

This matter came on for hearing before a panel of the Discipline Committee of the Association of Professional Engineers of Ontario (“association”) at Toronto on Monday, the 5th day of December 2005. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Mohammad Nasiruddin, P.Eng., was represented by George Glezoz of Lerner LLP.

The Allegations

The allegations against Mohammad Nasiruddin, P.Eng., (“Nasiruddin”) as set out in the Fresh Notice of Hearing dated November 9, 2005 were as follows:

It is alleged that Nasiruddin is guilty of professional misconduct, the particulars of which are as follows:

1. Nasiruddin was at all material times a member of the Association of Professional Engineers of Ontario.
2. In April 2002, the Ministry of Transportation of Ontario (“MTO”) awarded Contract No. 2002-2000 (“Contract”) to Graham Brothers Construction Limited (“GBC”) for improvements to Highway 401 between Renforth Drive and Highway 427.
The work included the replacement of two overpasses that required the construction of several pier footings, including Pier Footing PC2 South. The drawings for the overpasses were stamped by A.H. Hachborn, P.Eng., (“Hachborn”) and M.W.M. Ibrahim, P.Eng., of Marshall Macklin Monaghan (“MMM”). The contract drawings included:
 - (a) Sheet No. 504, *Highway 401/27 Overpass EBL Foundation Layout*; and
 - (b) Sheet No. 505, *Highway 401/27 Overpass Foundation Reinforcing 1*.

In accordance with the terms of the contract, GBC was required to provide the services of a quality verification engineer (QVE) to confirm that specific working drawings and components of the work were in general conformance with the requirements of the contract documents. Nasiruddin was appointed QVE for the reinforcing steel in Pier Footing PC2 South. The con-

Summary of 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:

Mohammad Nasiruddin, P.Eng.

a member of the Association of Professional Engineers of Ontario.

- tract was administered on behalf of MTO by Morrison Hershfield Ltd. (“MHL”).
3. On November 19, 2002, prior to the placement of concrete in Pier Footing PC2 South, MHL expressed concerns to the steel placement workers of GBC that the placement of reinforcing steel was not in accordance with the design drawings.
4. Nasiruddin arrived on site the same day. Nasiruddin directed the steel placement workers of GBC to include additional reinforcing steel in the bottom of the footing to compensate for piles that were out of position or slightly twisted. This direction was given without the knowledge or approval of the design engineer or the MTO.
5. Nasiruddin issued a sealed Certificate of Conformance, dated November 19, 2002, for the reinforcing steel placement in the footing stating that the reinforcing steel placement had been inspected and the work was carried out in general conformance with the stamped drawings and contract drawings. He included a note on the certificate indicating: “Four extra bars were provided in the bottom to compensate for a slightly twisted pile in the centre. Drawing #138-1-01.”
6. After the receipt of the Certificate of Conformance, and other supporting documents from GBC, Yen-Le (“Yen-Le”) signed the Notification of Placement of Structural Concrete form and the concrete placement was carried out in the footing, beginning at approximately 3:00 p.m. on November 19, 2002.
7. Following placement of the concrete, Yen-Le identified his concerns to the contract administrator, Terry Choo-Kang (“Choo-Kang”), of MHL.
8. At approximately 6:00 p.m. on November 19, 2002, Choo-Kang issued Instruction Notice No.121, with a copy of the Certificate of Conformance attached, to Alfredo Maggio, P.Eng., (“Maggio”) manager of highways for GBC, expressing concern that the placement of reinforcing steel was altered from the arrangement shown in the contract drawings. Choo-Kang stated in the instruction notice that: “This is considered a major departure from the design in that the capacity of the footing may have been significantly altered.” He also stated that the Certificate of Conformance did not fully reflect the changes indicated and, therefore, was considered unacceptable. He directed Maggio to look into the matter that was currently being reviewed by Hachborn and Chris Sadler, P.Eng., (“Sadler”) senior structural engineer of MTO.

9. Nasiruddin provided a response to Instruction Notice No. 121 by letter to Maggio dated November 21, 2002, which included the following:
- “We would like to clarify that there were no changes to the basic placement of the reinforcing steel. Due to a slight twist in the centre pile, the bottom steel had to be moved leaving a bigger spacing between the bottom bars. Therefore these extra bars were provided to ensure proper spacing and avoid any gap in the continuity of the bottom mat. We are sure that these extra bars have added to the structural strength of the footing.”
10. Maggio forwarded Nasiruddin’s response to Choo-Kang, under cover of letter dated November 22, 2002, summarizing that the additional reinforcing steel bars were to fill some gaps that had developed as a result of the piles not being located exactly as per contract, but still within tolerance.
11. By letter dated November 22, 2002 to Jason Raymond, Q.C., plan administrator of GBC, and entitled *QC Plan Deviations for Incorrect QVE Certification of Reinforcing Steel Placement*, Choo-Kang stated: “The role of the QVE is to ensure conformance with the contract documents, and not to instruct on any field modification of the proposed design. Modifications to the design (in this case the modification to the arrangement and addition of reinforcing steel) is the responsibility of the design engineer. Any modifications are to be approved and included as part of the contract documents, and then the QVE can certify as per the approved changes. Accordingly, it is evident that the QVE did not allow for this process to take place.” Choo-Kang attached a copy of the sketch of reinforcing steel drawn by Yen-Le. Yen-Le drew the sketch after he returned to the office on November 19, 2002, based on his recollection of the layout. Choo-Kang also requested a copy of the as-built drawing to confirm the location of the piles and the reinforcing steel placement arrangement in the footing.
12. By fax dated November 27, 2002, Frank Steblay (“Steblay”) of GBC provided Choo-Kang a copy of Nasiruddin’s cover letter dated November 27, 2002 with a layout sketch of the as-built reinforcing steel for Pier Footing PC2 South location. Choo-Kang forwarded both the layout sketch of the as-built reinforcing steel and Nasiruddin’s cover letter of November 27, 2002, to Sadler.
13. On December 2, 2002, Sadler faxed Nasiruddin’s sketch of the as-constructed reinforcing steel arrangement to Hachborn for comments. By inter-office memo to Sadler dated December 2, 2002, Hachborn responded with the following comments and options:
- “The capacity under U.L.S. loading meets OHBDC requirements”;
 - “The capacity under S.L.S loading does not meet OHBDC requirements (approx. 88 per cent)”;
 - “We have concerns regarding the consolidation of concrete around and in contact with the layer of six (6) 30M bars if these bars were placed in one layer”;
 - Option 1: “Additional horizontal reinforcing steel could be grouted into core drilled holes”;
 - Option 2: “Additional horizontal reinforcing steel could be added when the pile cap is partially demolished to provide additional capacity.”
- Hachborn also recommended that testing should be carried out to verify that there was adequate consolidation of the concrete around the 30M bars.
14. Sadler provided, through the contract administrator, a copy of Hachborn’s recommendations to GBC, who chose option 2 to partially remove the concrete at the footing.
15. The concrete was removed on December 4, 2002. The position of the piles and the reinforcing steel was recorded in a photograph. The location of the reinforcing steel differed from both the contract drawings and Nasiruddin’s as-built sketch, thus contradicting both the Certificate of Conformance and Nasiruddin’s stamped letter.
16. By letter to Nasiruddin dated July 15, 2003, Dr. D.G. Manning, P.Eng., (“Manning”) construction engineer of MTO, advised that the MTO’s Qualification Committee had reviewed the documentation alleging professional deficiencies in the services that Nasiruddin provided as the QVE under the terms of Contract 2002-2000 with GBC. Manning invited Nasiruddin to comment.
17. By letter dated August 12, 2003, Nasiruddin responded to Manning stating that he found that the steel had been placed in general conformance with the contract requirements and that the non-reinforced space was evident in the base area of the footing. He recommended that reinforcing bars be added to the bottom base knowing that Note 2 of Contract Sheet 505 would be met. Note 2 stated: “bottom reinforcement to fit with equal spaces between piles.”
18. In summary, it appears that Nasiruddin:
- issued a Certificate of Conformance stating that the reinforcement was in general conformance with the contract documents when, in fact, it was not;
 - directed the placement of four additional steel reinforcing bars without the approval of the design engineer or MTO;
 - provided a modified design that did not meet the requirements of the *Canadian Highway Bridge Design Code*;
 - provided a signed and stamped letter stating that there were no changes to the basic placement of the steel reinforcing bars when, in fact, the reinforcing steel was not in general conformance with the contract documents and extra steel reinforcing bars were added to the footing;

- (e) inappropriately directed the contractor to modify steel reinforcing bar placement;
- (f) failed to carry out his duty as quality verification engineer by failing to identify the non-conforming work;
- (g) failed to follow the procedure for non-conforming work as per contractual document SP 199S48: "Quality Verification Engineer Services"; and
- (h) acted in an unprofessional manner.

19. By reason of the facts aforesaid, the Association of Professional Engineers of Ontario alleged that Nasiruddin was guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

20. "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."

21. 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 engi-

neering profession as disgraceful, dishonourable or unprofessional.

Counsel for the association advised the panel that the parties had agreed upon the facts and that the facts contained in the Fresh Notice of Hearing could be treated as an Agreed Statement of Facts ("ASF").

Plea by Member and/or Holder

Nasiruddin admitted the allegations set out in the Fresh 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 Nasiruddin's admission and found that the facts supported a finding of professional misconduct and, in particular, found that Nasiruddin's actions constituted professional misconduct as set out in the Fresh Notice of Hearing. The panel did not find that these actions were disgraceful or dishonourable in accordance with section 72(2)(j) of Regulation 941.

Reasons for Decision

The panel accepted Nasiruddin's plea which, along with the ASF, sustained the finding of professional misconduct.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon, with the exception of the issue of whether the panel's decision would be published with or without names. The Joint Submission as to Penalty was as follows:

1. Nasiruddin shall be reprimanded and the fact of the reprimand shall be recorded on the Register;
2. The decision and reasons of the Discipline Committee shall be published in Gazette;
3. Nasiruddin shall write the Professional Practice Examination, Parts A and B ("PPE") on December 17, 2005;
4. If Nasiruddin does not pass the PPE, there shall be a term, condition and limitation on his licence that he not

act or serve as a quality verification engineer for Ministry of Transportation of Ontario projects;

5. The term, condition and limitation set out in paragraph 4 above shall remain on Nasiruddin's licence until such time as he again writes and passes the PPE;
6. That in the event Nasiruddin fails to write and pass the PPE within 12 months of the date of the discipline hearing, his licence to engage in the practice of professional engineering shall be suspended;
7. That in the event Nasiruddin fails to write and pass the PPE within 24 months of the date of the discipline hearing, his licence to engage in the practice of professional engineering shall be revoked; and
8. That Nasiruddin shall pay costs of the disciplinary proceeding fixed in the sum of \$2,500 within three months of the date of the hearing.

The panel heard submissions from counsel for the association and for Nasiruddin on the issue of whether the panel's decision would be published with or without names.

Penalty Decision

The panel considered the cases provided as precedents on the issue of publishing with names and noted that except for one decision, they were all rendered after the Council for the association passed a motion that discipline decisions should be published with names. While most of the decisions in the 16 precedents provided cited general deterrence as a reason for the penalties, only one specifically addressed why the panel exercised its authority to order that it be published without names. That reason, that the actions were not that serious, does not apply in the Nasiruddin matter.

The panel noted that the decisions to publish without names were rendered in stipulated hearings, contested hearings, and when there were Agreed Statements of Facts and Joint Submissions as to Penalty. In addition, the member of this

panel was not a member of any of the panels in the precedent cases.

The panel considered the submission on behalf of and by Nasiruddin that publishing with names would be embarrassing and would impair his ability to act as a mentor for other professional engineers or engineers-in-training. In addition, the panel considered the evidence provided that shows Nasiruddin has over 30 years of experience as a professional engineer in Ontario without a discipline decision against him, that he is remorseful, that he is of good character, that by agreeing to the facts and a proposed penalty accepted responsibility for his actions, and has avoided unnecessary expense to the association.

The panel decided that embarrassment was not a mitigating factor since any defendant could make this claim, but since no measure was proposed for this factor, the effect of accepting embarrassment as a mitigating factor would be to prevent any decision being published.

The panel considered the submission of the association that publishing discipline decisions with names is consistent with the direction provided by the Council for the association, that it is consistent with the trend for such decisions in other professional associations in Ontario, that it is required for general deterrence to other members of the association, and that it is required for transparency in the public interest.

The panel weighed the public interest and mitigating factors by assessing that compliance with most of the factors was required before considering whether to publish. Then, the factor to consider was whether any other person would be significantly impacted by the discipline decision or whether there is significant detriment to the public interest to publish with names.

The panel concluded that the proposed penalty, as a whole, is reasonable and in the public interest. In particular, the panel concluded that the penalty is appropriate in terms of general deterrence to the members of the profession, of specific deterrence to Nasiruddin that is proportionate to the seriousness of his actions, will reinforce Nasiruddin's rehabilitation, and will ensure that the public is protected.

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

1. Nasiruddin be reprimanded and the fact of the reprimand shall be recorded on the Register;
2. the decision and reasons of the Discipline Committee be published with names in Gazette;
3. Nasiruddin write the Professional Practice Examination, Parts A and B ("PPE") on December 17, 2005;
4. if Nasiruddin does not pass both parts of the PPE, there shall be a term, condition and limitation on his licence that he not act or serve as a quality verification engineer for Ministry of Transportation of Ontario projects;
5. the term, condition and limitation set out in paragraph 4 above shall remain on Nasiruddin's licence until such time as he again writes and passes the PPE;
6. in the event Nasiruddin fails to write and pass the PPE within 12 months of the date of the discipline hearing, his licence to engage in the practice of professional engineering shall be suspended;
7. in the event Nasiruddin fails to write and pass the PPE within 24 months of the date of the discipline hearing, his licence to engage in the practice of professional engineering shall be revoked; and
8. Nasiruddin pay costs of the disciplinary proceeding fixed in the sum of \$2,500 within three months of the date of the hearing.

Nasiruddin waived his right to appeal and the reprimand was administered immediately following the hearing.

The written Decision and Reasons in this matter were dated March 15, 2006, and were signed by the Chair of the panel, Glenn Richardson, P.Eng.

Discipline Hearing Schedule

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 1072.

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.

September 11-15, 2006

Rene G. Caskanette, P.Eng., and Caskanette & Associates (C&A)

It is alleged that Caskanette is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Caskanette and C&A are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

September 11-15, 2006

Jeffrey D. Udall, P.Eng.

It is alleged that Udall is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Udall is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

Notice of Revocation—John S. Ivanyi and Conengr Inc.

At a discipline hearing held on June 6, 2006, at the offices of the association in Toronto, the Discipline Committee ordered the revocation of the licence of John S. Ivanyi after finding him guilty of professional misconduct. Similarly, the Discipline Committee ordered the revocation of the Certificate of Authorization of Conengr Inc. after finding it guilty of professional misconduct. Ivanyi and Conengr were found to have engaged in the practice of professional engineering, and to have offered and provided professional engineering services to the public, at a time when their respective licence and Certificate of Authorization were suspended. Ivanyi and Conengr waived their right of appeal and therefore the revocations took effect as of the date of the hearing.

The Decision and Reasons of the Discipline Committee will be published in due course.