

tone had on achieving his objectives and on the profession as a whole. The panel would aim to convince the member that, in future, his practice of engineering would be better served by avoiding the emotion, language and tone in his communications that is aggressive and personal. Given the co-operative nature of the member during the hearing and his acceptance of the findings of the panel, the panel believes that a reprimand would have a rehabilitative effect and that the member would be unlikely to re-offend.

The panel chose to have the reprimand recorded on the register as a deterrent to the member and other members. By limiting the term of the recorded reprimand to one year, the panel took note that the member recognized his offence and was unlikely to repeat it. The one-year term would not create undue hardship for the member, but would show other members that such acts do carry a perceivable penalty.

The panel chose to have its Decision and Reasons published as a general deterrent so that other members of the profession will understand the need for appropriate professional conduct. The

panel chose to include the name of the member in the publication because of the findings in the case. Since the more serious of the allegations against the member was found to be unsubstantiated, publication of the decision with the name of the member serves to set the public record straight. Furthermore, the panel elected to write this summary for publication.

The panel chose to assign the partial cost of these proceedings because Remisz's conduct caused these costs. The assignment of costs is not a punishment of the member. It is unfair to burden all members of the profession with the entire cost that arises when members choose to act improperly and must be dealt with in the disciplinary process. Remisz agreed that the amount of \$7,500 to be paid to the association over a 12-month period did not represent an undue hardship.

The written Decision and Reasons were dated May 12, 2008, and were signed by John Vieth, P.Eng., as the chair on behalf of the other members of the discipline panel: J.E. (Tim) Benson, P.Eng., Ravi Gupta, P.Eng., Richard Hilton, P.Eng., and Nick Monsour, P.Eng.

DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding the conduct of BRADLEY J. KALUS, a holder of a limited licence issued by the Association of Professional Engineers of Ontario.

This matter came on for hearing before a three-member panel of the Discipline Committee on Thursday, November 23, 2006 at the Association of Professional Engineers of Ontario (the association) in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Bradley J. Kalus was represented by Jeffery Lanctot of Cassels Brock & Blackwell LLP.

THE ALLEGATIONS

In the Fresh Notice of Hearing dated November 16, 2006 (Exhibit 1), it was alleged that Bradley

J. Kalus (Kalus) is guilty of professional misconduct. The particulars of the allegations against the practitioner are summarized as follows:

1. On February 19, 2001, Kalus was issued a limited licence by Professional Engineers Ontario that entitled him to engage in the practice of professional engineering with respect to geometric design of highway and road improvement projects, functional planning, preliminary and detailed designs, but specifically excluded engaging in the practice in relation to structural, geotechnical and electrical

designs, stormwater management and environmental evaluations.

2. At all material times, Kalus was providing engineering services as an employee and agent of a company (the company) that was authorized, by virtue of its Certificate of Authorization, to offer to the public services that are within the practice of professional engineering.
3. Prior to May 2005, the company was requested by their client to produce a stormwater management report for a proposed indoor/outdoor soccer field development in the township of Cavan-Millbrook-North Morraghan. The company subsequently provided the stormwater management report dated May 2005 to the client.
4. The signature page of the stormwater management report had been signed under the “reviewed by” section by Kalus. Kalus had used a designation of LL Eng. after his name shown below his signature. The initials “B.K.” appeared in the “designed by,” “drawn by” and “checked by” boxes of drawing SP-01 titled “SITE PLAN” within the report.
5. By reason of the aforesaid, it is alleged that Kalus:
 - (a) breached section 45(1) of Regulation 941 made under the *Professional Engineers Act* by engaging in acts of professional engineering specifically excluded by his limited licence;
 - (b) breached section 40 of the *Professional Engineers Act* by using the designation LL Eng. after his name on a report; and
 - (c) acted in an unprofessional manner.
6. By reason of the facts aforesaid, it appeared that Kalus is guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
7. “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.”
8. The sections of Regulation 941/90 relevant to this misconduct are:
 - (a) SECTION 72(2)(G): breach of the act or regulations, other than an action that is solely a breach of the Code of Ethics;

- (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 unprofessional; and
- (c) SECTION 72(2)(K): failure by a practitioner to abide by the terms, conditions or limitations of the practitioner’s licence, provisional licence, limited licence, temporary licence or certificate.

PLEA BY KALUS

Kalus admitted the allegations of professional misconduct as defined by sections 72(2)(a), 72(2)(g), 72(2)(j) and 72(2)(k) of Regulation 941/90 and as agreed jointly by counsel for the association and counsel for Kalus.

The panel conducted a plea inquiry and was satisfied that Kalus’ plea was voluntary, informed and unequivocal.

AGREED STATEMENT OF FACTS

Counsel for the association advised the panel that agreement had been reached on the facts and that the facts, as set out in paragraphs 1 through 4 of the Fresh Notice of Hearing dated November 16, 2006, as set out above, could be treated as an Agreed Statement of Facts.

DECISION

After deliberation, the panel unanimously accepted Kalus’ plea and, accordingly, found him guilty of professional misconduct as defined in sections 72(2)(g), 72(2)(j), 72(2)(k) of Regulation 941/90 of the act.

REASONS FOR DECISION

The panel accepted the Agreed Statement of Facts and Kalus’ plea, which substantiated a finding of professional misconduct.

The panel found that the facts, as set out in paragraph 1 of the Fresh Notice of Hearing, support a finding that Kalus breached section 45(1) of Regulation 941, and those set out at paragraph 4 of the Fresh Notice of Hearing support the finding that Kalus breached section 40 of the *Professional Engineers Act*. Specifically, Kalus signed a report which, although it contained engineering that was covered by his limited licence, also contained engineering that was specifically excluded by his licence, and Kalus also put the initials LL Eng. after his name, where there is no such approved designation.

With respect to the finding of professional misconduct, the panel found that the facts set out in paragraphs 1 through 4 of the Fresh Notice of Hearing supported the finding with respect to sections 72(2)(g), 72(2)(j) and 72(2)(k) of Regulation 941/90 of the act.

PENALTY

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon and that the association was satisfied that the Joint Submission as to Penalty was fair and reasonable and was in line with similar cases. Counsel for Kalus advised that all matters were agreed. The Joint Submission as to Penalty provides as follows:

1. Kalus shall receive a verbal reprimand which shall be recorded on the register;
2. The Decision and Reasons shall be published with names in Gazette, with reference to Kalus;
3. The limited licence of Kalus shall be suspended for a period of three months; and
4. Kalus shall forthwith pay costs of the discipline proceedings in the sum of \$1,000.

After deliberation, the panel, with assistance on procedure from independent legal counsel, requested submissions from counsel on the justification of suspending Kalus' licence for a period of three months.

Counsel for the association submitted that, based on the evidence presented before the panel, Kalus' conduct was a knowing and intentional breach of the terms of his limited licence. Perrier submitted that it is more appropriate that there be a period of suspension of a limited licence for those people who may have a mind to act outside the scope of their limited licence. Perrier stated that this position by the association was reached following much consideration by both the association and by Kalus.

Kalus' counsel advised the panel that it was a Joint Submission as to Penalty, noting that Kalus was in agreement with the terms of penalty, and he wished to move forward and place this matter behind him.

Perrier, in reply, noted that the real issue was: What message does the association wish to send to the public? He commented that Kalus, through his counsel, had taken a very responsible position on the Joint Submission as to Penalty.

DECISION

Following further deliberation, the panel accepted the Joint Submission as to Penalty and, accordingly, ordered:

1. **Kalus shall receive a verbal reprimand which shall be recorded on the register;**
2. **The Decision and Reasons shall be published with names in Gazette, with reference to Kalus;**
3. **The limited licence of Kalus shall be suspended for a period of three months; and**
4. **Kalus shall forthwith pay costs of the discipline proceedings in the sum of \$1,000.**

REASONS FOR PENALTY

The panel concluded that the penalty proposed by the Joint Submission as to Penalty was reasonable and in the public interest.

The panel was of the view that the proposed penalty would send a strong message to the public and other members of the engineering community.

The Joint Submission as to Penalty had been carefully considered by both the association and Kalus. No new information was brought before the panel by Kalus' counsel to justify decreasing the duration of the suspension of Kalus' limited licence from three months.

WAIVER

Counsel for Kalus advised the panel that Kalus will not be appealing the decision of the panel and a waiver of appeal was filed with the panel, following which the panel delivered the oral reprimand.

The written decision in this matter was signed on May 9, 2008, by Edward Rohacek, P.Eng., as chair on behalf of the other members of the discipline panel: Max Perera, P.Eng., and Derek Wilson, P.Eng.