

Decision and Reasons

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on February 13, 2006 and July 14, 2006 at the Association of Professional Engineers of Ontario (“PEO”) in Toronto. The members were present and were represented by legal counsel. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Christopher Wirth of Stockwoods LLP acted as independent counsel to the panel.

The Allegations

The allegations against Engineer A and Engineer B in the Notice of Hearing dated January 11, 2006 were as follows:

It is alleged that Engineer A and Engineer B are guilty of professional misconduct, the particulars of which are as follows:

1. Engineer A and Engineer B were at all material times members of the Association of Professional Engineers of Ontario.
2. Engineer A and Engineer B were at all material times employees of Company A, a holder of a Certificate of Authorization.
3. In or about April 2000, Engineer X, operations manager at Company X, engaged Company A to provide a design for scaffolding to frame an environmental enclosure to be used in the cleaning and repainting of a portion of a bridge. Engineer A was the Company A engineer assigned to this work. No contract or letter of engagement was produced for this work because Company A was already providing scaffolding design services to Company X for another aspect of the project.
4. Between April 2000 and July 2000, the design of the scaffolding evolved

In the matter of a discipline hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the conduct of:

Engineer A and Engineer B

members of the Association of Professional Engineers of Ontario.

with information being exchanged by fax between Engineer A and representatives of Company X.

5. In or about May 2000, Company X further engaged Company A to assume engineering design responsibility, pursuant to the *Occupational Health and Safety Act* (“OHSA”), for an existing multi-point suspended platform (“MPSP”) under the bridge to be used for the same cleaning and repainting work (the MPSP would support the environmental enclosure). Engineer B was the Company A engineer primarily responsible for this work. Again, no contract or letter of engagement between Company X and Company A was produced for this work. The MPSP had been originally designed and manufactured by an American firm and had been used to clean and repaint other portions of the bridge over the previous years.
6. The primary suspension system for the MPSP consisted of a total of 10 turnbuckle and trolley assemblies, five on each side of the 32' x 80' platform, which attached to the bottom of the structure of the bridge through a truss, and attached to the platform via two aluminum traversing beams affixed to the “floor” of the platform. A secondary suspension system, used only when the MPSP was fixed in a working location, employed 15 steel cables attached between the bridge structure and the floor of the platform (five on each side, and five along the middle of the platform). The secondary suspension system had to be disconnected when the MPSP was being moved from one location to another under the bridge.
7. Sections 137 through 139 of Regulation 213 (Construction Projects) made under OHSA detail the requirements that apply to suspended platforms. Section 137 of the regulation states that a fixed support on a suspended platform shall be capable of supporting at least four times the maximum load to which it may be subjected. The same section states that every part of the hoisting and rigging system for a suspended platform shall be capable of supporting at least 10 times the maximum load to which the part is likely to be subjected. Section 139 of the regulation requires that a professional engineer (licensed in Ontario) design such a suspended platform in accordance with good engineering practice and issue drawings related to the design, and that the drawings include a statement that, in the opinion of the professional engineer who designed the suspended platform, the design meets the requirements of the regulation.
8. At the time, the Ministry of Labour (“MOL”) was considering amendments to the Construction Projects

regulation as it pertained to suspended platforms and, specifically, to add regulations regarding multi-point suspended platforms, such as the one at the bridge. A preliminary draft of the proposed regulations had been circulated by the MOL to relevant stakeholder groups for comment. Company A had received a copy of the proposed regulations. Among other things, the proposed regulation established minimum factors of safety of 4.0 for “components of the suspension and anchorage system” and 10.0 for “wire ropes, cables or chains used for hoisting, traversing or otherwise moving” the suspended platform. Despite these being only draft proposed regulations, Engineer A, Engineer B and Company A used these values as the basis for assuming design responsibility for the MPSP, believing that they represented the “state of the art” regarding MPSP design and that doing so represented good engineering practice.

Notice of Certificate of Authorization Suspension

At a discipline hearing held on November 6, 2006, a single-member panel of the Discipline Committee found **Raymond O. Dobbin, P.Eng.**, guilty of professional misconduct and ordered, among other things, that his Certificate of Authorization (C of A) be suspended for a period of three months. Dobbin waived his right of appeal in this matter and therefore the C of A suspension took effect immediately. The Discipline Committee also placed terms, conditions and limitations on Dobbin’s C of A; however, his professional engineer licence was not suspended or restricted. The Decision and Reasons of the Discipline Committee will be published in due course.

9. Between May 2000 and July 2000, Company X supplied Engineer B and Company A with original drawings, design details and specifications for the MPSP, including information about the procedure used to traverse the platform from one location to another under the bridge. Engineer B reviewed this material to determine whether the MPSP complied with the OHSA regulations.
10. On July 20, 2000, Engineer A and Engineer B attended at the bridge. Engineer A examined the scaffold, which had been almost fully erected, and Engineer B examined the MPSP, with particular focus on the aluminum traversing beams, details about which were not well documented in the information supplied by Company X. As a result of the examination, Engineer B recommended that the traversing beams be reinforced, and also that a load test be carried out on one of the trolleys to confirm its capacity. At no time did Engineer A or Engineer B observe the MPSP being traversed.
11. On August 9, 2000, Company A carried out a load test of a trolley assembly using facilities in their own laboratory. The trolley was tested in a static condition on a steel beam and was proof tested to 62,300 pounds.
12. On August 10, 2000, Company A issued two drawings, 4-G-00-7309-01 and 4-G-00-7309-02, showing the details, layout, sections and moving procedures for the MPSP and the scaffolding. The drawings were marked as “Approved: For Construction or Fabrication.” The drawings were signed, sealed, and dated by both Engineer A and Engineer B. There were no notes of limitation or qualification by either seal. The drawings did not include the statement required by Section 139 of Regulation 213. The drawings included a detail for the reinforcement of the aluminum traversing beams and included the text of the traversing procedure plus associated illustrations.
13. Company X had no further contact with Company A after the issuance of the drawings and prior to work beginning on the bridge. Company X did not request that Company A conduct the inspection of the MPSP that was called for under Section 139 of Regulation 213 prior to its use. Neither Engineer A nor Engineer B contacted Company X to determine whether the inspection had been done.
14. Company X began the cleaning and repainting work on or about August 12, 2000.
15. On November 14, 2000, while the MPSP was being traversed to its final position for the cleaning and repainting project, one of the trolleys jammed and partially derailed. The workers were in the process of replacing the trolley when a cascade failure of trolleys took place and the entire MPSP collapsed and fell into the river below the bridge. Three of the approximately 10 workers on the platform fell into the river and one drowned.
16. A forensic investigation by the MOL and an inquest by the Coroners’ Office revealed that:
 - (a) The reinforcement of the aluminum traversing beams was not in accordance with the detail developed by Engineer B and Company A;
 - (b) Many of the trolleys exhibited signs of wear, excessive loading, and poor maintenance;
 - (c) Certain of the special equipment used to traverse the platform exhibited signs of wear and poor maintenance;
 - (d) No inspection of the MPSP was carried out by a professional engineer pursuant to the OHSA regulation prior to the platform being put into use;

- (e) Engineer A, Engineer B, and Company A assumed a factor of safety of 4.0 in their confirmation of the load-bearing capacity of the primary suspension/traversing system;
 - (f) The primary suspension/traversing system provided a factor of safety lower than 4.0 in certain configurations during the normal traversing process; and
 - (g) The traversing process, as documented on the drawings sealed by Engineer A and Engineer B, contained errors and omissions.
17. It is alleged that Engineer A:
- (a) sealed a set of drawings pertaining to a suspended platform for which he was not in a position to assume design responsibility and for which he did not note any limitation or qualification regarding his seal, and that contained errors, omissions and deficiencies;
 - (b) failed to take any action when Company X did not call to schedule the inspection that was required under the OSHA regulations; and
 - (c) acted in an unprofessional manner.
18. It is alleged that Engineer B:
- (a) assumed design responsibility for a primary suspension system that failed to meet its stated safety factor in all normal operating conditions;
 - (b) accepted responsibility for a platform traversing procedure that he did not adequately review;
 - (c) despite expecting to inspect the suspended platform after having issued sealed design drawings, failed to take any action when Company X did not call to schedule the inspection that was required under the OSHA regulations;
 - (d) issued sealed design drawings regarding a suspended platform that did not contain a statement required under Section 139(3)(c) of the Construction Project regulations under the OSHA;
 - (e) sealed a set of drawings pertaining to a suspended scaffold and scaffold superstructure that were not adequately checked by him and

- that contained errors, omissions, and deficiencies;
 - (f) sealed a set of drawings pertaining to an environmental enclosure scaffold design for which he was not in a position to assume design responsibility and for which he did not note any limitation or qualification regarding his seal; and
 - (g) acted in an unprofessional manner.
19. By reason of the facts aforesaid, it is alleged that Engineer A and Engineer B are 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)(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;

- (c) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the 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 engineering profession as disgraceful, dishonourable or unprofessional.

Overview

On or about April 2000, Company X engaged Company A to provide a design for scaffolding. No contracts were executed and no contracts were issued to Company A to undertake field supervision of the work. Later in 2000, Company X engaged Company A to assume engineering design responsibility under the *Occupational Health and Safety Act* for an existing multi-point suspended platform. Once again, no contracts were executed and no contracts issued to Company A to undertake field supervision of the work.

Counsel for the association and counsel for Engineer A and Engineer B jointly agreed that none of the actions or conduct described in the Notice of Hearing regarding Engineer A or Engineer B were in any way the proximate cause of the collapse of the suspended platform.

The complaint brought before the Discipline Committee relates only to the fact that drawings that were jointly sealed by Engineer A and Engineer B contained a design loading difference and did not state that the drawings were in compliance with the *Occupational Health and Safety Act*, as required under the Act. In addition, there was no limitation against the seal by Engineer A, who was responsible only for the scaffolding.

Notice of Licence Suspension

At a discipline hearing held on October 23, 2006, a single-member panel of the Discipline Committee found **Christopher M. Turek, P.Eng.**, guilty of professional misconduct and ordered, among other things, that his licence be suspended for a period of two months. Turek waived his right of appeal in this matter and therefore the licence suspension took effect immediately. The Decision and Reasons of the Discipline Committee will be published in due course.

Plea of the Members

Engineer A and Engineer B both denied the allegations of professional misconduct against them as set out in the Notice of Hearing.

Agreed Statement of Fact

Counsel for the association advised that paragraphs 1 through 15 of the Notice of Hearing could be treated as an Agreed Statement of Fact (“ASF”). As well, a number of documents were filed with the panel on consent of the parties. The documents filed included:

- (a) Company A drawings on the suspended platform layout and sections (drawing 4-G-00-7309-01) and suspended platform details and procedures (drawing 4-G-00-7309-02);
- (b) photographs of the bridge and MSPS installation;
- (c) extracts from Ontario Reg. 213/91, OHS, setting out sections 133 to 144 inclusive;
- (d) MOL *New proposed regulations respecting multiple-point suspended scaffolds*, dated July 25, 1996, quoting sections 140 to 153 inclusive; and
- (e) a compilation of documents prepared by counsel for the members, which included, in part:
 - (i) PEO’s *Guideline to Professional Practice*, 1988 (revised 1996),
 - (ii) PEO’s *Guideline on Use of the Professional Engineer’s Seal* (July 2005), and
 - (iii) Letter of May 14, 2002 from PEO to MOL on behalf of PEO’s Professional Practice Committee.

Decision

- (a) **Onus and Standard of Proof**
The association bears the onus of proving the allegations in accordance with the standard of proof with which the panel is familiar, set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977) 15 O.R. (2d) 477. The standard of proof applied by the panel, in accordance with the Bernstein decision, was a balance of probabilities with the qual-

ification that the proof must be clear and convincing and based upon cogent evidence accepted by the panel. The panel also recognized that the more serious the allegation to be proved, the more cogent must be the evidence.

(b) Decision

Having considered the evidence and the onus and standard of proof, and upon reviewing the allegations, the agreed facts as set out in paragraphs 1 to 15 inclusive in the Notice of Hearing, as revised, and the documents filed by the parties, the panel found that Engineer B is guilty of professional misconduct as defined in Section 72(2)(d) of Regulation 941 under the Professional Engineers Act. Engineer A is not guilty of professional misconduct as alleged against him in the Notice of Hearing.

Reasons for Decision

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 members.

The panel accepted the submissions by counsel for the association and counsel for the members that their actions were not in any way the proximate cause of the collapse of the suspended platform.

The panel focused their deliberations on whether the findings were consistent with the practice of professional engineering as defined in the Act and supported by a consensus of practitioners.

The panel accepted the submission by counsel for the members that both were experienced professional engineers. Their responsibilities were functionally, rather than hierarchically, related. Initially, Engineer A had been assigned to provide a design for scaffolding and an environmental enclosure. Approximately one month later, Engineer B was assigned primary responsibility to assume the engineering design pursuant to the OHS for the existing MPSP, which would support the environmental enclosure. The MPSP, which had been used on other portions of the bridge, was to be used for similar work on the project in question.

There were errors with the information on the drawings. The written detail, which corresponded to a five-stage schematic, noted the last stage was “stage 6,” in error.

The capacity of the primary suspension points on drawing 4-G-00-7309-01 was shown as 15,000 lbs, whereas the second drawing (02) indicated 12,000 lbs capacity, in error. The 12,000 lbs capacity was applicable in the US; however, Ontario requirements yielded 15,000 lbs as the design capacity. These errors ought to have been caught, in particular the 15,000 lbs vs. 12,000 lbs difference between the two standards, in a detailed review by an experienced design engineer.

A factor of safety of 4.0 was assumed in the confirmation of the load-bearing capacity of the primary suspension/traversing system. The Ontario requirement was to be 15,000 lbs capacity. Laboratory tests indicated that the assembly was capable of at least 62,300 lbs, at which time the test was suspended. The evidence presented

Notice of Resolution—Guy A. Cormier, P.Eng., and J.L. Richards & Associates Limited

In the matter of **Guy A. Cormier, P.Eng.**, and **J.L. Richards & Associates Limited (JLRA)**, the parties participated in a pre-hearing conference and Cormier and JLRA provided additional information to PEO. PEO, Cormier and JLRA subsequently negotiated a resolution to the matter that served and protected the public interest. Details of the resolution are confidential. On October 11, 2006, PEO sought and obtained an order from the Discipline Committee authorizing PEO to withdraw the allegations of incompetence and professional misconduct against Cormier and JLRA.

included a draft report of an independent expert that indicated a finite element analysis performed after the accident, utilizing a three-dimensional computer model with the aid of a SCADA program, yielded a factor of safety of 3.9 based on the design drawings prepared by Company A. There was no evidence to indicate the initial calculations were in error. The panel considered the member had carried out the design with due diligence and that the initial design by Company A was a reasonable and prudent application of the practice of professional engineering.

Both members attended the site prior to finalizing the drawings. Drawing 4-G-00-7309-02 was revised to include detail "6" with respect to reinforcing the aluminium traversing beam subsequent to their attendance at the site.

Section 139(3) of Regulation 213/91 under OSHA stipulates the requirements for design drawings for the work. Subsection 139(3)(c) requires a statement by the designing professional engineer that "the design meets the requirements of this section." The drawings did not include the required statement. While the position of PEO's Professional Practice Committee in the May 14, 2002 letter to the Ministry of Labour on proposed amendments to Reg. 213/91 was that such a statement was not required to supplement the seal, the panel accepted the argument from counsel for the association that such a letter cannot be the basis for abdicating responsibilities with respect to laws.

Each member stamped and sealed the drawings. Neither member qualified or limited the components for which he was responsible. Each reviewed the drawings and the drawings were stamped and sealed in the presence of each other on August 10, 2000. Neither Clause 7(1)(12) of the *Professional Engineers Act* nor Section 53, Regulation 941/90, stipulates requirements in situations where two members stamp drawings.

The association's professional practice guideline on use of the seal is silent as to situations where two members within the same discipline stamp drawings. There was no evidence as to Company A policies or corporate standards applicable to sealing drawings.

The panel accepted from counsel for the members that each member was responsible for their portion of the work. The errors on the drawings were on detail other than scaffolding. Engineer B had an overall responsibility for the requirements of the OSHA and, as such, was primarily responsible for the work. The panel was inclined to believe the members' claims that they knew Engineer A was taking responsibility only for the scaffolding and that Engineer B was taking responsibility for the entire set of drawings. If they had not agreed upon this assignment of responsibility, the panel would have considered that each had assumed responsibility for the other's work.

Section 139(5) of Regulation 213/91 under OSHA stipulates that a professional engineer shall inspect and verify that a suspended scaffold or platform has been erected in accordance with the design drawings before it is put to use. While there may have been an expectation by the member that he would be called upon to do this inspection and verification, the regulation does not stipulate that the inspection is to be by the designer.

There was no written agreement between Company A and the client. The client (Company X), as constructor, would

have responsibility for assuring the inspection and verification was carried out. It is not uncommon that such inspection and verification is performed by a professional engineer other than the designer.

Based on the evidence and the above rationale, the panel considered that the burden of proof to constitute misconduct was not satisfied with respect to Engineer A. The panel found that Engineer A was not guilty of professional misconduct as defined in Section 28(2)(b) of the *Professional Engineers Act* as alleged in Clause 18 of the Notice of Hearing.

The panel found that Engineer B, who had overall responsibility for the requirements of the OSHA, committed an act of misconduct as alleged in Clause 18 of the Notice of Hearing. In particular, the panel found that Section 72(2)(d) of Regulation 941 was contravened in that the drawings did not include the statement under section 139(3)(c) of Reg. 213/91 of the OSHA.

The written Decision and Reasons regarding the finding of professional misconduct were dated June 7, 2006, and were signed by David Robinson, P.Eng., as the Chair of the panel, on behalf of the other members of the panel: Roydon Fraser, P.Eng., Rishi Kumar, P.Eng., Virendra Sahni, P.Eng., and Derek Wilson, P.Eng.

Notice of Revocation

At a discipline hearing held on November 22, 2006, a panel of the Discipline Committee found **Kwang-Ray Hsu** guilty of incompetence and professional misconduct. The panel ordered, among other things, that Hsu's licence and Certificate of Authorization be revoked. Because there was a finding of incompetence, the revocations took effect immediately, pursuant to Section 29(1) of the *Professional Engineers Act*, regardless of any appeal that may be launched by Hsu. The Decision and Reasons of the Discipline Committee will be published in due course.

Notice of Licence Suspension

Pursuant to an order of the Discipline Committee dated December 7, 2005, the licence of **Eric Desbiens, P.Eng.**, has been suspended effective November 23, 2006. A summary of the Decision and Reasons of the Discipline Committee, including the penalty order, was published in the July/August 2006 issue of Gazette. Desbiens failed to write and pass the Professional Practice Examination (PPE) within 12 months of the date of the discipline hearing. The licence suspension will continue until such time as Desbiens writes and passes the PPE. If he does not do so before November 23, 2007, the penalty order requires that his licence be revoked.

Penalty

The panel reconvened on July 14, 2006 to hear submissions with respect to penalty based on the panel's earlier finding.

Submissions on Behalf of the Association

Counsel for the association submitted the association's request for penalty, which included:

1. that Engineer B be reprimanded and the fact of the reprimand be recorded on the Register;
2. that there be publication of the panel's decision and reasons, including reference to names; and
3. that costs fixed in the amount of \$2,500 be awarded to the association with 12 months to pay.

Counsel indicated that both parties agreed there should be a reprimand; however, there was no agreement on the remainder of the penalty proposed.

It was agreed that the panel's finding regarding Section 72(2)(d) of Regulation

941 was not one of the more serious contraventions constituting misconduct.

Counsel for the association filed minutes of the June 21, 2003 meeting of the association's Council quoting Motion 9921, which stipulated:

"That Council recommend to the Discipline Committee that the names of all members or holders of temporary licences, limited licences, provisional licences or Certificates of Authorization found guilty of professional misconduct be published, including those who are the subject of a Stipulated Order, or to require written reasons for a decision to the contrary, which would be published with the decision."

Association counsel indicated regulatory bodies have moved towards open and transparent proceedings. The reprimand and publication are necessary to maintain the credibility of the regulator. The panel was provided a March 15, 2006 decision of the Discipline Committee, written by Glenn Richardson, P.Eng., in which the decision to publish with names was very well reasoned. Association counsel advised the costs requested were at the minimum range and reflected only a portion of the total costs.

Submissions on Behalf of Engineer B

Counsel for Engineer B affirmed that the reprimand is appropriate and fair but that the balance of the proposed penalty was not necessary. He highlighted the Powers of the Discipline Committee, as provided by Section 28(4) of the Act and, in particular, the committee's discretion with respect to recording on the Register and publishing.

There was no finding of guilt with respect to Engineer A, and Engineer B was found guilty of only one of seven allegations and the contravention was relatively minor. The members were bearing costs where there was an acquittal and should not have to pay costs to the association.

Mitigating matters that might be considered by the panel were the fact that Engineer B has had a long and honourable career as a professional engineer and that this is the first time he has been involved in a discipline matter. He cooperated with the association throughout the process and assumed responsibility for his work. Omission of the statement required under OHSAA was consistent with what the association advocated in its May 14, 2002 letter to the MOL on behalf of the association's Professional Practice Committee.

Counsel for the defendants advised that Engineer A was not seeking publication, as allowed under Section 28(6) of the Act. This section affords the opportunity for publication upon request of the member, where allegations of professional misconduct were determined to be unfounded.

Submission by ILC

Independent legal counsel (ILC) offered that the guiding principles in determining penalty ought to be:

1. protection of the public interest;
2. maintaining public confidence in the profession's ability to regulate;
3. general deterrence;

Notice of Licence Suspension

At a discipline hearing held on November 23, 2006, a three-member panel of the Discipline Committee found **Bradley J. Kalus**, a holder of a limited licence, guilty of professional misconduct. The panel ordered, among other things, that his limited licence be suspended for a period of three months. Kalus waived his right of appeal in this matter and, therefore, the licence suspension took effect immediately. The Decision and Reasons of the Discipline Committee will be published in due course.

Notice of Resolution—The Greer Galloway Group Inc.

In the matter of **The Greer Galloway Group Inc. (GGGI)**, the parties have negotiated a resolution to the matter. GGGI has undertaken to submit to a practice inspection in respect of its administrative processes and controls relating to professional engineering matters, and have further undertaken to host a day workshop/seminar regarding engineering ethics and professional misconduct for its Ontario-based professional engineering staff. In exchange for these undertakings, PEO sought and obtained an order from the Discipline Committee on November 23, 2006 authorizing PEO to withdraw the allegation of professional misconduct against GGGI. At no time did GGGI admit to any professional misconduct on its part.

4. specific deterrence; and
5. rehabilitation.

No single principle governs. The panel should assess the significance and circumstances and balance with the goals of the profession. While the panel could consider Council's Motion 9921, the Discipline Committee is independent of Council and is not bound to follow Council's recommendation.

Penalty Decision

The panel deliberated and ordered that:

1. **Engineer B be reprimanded and the fact of the reprimand be recorded on the Register for a period of 12 months;**
2. **the decision and reasons of the panel be published without names in Gazette; and**
3. **costs of the disciplinary proceedings fixed in the sum of \$2,500 be paid by Engineer B to the association within 12 months.**

Reason for Decision

The panel accepted submissions from both counsel that a reprimand was appropriate as a specific deterrent.

With respect to publication, it may assist other professional engineers should they encounter similar situations. Publication, a general deterrent, will also serve to protect the public interest. The circumstances and reasons detailed in the proceedings demonstrate openness and an ability to regulate. Costs are minimal, reflecting the total cooperation of all parties affected throughout the process.

Considerations in the reason for publishing without names included:

1. None of the parties were in any way the proximate cause of the collapse of the suspended platform; however, the incident resulted in a detailed forensic investigation of their work;
2. The allegations with respect to misconduct were a matter of public record prior to the hearing;
3. Engineer B has, and continues to be, respected for his work and cooperated in an honourable and professional manner in the process;
4. The Certificate of Authorization holder and the two members were involved throughout and only one member was found to have committed a relatively minor act of misconduct; and
5. Publishing with names was not requested by the member where allegations of misconduct were unfounded.

The panel considered that openness and transparency would be satisfied without requiring names in Gazette and, in the interest of overall fairness, ordered publication without names.

Engineer B waived his right to appeal and the panel administered an oral reprimand following the hearing.

The written Decision and Reasons regarding the penalty were dated September 11, 2006, and were signed by David Robinson, P.Eng., as the Chair of the panel, on behalf of the other members of the panel: Roydon Fraser, P.Eng., Rishi Kumar, P.Eng., Virendra Sahni, P.Eng., and Derek Wilson, 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.

Anyone 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 licence or Certificate of Authorization holder should be made based on the allegations listed herein.

February 26-March 2, 2007

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*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (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)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; 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 engineering profession as disgraceful, dishonourable or unprofessional.

February 26-March 2, 2007

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*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (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;

Clarification—Delta Engineering

In the September/October 2006 issue of Gazette, a Decision and Reasons of the Discipline Committee was published regarding **Delta Engineering**. Readers are advised that the Delta Engineering in question was located in the Ottawa area and is in no way related to Delta Engineering Inc. of Toronto or Delta Engineering Services (a Division of 728401 Ontario Limited) of Markham. PEO regrets any confusion this may have caused.

- (c) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; 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 engineering profession as disgraceful, dishonourable or unprofessional.

March 19-23, 2007

Kanan K. Sinha, P.Eng., and 1523829 Ontario Ltd. (c.o.b. as Engineering Online America)

It is alleged that Sinha is guilty of incompetence as defined in Section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Sinha and 1523829 Ontario Ltd. are guilty of professional misconduct as defined in Section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (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 the practitioner;
- (d) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; 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.

May 1-4, 2007

Helmut G. Brosz, P.Eng., and 442890 Ontario Ltd. (c.o.b. as Brosz & Associates)

It is alleged that Brosz is guilty of incompetence as defined in Section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Brosz and 442890 Ontario Ltd. are guilty of professional misconduct

as defined in Section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (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 the 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.

Incompetence

A very serious matter in PEO's regulation of the profession...

Incompetence is defined under Section 28(3) of the *Professional Engineers Act* as follows:

28(3) The Discipline Committee may find a member of the Association or a holder of a temporary licence, a provisional licence or a limited licence to be incompetent if in its opinion,

- (a) the member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer; or
- (b) the member or holder is suffering from a physical or mental

condition or disorder of a nature and extent making it desirable in the interests of the public or the member or holder that the member or holder no longer be permitted to engage in the practice of professional engineering or that his or her practice of professional engineering be restricted. R.S.O. 1990, c. P.28, s. 28 (3); 2001, c. 9, Sched. B, s. 11 (37).

Allegations of incompetence can only be determined by the Discipline Committee at the conclusion of a discipline hearing. PEO Council, the Executive Committee or the Complaints Committee can direct the Discipline Committee to hold a hearing into an allegation of incompetence. It becomes PEO's burden to

prove the allegation during the discipline hearing.

Since the definitions of incompetence suggest that the individual is unfit to carry out the responsibilities of a professional engineer or should no longer be permitted to engage in the practice of professional engineering, PEO takes allegations of incompetence very seriously. It is clear that an individual who has been found by the Discipline Committee to be incompetent should, as a minimum, have their licence suspended until such time as they can demonstrate that they are qualified or able to resume practice as a professional engineer. In certain circumstances, revocation of the licence may be required in order to serve and protect the public interest.