

3. **That an article be published in the official journal of the association, without reference to names or identifying features.**

This Decision and Reasons document was dated April 2, 2004 and was signed by the Discipline Committee member, Richard Weldon,

P.Eng. The Stipulated Order document was dated April 12, 2004 and was signed by Richard Weldon and Engineer A.

## Decision and Reasons—Stipulated Order

In the matter of a complaint regarding the conduct of:

### Engineer X

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

### Company X

a holder of a Certificate of Authorization.

**T**he Complaints Committee in accordance with section 24 of the *Professional Engineers Act* (the “Act”) referred a complaint in the matter of Engineer X (the “member”) and Company X to be dealt with by way of the Stipulated Order process.

In accordance with the Stipulated Order process, Gina P. Cody, P.Eng., a member of the Discipline Committee (“Discipline Committee member”) of the Association of Professional Engineers of Ontario (“PEO”) was selected by the Chair of the Discipline Committee to act as the Chair of the Stipulated Order process for the disposition of this matter. After reviewing the complaint and other

related information, the Discipline Committee member met with Engineer X on September 15, 2004, to allow the member the opportunity to offer any explanation and/or defence for his actions and conduct.

The complaint alleged as follows:

1. By letter to Company A dated May 9, 2003, Architect B engaged Company A to conduct a peer review of a set of structural drawings and to provide comments. These structural drawings were dated March 19, 2003 and were prepared by Company X for the alteration and addition to a proposed restau-

rant in Toronto, and were signed and sealed by Engineer X.

2. Architect B indicated to Company A in the same letter that the review of the drawings was for the sole benefit of the landlord of the restaurant property and requested that a written report be submitted.
3. By fax to Architect B dated May 12, 2003, Company A indicated that they were required to inform Company X of this peer review of structural drawings in order to complete the noted work. Company A also attached their confirmation of assignment form for Architect B to review and sign. Architect B signed the confirmation of assignment on the same date and returned it to Company A by fax.
4. By letter to Engineer X dated May 13, 2003, Company A indicated that they had been retained by Architect B to conduct a peer review of the proposed renovations to the restaurant in Toronto. Company A also indicated in the same letter that the notification was being sent as a courtesy.
5. By letter to Architect B dated May 21, 2003, Company A provided a review summary with comments.

6. During the structural drawing reviewing process, Company A discovered that some of the design details contained in Company X drawings, dated March 19, 2003, were either similar or identical to Company A standards of the time. By way of example, an engineer at Company A used certain specific Company A drawings for a project of similar size. The similarities included drawing title, dimension, instructions and pattern of hatching.
7. Company A carried the copyright symbol and the following notation: "2002 <Company A>. Must be returned upon request. Reproduction of these drawings, specifications, related documents and designs in whole or in part is strictly forbidden without the prior written permission of <Company A>."
8. Company A alleged that 15 Company X design details were identical to those of Company A (a list was provided).
9. It is alleged that Engineer X and Company X:
  - (a) signed, dated and sealed drawings and technical specifications for the restaurant project that were partly or mostly copied from Company A drawing files without authorization;
  - (b) utilized copies of Company A design files to form the basis for the preparation of Company X's drawings and technical specifications for the project;
  - (c) inappropriately used material and technical specifications from Company A drawings, and represented the material as Company X's material;

- (d) knew or ought to have known that their drawings and technical specifications for the project contained information obtained improperly from Company A;
- (e) violated copyright laws;
- (f) failed to maintain the standards that a reasonable and prudent practitioner would maintain in carrying out the design project; and
- (g) acted in a disgraceful, dishonourable and/or unprofessional manner.

The Discipline Committee member, in the meeting with the member, reminded him that this was his opportunity to offer an explanation and/or defence for his actions and conduct, and that if he did not accept the Stipulated Order, the matter would proceed to a full Discipline Hearing before a panel of the Discipline Committee.

The member, in providing an explanation, stated that:

1. He had no knowledge of the drawings being a copy of Company A drawings until he received a call from Company A.
2. He was told by the draftsman who prepared the drawings that, based on his experience, he could improve the details prepared by Engineer X, and that draftsman prepared the drawings for him.
3. He was not aware that these details were prepared for other firms.
4. He was not aware that the draftsman had worked for Company A.
5. In the future, he would never include the details provided by

any draftsman in his drawings without verifying the source and ensuring that they can be incorporated and/or used with his material.

The Discipline Committee member considered the available information and the explanations of the member and found the following information to be significant:

1. The member had no reason to believe that the drawings prepared by the draftsman were copied from Company A drawings.
2. The member did not personally prepare the details.
3. Upon receiving a phone call from Company A regarding the details, the member called them back and apologized for what had happened.
4. The member appeared to have displayed concern regarding the work prepared by his draftsman.

Based upon the foregoing, the parties have agreed:

**THAT** there is no basis to believe that Engineer X was in breach of the *Professional Engineers Act* and the Regulations made under the Act.

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

1. **that there be no further action taken related to this matter; and**
2. **that an article be published in the official journal of the association, without reference to names or identifying features, on the subject of copyright laws and the fact that engineers should ensure materials**

prepared by draftspeople for them are not copied from other restricted sources.

This Decision and Reasons document was dated October 12, 2004 and was signed by the Discipline Committee member, Gina

Cody, P.Eng. The Stipulated Order document was dated December 30, 2004 and was signed by Gina Cody, P.Eng., and Engineer X.

## Notice of Licence Suspension

Pursuant to an October 28, 2003 order of the Discipline Committee, the licence of **John S. Ivanyi** has been suspended for a period of six months, effective April 1, 2005. This suspension arises as a result of Ivanyi's failure to write and pass the Professional Practice Examination and to pay \$3,000 in costs to PEO within the timeframe established by the Discipline Committee in its order. Details regarding the order can be found in the Decision and Reasons arising from the associated discipline hearing, which were published in the November/December 2004 *Gazette*.

## Summary of Scheduled Discipline Hearings

This schedule is subject to change without public notice. For further information contact PEO at 416-840-1072; toll free 800-339-3716, ext. 1072.

Any person wishing to attend a hearing should contact the complaints and discipline coordinator at extension 1072.

All hearings commence at 9:30 a.m.

NOTE: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference regarding the status, qualifications or character of the member or Certificate of Authorization holder should be made based on the allegations listed herein.

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](http://www.peo.on.ca).

### May 24-27, 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.

### June 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.