

acceptance would bring the discipline process into disrepute or would otherwise be contrary to the public interest, the panel should accept it.

Penalty Decision

The panel accepts the PEO submission as to penalty and accordingly orders that:

1. the member receive a recorded reprimand from the panel;
2. the member be assessed costs, on a partial recovery basis, in the amount of \$2,500; and
3. the proceedings of this hearing be published, with names, in the journal of the association.

The panel recognizes that as part of any negotiation process there must be give and take from both parties involved. Thus, if there is an admission of guilt, a negotiated submission of penalty is to be expected.

The panel considered licence suspension or revocation, but concluded that the proposed penalty would not bring the discipline process into disrepute and was in the public interest. The panel also noted that the actions of the member were purely of ethical and legal concerns and not of a technical nature.

John J. Kadlec, P.Eng., has cooperated with the association and, by agreeing to the facts and a proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association. Further, he waived his right to appeal and, consequently, the panel administered the reprimand at the conclusion of the hearing on February 3, 2004.

The written Decision and Reasons in this matter were dated February 23, 2004, and were signed by the Chair of the panel, Max Perera, P.Eng., on behalf of the other members of the panel: James Dunsmuir, P.Eng., Daniela Iliescu, P.Eng., Ken Lopez, P.Eng., and Richard Weldon, P.Eng.

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:

William Tessler, P.Eng.

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

Sonterlan Corporation

a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on April 14, 2004, at the Association of Professional Engineers of Ontario in Toronto. The association was represented by Michael Royce ("Royce") of Lenczner Slaght Royce Smith Griffin. William Tessler, P.Eng. ("Tessler") and Sonterlan Corporation ("Sonterlan") were represented by Richard Quance ("Quance") of Himelfarb Proszanski.

The Allegations

The allegations against William Tessler, P.Eng., and Sonterlan Corporation in the Fresh Notice of Hearing dated April 1, 2004 are as follows:

1. Tessler was at all material times a member of the Association of Professional Engineers of Ontario.
2. Sonterlan 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 and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure that its employees, including Tessler, carried on the practice of professional engineering in a proper and lawful manner. Tessler was one of the professional engineers responsible for the services provided by Sonterlan.

3. In July 1998, the Ministry of Transportation of Ontario ("MTO") awarded Contract No. 98-58 (the "contract") to Underground Services (1983) Ltd. ("USL") for structural rehabilitation of two Highway 401 underpasses, including the Essex County Road No. 37 bridge.
4. On or about July 20, 1998, Tessler and Sonterlan accepted an engagement from USL to act as the

Quality Verification Engineer (“QVE”) for the contract.

5. Section 905.04.04 of the contract required the contractor to submit to the contract administrator (“CA”) a Certificate of Conformance (“C of C”) sealed and signed by the QVE, upon completion of the placement of reinforcing steel bars (“rebars”) for each structural component. The QVE was required to certify that the rebar placement was in general conformance with the contract documents. Dillon Consulting Limited (“Dillon”) provided contract administrative services on the contract.
6. The rebar placement was set out in contract drawings, which included:
 - (a) Sheet No. 41, dated February 1997, “Deck Reinforcement & Details”; and
 - (b) Sheet No. 42, dated February 1997, Standard Drawing No. SS110-60, for “Barrier Wall w/o Railing, Performance Level 3.”

These two drawings specified rebar placement requirements for the east and west barrier walls, and the deck of the Essex County Road No. 37 bridge.

7. Each wall on the deck required the placement of 281 sets, each comprising three bars, of vertical rebars with 220mm spacing, and 10 sets of the rebars spaced at 110mm at both ends (within interior panels “B” and “D”) adjacent to the expansion joints.
8. To provide structural continuity through the construction joints between the deck and the walls, and to fix the vertical wall rebars in position, the rebars passing

through the joints had to be tied to the longitudinal rebars in the deck before the deck concrete was poured.

9. Tessler and Sonterlan issued a sealed C of C #1, Verification Inspection Report No. 3 dated September 2, 1998, which stated that the rebar placement for the deck of the Essex County Road No. 37 bridge generally conformed to the drawings.
10. On September 4 and 5, 1998, concrete was poured in the deck of Essex County Road No. 37 bridge.
11. Tessler and Sonterlan issued a sealed C of C #2, Verification Inspection Report No. 6 dated September 16, 1998, which stated that the rebar placement for the walls at Essex County Road No. 37 bridge generally conformed to the drawings.
12. On September 24, 1998, Graydon Knights, P.Eng., project manager for Dillon, noticed missing wall rebars during a routine site visit and asked Dillon personnel to verify this.
13. By Instruction Notice (“I.N.”) No. 12 dated September 25, 1998, George Zubyk of Dillon, the CA, advised USL that there were approximately 87 sets of rebars missing from each wall. Zubyk requested that USL submit a proposal to correct this deficiency. The MTO was also informed of the deficiency and the request.
14. By letter dated September 25, 1998 to USL, Tessler and Sonterlan responded by submitting a repair proposal to correct the spacing of the barrier wall steel, which was placed at 350mm c/c instead of 220mm c/c as shown

on the contract drawing. Tessler recommended that additional dowels be installed at 350mm c/c alternating with the existing rebars.

15. By I.N. No. 13 dated September 29, 1998, Zubyk advised USL that John Schaefer, P.Eng., of the MTO, had accepted Tessler’s proposal to correct the missing rebars.
16. By letter dated October 14, 1998 to USL, Tessler and Sonterlan provided the following explanations relating to C of C #1:
 - (a) “The dowels for the barrier wall were placed at intervals varying from 210mm to 240mm and generally conformed to the required spacing of 220mm, with the exception of the ends of the interior panel ‘D,’ which were placed at 110mm to 120mm centres.”
 - (b) “Subsequent to the above noted inspection and placement of concrete in the deck, we were advised that the barrier wall dowels were found to have been placed at varying intervals of approximately 350mm to 400mm on centre. The transverse steel in the deck was verified to have been placed at 300mm centres. If the dowels had been installed incorrectly, they would have been aligned with the transverse steel and demonstrated a spacing of 300mm centre to centre. The observed in situ spacing would suggest that the dowels for the barrier wall were tampered with prior to the deck pour.”
 - (c) The installation of the additional dowels provided approximately 23 per cent more steel than was required by the drawings.
17. By declaration dated January 22, 1999, Tessler repeated his October 14, 1998 statement about the wall

rebar spacing when C of C #1 was issued, as follows:

- (a) “The dowels for the barrier walls were installed at intervals varying from 210mm to 240mm and generally conformed to the required spacing of 220mm.”
 - (b) “The dowels for the ends of interior panel ‘D’ were placed at 110mm to 120mm on centre and generally conformed to the required spacing of 110mm.”
18. It is alleged that William Tessler, P.Eng., and Sonterlan Corporation:
- (a) inadequately performed inspections for the purpose of certifications of rebar placement;
 - (b) prepared and issued Cs of C #1 and #2, which contained errors and omissions;
 - (c) issued statements in Cs of C #1 and #2 that were contrary to the drawing requirements and the as-built condition;
 - (d) provided reports that there was no deficiency in the wall rebar placement as reported in either C of C #1 or #2;
 - (e) erroneously repeated in the declaration that the wall rebar spacing generally conformed to the drawings when C of C #1 was issued, when they knew, or ought to have known, that MTO would have found the statements improper; and
 - (f) failed to demonstrate an understanding of their professional engineering responsibilities and obligations while engaged as a QVE.

Agreed Facts

Counsel for the association and counsel for the member and holder advised

the panel that agreement had been reached on the facts and that the factual allegations as set out in the Fresh Notice of Hearing were accepted as accurate by the member and holder (the “Agreed Facts”).

Plea by Member and Holder

The member and the holder admitted the Agreed Facts set out in paragraphs 1 through 18 in the Fresh Notice of Hearing constituted acts of professional misconduct. The panel conducted a plea inquiry and was satisfied that the member’s admission and that of the holder was voluntary, informed and unequivocal.

Decision

The panel considered the Agreed Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that William Tessler, P.Eng., and Sonterlan Corporation committed acts of professional misconduct as alleged in paragraphs 1 through 18 of the Fresh Notice of Hearing dated April 1, 2004, in that by reason of the facts aforesaid Tessler and Sonterlan are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act, R.S.O. 1990, Chapter P.28.*

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 engineering profession as disgraceful, dishonourable or unprofessional.**

Reasons for Decision

The panel was persuaded that the Agreed Facts constituted acts of professional misconduct, and noted that the member and the holder agreed with the association that findings of professional misconduct were appropriate.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed upon. The Joint Submission as to Penalty was as follows:

1. a two-month suspension of the member’s licence and the holder’s Certificate of Authorization, to commence May 14, 2004;
2. a recorded Reprimand;
3. a requirement that the member write and pass the Professional Practice Examination within 12 months of April 14, 2004, failing which his licence will be suspended until he passes it, on the understanding that his licence

will be revoked if he has not passed the examination within 24 months of April 14, 2004; and

4. the member and the holder shall pay costs in the amount of \$7,500 within 12 months of April 14, 2004.

Joint Penalty Submissions

Counsel for the association advised that the association was satisfied that the proposed penalties were fair and reasonable. He noted that if the member and the holder had disputed the allegations and the penalty, a lengthy hearing would have been held and significant costs incurred as a result.

Counsel for the member and the holder stated that they were in agreement with the submissions made by counsel for the association. He advised the panel that the member and the holder regretted what had taken place and had put into place new procedures to avoid such incidents in the future.

Penalty Decision

The panel deliberated and a majority of the panel accepted the Joint Submission as to Penalty and accordingly orders:

1. a two-month suspension of the member's licence and the hold-

er's Certificate of Authorization, to commence April 14, 2004;

2. a recorded Reprimand;
3. a requirement that the member write and pass the Professional Practice Examination within 12 months of April 14, 2004, failing which his licence will be suspended until he passes it, on the understanding that his licence will be revoked if he has not passed the examination within 24 months of April 14, 2004; and
4. the member and the holder shall pay costs in the amount of \$7,500 within 12 months of April 14, 2004.

The panel felt that the use of the engineering seal (the "seal") represents the integrity of the engineering profession and the misuse of the seal by affixing it to Certificates of Completion that contained errors and omissions, were incomplete, and which contained misstatements was a very serious matter.

There is little doubt in the minds of the panel that during the construction process others were involved in the site inspection process and had this not

occurred, there could have been a danger to the public.

The end result, however, was that the member and the holder, although relying on others, misused the seal by issuing Certificates of Completion (Exhibits 2 and 3) which the member, the holder and the association agreed were incorrect.

The panel understood the CA and the MTO were involved in the inspection and approval process for the projects. The panel felt the MTO process in undertaking rehabilitation projects should be subject to a review by an independent board in order to set up a procedure so a similar incident cannot occur in the future.

Waiver of Right to Appeal

Upon pronouncement of the penalty decision by the Chair, the member and the holder advised that they would waive their right to appeal. As a result the penalties will take effect immediately and an order imposing the penalties effective April 14, 2004 will be issued.

The written Decision and Reasons in this matter were dated October 18, 2004, and were signed by the Chair of the panel, Jag Mohan, P.Eng., on behalf of the other members of the panel: Ken Lopez, P.Eng., Derek Wilson, P.Eng., Tom Ellerbusch, P.Eng., and Daniela Ilescu, P.Eng.

Notice from the Regulatory Compliance Department re: Mohammad (Mike) Panahi, P.Eng., and Pancon Engineering Ltd.

At a discipline hearing held at the offices of the association on October 14 and 15, 2004, Mohammad (Mike) Panahi, P.Eng., and Pancon Engineering Ltd. were found not guilty of professional misconduct. The allegations relating to this hearing were previously published in *Gazette* and on the association's website. This notice is published by order of the Discipline Committee based on a request by Panahi and Pancon pursuant to section 28(6) of the *Professional Engineers Act*.

Summary of Scheduled Discipline Hearings

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 496.

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.

Further details regarding the allegations against the members and Certificate of Authorization holders listed below can be found on PEO's website at www.peo.on.ca.

February 7-11, 2005

Bruce A. Brown, P.Eng., and Bruce A. Brown Associates Limited (BABAL)

It is alleged that Brown and BABAL 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)(f)*: failure of a practitioner to present clearly to the practitioner's employer the consequences to be expected from a deviation proposed in work, if the professional engineering judgment of the practitioner is overruled by non-technical authority in cases where the practitioner is responsible for the technical adequacy of professional engineering work;
- (e) *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

- (f) *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 22-24, 2005

Tony E. Kahil, P.Eng.

It is alleged that Kahil 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)(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;
- (b) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
- (c) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (d) *Section 72(2)(i)*: failure to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client; 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.

April 25-29, 2005

William C. Wong, P.Eng., and Construction Testing Laboratories Limited (CTTL)

It is alleged that Wong is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Wong and CTTL 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:

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 9-13, 2005

John Y.M. Kwan, P.Eng., and K.O. Partners Ltd.

It is alleged that Kwan is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Kwan and K.O. Partners 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)(c)*: failure to act to correct or report a situation that the practitioner believes may endanger the safety or welfare of the public;
- (d) *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;

- (e) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
- (f) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
- (g) *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.

June 20-24, 2005

Vinodbhai Patel, P.Eng.

It is alleged that Patel 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;
- (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;
- (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 professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

July 7-9, 2005

Nicholas M. Upton, P.Eng.

It is alleged that Upton is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Upton 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;
- (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;
- (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 professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

Q&A: Returning your seal and licence certificate

Every successful applicant for a licence, limited licence, temporary licence or provisional licence receives a seal and licence certificate from PEO. The seals vary in appearance depending upon the type of licence, and their use is governed by Regulation 941 made under the *Professional Engineers Act*. Both the seal and the licence certificate that is issued with it remain the property of PEO and must be returned under certain circumstances. The same is true for the certificate issued when an application for a Certificate of Authorization (C of A) is approved.

Q: Under what circumstances would I have to return my seal and/or certificate?

A: There are three situations that would require the return of your seal and certificate:

1. *When your licence, limited licence, temporary licence, provisional licence or C of A is suspended or revoked.* If you are found guilty of professional misconduct or incompetence at a discipline hearing, section 28(4) of the Act gives the Discipline Committee the power to suspend or revoke your licence, limited licence, temporary licence, provisional licence or C of A. Separate from any disciplinary matters, the registrar has powers under sections 15(8) and 18(2) of the Act to suspend or revoke a limited licence, temporary licence, provisional licence or C of A upon certain reasonable and probable grounds. Regardless of the basis for the suspension or revocation, you must return your seal and certificate to PEO. This is required under section

