

## DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the conduct of SERDAR KALAYCIOGLU, P.ENG., a member of the Association of Professional Engineers of Ontario.

This matter was presented for hearing before a panel of the Discipline Committee on February 17, 2009, at the Association of Professional Engineers of Ontario in Toronto.

The association was represented by Neil J. Perrier of Perrier Law Professional Corporation. Serdar Kalaycioglu, P.Eng., was not present and was unrepresented. David P. Jacobs acted as independent legal counsel.

### THE ALLEGATIONS

The allegations against Serdar Kalaycioglu, P.Eng. (Kalaycioglu or the member), as stated in the Statement of Allegations dated November 13, 2007, are as follows:

1. Kalaycioglu was, at all times material to these allegations, a member of the Association of Professional Engineers of Ontario.
2. On April 30, 2004, Kalaycioglu was found guilty and convicted of 11 counts of wire fraud and one count of conspiracy to commit wire fraud by the United States district court in the southern district of the state of Florida.
3. Kalaycioglu was sentenced to 324 months of imprisonment plus an order to pay \$6,722,592.29 in restitution. Kalaycioglu appealed the conviction and sentence.
4. On December 11, 2006, the United States Court of Appeals for the Eleventh Circuit substantially affirmed the conviction and sentence of Kalaycioglu.
5. On April 17, 2007, Kalaycioglu filed a petition for a writ of certiorari in the United States Supreme Court.
6. On October 1, 2007, the United States Supreme Court denied Kalaycioglu's petition for a writ of certiorari.
7. From approximately May 2000 until September 2001, Kalaycioglu represented himself as a licensed "trader" for the United States Federal Reserve engaged in the trading of bank instruments and notes between international banks. Kalaycioglu claimed that trading programs sanctioned by the United States Federal Reserve, called "high-yield investment programs," existed and that these programs could yield investors extraordinarily high rates of return. Kalaycioglu persuaded investors in the United States and Canada to place money into allegedly secure trust accounts in Canada to be used for later investment.
8. During the same time period, Kalaycioglu became the CEO of Meridian Investment Bank in Grenada. He convinced members of the public to deposit their money in the bank, saying he would invest the cash in high-yield products. The Grenada government shut down the Meridian Bank in mid-2001.
9. In or about 2001, during the course of an FBI investigation code-named "Bermuda Short," Kalaycioglu offered a \$10-million undisclosed kickback to FBI undercover agents posing as representatives of a fictitious investment fund in return for the fund investing in \$40-million-worth of deposit certificates issued by Meridian Bank.
10. On June 25, 2002, the US federal grand jury returned an indictment charging Kalaycioglu with one count of conspiracy to commit wire fraud and 11 counts of wire fraud.
11. On April 26, 2004, following a trial in Florida, Kalaycioglu was found guilty on all charges and was sentenced to 324 months of imprisonment and ordered to pay \$6,722,592.29 in restitution.

12. It is alleged that Kalaycioglu:
  - (a) was convicted in the United States of America of 11 counts of wire fraud and one count of conspiracy to engage in wire fraud;
  - (b) engaged in the criminal act of wire fraud in Canada and the United States;
  - (c) falsely represented himself as a trader for the United States Federal Reserve for the purpose of defrauding investors of more than \$20 million;
  - (d) attempted to bribe FBI undercover agents;
  - (e) was convicted of an offence relevant to his suitability to practise professional engineering; and
  - (f) acted in a disgraceful, dishonourable and/or unprofessional manner.
  
13. It is alleged that Kalaycioglu is guilty of professional misconduct as defined in the *Professional Engineers Act*, R.S.O. 1990, c. P-28, as amended.
  
14. A member may be found guilty of “professional misconduct,” as defined in section 28(2) of the *Professional Engineers Act*, if:
  - (a) “The member or holder has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction.”
  - (b) “The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.”
  
15. The section of Regulation 941 made pursuant to the *Professional Engineers Act* and relevant to this misconduct is:
 

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 OF THE MEMBER AND/OR HOLDER

The member was not present.

Kalaycioglu advised PEO by letter dated January 28, 2009 that the undertaking of a determination related to the allegations set out in the Statement of Allegations was premature in light of his current appeal to vacate the conviction.

## OVERVIEW

The hearing arose as a result of the conviction of Kalaycioglu on 11 counts of wire fraud and one count of conspiracy to commit wire fraud by the United States district court in the southern district of the state of Florida. As well, the hearing arose from the decision on appeal

from the United States Court of Appeals for the Eleventh Circuit, substantially affirming the conviction and sentence in respect of Kalaycioglu.

The United States Court of Appeals for the Eleventh Circuit identified Kalaycioglu “as a naturalized Canadian citizen, a resident of Canada, and an employee of the Canadian Space Agency. Further, that he has a PhD in engineering, specializing in space robotics and satellite technologies.”

As well, in their reasons, the United States Court of Appeals for the Eleventh Circuit stated that Kalaycioglu “claimed to be engaged in investment trading for the Canadian government and to have a mandate from the United States Federal Reserve and World Bank to invest in certain humanitarian programs. To support his claimed connections, Kalaycioglu often flashed his Canadian Space Agency identification and an American Express card issued to him by the Canadian government.”

## EVIDENCE

During the course of this hearing, nine exhibits were received by the panel. All but one of the exhibits were certified copies of US court decisions rendered in respect of criminal charges against Kalaycioglu. The other exhibit related to a document provided by Kalaycioglu requesting that the hearing be delayed until the disposition of the US court’s ruling on his motion to vacate his sentence, but not the conviction.

Bruce Matthews, P.Eng., testified that the legal documents received as exhibits were the actual documents that were received by him in his capacity as manager, complaints and discipline for PEO at the time that the case was under investigation.

In his testimony, Matthews stated that the complaint in this matter came to the attention of PEO as a result of a *National Post* article in which a reference was made to a Canadian engineer found guilty of wire fraud. The assertions in the article were investigated.

Matthews testified that Kalaycioglu was a licensed P.Eng. at all times during the conduct for which he was convicted.

Matthews provided evidence that Kalaycioglu had allowed his licence to lapse in 2006.

## DECISION

Having considered the evidence, which the panel finds to be abundantly clear, cogent and convincing, and the onus and standard of proof, the panel finds that Kalaycioglu committed an act of professional misconduct as alleged in paragraphs 13 and 14 of the Statement of Allegations. In particular, the panel found that Kalaycioglu is guilty of professional misconduct as defined in section 28(2) of the

*Professional Engineers Act* and section 72(2)(j) of Regulation 941 made under the *Professional Engineers Act*.

## REASONS FOR DECISION

The panel accepted the proof of conviction provided from the United States district court as evidence that the member was found guilty of an offence relevant to his suitability to practise. Further, the panel considered the evidence and found that the member was guilty of professional misconduct as defined in the regulation.

The panel accepted that the conduct of Kalaycioglu, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional based on the following evidence:

Kalaycioglu:

- was, at all material times, a member of the Association of Professional Engineers of Ontario;
- was an employee of the Canadian Space Agency;
- holds a PhD in engineering, specializing in space robotics and satellite technologies;
- utilized his Canadian Space Agency credentials to support fraudulent claimed connections that he was approved and licensed by the United States Federal Reserve to engage in the trading of bank instruments that yielded a very high rate of return; and
- was found guilty of 11 counts of wire fraud and one count of conspiracy to commit wire fraud and sentenced to incarceration for 324 months.

## PENALTY DECISION

The panel makes the following order as to penalty.

The panel finds as appropriate the penalty of revocation of the member's licence and, further, for the protection of the public, this order has immediate effect pursuant to section 29(2) of the *Professional Engineers Act*.

Pursuant to section 28(5) of the *Professional Engineers Act*, the panel directs that the findings of these proceedings be published with names.

## REASONS FOR PENALTY DECISION

The reasons for the penalty decision are substantially the same as those for the reasons for decision in respect of the findings discussed above. The panel ordered that the penalty, including revocation, take immediate effect to ensure the protection of the public given the gravity of the offence. The panel reasoned that this will prevent administrative reinstatement of Kalaycioglu's licence under section 51.1 of Regulation 941, if there was a stay during an appeal of this decision.

The written Decision and Reasons were signed by Bruce Clarida, P.Eng., on March 18, 2009, as chair on behalf of

the other members of the discipline panel: Diane Freeman, P.Eng., Aubrey Friedman, P.Eng., Jim Lucey, P.Eng., and Rakesh Shreewastav, 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.

Any person wishing to attend a hearing should contact the tribunal office at extension 1083.

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.

### AUGUST 10, 2009

THOMAS A. ETCHES, P.ENG., and T.A. ETCHES ENGINEERING LTD.

It is alleged that Etches is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act* and is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

### AUGUST 12, 2009

SULI BRAUNSHTEIN, P.ENG.

It is alleged that Braunshtein is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act* and is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

### SEPTEMBER 21, 2009

JENNIFER B. GORRELL, P.ENG., and GORRELL RESOURCE INVESTIGATIONS

It is alleged that Gorrell and Gorrell, carrying on business as Gorrell Resource Investigations, are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

### OCTOBER 5, 2009

NELSON VIEIRA COUTO, P.ENG., and NELSON VIEIRA COUTO, P.ENG. o/a INGCON CONSULTANTS

It is alleged that Couto is guilty of breaching the Code of Ethics and/or professional misconduct as defined in the *Professional Engineers Act*.

### OCTOBER 19-20, 2009

NORMAN DONALD GARBUTT, P.ENG., and GARBUTT ENGINEERING LTD.

It is alleged that Garbutt is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act* and that Garbutt and Garbutt Engineering Ltd. are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

# REGULATION 941/90 AMENDED. SOME CHANGES EFFECTIVE MAY 28, 2009, OTHERS ON JULY 1, 2009

At its meeting on April 16, 2009, PEO council approved amendments to Regulation 941/90 made under the *Professional Engineers Act*. Following approval by cabinet, the regulation amendments were filed with the registrar of regulations as O.Reg. 205/09 on May 28, 2009.

These regulation amendments:

- add at least one lieutenant governor appointee member to the Executive Committee;
- create the interested classes “engineering intern” and “engineer student” and the requirements and rights for each class;
- create titles and abbreviations to be used by licence, temporary licence and limited licence holders; and
- create authority for fee remissions for members and limited licence holders, along with the corresponding reinstatement provisions.

The amended or new sections effective May 28, 2009 are shown below.

28. (1) The Executive Committee shall consist of,
- (a) the president;
  - (b) the president-elect;
  - (c) the immediate past-president;
  - (d) the two vice-presidents; and
  - (e) one or more other members of the Council from time to time appointed by the Council. R.R.O. 1990, Reg. 941, s. 28(1).

(1.1) The Council shall ensure that at least one member appointed to the Council by the Lieutenant Governor-in-Council is appointed under clause (1)(e) at any given time. O.Reg. 205/09, s.1.

(2) Three members of the Executive Committee, at least one of whom shall be a person named in clause (1)(a), (b) or (c), constitute a quorum. R.R.O. 1990, Reg. 941, s. 28(2).

32.1 (1) The class of “engineering intern” is established as a class of persons whose interests are related to those of the Association. O.Reg. 205/09, s. 2.

- (2) The Registrar shall accept as a member of the engineering intern class any person who, when submitting an application for a licence, indicates in writing his or her wish to join the class and,
- (a) is enrolled in the Association’s engineering intern program;
  - (b) has applied for a licence in accordance with the Act and this Regulation and the application has not been finally dealt with; and
  - (c) meets the academic requirements for a licence prescribed by this Regulation or is in the process of completing one or more examinations or courses in order to meet those requirements. O.Reg. 205/09, s. 2.

(3) Members of the engineering intern class have the following privileges:

1. A member of the class is a member of the Chapter in the Region in which he or she resides and,
  - (i) may vote in the Chapter’s elections, and
  - (ii) subject to the Chapter’s by-laws, may serve as a member of the Chapter executive.
2. A member of the class may attend annual meetings of Members and meetings of the Council, but is not entitled to vote at an annual meeting.
3. A member of the class may be appointed to a committee established by the Council, except as otherwise provided in the Act, this Regulation or the by-laws.

4. A member of the class is entitled to receive from the Association,
    - (i) notice of annual meetings of Members,
    - (ii) notice of the results of elections held under the Act,
    - (iii) issues of the Association's official publication, and
    - (iv) any other notice, document or information provided by the Association and intended for members of the class.
  5. A member of the class is entitled to receive from the executive of the Chapter in which he or she is a member any notice, document or information provided by the executive and intended for members of the class.  
O.Reg. 205/09, s. 2.
- (4) The Registrar may revoke the membership of a member of the engineering intern class for non-payment of any fee that is payable by the member under this Regulation. O.Reg. 205/09, s. 2.
  - (5) A person ceases to be a member of the engineering intern class on the day that his or her application for a licence is finally dealt with, subject to his or her earlier withdrawal from the class.  
O.Reg. 205/09, s. 2.
  - (6) The members of the engineering intern class shall be recorded in the registers maintained by the Registrar. O.Reg. 205/09, s. 2.
- 32.2**
- (1) The class of "engineer student" is established as a class of persons whose interests are related to those of the Association. O.Reg. 205/09, s. 2.
  - (2) The Registrar shall accept as a member of the engineer student class any person who registers for membership on-line through the Association's website in the form provided by the Association for the purpose and is enrolled in,
    - (a) the Association's student's program; and
    - (b) an engineering program offered by a Canadian university and accredited to the Council's satisfaction or for which accreditation from the Canadian Engineering Accreditation Board is being sought. O.Reg. 205/09, s. 2.
  - (3) Members of the engineer student class have the following privileges:
    1. A member of the class may attend annual meetings of Members and meetings of the Council, but is not entitled to vote at an annual meeting.
2. A member of the class may participate in events organized by the Chapter in the Region in which he or she resides.
  3. A member of the class is entitled to receive from the Association,
    - (i) notice of annual meetings of Members,
    - (ii) notice of the results of elections held under the Act,
    - (iii) electronic issues of the Association's official publication, and
    - (iv) any other notice, document or information provided by the Association and intended for members of the class.
  4. A member of the class is entitled to receive from the executive of the Chapter in the Region in which he or she resides any notice, document or information provided by the executive and intended for members of the class. O.Reg. 205/09, s. 2
- (4) A person ceases to be a member of the engineer student class on the day that he or she is no longer enrolled in a program referred to in subsection (2), subject to his or her earlier withdrawal from the class. O.Reg. 205/09, s. 2.
- 55.1**
- (1) The following are the titles and abbreviations that may be used in the practice of professional engineering by the holder of a licence or temporary licence:
    1. "Professional engineer", "engineer" or "ingénieur".
    2. "P.Eng." or "ing." O.Reg. 205/09, s. 7.
  - (2) The following are the titles and abbreviations that may be used in the practice of professional engineering by the holder of a limited licence:
    1. "Limited Engineering Licensee" or "titulaire de permis restreint d'ingénieur".
    2. "LEL" or "PRI". O.Reg. 205/09, s. 7.
- 79.1** The fee for membership in the engineering intern class is \$70 for every year or part of a year during which a person is a member of the class.  
O.Reg. 205/09, s. 8.
- 81.** Revoked: O.Reg. 205/09, s. 9.
- The amended or new sections effective July 1, 2009 are shown below.
- 41.1**
- (1) The Registrar shall designate as a "fee remission Member" every holder of a licence who meets the following requirements:

1. The holder is not engaged in the practice of professional engineering because he or she,
    - (i) is retired from the practice of professional engineering,
    - (ii) is enrolled in a post-graduate program,
    - (iii) is on maternity, paternity or other family leave,
    - (iv) is unemployed, or
    - (v) has a long-term health condition or physical impairment that prevents the holder from engaging in the practice of professional engineering.
  2. The holder gives to the Registrar a written request for the designation stating that he or she is not engaged in the practice of professional engineering and the reason why he or she is not engaged in that practice. O.Reg. 205/09, s. 3.
- (2) It is a condition of the licence of every holder designated as a fee remission Member that he or she shall not engage in the practice of professional engineering, and this condition prevails over any other term, condition or limitation to which the holder's licence is subject. O.Reg. 205/09, s. 3.
  - (3) The Registrar shall revoke a holder's fee remission Member designation if the holder,
    - (a) gives to the Registrar notice in writing indicating that the reason for the designation no longer exists and the date on which the reason ceased to exist; and
    - (b) pays the following amounts:
      - (i) any fees owing to the Association from the period during which he or she was designated as a fee remission Member,
      - (ii) the difference, if any, between any amount required to be paid by the Member as an annual fee for the current year and the amount required to be paid as an annual fee for a Member who is not designated as a fee remission Member for that year, and
      - (iii) a fee of \$50. O.Reg. 205/09, s. 3.
  - (4) The Registrar shall confirm the revocation of the designation and the date of the revocation by written notice to the holder of the licence. O.Reg. 205/09, s. 3.
  - (5) The condition imposed on the holder's licence under subsection (2) that he or she shall not engage in the practice of professional engineering is lifted on the date that the designation is revoked, as indicated in the notice referred to in subsection (4). O.Reg. 205/09, s. 3.
  - (6) The lifting of the condition imposed on the holder's licence under subsection (2) does not affect the application of any other term, condition or limitation to which the holder's licence is subject. O.Reg. 205/09, s. 3.
- 46.1 (1) The Registrar shall designate as a "fee remission limited licence holder" every holder of a limited licence who meets the following requirements:
1. The holder is not engaged in the practice of professional engineering because he or she,
    - (i) is retired from the practice of professional engineering,
    - (ii) is enrolled in a post-graduate program,
    - (iii) is on maternity, paternity or other family leave,
    - (iv) is unemployed, or
    - (v) has a long-term health condition or physical impairment that prevents the holder from engaging in the practice of professional engineering.
  2. The holder gives to the Registrar a written request for the designation stating that he or she is not engaged in the practice of professional engineering and the reason why he or she is not engaged in that practice. O.Reg. 205/09, s. 4.
- (2) Subsections 41.1(2) to (6) apply with necessary modifications with respect to a designation under subsection (1). O.Reg. 205/09, s. 4.
51. (1) Subject to subsection (2), the following qualifications and requirements are prescribed for the reinstatement of the licence of a Member who resigned:
1. Payment of the fees owing by the applicant for reinstatement to the Association at the time the applicant resigned, if any, and of the fees for the current year.
  2. Payment of a reinstatement fee of \$230.
  3. Production of evidence of good character. O.Reg. 143/08, s. 7; O.Reg. 205/09, s. 5(1).
- (2) If at the time the applicant resigned he or she was designated as a fee remission Member, the fees for the current year that are required to be paid under paragraph 1 of subsection (1) are the fees that are applicable to a person designated as a fee remission Member. O.Reg. 205/09, s. 5(2).

- (3) Any term, condition or limitation that applied to a licence when a Member resigns continues to apply to the reinstated licence and, for greater certainty, a Member who at the time that he or she resigned was designated as a fee remission Member continues to be so designated on the reinstatement of his or her licence. O.Reg. 205/09, s. 5(2).

51.1 Subject to subsection (2), the following qualifications and requirements are prescribed for the reinstatement of a licence or limited licence that was cancelled for non-payment of fees:

- (1)
  1. Payment of the fees owing by the applicant for reinstatement to the Association at the time his or her licence or limited licence was cancelled and of the fees for the current year.
  2. Payment of a reinstatement fee of,
    - (i) \$50, if the payments referred to in paragraph 1 are made in full within 90 days after the cancellation,
    - (ii) \$230, if the payments referred to in paragraph 1 are made in full more than 90 days and within two years after the cancellation, and
    - (iii) \$460, if the payments referred to in paragraph 1 are made in full more than two years after the cancellation.
  3. Production of evidence of good character, if the payments referred to in paragraph 1 are made in full more than one year after the cancellation.
  4. Successful completion of an assessment by the Experience Requirements Committee that the applicant has sufficient knowledge and understanding of the current laws and standards governing the practice of professional engineering, if the payments referred to in paragraph 1 are made in full more than two years after the cancellation. O.Reg. 143/08, s. 7; O.Reg. 205/09, s. 6(1).
- (2) If at the time the applicant's licence or limited licence was cancelled for non-payment of fees the applicant was designated as a fee remission Member or fee remission limited licence holder, as the case may be, the following qualifications and requirements are prescribed for the reinstatement of his or her licence or limited licence:
  1. Payment of the fees owing by the applicant for reinstatement to the Association at the time his or her licence or limited licence was cancelled and of the fees for the current year that are applicable to a person designated as a fee remis-

- sion Member or fee remission limited licence holder, as the case may be.
  2. Payment of a reinstatement fee of,
    - (i) \$50, if the payments referred to in paragraph 1 are made in full within two years after the cancellation, and
    - (ii) \$460, if the payments referred to in paragraph 1 are made in full more than two years after the cancellation.
  3. Production of evidence of good character, if the payments referred to in paragraph 1 are made in full more than one year after the cancellation.
  4. Successful completion of an assessment by the Experience Requirements Committee that the applicant has sufficient knowledge and understanding of the current laws and standards governing the practice of professional engineering, if the payments referred to in paragraph 1 are made in full more than two years after the cancellation. O.Reg. 205/09, s. 6(2).
- (3) Any term, condition or limitation that applied to a licence or limited licence that was cancelled for non-payment of fees continues to apply to the reinstated licence or limited licence and, for greater certainty, a person who at the time that his or her licence or limited licence was cancelled was designated as a fee remission Member or fee remission limited licence holder, as the case may be, continues to be so designated on the reinstatement of his or her licence or limited licence. O.Reg. 250/09, s. 6(2).

83. (1) The application fee for registration as a holder of a limited licence is \$230. O.Reg. 631/92, s. 3; O.Reg. 81/06, s. 8(1).
- (2) The registration fee for an applicant for registration as a holder of a limited licence whose application is accepted is \$230. O.Reg. 631/92, s. 3; O.Reg. 81/06, s. 8(2).
- (3) Subject to subsection (4), the annual fee for a limited licence is \$160. O.Reg. 205/09, s. 10.
- (4) In the case of a holder of a limited licence who is designated as a fee remission limited licence holder, the annual fee for the limited licence is \$40. O.Reg. 205/09, s. 10.

To access the complete Regulation 941/90, please visit:  
[www.e-laws.gov.on.ca/html/regis/english/elaws\\_regs\\_900941\\_e.htm](http://www.e-laws.gov.on.ca/html/regis/english/elaws_regs_900941_e.htm).

## ENFORCEMENT EXPLAINED

This Q & A column aims to educate members about some of the issues PEO faces in protecting the public against unlicensed individuals who engage in the practice of professional engineering, and in enforcing the title protection provisions of the *Professional Engineers Act*.

By Steven Haddock

**Q.** I run a small Ontario-based engineering company that holds a Certificate of Authorization (C of A). However, an increasing number of my customers and an increasing amount of my work are outside the province of Ontario. I expect my Ontario work to dry up entirely. If I have no Ontario clients, do I still need a C of A?

**A.** This issue has been the subject of much discussion at PEO over the past several years. The current consensus is that in a situation such as yours, you will be required to maintain a C of A even if most or all of your clients and/or work are outside Ontario. Recent legal developments appear to give PEO jurisdiction in a case where a business maintains a substantial presence in Ontario, even if the work is performed elsewhere.

Application of the C of A provisions of the *Professional Engineers Act* are often a source of confusion for members. Under the 1984 version of the act, all companies and individuals offering or providing professional engineering services to

the public are required to hold a C of A, something that prior to 1984 was a requirement only for partnerships and corporations. Moreover, the requirement for a sole proprietor to hold a C of A is not common among professions in Ontario—lawyers, doctors and accountants operating as sole proprietors do not need the equivalent of a C of A. In addition, some provinces do not have C of A requirements for professional engineers or engineering firms.

PEO has always held that the public includes not just “natural persons” but corporations and governments as well. What was not as clear, however, was whether the public included anyone outside the province. Ontario professional engineers are required to comply with the laws of any other jurisdiction where they practise. In addition, Ontario professional engineers remain responsible to PEO for their conduct no matter where the work takes place. However, regulatory statutes like the *Professional Engineers Act* generally can’t be applied outside the territory in which they were passed.

A recent decision of the Ontario Court of Appeal in a non-engineering matter seems to have provided clarity to the situation. In *R. v. Stucky*, a mail-order operation based in Ontario was charged with making misleading statements to the public under the federal *Competition Act*. In this case the public was located in the United States, the United Kingdom, Australia and New Zealand—none of the complainants was Canadian. Stucky argued that the public meant the Canadian public, and he was not guilty of the offence. However, the court ruled against him, deciding that “There is a real and substantial connection between the offence alleged and Canada, notwithstanding the fact that the ‘public’ to whom the representations were made was located outside Canada.”

Whether an engineering company has a “real and substantial connection” to Ontario will likely depend on several factors, including whether they have a full-time office in Ontario, or whether they solicit business in Ontario. As such, whether a particular company needs an Ontario C of A is dependent on the facts of the case. A company that carries on all of its actual engineering work in Ontario probably meets the test and requires a C of A, even if it never works for an Ontario client or performs work to be applied in Ontario. If you are doing work outside Ontario, you also need to be qualified in the province or other territory where you are performing the work—your Ontario C of A and licence will not suffice.

Please report any person or company you suspect is violating the act. Call the PEO Enforcement Hotline at 416-224-9528, ext. 1444 or 800-339-3716, ext. 1444. Or email your questions or concerns to [enforcement@peo.on.ca](mailto:enforcement@peo.on.ca).