

Gazette

THE DEPARTMENT OF THE REGISTRAR, PEO

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the Association of
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The Discipline Committee of the Association of Professional Engineers of Ontario

In the matter of a hearing under the *Professional Engineers Act*, R.S.O. 1990,
Chapter P.28;

And in the matter of a complaint regarding the conduct of

A Member

of the Association of Professional Engineers of Ontario

BETWEEN:

The Association of Professional Engineers of Ontario and

A Member

Summary of Decision and Reasons

A panel of the Discipline Committee of the Association of Professional Engineers of Ontario (PEO) met in the offices of the association on September 20, November 13 and 14, 2001 and January 14, 2002, to hear allegations of professional misconduct against a member (hereinafter referred to as “the member”). PEO and the member were represented by legal counsel and independent legal counsel was in attendance for the Panel of the Discipline Committee.

The hearing arose as a result of the member’s involvement in a site for redevelopment.

The allegations against the member as set out in the Notice of Hearing are summarized as follows:

It is alleged that the member is guilty of professional misconduct as defined in the *Professional Engineers Act* and a breach of the *Code of Ethics*, the particulars of which are as follows:

1. The member was first licensed as a professional engineer in the Province of Ontario in August 1994.
2. The member at no time prior to October 2000 held a Certificate of Authorization under the *Professional Engineers Act*.
3. In 1995, the member executed an Agreement of Purchase and Sale as purchaser relative to a property in Ontario (hereinafter referred to as “the property”).
4. In 1996, the member had discussions with representatives of a development company (hereinafter referred to as “the developer”) concerning the possibility of the developer acquiring the property and taking over the proposed development of the property as a residential subdivision.

5. The developer agreed to do so and subsequently proceeded to negotiate directly with the vendor in order to acquire the property.
6. As part of the arrangement pursuant to which the developer agreed to acquire the property, the member and the developer negotiated an agreement in which the member was to be paid \$50,000 as reimbursement for expenses that he had incurred to that point. The payment was to be made once a site plan development agreement was executed with the local authority.
7. Pursuant to the terms of the agreement, the member agreed to provide the developer all reports and studies then in his possession or control relative to the property.
8. Pursuant to this agreement, the member provided to the developer copies of two environmental reports in his possession indicating that the property had a low risk of environmental contamination and should not require remediation prior to redevelopment.
9. At the time of entering into the agreement, the member did not provide to the developer a third report, dated May 9, 1995, prepared by an environmental engineering company (hereinafter referred to as "the environmental engineers") indicating a possibility that the property was contaminated, notwithstanding that it appears that this report was in the member's possession soon after it was prepared.
10. The member provided a copy of the environmental engineer's report to the developer in September 1997, after the developer had incurred substantial expense relative to investigation and remediation of the property, which was in fact substantially contaminated.
11. Also in September 1997, by which time the developer had advised the member of its intention to make a claim against him, based on the member withholding information concerning contamination of the property, the member submitted an invoice to the developer containing a charge of \$50,000 purported to be owing for "consulting and engineering services" provided pursuant to the prior agreement.
12. In the dispute and legal proceedings, which arose thereafter between the member and the developer, including in particular, the member's registration of a lien on the property in March 1998, the member continued to take the position that he had provided engineering services with respect to the property including, *inter alia*, "preparation of drawings and plans".
13. In fact, the member did not provide any such engineering services or any engineering services relative to the property.
14. In summary, it appears that the member:
 - (a) claimed to have provided engineering services to the developer in respect of the property when his agreement with the developer did not incorporate such engineering services and when no such engineering services appear to have been provided;
 - (b) purported to have provided engineering services to the developer while not a current holder of a Certificate of Authorization;
 - (c) misrepresented the state of the property to the developer by omitting to provide to the developer in a timely manner a copy of the report from the environmental engineers;
 - (d) misused his status as a professional engineer when he placed a lien on the property purportedly for the provision of engineering services.
15. **By reason of the facts set out above, it was alleged that the member was guilty of professional misconduct as defined in Section 28(2)(b) of the Act, including the following sections of Regulation 941 made under the Act:**
 - ◆ **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";**
 - ◆ **Section 72(2)(c): "failure to act to correct or report a situation that the practitioner believes may endanger the safety or the welfare of the public";**
 - ◆ **Section 72(2)(g): "breach of the Act or Regulations, other than an action that is solely a breach of the *Code of Ethics*";**
 - ◆ **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 in particular, without limiting the generality of the foregoing, carrying out any of the following acts without making such a prior disclosure:**
 1. **Accepting compensation in any form for a particular service from more than one party.**
 2. **Submitting a tender or acting as a contractor in respect of work upon which the practitioner may be performing as a professional engineer.**
 3. **Participating in the supply of material or equipment to be used by the employer or client of the practitioner.**
 4. **Contracting in the practitioner's own right to perform professional engineering services**

for other than the practitioner's employer.

5. **Expressing opinions or making statements concerning matters within the practice of professional engineering of public interest where the opinions or statements are inspired or paid for by other interests”;**

◆ **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”;**

16. **In addition, it is alleged that the member has breached provisions of the Code of Ethics of the association contained in Section 77 of Regulation 941 made under the Act.**

On the fourth day of the hearing, the committee was informed by legal counsel for PEO, who had been advised by legal counsel for the complainant and legal counsel for the member, that a settlement had been reached in the civil proceedings, and that part of the agreement was that the complainant would not pursue his complaint at PEO.

In the course of questions from the panel, legal counsel for PEO advised that most of the allegations against the member were linked to the civil proceedings, and that for the most part the complainant would be the one giving evidence, that an unwilling witness would be difficult for PEO to deal with, and that PEO's investigation revealed no other instances of the member having provided engineering services to the public without a Certificate of Authorization.

He asked the committee to consider ordering the withdrawal of allegations with the consent of all the parties. Independent legal counsel advised the discipline panel that it had jurisdiction to make the order requested, in section 4.1 of the *Statutory Powers Procedure Act (SPPA)* which provides that if the parties consent, a pro-

ceeding may be disposed of by a decision of the panel without a hearing. Counsel for the complainant was aware of the fact that the complainant does not control the proceedings at PEO, and that PEO could insist on proceeding with a hearing, and compel the complainant to attend as a witness. PEO considered pursuing the matter with an unwilling witness, but concluded that its main concern, and the only issue not tied up with the civil action, was that the member lacked a Certificate of Authorization at the time it was alleged that he offered professional engineering services to the complainant.

Decision of the Panel with Reasons

With respect to PEO's proposed disposal of this matter, the panel confirms that under the *SPPA*, the Discipline Committee has the jurisdiction to dispose of the matter without a hearing, with the consent of the parties and the tribunal. From exhibits filed, it is clear that the parties have reached an agreement to dispose of the matter.

The one allegation not tied to the civil proceedings, and having a direct bearing on the issue of protection of the public interest, is the member's lack of a Certificate of Authorization. This has been addressed by a witnessed undertaking ordered by the panel. Further, it appears that PEO's investigation of the matter revealed no other instances of the member having been engaged in conduct requiring a Certificate of Authorization.

In recognition of the foregoing, which in the committee's view allowed it to address its main concern, which is to ensure the protection of the public interest in the future, the panel decided to authorize PEO to withdraw the allegations against the member, as agreed to by the parties on the terms as set out below:

1. That the member provide a written undertaking, in a form to be agreed, that, to the extent that he proposes to offer to the public or engage in the business of providing to the public services in Ontario that are within the practice of professional engineering from this time forward, he shall only

do so under and in accordance with a valid and subsisting Certificate of Authorization;

2. There will be publication in PEO's *Gazette*, without names or identifying details, a summary of the allegations in the Notice of Hearing, a summary of the specific decisions reached by the Discipline Committee relative to the various motions brought on the member's behalf, and a summary of the proposed disposition of this matter.
3. Neither PEO nor the member will seek payment of costs of the hearing to this point.

The panel accepted the member's signed undertaking, which read as follows:

I, a member of PEO, hereby undertake to the Association of Professional Engineers of Ontario as follows: From this point on, to the extent that I propose to offer to the public or engage in the business of providing to the public, services that are within the practice of professional engineering in the Province of Ontario, I shall do so only under and in accordance with a valid and subsisting Certificate of Authorization. I confirm my understanding that the *Professional Engineers Act*, R.S.O. 1990, c. P.28 requires any such services are to be offered and/or provided only in accordance with a valid and subsisting Certificate of Authorization.

Notwithstanding the foregoing and considering that the complainant has withdrawn the complaint following settlement of the parallel civil proceedings, the panel cannot help but be left with the impression that PEO's complaints and discipline procedures may have been inappropriately used. Consequently, the panel cautions PEO to be cognizant of this possibility, and to be vigilant, so as not to have its processes and procedures inappropriately used.

Dated at Toronto this 20th of February 2002.

Ken Lopez, P.Eng. (Chair)

(For and on behalf of the Panel of the Discipline Committee)

Ken Serdula, P.Eng.
Angelo Mattacchione, P.Eng.

Note: With respect to the panel's reference to summarizing the disposition of the various motions, they related to administrative matters brought up during the hearing, the particulars of which do not affect the eventual disposition of this matter.

Notice of Licence Suspension

At a Discipline Hearing held at the offices of the association in Toronto on November 28, December 9 and 10, 1996 and January 9, 1997, the Discipline Committee suspended the licence of Ernest Onyido, P.Eng., for a period of six months.

Mr. Onyido appealed the committee's decision. His appeal was subsequently dismissed by the Divisional Court.

The suspension commenced February 1, 2003. A summary of the Decision and Reasons of the Discipline Committee will be published in due course.

Council approves designation and redesignation of Consulting Engineers

At the 414th Meeting of Council held on January 23 and 24, 2003, the following members were designated or redesignated as Consulting Engineers pursuant to Ontario Regulation 941 of the *Professional Engineers Act*. Also listed are firms to which Council has granted permission to use the title "Consulting Engineers".

Newly designated Consulting Engineers

Thomas Agnew, P.Eng.
Asi Group Ltd.
St. Catharines, ON

Kevin Clark, P.Eng.
Ancam Technologies Limited
East Oakville, ON

Harold Harkonen, P.Eng.
KMH Engineering Inc.
Thunder Bay, ON

Mashkoor Naqvi, P.Eng.
M. Naqvi and Associates Inc.
St. Clair Beach, ON

Marko Seppanen, P.Eng.
KMH Engineering Inc.
Thunder Bay, ON

Gheorghe Silber, P.Eng.
URS Cole Sherman
East Thornhill, ON

John Slocombe, P.Eng.
Gamsby and Mannerow Limited
Owen Sound, ON

Glen Thoman, P.Eng.
Valdor Engineering Inc.
Woodbridge, ON

Janine Turner, P.Eng.
Marshall Macklin Monaghan Limited
East Thornhill, ON

Redesignated Consulting Engineers

Ernest Amor, P.Eng.
Sando Angotti, P.Eng.
Larry Argue, P.Eng.
Jersy Bak, P.Eng.
Attila Barbacsy, P.Eng.
Dipankar Basu-Roy, P.Eng.
Kenneth Behm, P.Eng.
George Bell, P.Eng.
Alan Billing, P.Eng.
Hendrik Borgdorff, P.Eng.
Stephen Burns, P.Eng.
Joseph Calabrese, P.Eng.
Angelo Cameracci, P.Eng.
Hugh Carter, P.Eng.
Co-Fat Chu, P.Eng.
Phillip Chung, P.Eng.
Richard Crawford, P.Eng.
Robert De Berardis, P.Eng.
Christine Furlong, P.Eng.
Ronald Gayowsky, P.Eng.
Ajwad Gebara, P.Eng.
Hazem Gidamy, P.Eng.

Designation as a Consulting Engineer is for a period of five years; at the end of that time, the member must be redesignated. Anyone wishing information on the Consulting Engineers Designation Program may contact Angela Gallant, C of A Coordinator, Department of Professional Affairs, at (800) 339-3716 or (416) 224-9528, ext. 491; email: agallant@peo.on.ca.

David Goodwill, P.Eng.
Wayne Gravelle, P.Eng.
Philip Grubb, P.Eng.
John Hamalainen, P.Eng.
David Harmer, P.Eng.
Robert Jenkins, P.Eng.
James Jones, P.Eng.
John Jones, P.Eng.
Barry Kozluk, P.Eng.
Daniel Lalonde, P.Eng.
Gaetan Lascelles, P.Eng.
David Lehman, P.Eng.
William MacKay, P.Eng.
James MacLaren, P.Eng.
James Mann, P.Eng.
Ronald Mazza, P.Eng.
Way Miao, P.Eng.
Walter Miller, P.Eng.
Kenneth Morrison, P.Eng.
Timothy Orpwood, P.Eng.
Mladen Pazin, P.Eng.
Pierre Poirier, P.Eng.
Ian Richardson, P.Eng.
Primo Scalzo, P.Eng.
Howard Shrimpton, P.Eng.
Matthew Stairs, P.Eng.
Michael Stojanov, P.Eng.
Richard Stranges, P.Eng.

Harold Sturm, P.Eng.
Christopher F.M. Twigge-Molecey, P.Eng.
Axel Uderstadt, P.Eng.
John Van Egmond, P.Eng.
Johannes Vierhuis, P.Eng.
Robert Wheildon, P.Eng.
Mitchell Terrence Wilk, P.Eng.
Brian Worsley, P.Eng.

Consultants granted permission to use the title "Consulting Engineers"

Bruce D. Crozier Engineering Inc.
Leamington, ON

Exsen Engineering Ltd.
Maple, ON

Green-Tech Environmental Engineering Ltd.
Toronto, ON

Renzo Villa Associates
Toronto, ON

STEM Engineering Group Inc.
Sault Ste. Marie, ON

Recent Act and Regulation changes made under the *Professional Engineers Act*

On February 28, 2003, the following changes to the *Professional Engineers Act*, R.S.O. 1990, Chapter P. 28 and Regulation 941 made under the Act were proclaimed and are now in force.

The changes are listed under subject headings and access to the complete legislation can be obtained from the Ontario Government website at:

http://192.75.156.68/DBLaws/Statutes/English/90p28_e.htm, for the Act, and http://192.75.156.68/DBLaws/Regs/English/900941_e.htm for Regulation 941.

Provisional Licences

Addition to the Act to allow for provisional licences to be issued to applicants for full licensure who have satisfied all requirements for licensure with the exception of the required 12 months of engineering work experience in a Canadian jurisdiction, under the supervision of a professional engineer licensed in a Canadian jurisdiction.

Professional Engineers Act

Section 1 – New:

“provisional licence” means a provisional licence to engage in the practice of professional engineering issued under subsection 14(7).

Section 2(3):

“holders of provisional licences” added.

Section 7(1), 9, 9vi., 10, 13, 15, 16, 25, 26:

“provisional licences” added.

Section 7(2)(a); Section 8(1)6 and 7;

Section 12(1):

“provisional licence” added.

Section 14(7) – New:

The Registrar shall issue a provisional licence, to be valid for one year, to a natural person who has applied for a licence in accordance with the regulations and has complied with all the requirements of subsection (1) except the Canadian experience requirement set out in paragraph 4 of section 33(1) of Regulation 941 of the Revised Regulations of Ontario, 1990.

Section 18(1), (2)(a), (b) and (c):

“provisional licence” added.

Section 19(1)(b):

“provisional licence” added.

Section 19(2): Repealed and replaced by the following:

Subsection (1) does not apply in respect of a proposal to refuse to issue a licence, a temporary licence, a provisional licence or a limited licence where the applicant previously held a licence, a certificate of authorization, a temporary licence, a provisional licence or a limited licence that was suspended or revoked as a result of a decision of the Discipline Committee.

Section 19(7)(a), (b)(i) and (ii), (c), (10), (16); Section 21(1); Section 22(1) and (2); Section 24(1); Section 26(2); Section 27(5); Section 28(1)(a), (2), (3), (4), (5), (6) and (7); Section 29(1) and (2); Section 30(1), (2) and (10); Section 32(2)(a) and (3); Section 33(1), (2), (4)(b) and (7); Section 36; Section 37(1), (2) and (3); Section 41(1) and (2); Section 42; Section 46(1):

“provisional licence” added.

Ontario Regulation 941

Section 1 – New:

The term “provisional licence” is added to the definition of practitioner.

Section 44.1(1) and (2) – New:

44.1(1) The Registrar may grant a provisional licence to an applicant who complies with the requirements of paragraphs 1, 2, 3 and 5 of subsection 33(1).

(2) The following conditions apply to every provisional licence:

1. The provisional licence is valid for 12 months from the date of issue. It may be renewed once for up to 12 months if the Registrar is of the opinion that renewal is necessary to enable the applicant to acquire the experience required by paragraph 4 of subsection 33(1).
2. The holder of the provisional licence is entitled to practise professional engineering only under the supervision of a professional engineer, and shall not issue a final drawing, specification, plan, report or other document unless the supervising professional engineer also signs and dates it and affixes his or her seal to it.

Section 52(3.1) – New:

Every holder of a provisional licence shall have a seal of a design approved by the Council, the impression of which shall include,

- (a) the surname and initials of the holder of the provisional licence;
- (b) the words “Provisional Licensee” and “Association of Professional Engineers of Ontario”;
- (c) the provisional licence number;
- (d) the date of expiry; and
- (e) a statement that the holder is entitled to practise professional engineering only under the supervision of a professional engineer, and shall not issue a final drawing, specification, plan, report or other document unless the supervising engi-

neer also signs and dates it and affixes his or her seal to it.

Sections 53, 54, 55, 72(2)(k), 75, 77 2.iv.:
“provisional licence” added.

Section 82.1 – New:

The registration fee for an applicant for registration as a holder of a provisional licence is \$175.00.

Enforcement

Addition to the Act to prohibit use of the term “engineer” in a manner that will lead to the belief that the person may engage in the practice of professional engineering.

Professional Engineers Act

Section 12(3)(f) – New:

From using the title “engineer” or an abbreviation of that title in a manner that is authorized or required by an Act or regulation.

Section 40(2)(a.1) – New:

Uses the title “engineer” or an abbreviation of that title in a manner that will lead to the belief that the person may engage in the practice of professional engineering;

Section 40(2)(2.1) – New:

In a proceeding for an alleged contravention of clause (2)(a.1), the burden of proving that the use of the title or abbreviation will not lead to the belief referred to is on the defendant, unless the defendant’s use of the title or abbreviation is authorized or required by an Act or regulation.

False Representation

Extends limitation period in proceedings from six months to two years.

Professional Engineers Act

Section 41(3) – Is repealed and the following substituted:

No proceeding shall be commenced in respect of an offence under subsection (1) or (2) after the expiration of two years after the date on which the offence was, or is alleged to have been, committed.

Confidentiality

Brings in a penalty for contravening the confidentiality section.

Professional Engineers Act

Section 38(3) – New:

Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Section 38(4) – New:

No proceeding shall be commenced in respect of an offence under subsection (1) after the expiration of two years after the date on which the offence was, or is alleged to have been, committed.

Discipline Committee

Allows for non-member Lieutenant Governor-in-Council Appointees to sit on a Discipline Committee, open hearings, and establishes panels of the committee to hear matters.

Additional Members

Professional Engineers Act

Section 27(1.1) – New:

The Discipline Committee may also include one or more persons appointed

by the Council from among the members of the Council appointed by the Lieutenant Governor in Council under clause 3(2)(c).

Section 27(6) – New:

When a matter is referred to the Discipline Committee for hearing and determination, the chair may,

- (a) select from among the members of the Committee a panel composed of at least one person described in clause (1)(a), at least one person described in clause (1)(b), at least one person described in clause (1)(c), and, if the Council has made an appointment under subsection (1.1), at least one person described in that subsection;
- (b) designate one of the members of the panel to chair it;
- (c) refer the matter to the panel for hearing and determination; and
- (d) set a date, time and place for the hearing.

Powers of Panel

Professional Engineers Act

Section 27(7):

A panel established under subsection (6) has all the powers and responsibilities of the Discipline Committee with respect to the hearing and determination of the matter referred to the panel.

Section 30(4) – Subsection (4) is repealed and the following substituted:

Public Hearings

Hearings of the Discipline Committee shall be open to the public, subject to subsection (4.1).

Section 30(4.1):

Exception

The Discipline Committee may order that the public be excluded from all or part of a hearing if the following conditions are satisfied:

1. The person whose conduct is being investigated delivers to the Registrar, before the day fixed for the hearing or part, a written request that the hearing or part be closed.
2. The Discipline Committee is satisfied that,
 - i. matters involving public security may be disclosed at the hearing or part, or
 - ii. financial or personal or other matters may be disclosed at the hearing or part, of such a nature that the desirability of avoiding public disclosure of these matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

Admission Appeal

To allow appeals of Experience Requirements Committee and Academic Requirements Committee decisions to be heard.

Professional Engineers Act

Section 14(4) is deleted.

Member Seals

Addition to add the member's licence number to a seal.

Ontario Regulation 941

Section 52(1)(c) – New:

The licence number.

Section 52(1.1) – New:

If a Member's seal was issued before the day

subsections 11(1) to (65) of Schedule B to the *Government Efficiency Act, 2001* come into force, clause (1)(c) does not apply.

Experience Outside Canada

Allows for the experience to be counted if acquired in a Canadian jurisdiction and supervised by a Canadian professional engineer.

Ontario Regulation 941

Section 33(2) – New:

Experience acquired outside Canada satisfies the requirements of paragraph 4 of subsection (1) if,

- (a) it is obtained while the applicant is,
 - (i) employed by an employer whose head office is located in Canada, and
 - (ii) supervised by one or more persons who are legally authorized to engage in the practice of professional engineering in a Canadian jurisdiction; and
- (b) in the Council's opinion, the experience provides the applicant with,
 - (i) the necessary practical skill for the practice of professional engineering, and
 - (ii) sufficient familiarity with the applicable Canadian codes, regulations and standards for the practice of professional engineering.

Limited Licence

Removes the requirement that employers be named on a limited licence certificate or seal.

Ontario Regulation 941

Section 45: – Is revoked and the following substituted:

The following conditions apply to every limited licence:

1. The practice of professional engineering by the holder of the limited licence must be limited to the services specified in the limited licence.
2. When the holder of the limited licence ceases to provide the services specified in the limited licence, the holder must notify the Registrar and return to the Registrar the limited licence and the seal issued to the holder. R.R.O. 1990, Reg. 941, s. 45.

Section 46 – Paragraphs 6 and 7 are revoked and the following is substituted:

6. A holder of a limited licence who returns the limited licence and related seal to the Registrar and afterwards proposes to resume providing the services specified in the limited licence is entitled to be issued a new limited licence and related seal limited to the services specified in the previous limited licence.

Registrar

Added to require that the Registrar be a member of PEO.

Professional Engineers Act

Section 3(8) – New:

...Registrar, who shall be a member of the Association,...

Section 8(1) – New:

Role of Registrar

The Registrar is responsible for the administration of the Association and reports to the Council.

Ontario Regulation 941

The term "Executive Director" is repealed in Section 1 and substituted by "Registrar" and in the following sections of the Regulation: Section 12(4)(a) and (b); Section 13(8)(a) and (b); Section 14(3)(a); Section 17; Section 18; Section 19(1); Section 21(f); Section 23(1); Section 29(d).

