

Counsel for the association further advised that there was no agreement of the parties with respect to publication.

With respect to the issue of publication, counsel for the association advised that the association had, over a year ago, provided for more openness and therefore it was important that publication occur in order for there to be public accountability. Further, the fact that the association had specifically withdrawn the allegation of incompetence was a further fact that supported that there be publication.

Counsel for Brouwer submitted that Brouwer and Brouwer Associates agreed with the Joint Submission on Penalty but that with respect to publication, given that Brouwer was remorseful for his actions, was an expert in concrete, was 44 years old and had been an engineer for 19 years, there was nothing to be gained by publishing his name and that specific deterrence of Brouwer had already been met by the whole discipline process.

However, following questions from the panel, Brouwer changed his mind and through his counsel advised that he did want full publication of the decision, including his name.

Penalty Decision

The panel deliberated and accepted the JSP and accordingly ordered:

- (a) that Brouwer be reprimanded and that the reprimand be recorded and kept on the Register for one year;
- (b) that Brouwer write and successfully complete the Professional Practice Examination ("PPE") within 12 months from the date of this hearing;
- (c) that Brouwer pay to the association costs of the disciplinary proceeding fixed in the amount of \$1,500; and
- (d) the Decision and Reasons of the panel be published with the name of Brouwer and Brouwer Associates in *Gazette*.

Reasons for Penalty Decision

The panel concluded that the proposed penalty was reasonable and in the public interest. Brouwer and Brouwer Associates had cooperated with the association and, by agreeing to the facts and a proposed penalty, had accepted responsibility for their actions and avoided unnecessary expense.

The written Decision and Reasons in this matter were dated June 3, 2005, and were signed by the Chair of the panel, Kam E. Elguindi, P.Eng., on behalf of the other members of the panel: James Dunsmuir, P.Eng., Colin Moore, P.Eng., J.E. (Tim) Benson, P.Eng., and Phil Maka, P.Eng.

Notice of Certificate of Authorization Suspension

Pursuant to his powers under section 15(8)(a) of the *Professional Engineers Act*, the Registrar has suspended the Certificate of Authorization of Conengr Inc. ("Conengr") of Etobicoke, Ontario, effective October 1, 2005. This action was taken because the Registrar, upon reasonable and probable grounds, is of the opinion that the past conduct of the person responsible for the operation of Conengr leads to the belief that Conengr would not engage in the business of providing professional engineering services in accordance with the law and with honesty and integrity. The suspension will remain in effect until allegations of professional misconduct against Conengr, and allegations of professional misconduct and incompetence against the responsible person, have been considered and disposed of by the Complaints and Discipline committees.

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:

Derk Meyer, P.Eng.

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

Company A

a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on April 5, 2004, at the offices of the Association of Professional Engineers of Ontario (the "association") in Toronto. The association was represented by William D. Black

of McCarthy Tétrault. Derk Meyer, P.Eng., and Company A were represented by John W.T. Judson of Lerner LLP.

The Allegations

It was alleged that Derk Meyer, P.Eng., ("Meyer") was guilty of professional mis-

represented in the above documentation and made findings of professional misconduct as described in paragraphs 12 and 13 above; however, the panel qualified its finding in relation to section 72(2)(j) of the Regulation in that it found the conduct or act to be “unprofessional” only.

Penalty

The panel was presented with a joint submission as to penalty. This joint submission was as follows:

- (a) With respect to Meyer:
 - (i) a recorded reprimand,
 - (ii) a requirement that Meyer complete the advanced structural analysis examination and the Professional Practice Examination (both parts) within 12 months of the date of the hearing,
 - (iii) if Meyer fails to complete these two examinations successfully within 12 months his licence would then be suspended for a three-month period and he would still have the obligation to complete the two examinations,
 - (iv) a publication of the matter with names;
- (b) With respect to Company A, there will be a reprimand that will be recorded for a period of 12 months only.

The panel then invited counsel to make submissions on the merit of two components of the presentation, as follows:

- the merits of requiring Meyer to write and pass an examination in structural engineering; and
- the merits of publication with names.

Penalty Decision

Having deliberated on the facts presented and the joint submission on penalty, the panel ordered:

- a) **With respect to Meyer:**
 - (i) **that Meyer be reprimanded and that the reprimand be recorded by the Registrar for a period of two years;**
 - (ii) **that Meyer be required to pass the Professional Practice Examination by April 30, 2005; failure to complete the examination by April 30, 2005 will result in the suspension of his licence for three months and a continuing obligation to pass the examination;**
 - (iii) **that publication of the matter be with Meyer’s name only and without reference to the name of Company A.**
- b) **With respect to Company A:**
 - (iv) **that Company A be reprimanded and the reprimand be recorded by the Registrar for a period of one year.**

Considerations and reasons for departing from the agreed statement of penalty were as follows:

- There was no evidence that completion of the advanced structural analysis exam by Meyer would serve to enhance public safety. Evidence to the contrary was provided by the drawing submitted as evidence; the drawing was prepared by Company A and titled “Column Footing for Residential Construction.”
- The Professional Practice Examination provides an appropriate specific deterrent to Meyer and will confirm his understanding of professional engineering practices.
- Specific deterrent to Meyer is also afforded by publication with names and by the licence suspension should he fail to pass the Professional Practice Examination.

The written Decision and Reasons in this matter were dated May 24, 2004, and were signed by the Chair of the panel, Anne Poschmann, P.Eng., on behalf of the other members of the panel: Roydon Fraser, P.Eng., Nick Monsour, P.Eng., Bill Walker, P.Eng., and William Rutherford, P.Eng.

Decision and Reasons— Stipulated Order

In the matter of a complaint regarding the conduct of:

A Member

of the Association of Professional Engineers of Ontario.

The Complaints Committee, in accordance with section 24 of the *Professional Engineers Act*, referred this matter to discipline by way of Stipulated Order, failing which the matter was to be referred to a hearing of the Discipline Committee.

In accordance with the Stipulated Order process, David W. Smith, P.Eng., (“Smith”) a member of the Discipline Committee, was selected to represent the Discipline Committee as Chair of the Stipulated Order. Smith reviewed the available information relative to the com-

conduct and/or incompetence as defined in the *Professional Engineers Act* (the "Act"), and that Company A was guilty of professional misconduct as defined in the Act, the particulars of which were as follows:

1. Meyer was first licensed as a professional engineer in the Province of Ontario on March 11, 1987.
2. Company A was the holder of a Certificate of Authorization under the Act and first held a Certificate of Authorization as of February 2, 1970.
3. In or about March 1999, Meyer, on behalf of Company A, produced for Dan Brouwer Associates Ltd. ("Brouwer Associates") a design for a thin, reinforced concrete footing for residential construction. Drawing S1 was dated March 29, 1999, and sealed by Meyer on March 31, 1999. The drawing provided three sets of specifications for the design, based on three soil types.
4. This reinforced footing design sealed by Meyer was inadequate in that it did not comply with the requirements of the *Ontario Building Code* ("OBC") and CAN/CSA 23.3-94 (design of concrete structures) with respect to footing depth and shear resistance.
5. In or about April 2001, Brouwer Associates, without the knowledge or consent of Meyer or Company A, provided the design drawing to the Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity ("LRF"). LRF subsequently provided the drawing to numerous building departments and officials.
6. On or about June 21, 2001, Meyer received a call from a building inspector with the City of Toronto concerning the footing design, advising that the design did not meet the OBC. Meyer reviewed the design, agreed that it did not com-

ply with the OBC, and made revisions to the design.

7. Meyer then contacted Brouwer Associates, and forwarded to Brouwer Associates the revised design drawing, asking Brouwer Associates to revoke the previous footing design. Meyer neglected to put his seal and signature on the revised drawing.
8. It was admitted that Meyer:
 - (a) signed and sealed a design for a thin, reinforced concrete footing that did not comply with the requirements of the OBC and CAN/CSA 23.3-94;
 - (b) breached section 53 of Regulation 941 made under the *Professional Engineers Act* by failing to sign and seal a revised drawing; and
 - (c) acted in an unprofessional manner.
9. It was further admitted that Company A failed in its obligation to supervise Meyer and to review the design and, thus, acted in an unprofessional manner.
10. The association engaged an independent expert to review this matter. Having reviewed the relevant materials, including the complaint, the design document, and Meyer's response to the complaint (*inter alia*), the expert reached the following conclusions (among other observations):
 - (a) Meyer's original design did not appear to give any consideration to structural requirements in the design of the pad footing, such as punching shear, other than providing the protective three-inch cover between the reinforcing and soil. Whereas the minimum pad thickness allowed by clause 15.7 of CAN/CSA 23.3-94 would have been six inches, the design stamped by Meyer and Brouwer Associates had an effective depth of footing of approximately three inches.
 - (b) The expert's calculations revealed that the footing shown in Meyer's original design shows a shear resist-

ance that is only 69 per cent of the required capacity.

- (c) The relatively light 15-m reinforcement provided in the original design is inadequate to serve as shear head reinforcement and appreciably increase shear resistance.
 - (d) Meyer did not sign or seal his revised drawing of March 29, 1999, sent to a building inspector from the City of Toronto in 2001, and was required to seal such work.
11. The parties agreed that the admissions above, including in particular the admissions set out in paragraph 8 above, constitute professional misconduct as defined in section 28(2)(b) as follows:

"28(2)(b) A member of the Association or 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."
 12. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct were:
 - (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 the work being undertaken by or under the responsibility of the 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.

Decision

The panel was presented with an Agreed Statement of Facts, which is