

Summary of Decision and Reasons

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter was heard before a panel of the Discipline Committee on October 15, 2003, at the Association of Professional Engineers of Ontario (the “association”) in Toronto. The association was represented by John Abdo of Cassels Brock and Engineer A was unrepresented.

The Allegations

In a Notice of Hearing dated January 14, 2003, it was alleged that Engineer A was guilty of professional misconduct as defined in Regulation 941 and that he was incompetent.

Agreed Facts

The Agreed Statement of Facts, dated September 26, 2003, is summarized as follows:

1. On or about March 16, 2001, Engineer A signed a General Review/Commitment Certificate (“GRCC”) and a letter of undertaking in relation to the construction of an industrial/commercial building.
2. Engineer A prepared structural and architectural drawings for the project.
3. The drawings were submitted to the local municipality on or about September 20, 2001, and a building permit was issued on September 21, 2001, on the basis of the drawings prepared and submitted by Engineer A.
4. Engineer A provided the municipality with his first signed and sealed site review report dated November 30, 2001 (Report #1). Report #1 addressed the placement of the wall footings and stated that the spread footing rein-

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 and Certificate of Authorization holder of the Association of Professional Engineers of Ontario.

- forcing or sizes could not be verified because they were covered at the time of the review. In Report #1, Engineer A stated that the contractor had advised him that the building inspector had already done this verification. Report #1 also advised of a change to block wall construction.
5. Construction of the building’s steel framing commenced in early March 2002. On or about the evening of Saturday, March 9, 2002, the partially erected structural steel frame of the building collapsed in a windstorm. No further site review reports were received from Engineer A from the time of Report #1 until the date of the collapse.
6. Engineer A attended at the site on March 11, 2002. He subsequently provided the municipality with a second signed and sealed site review report dated March 19, 2002 (Report #2). In Report #2, he stated that the property owner had advised that the structural steel frame had collapsed as a result of high winds. Report #2 provided repair detail and some instructions as to the remedial

work to be completed for the project to continue.

7. There was no action or omission by Engineer A that either directly or indirectly caused or contributed to the collapse. The primary reason for the collapse was that the partially erected structural steel frame of the building was not adequately braced, combined with high winds.
8. It is agreed that Engineer A:
 - (a) failed to maintain the standards that a reasonable and prudent practitioner would maintain by producing a structural steel design and sealing associated drawings in which:
 - (i) there were a number of steel beams and columns that were undersized for their intended use,
 - (ii) basic structural items and material, required to construct the building were not sized, dimensioned and/or specified,
 - (iii) the primary lateral stability system was not adequately detailed,
 - (iv) the primary connection loading was not shown,

- (v) the structural framing around the large openings in the exterior walls was not specified,
 - (vi) sufficient structural framing to satisfy the *Ontario Building Code* requirements for support and connection of the exterior precast concrete panels was missing, and
 - (vii) several column piers and footings were omitted from the foundation plan;
- (b) failed to carry out adequate site inspections in accordance with the GRCC prior to the collapse and hence failed to note and/or provide, among other things, that:
- (i) there were adequate drawings and details for the design changes to the foundation walls,
 - (ii) the exterior column piers were not constructed integrally with the exterior foundation wall, and
 - (iii) the interior column piers were undersized when compared to the size of the column base plates; and
- (c) failed to note deficiencies that ought to have been evident upon his inspection of the site on March 11, 2002, after the collapse, including:
- (i) the interior column piers that were undersized when compared to the size of the column base plates, and
 - (ii) the contractor who had used wood shims and/or unusually high stacks of steel shims to level the columns during erection.
9. By reason of the facts set out above, it is agreed that Engineer A is guilty of professional misconduct as defined in section 28(2)(b) of the Act as follows:

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 defined in the regulations.”

10. The sections of the regulation, Regulation 941 to the Act, relevant to the alleged professional misconduct by Engineer A are:

- (a) *Section 72(2)(a)*: negligence, which is defined as 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)(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;
- (c) *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
- (d) *Section 72(2)(j)*: Conduct or an act relevant to the practice of professional engineering that, having regard to all of the circumstances, would reasonably be regarded by the engineering profession as unprofessional.

Plea by Member

Engineer A admitted to the allegations of professional misconduct referred to in the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the admission was voluntary, informed and unequivocal.

Decision

The panel considered the Agreed Facts and found that the facts support a finding of professional misconduct and, in particular, found that Engineer

A committed an act of professional misconduct as admitted.

Reasons for Decision

The panel accepted the Agreed Facts on the basis that there was no difference of opinion between counsel for the association and Engineer A.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. He further advised that the association was satisfied that the Joint Submission was fair and reasonable. He noted that there had been considerable discussion with Engineer A and that the association had received excellent replies. He also noted that Engineer A had always cooperated with the association and that the association tries to be fair.

Engineer A, in speaking on his own behalf, noted that he had very little to add to the remarks made by Mr. Abdo. He advised that he had a 40-year unblemished career and was very embarrassed. He noted that he felt great respect for the association and acknowledged he had provided an inadequate report after the collapse. He requested the panel not to include his name in the publication of the matter.

Penalty Decision

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

1. **That Engineer A write and pass the Professional Practice Examination within 12 months from the date of the hearing, failing which his licence and Certificate of Authorization would be suspended. This suspension would continue until the exam has been passed, or for a maximum period of 24 months, after which his licence would be revoked;**
2. **That it shall henceforth be a term, condition and limitation on the licence and Certificate of Authorization of Engineer A that**

he only engage in the practice of professional engineering with respect to buildings that fall under Part 9 of the *Ontario Building Code*;

3. That Engineer A provide the association with a written undertaking to the effect that, in all future work involving construction review services, he will comply with the requirements of section 78 of Regulation 941 made under the *Professional Engineers Act*, and the

provisions of the PEO Guideline entitled, *Professional Engineers Providing General Review of Construction as Required by the Ontario Building Code*;

4. That Engineer A receive a reprimand and the fact of the reprimand be recorded on the Register of the association; and
5. That Engineer A pay a costs award to the association in the amount of \$5,000.

The panel concluded that the proposed penalty is reasonable and in the public interest. Engineer A has cooperated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions.

The written Decision and Reasons in this matter were dated October 12, 2004, and were signed by the Chair of the panel, Kam El Guindi, P.Eng., on behalf of the other members of the panel: Barry Hitchcock, P.Eng., Phil Maka, P.Eng., David Smith, P.Eng., and Derek Wilson, P.Eng.

This matter came on for hearing before a panel of the Discipline Committee on February 3, 2004, at the Association of Professional Engineers of Ontario (“PEO”) in Toronto. The association was represented by Michael Royce (“Royce”) of Lenczner Slaght Royce Smith Griffin and John J. Kadlec, P.Eng. (“Kadlec”) was unrepresented.

The Allegations

The allegations against Kadlec as stated in the Notice of Hearing dated July 21, 2003 (Exhibit #1) were as follows:

1. Save as hereinafter stated, Kadlec was at all material times a member of the Association of Professional Engineers of Ontario and was designated by the Council of PEO as a consulting engineer.
2. On March 16, 1994, the Discipline Committee of PEO suspended Kadlec’s licence to practise professional engineering pending an engineering practice inspection. Following that practice inspection and a second hearing before the Discipline Committee of PEO on September 30, 1994, Kadlec’s licence to practise professional engineering was revoked and the

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 J. Kadlec, P.Eng.

a member of the Association of Professional Engineers of Ontario.

Certificate of Authorization of his company, BETA Engineering Inc. (“BETA”) was revoked. Kadlec’s licence to practise professional engineering was reinstated in November 1999.

At this point Royce clarified the dates given above by referring to the PEO Registrar’s Certificate (Exhibit #2). As reflected in the Registrar’s Certificate (Exhibit #2), Mr. Kadlec’s licence was suspended on November 24, 1993, revoked on April 12, 1994, and reinstated on August 26, 1999. It

was noted that prior to Kadlec’s licence suspension, there was a November 24, 1993 Discipline Committee hearing; prior to his licence and BETA’s Certificate of Authorization being revoked there was an April 12, 1994 hearing; and prior to Kadlec’s licence being reinstated there was an August 26, 1999 hearing.

3. In or about March 1994, Kadlec requested that Vilen Zlotnikov, P.Eng. (“Zlotnikov”) assist him and his company, BETA, by reviewing

and applying his professional engineer's seal to 17 structural drawings prepared by Kadlec.

4. Kadlec at that time agreed to pay to Zlotnikov \$500 for each drawing he reviewed and stamped and, on the basis of that agreement, Zlotnikov reviewed and stamped the aforementioned 17 structural drawings and submitted to Kadlec an invoice dated July 11, 1994 in the amount of \$8,500.
5. Kadlec refused or neglected to honour the said invoice with the result that Zlotnikov instituted proceedings in the Burlington Small Claims Court and on September 7, 1995 recovered judgment against Kadlec in the amount of \$6,080, being the maximum jurisdiction of that court at that time.
6. Zlotnikov was unable to enforce the said judgment because Kadlec could not be located, but Zlotnikov in 2001 was able to locate Kadlec and undertook proceedings to enforce the said judgment, with the result that Kadlec on April 9, 2002 agreed in the North York Small Claims Court to pay the aforementioned sum of \$6,080 in instalments recited in Minutes of Settlement executed by Kadlec and Zlotnikov on April 9, 2002.
7. Kadlec refused or neglected to make any payment pursuant to the said settlement, with the result that Zlotnikov instituted further proceedings in the Toronto Small Claims Court and obtained a judgment against Kadlec in the amount of \$9,399.52 in addition to interest from June 1, 2002, and \$300.00 in costs.
8. Kadlec refused or neglected to pay any of the said sum and filed an Assignment in Bankruptcy on or about June 11, 2002.
9. It is therefore alleged that Kadlec repeatedly failed to obey court orders and to honour a professional obligation to pay the account for professional services rendered by Zlotnikov.
10. By reason of the facts aforesaid, it is alleged that Kadlec is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
11. The section of Regulation 941 made under the said Act and relevant to this misconduct is:

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.

Kadlec admitted to the alleged professional misconduct and all of the underlying facts, except those contained in paragraph #4. Kadlec indicated that Zlotnikov, the complainant, did not carry out the services as described in item #4.

Royce indicated that this point of disagreement was not relevant to the matters in question and that PEO was prepared to proceed on the basis that the panel would not be required to find the facts as alleged in paragraph #4.

Plea by Member and/or Holder

Kadlec admitted to the allegations set out in paragraphs 1 to 3 and 5 to 11 in the Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the member's admission was voluntary, informed and unequivocal.

Decision

The panel considered the member's agreement to the Notice of Hearing

and finds that the facts support a finding of professional misconduct and, in particular, finds that John J. Kadlec, P.Eng., committed an act of professional misconduct as alleged in paragraphs 5, 6, 7, 8 and 9 of the Notice of Hearing in that:

1. **Kadlec refused or neglected to honour the said invoice with the result that Zlotnikov instituted proceedings in the Burlington Small Claims Court and on September 7, 1995, recovered judgment against Kadlec in the amount of \$6,080, being the maximum jurisdiction of that court at that time.**
2. **Zlotnikov in 2001 was able to locate Kadlec and undertook proceedings to enforce the said judgment, with the result that Kadlec on April 9, 2002, agreed in the North York Small Claims Court to pay the aforementioned sum of \$6,080 in instalments recited in Minutes of Settlement executed by Kadlec and Zlotnikov on April 9, 2002.**
3. **Kadlec refused or neglected to make any payment pursuant to the said settlement, with the result that Zlotnikov instituted further proceedings in the Toronto Small Claims Court and obtained a judgment against Kadlec in the amount of \$9,399.52 in addition to interest from June 1, 2002, and \$300 in costs.**
4. **Kadlec refused or neglected to pay any of the said sum and filed an Assignment in Bankruptcy on or about June 11, 2002.**
5. **Kadlec repeatedly failed to obey court orders and to honour a professional obligation to pay the account for professional services rendered by Zlotnikov.**

Reasons for Decision

Prior to making its decision, the panel obtained the advice of independent legal counsel (“ILC”) as to the meaning of the words “disgraceful, dishonourable or unprofessional.”

ILC advised the panel that “disgraceful” conduct is conduct that has the effect of shaming the member and, by extension, the profession. In order to be disgraceful, the conduct should cast serious doubt on the member’s moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet.

“Dishonourable” conduct is similar, but need not be as severe. However, “dishonourable” conduct is often the best description for conduct involving dishonesty or deceit. (Such conduct is considered in most areas of law to be the most serious and worthy of sanction, and in many cases dishonest conduct should also be regarded as “disgraceful.”) Both dishonourable and disgraceful conduct have an element of moral failing.

A member ought to, or will, know that the conduct is unacceptable and falls well below the standards of a professional when he or she commits a disgraceful or dishonourable act. Conduct amounting to fraud or theft would be examples of dishonourable or disgraceful conduct. In general, the more knowledge of the wrongfulness the member had or ought to have had at the time of the conduct, the more it will tend to be “disgraceful” instead of merely “dishonourable.”

By contrast, “unprofessional” conduct does not require any dishonest or immoral element to the act or conduct. Many courts have found that unprofessional conduct includes “a serious or persistent disregard for one’s professional obligations.” This term recognizes the general traits of good judgment and responsibility that are required of those privileged to practise the profession. Whether or not a member commits an act that disgraces him or her and dishonours the profession, failure to live up to the standards expected of him or her

can demonstrate that a member is, simply put, not professional. However, mere errors in judgment, or discretionary decisions made reasonably (though the panel might have made them differently), are not properly considered “unprofessional” conduct.

Whether conduct is dishonourable, disgraceful or unprofessional is to be tested against the consensus view of the profession. That is why the regulation says that the conduct must “reasonably be regarded” as disgraceful, dishonourable or unprofessional. While the members of a panel may have a standard that is more strict or more lax with respect to their own conduct, or with respect to the conduct of the general public, they must not test a member’s conduct against either of those standards. Instead, they must determine what, in the circumstances, is the generally accepted view within the profession.

The regulation also provides that the conduct in question, in order to be considered “disgraceful, dishonourable or unprofessional,” must be “relevant to the practice of the profession.” Purely private conduct is not meant to be regulated by the rule, unless that conduct has some impact on the public trust in professional engineering.

The panel accepted the ILC’s advice and found that Kadlec’s actions were both unprofessional and dishonourable.

The panel found Kadlec’s actions showed a persistent disregard for the judicial process and findings initiated by Zlotnikov. This was not a simple error in Kadlec’s judgment, but a calculated decision that was found to be unprofessional.

Further, the panel found that the refusal or failure to pay the money as directed by the court, and even agreed to by Kadlec at the court proceedings on April 9, 2002, was in fact dishonest. The panel found that the general view of the membership would be that this dishonesty brings dishonour to the profession and, therefore, this conduct was considered to be dishonourable.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been totally agreed upon. The PEO submission sought an order as to penalty that:

1. the member receive a recorded reprimand from the panel;
2. the member be assessed costs, on a partial recovery basis, in the amount of \$2,500; and
3. the proceedings of this hearing be published, with names, in the journal of the association.

Kadlec was in agreement with items 1 and 2 of the penalty submission, but requested that the proceedings of this hearing be published without names. Kadlec indicated that his name was published from a previous discipline matter he was involved in and that it caused him substantial financial hardship.

The panel considered the parties’ submissions. The panel felt the penalty submission was inconsistent with the panel’s findings, and that a more significant penalty was in order. The panel requested further submissions from PEO and Kadlec, as to why a licence suspension or revocation or a requirement to write the PEO Professional Practice Exam would not be appropriate.

Counsel for PEO submitted that an agreement of the facts and an admission of guilt resulted from lengthy negotiations with the member. As part of this negotiation process, a general agreement to penalty submission was also negotiated.

Kadlec indicated that he wrote and passed the professional practice exam in 1999, as part of a requirement for reinstatement of his licence.

In his advice to the panel, the ILC highlighted the nature of the negotiation process. The ILC further advised the panel that unless the Joint Submission as to Penalty was completely outside the appropriate range of penalty such that its

acceptance would bring the discipline process into disrepute or would otherwise be contrary to the public interest, the panel should accept it.

Penalty Decision

The panel accepts the PEO submission as to penalty and accordingly orders that:

1. the member receive a recorded reprimand from the panel;
2. the member be assessed costs, on a partial recovery basis, in the amount of \$2,500; and
3. the proceedings of this hearing be published, with names, in the journal of the association.

The panel recognizes that as part of any negotiation process there must be give and take from both parties involved. Thus, if there is an admission of guilt, a negotiated submission of penalty is to be expected.

The panel considered licence suspension or revocation, but concluded that the proposed penalty would not bring the discipline process into disrepute and was in the public interest. The panel also noted that the actions of the member were purely of ethical and legal concerns and not of a technical nature.

John J. Kadlec, P.Eng., has cooperated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association. Further, he waived his right to appeal and, consequently, the panel administered the reprimand at the conclusion of the hearing on February 3, 2004.

The written Decision and Reasons in this matter were dated February 23, 2004, and were signed by the Chair of the panel, Max Perera, P.Eng., on behalf of the other members of the panel: James Dunsmuir, P.Eng., Daniela Iliescu, P.Eng., Ken Lopez, P.Eng., and Richard Weldon, P.Eng.

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:

William Tessler, P.Eng.

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

Sonterlan Corporation

a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on April 14, 2004, at the Association of Professional Engineers of Ontario in Toronto. The association was represented by Michael Royce ("Royce") of Lenczner Slaght Royce Smith Griffin. William Tessler, P.Eng. ("Tessler") and Sonterlan Corporation ("Sonterlan") were represented by Richard Quance ("Quance") of Himelfarb Proszanski.

The Allegations

The allegations against William Tessler, P.Eng., and Sonterlan Corporation in the Fresh Notice of Hearing dated April 1, 2004 are as follows:

1. Tessler was at all material times a member of the Association of Professional Engineers of Ontario.
2. Sonterlan 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 Tessler, carried on the practice of professional engineering in a proper and lawful manner. Tessler was one of the professional engineers responsible for the services provided by Sonterlan.

3. In July 1998, the Ministry of Transportation of Ontario ("MTO") awarded Contract No. 98-58 (the "contract") to Underground Services (1983) Ltd. ("USL") for structural rehabilitation of two Highway 401 underpasses, including the Essex County Road No. 37 bridge.
4. On or about July 20, 1998, Tessler and Sonterlan accepted an engagement from USL to act as the

Quality Verification Engineer (“QVE”) for the contract.

5. Section 905.04.04 of the contract required the contractor to submit to the contract administrator (“CA”) a Certificate of Conformance (“C of C”) sealed and signed by the QVE, upon completion of the placement of reinforcing steel bars (“rebars”) for each structural component. The QVE was required to certify that the rebar placement was in general conformance with the contract documents. Dillon Consulting Limited (“Dillon”) provided contract administrative services on the contract.
6. The rebar placement was set out in contract drawings, which included:
 - (a) Sheet No. 41, dated February 1997, “Deck Reinforcement & Details”; and
 - (b) Sheet No. 42, dated February 1997, Standard Drawing No. SS110-60, for “Barrier Wall w/o Railing, Performance Level 3.”

These two drawings specified rebar placement requirements for the east and west barrier walls, and the deck of the Essex County Road No. 37 bridge.

7. Each wall on the deck required the placement of 281 sets, each comprising three bars, of vertical rebars with 220mm spacing, and 10 sets of the rebars spaced at 110mm at both ends (within interior panels “B” and “D”) adjacent to the expansion joints.
8. To provide structural continuity through the construction joints between the deck and the walls, and to fix the vertical wall rebars in position, the rebars passing

through the joints had to be tied to the longitudinal rebars in the deck before the deck concrete was poured.

9. Tessler and Sonterlan issued a sealed C of C #1, Verification Inspection Report No. 3 dated September 2, 1998, which stated that the rebar placement for the deck of the Essex County Road No. 37 bridge generally conformed to the drawings.
10. On September 4 and 5, 1998, concrete was poured in the deck of Essex County Road No. 37 bridge.
11. Tessler and Sonterlan issued a sealed C of C #2, Verification Inspection Report No. 6 dated September 16, 1998, which stated that the rebar placement for the walls at Essex County Road No. 37 bridge generally conformed to the drawings.
12. On September 24, 1998, Graydon Knights, P.Eng., project manager for Dillon, noticed missing wall rebars during a routine site visit and asked Dillon personnel to verify this.
13. By Instruction Notice (“I.N.”) No. 12 dated September 25, 1998, George Zubyk of Dillon, the CA, advised USL that there were approximately 87 sets of rebars missing from each wall. Zubyk requested that USL submit a proposal to correct this deficiency. The MTO was also informed of the deficiency and the request.
14. By letter dated September 25, 1998 to USL, Tessler and Sonterlan responded by submitting a repair proposal to correct the spacing of the barrier wall steel, which was placed at 350mm c/c instead of 220mm c/c as shown

on the contract drawing. Tessler recommended that additional dowels be installed at 350mm c/c alternating with the existing rebars.

15. By I.N. No. 13 dated September 29, 1998, Zubyk advised USL that John Schaefer, P.Eng., of the MTO, had accepted Tessler’s proposal to correct the missing rebars.
16. By letter dated October 14, 1998 to USL, Tessler and Sonterlan provided the following explanations relating to C of C #1:
 - (a) “The dowels for the barrier wall were placed at intervals varying from 210mm to 240mm and generally conformed to the required spacing of 220mm, with the exception of the ends of the interior panel ‘D,’ which were placed at 110mm to 120mm centres.”
 - (b) “Subsequent to the above noted inspection and placement of concrete in the deck, we were advised that the barrier wall dowels were found to have been placed at varying intervals of approximately 350mm to 400mm on centre. The transverse steel in the deck was verified to have been placed at 300mm centres. If the dowels had been installed incorrectly, they would have been aligned with the transverse steel and demonstrated a spacing of 300mm centre to centre. The observed in situ spacing would suggest that the dowels for the barrier wall were tampered with prior to the deck pour.”
 - (c) The installation of the additional dowels provided approximately 23 per cent more steel than was required by the drawings.
17. By declaration dated January 22, 1999, Tessler repeated his October 14, 1998 statement about the wall

rebar spacing when C of C #1 was issued, as follows:

- (a) “The dowels for the barrier walls were installed at intervals varying from 210mm to 240mm and generally conformed to the required spacing of 220mm.”
 - (b) “The dowels for the ends of interior panel ‘D’ were placed at 110mm to 120mm on centre and generally conformed to the required spacing of 110mm.”
18. It is alleged that William Tessler, P.Eng., and Sonterlan Corporation:
- (a) inadequately performed inspections for the purpose of certifications of rebar placement;
 - (b) prepared and issued Cs of C #1 and #2, which contained errors and omissions;
 - (c) issued statements in Cs of C #1 and #2 that were contrary to the drawing requirements and the as-built condition;
 - (d) provided reports that there was no deficiency in the wall rebar placement as reported in either C of C #1 or #2;
 - (e) erroneously repeated in the declaration that the wall rebar spacing generally conformed to the drawings when C of C #1 was issued, when they knew, or ought to have known, that MTO would have found the statements improper; and
 - (f) failed to demonstrate an understanding of their professional engineering responsibilities and obligations while engaged as a QVE.

Agreed Facts

Counsel for the association and counsel for the member and holder advised

the panel that agreement had been reached on the facts and that the factual allegations as set out in the Fresh Notice of Hearing were accepted as accurate by the member and holder (the “Agreed Facts”).

Plea by Member and Holder

The member and the holder admitted the Agreed Facts set out in paragraphs 1 through 18 in the Fresh Notice of Hearing constituted acts of professional misconduct. The panel conducted a plea inquiry and was satisfied that the member’s admission and that of the holder was voluntary, informed and unequivocal.

Decision

The panel considered the Agreed Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that William Tessler, P.Eng., and Sonterlan Corporation committed acts of professional misconduct as alleged in paragraphs 1 through 18 of the Fresh Notice of Hearing dated April 1, 2004, in that by reason of the facts aforesaid Tessler and Sonterlan are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act, R.S.O. 1990, Chapter P.28.*

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)(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 a practitioner; and**
- (d) **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.**

Reasons for Decision

The panel was persuaded that the Agreed Facts constituted acts of professional misconduct, and noted that the member and the holder agreed with the association that findings of professional misconduct were appropriate.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. The Joint Submission as to Penalty was as follows:

1. a two-month suspension of the member’s licence and the holder’s Certificate of Authorization, to commence May 14, 2004;
2. a recorded Reprimand;
3. a requirement that the member write and pass the Professional Practice Examination within 12 months of April 14, 2004, failing which his licence will be suspended until he passes it, on the understanding that his licence

will be revoked if he has not passed the examination within 24 months of April 14, 2004; and

4. the member and the holder shall pay costs in the amount of \$7,500 within 12 months of April 14, 2004.

Joint Penalty Submissions

Counsel for the association advised that the association was satisfied that the proposed penalties were fair and reasonable. He noted that if the member and the holder had disputed the allegations and the penalty, a lengthy hearing would have been held and significant costs incurred as a result.

Counsel for the member and the holder stated that they were in agreement with the submissions made by counsel for the association. He advised the panel that the member and the holder regretted what had taken place and had put into place new procedures to avoid such incidents in the future.

Penalty Decision

The panel deliberated and a majority of the panel accepted the Joint Submission as to Penalty and accordingly orders:

1. a two-month suspension of the member's licence and the hold-

er's Certificate of Authorization, to commence April 14, 2004;

2. a recorded Reprimand;
3. a requirement that the member write and pass the Professional Practice Examination within 12 months of April 14, 2004, failing which his licence will be suspended until he passes it, on the understanding that his licence will be revoked if he has not passed the examination within 24 months of April 14, 2004; and
4. the member and the holder shall pay costs in the amount of \$7,500 within 12 months of April 14, 2004.

The panel felt that the use of the engineering seal (the "seal") represents the integrity of the engineering profession and the misuse of the seal by affixing it to Certificates of Completion that contained errors and omissions, were incomplete, and which contained misstatements was a very serious matter.

There is little doubt in the minds of the panel that during the construction process others were involved in the site inspection process and had this not

occurred, there could have been a danger to the public.

The end result, however, was that the member and the holder, although relying on others, misused the seal by issuing Certificates of Completion (Exhibits 2 and 3) which the member, the holder and the association agreed were incorrect.

The panel understood the CA and the MTO were involved in the inspection and approval process for the projects. The panel felt the MTO process in undertaking rehabilitation projects should be subject to a review by an independent board in order to set up a procedure so a similar incident cannot occur in the future.

Waiver of Right to Appeal

Upon pronouncement of the penalty decision by the Chair, the member and the holder advised that they would waive their right to appeal. As a result the penalties will take effect immediately and an order imposing the penalties effective April 14, 2004 will be issued.

The written Decision and Reasons in this matter were dated October 18, 2004, and were signed by the Chair of the panel, Jag Mohan, P.Eng., on behalf of the other members of the panel: Ken Lopez, P.Eng., Derek Wilson, P.Eng., Tom Ellerbusch, P.Eng., and Daniela Ilescu, P.Eng.

Notice from the Regulatory Compliance Department re: Mohammad (Mike) Panahi, P.Eng., and Pancon Engineering Ltd.

At a discipline hearing held at the offices of the association on October 14 and 15, 2004, Mohammad (Mike) Panahi, P.Eng., and Pancon Engineering Ltd. were found not guilty of professional misconduct. The allegations relating to this hearing were previously published in *Gazette* and on the association's website. This notice is published by order of the Discipline Committee based on a request by Panahi and Pancon pursuant to section 28(6) of the *Professional Engineers Act*.

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 496.

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.

Further details regarding the allegations against the members and Certificate of Authorization holders listed below can be found on PEO's website at www.peo.on.ca.

February 7-11, 2005

Bruce A. Brown, P.Eng., and Bruce A. Brown Associates Limited (BABAL)

It is alleged that Brown and BABAL 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)(f)*: failure of a practitioner to present clearly to the practitioner's employer the consequences to be expected from a deviation proposed in work, if the professional engineering judgment of the practitioner is overruled by non-technical authority in cases where the practitioner is responsible for the technical adequacy of professional engineering work;
- (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; and

- (f) *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.

February 22-24, 2005

Tony E. Kahil, P.Eng.

It is alleged that Kahil 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)(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;
- (b) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
- (c) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (d) *Section 72(2)(i)*: failure to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client; 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.

April 25-29, 2005

William C. Wong, P.Eng., and Construction Testing Laboratories Limited (CTTL)

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

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.

May 9-13, 2005

John Y.M. Kwan, P.Eng., and K.O. Partners Ltd.

It is alleged that Kwan is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Kwan and K.O. Partners 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)(c)*: failure to act to correct or report a situation that the practitioner believes may endanger the safety or welfare of the public;
- (d) *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;

- (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.

June 20-24, 2005

Vinodbhai Patel, P.Eng.

It is alleged that Patel 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)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
- (f) *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.

July 7-9, 2005

Nicholas M. Upton, P.Eng.

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

Q&A: Returning your seal and licence certificate

Every successful applicant for a licence, limited licence, temporary licence or provisional licence receives a seal and licence certificate from PEO. The seals vary in appearance depending upon the type of licence, and their use is governed by Regulation 941 made under the *Professional Engineers Act*. Both the seal and the licence certificate that is issued with it remain the property of PEO and must be returned under certain circumstances. The same is true for the certificate issued when an application for a Certificate of Authorization (C of A) is approved.

Q: Under what circumstances would I have to return my seal and/or certificate?

A: There are three situations that would require the return of your seal and certificate:

1. *When your licence, limited licence, temporary licence, provisional licence or C of A is suspended or revoked.* If you are found guilty of professional misconduct or incompetence at a discipline hearing, section 28(4) of the Act gives the Discipline Committee the power to suspend or revoke your licence, limited licence, temporary licence, provisional licence or C of A. Separate from any disciplinary matters, the registrar has powers under sections 15(8) and 18(2) of the Act to suspend or revoke a limited licence, temporary licence, provisional licence or C of A upon certain reasonable and probable grounds. Regardless of the basis for the suspension or revocation, you must return your seal and certificate to PEO. This is required under section



54 of Regulation 941, which states that: “Every person whose licence, temporary licence, provisional licence, limited licence or certificate of authorization is suspended or revoked and every partnership whose certificate of authorization is suspended or revoked shall forthwith deliver it to the registrar together with the person’s or partnership’s related seal and the certificate, if any, designating the person as a specialist or a consulting engineer.” If the licence, limited licence, temporary licence, provisional licence or C of A has only been suspended, the seal and certificate will be returned to the holder at the conclusion of the period of suspension.

2. *When your licence, limited licence, temporary licence, provisional licence or C of A has been cancelled for non-payment of fees.* Section 22 of the Act empowers the registrar, with due notice to the licence or C of A holder, to cancel a licence, limited licence, temporary licence, provisional licence or C of A for non-payment of any fee prescribed by the regulations or by-laws. This would include the annual renewal fee, various application fees (e.g. consulting engineer designation) and examination fees. If a licence, limited licence, temporary licence, provisional licence or C of A is cancelled for non-payment of fees, return of the seal and certificate is required under section 36 of the Act, which states: “Where a licence, certificate of authorization, temporary licence, provisional licence or limited licence is revoked or cancelled, the former holder thereof shall forthwith deliver the licence, certificate of authorization, temporary licence, provisional licence or limited licence and related seal to the Registrar.”

3. *When you resign your membership.* Section 5(2) of the Act states: “A member may resign his or her membership by filing with the registrar a resignation in writing and his or her licence is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary action arising out of the person’s professional conduct while a member.” A resignation results in a cancelled licence, and therefore the seal and certificate must be returned pursuant to section 36 of the Act as noted above in item (2).

In summary, if your licence, limited licence, temporary licence, provisional licence or C of A becomes invalid for any reason, the certificate and seal must be returned to PEO. It is important to note that the onus is on the licence holder to promptly return the seal and certificate when the circumstances warrant; it is not a matter of waiting for PEO to request it.

Q: What if I don’t return my seal and certificate?

A: As a minimum, you would be placing yourself at risk that someone could gain possession of your seal and fraudulently apply it to drawings being submitted to a third party (e.g. building officials). While it is unlikely that you would be held professionally responsible for the adequacy of the content of the drawings, there would be significant inconvenience to you while the matter is straightened out. Further, in any lawsuit arising from such fraudulent activity, the courts may determine that you were negligent in failing to return your seal and certificate in accordance with the *Professional Engineers Act* and hold you at least partially responsible for costs arising from the misuse of the seal.

If you failed to return your seal and then knowingly used it, you would be guilty of offences under sections 40(1)

and 40(2) of the Act and subject to prosecution by PEO. The penalty for the illegal practice of professional engineering, which includes practising without a licence and offering services to the public without a C of A [section 40(1)], is a fine of up to \$25,000 for a first offence, and up to \$50,000 for each subsequent offence. The penalty for an unlicensed individual using a seal [section 40(2)] is a fine of up to \$10,000 for a first offence, and up to \$25,000 for each subsequent offence.

Lastly, simple failure to return the seal and certificate would constitute a breach of the Act or Regulation 941 and PEO could seek a court order under section 39 of the Act forcing the return of the seal and certificate. Ignoring such an order would be contempt of court and could result in fines or, in extreme cases, incarceration.

While PEO appreciates the pride associated with being a licence holder, the seal and certificate are not souvenirs. Their prompt return, when required, is an important element of PEO’s responsibility to serve and protect the public interest.

Q: What if my seal and certificate were lost prior to my licence being cancelled, suspended or revoked?

A: Regardless of your licence status, you should report a lost seal or licence certificate to PEO as soon as the loss is discovered. If you only discover that the seal or certificate has been lost when you were planning to return them to PEO, you must advise PEO in writing that you have made every effort to locate the seal and certificate and have been unable to find them, and that should you locate them at a future date you will immediately return them to PEO.

Any questions regarding the return of the seal and certificate should be directed to the Regulatory Compliance department at PEO.