

The Discipline Committee of the Association of Professional Engineers of Ontario

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990, Chapter P. 28

And in the matter of a complaint regarding the conduct of

## Several Professional Engineers

members of the Association of Professional Engineers of Ontario, and

## Company X

a holder of a Certificate of Authorization

BETWEEN:

The Association of Professional Engineers of Ontario and

Several Professional Engineers and Company X

## Summary of Decision and Reasons

A Panel of the Discipline Committee of the Association of Professional Engineers of Ontario (PEO) met in the offices of PEO on January 6, 2003, to hear allegations of incompetence and professional misconduct against several professional engineers (the members), who were members of PEO, and allegations of professional misconduct against Company X, a holder of a Certificate of Authorization issued by PEO.

The principal allegations, as stated in the Notice of Hearing, dated May 24, 2002, against the members and company X were as follows:

### Allegations

1. The members and company X issued copies of a catalogue utilizing specific text and figures, which were taken from another company's catalogue without consent from the other company.
2. The catalogue implied that the members and company X were responsible for the product.
3. Company X was selling the product described in the catalogue without complying with the requirements of the *Energy Efficiency Act*.

Counsel for PEO advised that PEO was seeking leave of the Discipline Panel to withdraw the allegation of incompetence made against the members.

Counsel for PEO advised that PEO was not calling any expert or other evidence with respect to the allegations as set out in the Notice of Hearing except for filing the other company's catalogue and the company X catalogue as exhibits.

The members and company X admitted the principal allegations as set out above.

The panel conducted a plea inquiry and was satisfied that the admission by the members and company X was voluntary, informed and unequivocal.

**The panel considered the allegations and the admission by the members and company X and finds that the facts support a finding of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act* as follows:**

**"28(2) A member of the Association or a holder of a Certificate of Authorization, temporary 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."**

**The sections of Regulation 941 made under the Act relevant to the panel's finding of professional misconduct are:**

- ◆ **Section 72(2)(a): "negligence";**
  - ◆ **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";**
  - ◆ **Section 72(2)(g): "breach of the Act or Regulations, other than an action that is solely a breach of the Code of Ethics"; and**
  - ◆ **Section 72(2)(j): "conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would be reasonably regarded by the engineering profession as unprofessional."**
- The panel granted leave to PEO to withdraw the allegation of incompetence made against the members.
- The panel considered the submissions of counsel and in particular that the

members admitted the allegations and that the members claimed that the catalogue had been prepared by employees of company X without the permission and knowledge of the members. The members, however, take responsibility for this occurrence. When it came to their attention, company X did not issue further copies of the catalogue and the members took steps to retrieve copies of the catalogue already distributed.

With respect to the finding of negligence [section 72(2)(a)], the panel accepts the submissions of counsel for PEO that the failure of the members and company X to properly monitor company X employees constitutes negligence in that they failed to have a system in place to ensure that this type of error would not occur. Furthermore, with respect to section 72(2)(g), the panel accepts that the conduct of the members and company X was a breach of section 75(a) and (b) of Regulation 941 in that it was not professional to include language from another company in the company X catalogue, and that company X's catalogue was not factual. The panel also found the conduct to be unprofessional and a breach of 72(2)(j) of Regulation 941. With respect to section 72(2)(d), the panel accepted the submissions of PEO counsel that company X was selling its products without complying with the *Energy Efficiency Act* and its associated Regulation 82/95, in that the company X products had not been tested to show compliance with the efficiency standards prescribed in the Regulation and the units did not bear the labeling required under the Regulation.

Counsel for PEO advised the panel that a Joint Submission as to Penalty had been agreed upon. The panel concluded that the proposed joint penalty was reasonable and in the public interest. The members cooperated with PEO and, by agreeing to the facts and a proposed penalty have accepted responsibility for their actions.

**The panel, therefore, ordered the following penalty:**

**1. The members shall receive a verbal reprimand, the fact of which**

**will not be recorded on the register of the Association;**

**2. Company X will receive a written reprimand, the fact of which will be recorded on the register of PEO for a period of six months;**

**3. The members and company X shall jointly provide a written undertaking to PEO to locate, recover and destroy all remaining copies of the company X catalogue and any other material in their possession that contains text and images copied from the other company material that is not in the public domain;**

**4. The members and company X shall jointly provide a written undertaking to PEO that, in the production of future company X marketing or technical material, they will never again utilize text or images from a third-party source without consent of that third party and without giving credit to that third party in the company X marketing or technical material;**

**5. The members shall write and pass the Professional Practice Examination (PPE) within 12 months of the date of the decision, failing which, this matter shall be brought back before the Discipline Committee for additional penalty action;**

**6. Company X shall pay costs to PEO in the amount of \$3,000, payable at the conclusion of the discipline hearing;**

**7. A summary of the discipline hearing proceedings shall be published in the official publication of the association, without reference to names or identifying details; and**

**8. The members and company X shall jointly provide a narrative, directly to PEO within 60 days**

**of delivering the panel's written decision, describing the circumstances and their experience in this matter, without reference to names or identifying details, for publication in the official publication of the association as an addendum to the summary described in paragraph 7 above.**

The panel is of the view that copying is a significant offence, not only in the technical field but also in the literary and artistic fields. It cannot be defended unless the permission of the author and proper credit is given. Copying and purporting the work to be original is reprehensible and unjustifiable. This is especially true for professional engineers who are to ascribe to a code of ethics and should be above this type of conduct.

The senior management of company X was lax in fulfilment of their responsibilities for allowing such actions to be committed. PEO cannot tolerate Ontario engineers to be tainted with a label of plagiarist.

Another aspect of this case that concerned the panel was the fact that company X brought a product to market without complying with the requisite standards, rules and regulations, i.e., the *Energy Efficiency Act*. These standards, rules and regulations exist to protect the public and the environment. Although, luckily, in this case no significant impact on the public occurred, this non-compliance cannot be construed as acceptable. Senior management must be aware of requirements before introduction of products to the public. The panel accepts, however, that the members as senior engineers of company X, stood up to their responsibilities and did not attempt to pass the actions off as the responsibilities of their junior engineers.

The written Decision and Reasons in this matter were dated March 3, 2003, and were signed by the Chair of the Panel, Kenneth Serdula, P.Eng., for and on behalf of the other members of the Discipline Panel: Jim Lucey, P.Eng., Colin Moore, P.Eng., Anne Poschmann, P.Eng., Derek Wilson, P.Eng.