

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee from May 24 through 27, 2005, at the offices of the Association of Professional Engineers of Ontario in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Vinodbhai Patel, P.Eng., was represented by Roger Chown, P.Eng., of Carroll Heyd Chown.

### The Allegations

The allegations against Vinodbhai Patel, P.Eng., (“Patel”) in the Notice of Hearing dated November 4, 2004, included incompetence and professional misconduct, the particulars of which are summarized as follows:

1. Patel was at all material times a member of the Association of Professional Engineers of Ontario (“PEO”). At all material times, Patel did not hold a Certificate of Authorization issued by PEO.
2. On September 3, 2002, Cougar Automation Technologies Inc. (“CAT”) retained Patel as a contract “project manager/senior control engineer” for two projects.
3. On September 4, 2002, Patel executed an agreement of employment (“Contract of Employment”) with CAT that provided, among other things, that Patel “would determine technical strategies utilized by a project and work as the architect for projects, defining interfaces and high-level operational items.” The Contract of Employment was for a period of four months commencing on September 9, 2002. One of the two projects Patel was to be involved in involved the upgrading of safety equipment in a Parmalat Canada (“Parmalat”) warehouse located in Mississauga, Ontario.

## Summary of 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:

**Vinodbhai Patel, P.Eng.**

a member of the Association of Professional Engineers of Ontario.

4. Also in September 2004, Patel received documents related to the Parmalat project that set out the scope of services to be provided by Patel for the project, including that he would: 1) be responsible for completing the electrical design based on the proposed functional solution, ensuring that the design satisfied safety requirements; 2) be responsible for identifying any deficiencies in the proposed functional solution that would render the final solution as non-compliant to the *Occupational Health and Safety Act*, Industrial Regulation 851, or any common safety expectations; and 3) stamp the electrical design changes that were made by Patel as part of the safety upgrade project.
5. On September 24, 2002, Patel toured the Parmalat facility. CAT provided instructions to Patel on matters related to safety requirements and provided relevant Allen-Bradley Safety Components manuals.
6. On September 30, 2002, Patel conducted a design review and a second site visit for functional determination.
7. On October 1, 2002, Patel reviewed the hydraulic circuitry. Patel had been advised that the hydraulic circuit would require bleed valves to ensure the hazardous pallet grip fingers would stop in sufficient time for compliance with light curtain distance calculations. However, the draft drawing prepared by Patel did not show any details of the hydraulic bleed valves.
8. On October 10, 2002, Patel reviewed the wiring requirements of the existing Emergency-stop/Master Control Relay circuitry. However, Patel’s draft design did not provide circuitry for stopping the motors in the Catwalk, Level Up or Cross Dock area in the event of an Emergency-stop. The motor Emergency-stop capability was routed from remote racks to the main controller only through software over

The scope of services set out above was provided to Patel by CAT at the outset of the project. Patel was also provided with project documentation, including the Warehouse Safety Upgrade Proposal, supplemental proposals and a functional description. Patel was instructed that it was imperative that the intent implied by these documents be adhered to, especially with respect to safety.

- a communications network. This was in violation of basic safety principles. Further, the *Occupational Health and Safety Act* and the *Regulations for Industrial Establishments*, R.R.O. 1990, Reg. 851, and the requirements of EN 954-1, *Safety of Machinery—Safety related parts of control systems, Category 3*, required that the Emergency-stop devices be hard-wired and not affected by, or routed through, the programmable system.
9. By letter to CAT dated November 4, 2002, Patel submitted his resignation with an effective date of November 7, 2002.
  10. On November 4, 2002, Patel provided draft drawings that he identified as being virtually complete. CAT later identified incomplete items.
  11. During the week of November 11, 2002, CAT conducted a detailed review of the project. CAT identified numerous deficiencies in Patel's draft design, which resulted in non-compliance with the *Occupational Health and Safety Act* and the *Regulations for Industrial Establishments*, R.R.O. 1990, Reg. 851 and the requirements of EN 954-1, *Safety of Machinery—Safety related parts of control systems, Category 3*.
  12. There were other concerns regarding Patel and his draft design, including complaints from parts distributors that Patel frequently changed items on the purchase order, failure to identify wiring termination points, and impractical panel layout.
  13. Also on November 11, 2002, CAT conducted a preliminary review with Patel regarding the deficiencies. Patel was unable to address the deficiencies and unable to explain details of his draft design. CAT determined that Patel's draft designs were not in a state that could be implemented.
  14. During the week of November 11, 2002, CAT conducted a detailed review of the project. The complete electrical drawing package was redesigned by CAT in order to meet the installation deadline of November 16, 2002.
  15. By letter to Patel dated December 17, 2002, CAT expressed dissatisfaction with Patel's services and indicated that the deficiencies in Patel's draft design had damaged CAT's relationship with Parmalat.
  16. By letter to Patel dated January 10, 2003, CAT indicated that Patel had not met the terms of the Contract of Employment. CAT proposed a meeting with Patel on January 23 or 28, 2003 to resolve the outstanding issues that resulted from the non-fulfillment of the terms of the Contract of Employment.
  17. A third party review of the CAT complaint was conducted by Stantec Consulting Ltd. ("Stantec"). Stantec issued a report dated August 20, 2003 that identified numerous deficiencies in Patel's draft design, which resulted in non-compliance with the *Occupational Health and Safety Act* and the *Regulations for Industrial Establishments*, R.R.O. 1990, Reg. 851 and the requirements of EN 954-1, *Safety of Machinery—Safety related parts of control systems, Category 3*.
  18. In summary, it appeared that Vinodbhai Patel, P.Eng.:
    - (a) breached section 12(2) of the *Professional Engineers Act* by offering and providing professional engineering services when not in possession of a Certificate of Authorization;
    - (b) provided a draft safety system design for the Parmalat Canada warehouse facilities that failed to meet the requirements of the *Occupational Health and Safety Act* and Industrial Establishments Regulation 851;
    - (c) provided a draft safety system design for the Parmalat Canada warehouse facilities that contained errors, omissions and deficiencies;
    - (d) undertook work he was not competent to perform;
    - (e) failed to maintain the standards that a reasonable and prudent practitioner would maintain in carrying out a contract in a professional manner; and
    - (f) acted in a disgraceful and unprofessional manner.
  19. By reason of the facts aforesaid, it is alleged that Patel is guilty of incompetence as defined in section 28(3)(a) and is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
  20. 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 reasonable 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;
    - (d) *Section 72(2)(g)*: breach of the Act or regulation, 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 profes-

sional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

### Plea by Member

Patel originally denied the allegations of professional misconduct and incompetence. However, on May 27, 2005, Patel changed his plea and admitted to the allegations of professional misconduct as defined by sections 72(2)(a), 72(2)(d), 72(2)(g) and 72(2)(j) as set out in paragraph 20 above and as agreed jointly by counsel for the association and counsel for Patel. The panel conducted a plea inquiry and was satisfied that Patel's 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 17 above could be treated as an Agreed Statement of Facts as Patel was pleading "no contest" to those facts.

### Decision

**After deliberation, the panel unanimously accepted Patel's plea and accordingly found Patel guilty of professional misconduct as defined by sections 72(2)(a), 72(2)(d), 72(2)(g) and 72(2)(j), under Regulation 941.**

### Reasons for Decision

The panel accepted the Agreed Statement of Facts and Patel's plea, which substantiated the findings of professional misconduct.

### 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 was fair and reasonable and was in line with similar cases. Counsel for Patel advised that all matters were agreed.**

**After deliberation, the panel unanimously accepted the Joint Submission as to Penalty, as amended and**

**dated May 27, 2005, and therefore the panel ordered:**

- 1. that Patel receive an oral reprimand and that the fact of the reprimand be recorded on the Register of the association until the successful completion of the examinations or equivalent course mentioned in paragraphs 3 and 4 below;**
- 2. that the licence of Patel be suspended for a period of one month, effective May 27, 2005;**
- 3. that Patel write and pass both parts of the Professional Practice Examination ("PPE") (being Part A and Part B) within 18 months from May 27, 2005;**
- 4. that Patel write and pass the 98-Elec-B3 Advanced Control Systems examination ("ACS"), or take and pass an equivalent advanced control systems course at an accredited Canadian university (such course to be approved in advance by the association), within 18 months from May 27, 2005;**
- 5. in the event that Patel fails to successfully complete the PPE and ACS (or equivalent course) within the prescribed time set out in paragraphs 3 and 4, his licence is to be again suspended until such time as he successfully completes the PPE and ACS;**

- 6. in the event that Patel fails to successfully complete the PPE and ACS (or equivalent course) within 30 months from May 27, 2005, his licence shall be revoked;**
- 7. that Patel pay costs to the association fixed in the amount of \$10,000, such costs to be paid within 30 months of May 27, 2005; and**
- 8. that a summary of the Decision and Reasons of the Discipline Committee be published, including reference to names, in the official publication of the association.**

### Reasons for Penalty

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

### Waiver of Right to Appeal

Counsel for Patel advised the panel that Patel 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 and Reasons in this matter were dated July 4, 2005, and were signed by the Chair of the panel, Phil Maka, P.Eng., on behalf of the other members of the panel: Monique Frize, P.Eng., Derek Wilson, P.Eng., Seimer Tsang, P.Eng., and Santosh Gupta, P.Eng.

## Notice of Licence Revocation—Marc Le Maguer

At a discipline hearing held on January 9, 2006, at the offices of the association in Toronto, the Discipline Committee ordered the revocation of the licence of **Marc Le Maguer** after finding him guilty of professional misconduct on the basis that he had been convicted of an offence that is relevant to his suitability to practise. The revocation order is subject to appeal. The Decision and Reasons of the Discipline Committee will be published in due course.

This matter came on for hearing before a panel of the Discipline Committee on April 25, 2005, at the offices of the Association of Professional Engineers of Ontario in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. William C. Wong, P.Eng., and Construction Testing Laboratories Limited were represented by Amar P. Singh of Singh Lynn LLP.

### The Allegations

The allegations against the member, William C. Wong, P.Eng., and Construction Testing Laboratories Limited, as stated in the Fresh Notice of Hearing dated April 22, 2005, were as follows:

It is alleged that William C. Wong, P.Eng., (hereinafter “Wong”) and Construction Testing Laboratories Limited (hereinafter “CTLL”) are guilty of professional misconduct, the particulars of which are as follows:

1. Wong was at all material times a member of the Association of Professional Engineers of Ontario.
2. CTLL 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. Wong was the professional engineer responsible for the services provided by CTLL.
3. In 1992, Fero Corporation (hereinafter “Fero”), a masonry tie manufacturer located in Edmonton, Alberta, issued a product brochure for Slotted Block-Ties (Type I), which contained performance and dimensional data for that product.
4. On July 27, 1998, Wong, then manager of CTLL in Mississauga, received a verbal request from Blok-Lok Ltd. (hereinafter “Blok-Lok”) to perform laboratory testing of Blok-Lok masonry ties in order to determine working loads and serv-

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**William C. Wong, P.Eng.**

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

**Construction Testing Laboratories Limited**

a holder of a Certificate of Authorization.

5. iceability parameters (free play and deflection) associated with the masonry ties.
5. CTLL issued report SF98-03 to Blok-Lok dated August 4, 1998, which was sealed and signed by Wong on February 23, 1999 (hereinafter “SF98-03, Version 1”). Wong reported that all testing of masonry ties was performed according to CSA Standard A370-94, *Connectors for Masonry* (hereinafter the “CSA Standard”). Wong further concluded that the assembled Blok-Lok “tie system” met load, deflection and free play requirements of the CSA Standard.
6. CTLL Report SF98-03, Version 1, contained a “Materials List” that stipulated under “Structural Backing” that “L” brackets were fastened to a 2" x 2" x 0.125" hollow steel section with 1/4" bolts as opposed to the requirements of the CSA Standard clause 12.2.1.
7. CTLL Report SF98-03, Version 1, included tables for load test data where failures were identified as follows: “L” brackets that buckled under compression tests and the slots in the “L” brackets that deformed under tensile tests. CTLL Report SF98-03, Version 1, failed to include measured Maximum Displacement Values as required by the CSA Standard.
8. Table No. 1 of CTLL Report SF98-03, Version 1, *Recommended Design Loads and Deflections of Slotted Ties Manufactured by Blok-Lok Ltd.*, established values for free play, deflection, design load and design load deflection. The notes in Table No. 1 represent that a safety factor value of 3.0 was used when there is no basis for application of a safety factor value of 3.0 in the relevant CSA Standard.
9. In Note iv of Table No. 1 of CTLL Report SF98-03, Version 1, it was asserted that the design values contained in Table No. 1 were “based on test results utilizing 16 GA. T304 ST. STL slotted L-Plate two steel self-tapping screw fasteners, measuring 0.211" in diameter with 1.5" long shanks for