for the association and for the member and concluded that the penalty was reasonable and in the public interest. The age of the member, who had no previous discipline history and who cooperated with the association, and the consideration that the complaint was at the lower end of the scale of seriousness, had a bearing on the penalty decision. The member and the association agreed to the reprimand and costs.

The written Decision and Reasons in this matter were dated August 16, 2004, and were signed by the Chair of the panel, James Dunsmuir, P.Eng., on behalf of the other members of the panel: Edward Aziz, P.Eng., Nick Monsour, P.Eng., Barry Hitchcock, P.Eng., and Bryan Parkinson, P.Eng.

Correction

In the July/August 2005 edition of *Gazette*, the Summary of Decision and Reasons regarding "Engineer A and Engineer B" contained errors with respect to certain dollar amounts. Specifically, in paragraph 17 on page 33, the \$19,348 and \$32,448 amounts should have read \$19,348,000 and \$32,448,000, respectively. Similarly, the \$21,336 and \$23,345 amounts should have read \$21,339,000 and \$23,345,000, respectively. PEO regrets any confusion caused by this error.

Summary of Scheduled Discipline Hearings

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.

November 7-11, 2005

William L. Haas, P.Eng., and William Haas Consultants Inc. (WHCI)

It is alleged that Haas is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Haas and WHCI 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)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
- (e) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (f) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
- (g) *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.

November 23-25, 2005

Eric J. Desbiens, P.Eng.

It is alleged that Desbiens is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Desbiens is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
- (c) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;
- (d) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
- (e) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (f) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
- (g) *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.

December 5-9, 2005

Mohammad Nasiruddin, P.Eng., and Jacques Whitford & Associates Limited (JWAL)

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