

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on June 6, 2006 at the Association of Professional Engineers of Ontario (PEO) in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. John S. Ivanyi, P.Eng., and Conengr Inc. were represented by Paul Heselden, Barrister & Solicitor. Christopher Wirth of Stockwoods LLP served as independent legal counsel to the discipline panel.

### The allegations

The allegations against John S. Ivanyi (Ivanyi) and Conengr Inc. (Conengr), as stated in the Notice of Hearing dated November 22, 2005, were as follows:

It is alleged that Ivanyi is guilty of incompetence, and Ivanyi and Conengr are guilty of professional misconduct, the particulars of which are as follows:

1. Other than as specifically noted in the following paragraphs, Ivanyi was at all material times a member of the Association of Professional Engineers of Ontario.
2. Other than as specifically noted in the following paragraphs, Conengr was at all material times the holder of a Certificate of Authorization (C of A) 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 Ivanyi, carried on the practice of professional engineering in a proper and lawful manner. Ivanyi was the sole professional engineer responsible for the services provided by Conengr.
3. On October 28, 2003, Ivanyi and Conengr were the subject of a discipline hearing held at the offices of the Association of Professional Engi-

## 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:

**John S. Ivanyi, P.Eng.**

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

**Conengr Inc.**

a holder of a Certificate of Authorization.

neers of Ontario. At the hearing, Ivanyi and Conengr pleaded guilty to professional misconduct.

4. The penalty ordered by the discipline panel, which was based on a joint submission by PEO and Ivanyi, included a two-month suspension of Ivanyi's licence, requirement for Ivanyi to write and pass the Professional Practice Examination (PPE) and pay \$3,000 in costs to PEO within 12 months of the date of the hearing, failing which his licence would be suspended for a further six months. Should such a licence suspension occur, the discipline panel specifically noted that the \$3,000 in costs would still be owing to PEO.
5. In early March 2005, PEO noted that Ivanyi had not made any attempt to write or pass the PPE and did not pay the cost award to PEO within the allotted time. By telephone conversation on March 8, 2005, it was agreed between PEO and Ivanyi that the six-month suspension would take effect as of April 1, 2005, and run to September 30, 2005.
6. In a letter to Ivanyi dated March 9, 2005, PEO confirmed that the licence

suspension would take effect April 1, 2005, and that if Ivanyi wanted the C of A for Conengr to remain in effect, he would have to arrange to have an appropriately qualified individual agree to supervise and take responsibility for the work of Conengr during Ivanyi's suspension.

7. By fax to PEO dated March 17, 2005, Ivanyi acknowledged receipt of PEO's March 9, 2005 letter. In the fax, Ivanyi reported that his epilepsy condition had caused memory problems and that it was only recently that he was "getting a better grasp of the problem and how it has affected" him. He inferred that his epilepsy had caused him to forget about much of the circumstances that led to the October 28, 2003 discipline hearing and also to forget about the requirement to write the PPE.
8. Ivanyi was unable to identify a suitably qualified individual to assume responsibility for Conengr and, hence, PEO suspended Conengr's C of A effective April 15, 2005.
9. On or about May 9, 2005, Ivanyi signed and sealed a series of structural drawings related to a project located at 678 Queen Street West in Toronto,

Ontario. These drawings formed part of a building permit application submitted to the City of Toronto's building division.

10. On or about August 18, 2005, Ivanyi sent a fax to the City of Toronto's building division providing further submissions with respect to the 678 Queen Street West project. The fax was on Conengr letterhead that included reference to Conengr as consulting engineers and as providers of engineering services.
11. It is alleged that John S. Ivanyi, P.Eng.:
  - (a) breached section 12(1) of the *Professional Engineers Act* by engaging in acts of professional engineering at a time when he knew, or ought to have known, that his licence was under suspension;
  - (b) suffers from a mental and/or physical condition of a nature and extent that makes him unfit to engage in the practice of professional engineering or to carry out the responsibilities of a professional engineer; and
  - (c) acted in a disgraceful, dishonourable or unprofessional manner.
12. It is alleged that Conengr Inc.:
  - (a) breached section 12(2) of the *Professional Engineers Act* by offering or engaging in the business of providing to the public services that were within the practice of professional engineering at a time when they knew, or ought to have known, that its C of A was under suspension;
  - (b) breached section 68 of Regulation 941 made under the *Professional Engineers Act* by using the "consulting engineers" title when they had not received permission from PEO Council to do so; and
  - (c) acted in a disgraceful, dishonourable or unprofessional manner.
13. By reason of the facts aforesaid, it is alleged that Ivanyi is guilty of incompetence as defined in section 28(3)(b), and Ivanyi and Conengr are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
14. "Incompetence" is defined in section 28(3)(b) as:
 

"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."
15. "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."
16. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
  - (a) *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;
  - (b) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
  - (c) *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;
  - (d) *Section 72(2)(k)*: failure by a practitioner to abide by the terms, conditions or limitations of the practitioner's licence, limited licence, temporary licence or certificate; and

- (e) *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.

PEO counsel advised that PEO was withdrawing the allegations set out in paragraphs 11(b) and 14 and the allegation of incompetence in paragraph 13 of the Notice of Hearing.

### Plea by member and/or holder

Ivanyi and Conengr admitted the remaining allegations against them as set out in the Notice of Hearing. The panel conducted a plea inquiry and was satisfied that their admissions were voluntary, informed and unequivocal.

### Agreed Statement of Facts

PEO counsel advised the panel that it was agreed by the parties that the remaining portions of the Notice of Hearing could be considered by the panel as an Agreed Statement of Facts.

In speaking to the Agreed Statement of Facts, PEO counsel indicated that there was no evidence that the member's medical condition was the reason for the misconduct. While the \$3,000 in cost as penalty from a previous discipline panel on October 26, 2003 had been paid after the suspension, the breach of the order was grounds for a finding of misconduct.

Responding to questions from the panel, PEO counsel submitted that an act or omission in Regulation 941, section 72(2)(a) was not restricted to performance standards of a member only, but also included reasonable standards of conduct. With respect to Regulation 941, section 72(2)(m), the member has a responsibility as a practitioner and, as well, the directing mind of the holder.

Counsel for the member and holder questioned how one could advise and counsel themselves; however, the panel accepted the opinion of independent legal counsel that the holder is in law, by being incorporated, "a separate entity from the member."

## Decision

The panel considered the Agreed Statement of Facts and Ivanyi's and Conengr's pleas, and found that the facts support a finding of professional misconduct and, in particular, found that Ivanyi and Conengr committed acts of professional misconduct as alleged in the Notice of Hearing.

## Reasons for decision

The panel accepted Ivanyi's and Conengr's pleas and the Agreed Statement of Facts, which substantiated the findings of professional misconduct.

The panel considered that the member and holder had knowingly and repeatedly disregarded licensing and regulating provisions of the Act, the Registrar and the previous discipline panel decision by providing engineering services to the public while his licence and the C of A were under suspension.

## Penalty

PEO counsel advised the panel that a Joint Submission as to Penalty had been agreed upon. The Joint Submission as to Penalty provided as follows:

- that the licence of Ivanyi be immediately revoked;
- that the Certificate of Authorization of Conengr be immediately revoked; and
- that Ivanyi shall pay the costs of the proceeding fixed in the sum of \$5,000, payable within 12 months of the date of the hearing.

PEO counsel filed the following exhibits to assist the panel in their deliberations:

1. The Decision and Reasons from the discipline hearing on October 28, 2003 involving the same member and holder as published in the November/December issue of *Engineering Dimensions*.
2. The Registrar's notice of proposal to suspend a Certificate of Authorization, dated August 23, 2005.
3. An Affidavit of Service letter and Notice of Hearing served on November 23, 2005.

4. A letter from Bob McKeown, P.Eng., building engineer, City of Toronto, to PEO forwarding a report from Conengr Engineering Services, dated November 15, 2005, and drawing sealed by the member.

PEO counsel indicated the Joint Submission as to Penalty was arrived at after lengthy deliberations. The member was ably represented by his counsel. The Act requires that a principal objective of PEO is that the public interest be served and protected.

Revocation of licence is the only appropriate penalty should a member be unable or unwilling to comply with the provisions of the Act. The member continued to practise engineering after his licence was suspended on April 1, 2005. After being served a letter and Notice of Hearing on November 23, 2005, the member sealed and dated a report and a drawing for Conengr Inc. PEO counsel submitted that the facts demonstrated that the member was ungovernable.

The panel heard from PEO counsel and independent legal counsel the guiding principles in determining penalty, namely that the penalty afforded:

- (a) protection of the public interest;
- (b) maintenance of public confidence in the profession's ability to regulate;
- (c) general deterrence;
- (d) specific deterrence; and
- (e) rehabilitation.

The penalty proposed satisfied these principles and the specific deterrence was, in part, prompted by the fact that lesser penalties had been unsuccessful.

Counsel for the member submitted that, in coming to the decision to agree to the joint submission and accepting revocation, the member appreciated the gravity of the situation and the significant consequences to his action.

Independent legal counsel advised the panel that, based on court precedents, the panel must accept the Joint Submission as to Penalty unless there was good cause to reject it.

## Penalty decision

**The panel accepted the Joint Submission as to Penalty and, accordingly, ordered that:**

1. **the licence of Ivanyi be immediately revoked;**
2. **the Certificate of Authorization of Conengr be immediately revoked; and**
3. **Ivanyi pay the costs of the proceeding fixed in the sum of \$5,000, payable within 12 months of the date of the hearing.**

The panel understands that Ivanyi will return his licence certificate, seal, and C of A to PEO immediately.

## Publication

The panel asked the parties for written submissions concerning publication of the penalty order in PEO's official publication. PEO counsel submitted that section 28(5) of the *Professional Engineers Act* required that, where the Discipline Committee orders the suspension or revocation of a licence or certificate, it must cause the order to be published. Counsel for the member submitted that the member's guilty plea did not contemplate such publication.

The panel finds that section 28(5) of the Act requires publication with names, and also ordered that its order be published with reasons in Gazette, including Ivanyi's and Conengr's names.

## Reasons for penalty

The panel concluded that the proposed penalty is reasonable and in the public interest. Ivanyi and Conengr have cooperated with PEO and, by agreeing to the facts and a proposed penalty, have accepted responsibility for their actions and have avoided unnecessary expense to PEO.

The panel considered that stamping of drawings and signing reports while the licence and C of A are under suspension bring the profession and PEO into disrepute. The member's unwillingness to comply and the nature of his conduct bring into question the ability of the profession to serve and protect the public interest.

The panel accepted submissions from the member's counsel that, in voluntarily

agreeing to the severe penalty, the member is accepting responsibility. The penalty, while severe, is appropriate based on the totality of the evidence.

The panel noted that the \$5,000 cost penalty, in addition to the unsatisfied penalties of the decision of the

previous hearing on October 28, 2003, could require that a significant commitment be made by the member towards his rehabilitation.

Following the hearing, Ivanyi and Conengr signed a waiver of appeal, which was filed.

The written Decision and Reasons were dated July 31, 2007, and were signed by J.E. (Tim) Benson, P.Eng., as the chair on behalf of the other members of the discipline panel: Colin Cantlie, P.Eng., Jeff Mark, P.Eng., David Robinson, P.Eng., and Derek Wilson, P.Eng.

## Decision and Reasons by the Registration Committee

Changes to the *Professional Engineers Act* in 2001 allowed applicants for licensure who were denied a licence due to adverse determinations by the Academic Requirements Committee and/or the Experience Requirements Committee to request a hearing before the Registration Committee.

The summary below chronicles the Decision and Reasons of the Registration Committee in connection with one applicant's request for an adjournment.

It is being published in an attempt to show how these matters are dealt with by the Registration Committee and to reinforce the advice that is given to applicants who request a hearing that they should retain legal counsel in these matters.

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of the proposal of the Registrar of the Association of Professional Engineers of Ontario to refuse to issue a licence to:

### An Applicant

This matter came on for hearing before a panel of the Registration Committee on September 12, 2007 at the Association of Professional Engineers of Ontario (PEO) in Toronto, with respect to the matter of a proposal by the Registrar of PEO to refuse to issue a licence to an applicant.

The applicant was not present and was not represented by counsel. The panel waited one-half hour, but the applicant still did not appear. Proof of service of the Notice of Hearing was provided by the Registrar's counsel.

Counsel for the Registrar advised that the applicant had emailed the PEO tribunal office on August 22, 2007, requesting an adjournment of this hearing date. The applicant had started a new job and was relocating

his family within Ontario. He was also having problems obtaining counsel.

The applicant had been invited by the PEO tribunal office to formalize his motion for an adjournment. He was told he could take steps to have it heard in writing or electronically. He did not take those steps.

Counsel for the Registrar advised the panel, as he had previously advised the applicant that the Registrar was prepared to consent to an adjournment as long as it was made preemptory to the applicant that the Registrar be given dates for the new hearing in advance of it being scheduled and allowed the opportunity to canvass those dates with its witnesses, and that the new hearing date be scheduled prior to the end of October 2007.

Independent legal counsel (ILC) to the panel advised that although the applicant had not complied with the forms and technicalities of the Registration Committee's rules regarding motions, the panel could waive those technicalities and consider that the applicant had made a motion for an adjournment of this hearing.

The ILC also advised that adjournment requests are governed by s. 21 of the *Statutory Powers Procedure Act*, as follows:

"A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held."

ILC advised that the panel should balance the parties' right to a fair hearing against the desirability of an expeditious hearing, and that the panel should consider such factors as: 1. whether this was a first adjournment request; 2. the reasons for the proposed adjournment; 3. the length of the proposed adjournment; 4. whether there were concerns about public safety or faith in the profession; and 5. what prejudice would result to the applicant if the request for an adjournment was denied. On the last point, the panel was advised that, since the onus in a Registration Committee hearing is on the applicant and he was not present, refusing his request for an adjournment would mean that the application would be dismissed and this proceeding would be at an end.

### Decision

The panel adjourned the hearing to a period not exceeding 90 days hence, on condition that the adjournment be preemptory to the applicant.

### Reasons for decision

There was no formal motion before the panel; however, in light of the fact that