

became apparent to the Discipline Committee member that Engineer A's knowledge of hydraulics was extremely limited. Engineer A acknowledged that he had never designed a water treatment plant.

7. Engineer A held himself out to have considerable expertise in cost estimating to the point where he publicly represented that his expertise in this area was greater than any of the project consultants retained by the city. However, when interviewed by the Discipline Committee member, he revealed that, for example, he estimated the electrical costs at water treatment plants by simply using 13 per cent of the total cost.
8. Although Engineer B had been a senior civil servant and taught water treatment to technology students, there was little evidence of his depth of training and experience as being sufficient to support the breadth and depth of the designs and analyses that he presented to the water committee and to the public.

Based upon the foregoing, the parties have agreed that there is a basis to believe that the members would be found guilty of professional misconduct and had breached sections of Ontario Regulation 941, specifically:

- (a) **Section 72(2)(j): conduct or 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;**
- (b) **Section 77(2)(iii): a practitioner shall ... not express publicly, or while the practitioner is a witness before a court, commission or other tribunal, opinions on professional engineering matters that are not founded on adequate knowledge and honest conviction;**

- (c) **Section 77(7)(i): a practitioner shall ... act towards other practitioners with courtesy and good faith;**
- (d) **Section 77(7)(iii): a practitioner shall ... not maliciously injure the reputation of another practitioner.**

The Discipline Committee member, after careful review of all the provided information, has offered, and the members have agreed to, the following Stipulated Order:

1. **that the members be reprimanded for their behaviour in this matter; and**

2. **that the Stipulated Order and Reasons be published in summary but without reference to names or identifying details.**

The Decision and Reasons documents were dated November 4, 2004 and were signed by the Discipline Committee member, William Walker, P.Eng. The Stipulated Order document for Engineer A was dated March 12, 2005 and was signed by William Walker, P.Eng., and Engineer A. The Stipulated Order document for Engineer B was also dated March 12, 2005 and was signed by William Walker, P.Eng., and Engineer B.

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:

A Member

of the Association of Professional Engineers of Ontario.

This matter came on for hearing before a panel of the Discipline Committee on Wednesday, July 7, 2004 at the Association of Professional Engineers of Ontario (the "association") in Toronto. The association and the member were each represented by legal counsel.

The Allegations

In a Notice of Hearing dated April 1, 2004 (Exhibit #1) it was alleged that the member was guilty of professional misconduct as defined in Regulation 941.

Agreed Facts

Counsel for the association advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts that provided as follows:

1. The member was at all material times a member of the Association of Professional Engineers of Ontario.
2. In or about July 2001, the owner of two properties in Toronto, Ontario (the "owner"), retained

- the member and his firm to prepare a site plan and act as agent with respect to a proposed severance of the properties.
3. The member's firm did not hold a Certificate of Authorization ("C of A") issued by the association permitting it to offer and provide professional engineering services to the public. In early 1990, the association had issued a C of A to a corporation owned by the member. In February 1995, the Government of Ontario cancelled the Certificate of Incorporation for that firm and dissolved the corporation for default in complying with the *Corporations Tax Act*. The member did not advise the association that the corporation had been dissolved. According to Government of Ontario records, the member's current firm was never incorporated.
 4. On or about July 16, 2001, the member and his firm issued a site plan drawing with respect to the proposed severance.
 5. On or about September 11, 2001, the member signed a "Declaration of Posting of Sign" (the "declaration") with respect to signs provided to the member by the City of Toronto Committee of Adjustment (the "committee"). The declaration stated that the signs were posted in accordance with the committee's instructions as soon as they were received. The signs stated the purpose of the severance application, in addition to the date and time of the public hearing. The member had not, in fact, posted the signs.
 6. At a hearing on September 11, 2001, the committee conditionally approved the application for severance and issued its Notice of Decision on September 14, 2001.
 7. On or about October 2, 2001, the fact of the severance application and the committee approval came to the attention of the owner of a neighbouring property (the "neighbour"). The neighbour telephoned the secretary and assistant manager for the committee and reported that she had received no notification about the hearing and that signs had not been posted in advance of the hearing.
 8. On or about October 4, 2001, the approval of the severance application was made null and void because of the lack of notification to the neighbour, and because of the false declaration signed by the member. The lack of notification was determined to be a clerical error on the part of the city. The member had assumed that the owner had posted the signs, but failed to confirm this fact prior to signing and submitting the declaration.
 9. The committee subsequently issued a Public Hearing Notice to the neighbour, among others, regarding the application for severance. Included with the notice was a revised site plan drawing, issued by the member and his firm.
 10. It is alleged that the member:
 - (a) breached section 12(2) of the *Professional Engineers Act* by offering and providing services within the practice of professional engineering without holding a valid Certificate of Authorization;
 - (b) breached section 50 of Regulation 941 made under the *Professional Engineers Act* by failing to give written notice to the Registrar regarding the dissolution of his prior incorporated business;
 - (c) signed and submitted a "Declaration of Posting of Sign" that he ought to have known was false; and
 - (d) acted in an unprofessional manner.
 11. By reason of the facts aforesaid, it was alleged that the member was guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28:
 - (a) *Section 72(2)(a)*: negligence as defined at Section 72(1);
 - (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;
 - (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; 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.

Plea by Member

The member admitted the allegations as set out in the Agreed Statement of Facts. The panel conducted a plea inquiry and was satisfied that the admission was voluntary, informed and unequivocal.

Decision and Reasons for Decision

The panel considered the Agreed Statement of Facts and found that the facts supported a finding of professional misconduct and, in particular, found that the member committed an act of professional misconduct as admitted.

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

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been prepared. The jointly submitted penalty included a reprimand, a requirement to pass the Professional Practice Examination and an award of costs to the association. Counsel for the association indicated that the association was satisfied that the Joint Submission was fair and reasonable.

Counsel for the member stated that the member was in agreement with the allegations made by the association. He advised the panel that the member regretted what had taken place and that there had been no deceitful intent. He noted that the member had maintained payment of his fees at all times and that the failure to advise the association about the dissolution of the prior corporation was simply an oversight. He also advised that the member, while submitting his severance documentation, was asked to sign the declaration as a formality. He said that the member had made an honest mistake and had admitted that an error in judgment had taken place.

Counsel for the member stated that the member wished to put this whole matter behind him immediately and that there was nothing to be gained by publishing names.

Penalty Decision

The panel completed their deliberations and accepted the Joint Submission as to Penalty. Consequently the panel ordered that:

- (a) the member will be required to write and pass the Professional Practice Examination within 12 months of July 7, 2004, failing which his licence would be suspended for three months;**
- (b) the member will receive a reprimand to be recorded on the association's Register for 12 months; and**
- (c) the member will pay to the association costs of \$2,000 within six months of July 7, 2004.**

The panel concluded that the proposed penalty was reasonable and in the public interest. The member had fully cooperated with the association, agreed to the facts and recognized that an error in judgment had been made. The panel therefore decided not to order the publication of the member's name.

The panel would like to highlight two important issues arising from this case: First, the C of A carries with it a

professional status and responsibility of not only engineering competence, but also a reasonable competence in administration and management. Although it is recognized that in a small business the owners are required to wear "many hats," these non-engineering activities must not be done haphazardly. Failure to attend to the business can cause problems that reflect on the professionalism of engineers.

Second, the signature of a professional engineer also carries with it a certain moral and legal accountability. Engineers are often in a position of representing clients as they submit drawings, specifications, forms, etc. to various authorities. In some cases, forms are thrust upon the engineer and they are requested to sign them as a "formality" and/or for "expedience's sake." However, it is the signing engineer who is held accountable and who must confirm that the conditions of the document have been fulfilled and that all statements are accurate.

The Decision and Reasons were signed on January 24, 2005 by the Chair of the Discipline Panel, Edward Rohacek, P.Eng., on behalf of the members of the panel: Colin Cantlie, P.Eng., Diane Freeman, P.Eng., Lawrence McCall, P.Eng., and Derek Wilson, P.Eng.

Notices of Licence Suspension

At the conclusion of a discipline hearing held from May 24 through May 27, 2005, a panel of the Discipline Committee ordered that the licence of **Vinodbhai Patel, P.Eng.**, be suspended for a period of one month, effective May 27, 2005. A summary of the Decision and Reasons of the Discipline Committee will be published in due course.

At a discipline hearing held on June 7, 2005, a panel of the Discipline Committee found **Nicholas M. Upton, P.Eng.**, guilty of professional misconduct and subsequently ordered that his licence be suspended for a period of three months. Mr. Upton waived his right of appeal in this matter and hence the licence suspension took effect on that date. A summary of the Decision and Reasons of the Discipline Committee will be published in due course.