

## 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 GEORGE WILLIAM MEYER, P.ENG., a member of the Association of Professional Engineers of Ontario, and QUARTZ HOLDINGS LIMITED, a holder of a Certificate of Authorization.

This matter came on for hearing before a panel of the Discipline Committee on April 14, 2008, at the Association of Professional Engineers of Ontario in Toronto. The association was represented by Neil J. Perrier. George William Meyer, P.Eng., and Quartz Holdings Limited, were represented by Peter H. Griffin. Scott Hutchison acted as independent legal counsel (ILC).

### THE ALLEGATIONS

The allegations against George William Meyer, P.Eng. (Meyer or member), and Quartz Holdings Limited (Quartz or holder), are contained in Exhibit 1, the Notice of Hearing dated June 20, 2007. They allege that Meyer was guilty of incompetence, and that Meyer and Quartz were guilty of professional misconduct.

In summary, they allege that Meyer and Quartz:

- (a) provided certifications and opinions that the fire and life safety systems in several new buildings were in compliance with the Ontario Building Code (OBC) and the National Fire Protection Association (NFPA) when they were not;
- (b) failed to make adequate provisions to comply with the OBC and NFPA regulations and requirements;
- (c) provided certification of fire and life safety installations, which they were not competent or qualified to do;
- (d) sealed and signed a certification that they did not conduct or supervise; and
- (e) acted in a disgraceful, dishonourable and unprofessional manner.

Counsel for the association advised that the association was not calling any evidence with respect to the allegations of incompetence, but would be providing an Agreed Statement of Facts.

A member of the panel asked who had made the decision to withdraw the allegations of incompetence. Counsel for the association stated that he was instructed to withdraw them as it was felt that the conduct of the member was better described by misconduct than by incompetence.

### WITHDRAWAL OF ALLEGATION OF INCOMPETENCE

Counsel for the association stated that the association was withdrawing its allegation of incompetence under rule 8 of the Discipline Committee rules of procedure. In light of the agreement reached by the parties, it would be inappropriate to proceed and the association had no evidence to put before the panel.

It is not unusual for panels to make findings of professional misconduct without making a finding of incompetence. Because a member has been negligent in a particular work, or has failed to comply with a standard or code, is not necessarily sufficient to make a finding of incompetence. For the association to prove an allegation of incompetence, the association would have to prove that the lack of knowledge, skill or judgment, or disregard for the public welfare, demonstrates that a member or holder is unfit to carry out the responsibilities of a professional engineer.

The 69-year-old member had a previously unblemished record as an engineer. After a careful review of the evidence, the association felt that the conduct of the member did not meet the definition of incompetence as defined in the *Professional Engineers Act*, R.S.O. 1990, c. P.28. It would, in fact, be rare for this to be so.

Counsel for the member added that it was a condition of the settlement that the charge of incompetence be withdrawn, and it was on that basis that agreement had been reached.

The chair stated that the panel regarded allegations of incompetence as serious and sought the advice of the ILC as to how to proceed. ILC advised that the panel must be guided by the public interest. Under normal circumstances, the panel should grant permission to the association to withdraw an allegation. The only circumstance justifying refusing would be if the panel concluded that this would be inconsistent with the public interest. On the facts before the panel, there was nothing to justify refusal. The panel should be comforted in the knowledge that the withdrawal is part of a wider agreement reached by respected and experienced counsel.

The panel accepted the association's request to withdraw the allegation of incompetence.

**PLEA BY MEMBER AND HOLDER**

Meyer and Quartz pleaded guilty to professional misconduct. The panel conducted a plea inquiry and was satisfied that the member's and holder's admission was voluntary, informed and unequivocal.

**AGREED STATEMENT OF FACTS**

Counsel for the association advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts and an Agreed Document Book.

The Agreed Statement of Facts may be summarized as follows:

1. George W. Meyer, P.Eng., was, at all material times, a member of the Association of Professional Engineers of Ontario.
2. Quartz Holdings Limited was, at all material times, the holder of a Certificate of Authorization to offer and provide to the public services that are within the practice of professional engineering. Meyer was one of the professional engineers responsible for the services provided by Quartz.

**1122 Pioneer Road**

3. On December 22, 2004, Meyer provided a signed, dated and sealed letter regarding fire protection systems for a new building at 1122 Pioneer Road in the City of Burlington and certified their compliance with the OBC, the NFPA 13 and NFPA 20, the approved drawings and good practice. The letter was provided to his client, Sure Fire Protection Inc. (Sure Fire). The president of Sure Fire was David Rooke (Rooke). A copy of Meyer's letter dated December 22, 2004, is contained in the Joint Document Brief at Tab 1.
4. On January 13, 2005, Meyer provided a signed, dated and sealed letter regarding the fire pump installation for a new building at 1122 Pioneer Road in the City of Burlington and certified its compliance with the OBC, NFPA 20 and good

practice. A copy of Meyer's letter dated January 13, 2005, is contained in the Joint Document Brief at Tab 2.

5. On April 15, 2005, the City of Burlington issued an Order to Comply related to numerous serious fire safety deficiencies for the building at 1122 Pioneer Road, including OBC and NFPA 13 and NFPA 20 deficiencies. A copy of the Order to Comply dated April 15, 2005, is contained in the Joint Document Brief at Tab 3. The referenced order was not forwarded by Sure Fire to Meyer.
6. On May 10, 2006, the City of Burlington issued a second Order to Comply for the building at 1122 Pioneer Road. The referenced order was forwarded by Sure Fire to Meyer. A copy of the second Order to Comply, dated May 10, 2006, is contained in the Joint Document Brief at Tab 4.

**4041 North Service Road**

7. On November 7, 2005, after conducting a building review, the City of Burlington issued a fire and life safety and occupancy requirements list for a new Building A and Building B at 4041 North Service Road in the City of Burlington. A copy of the fire and life safety and occupancy requirements list issued by the City of Burlington is contained in the Joint Document Brief at Tab 5.
8. On February 10, 2006, Meyer provided a signed, dated and sealed letter regarding fire protection systems for Building A and certified their compliance with the OBC and the NFPA. A copy of Meyer's letter dated February 10, 2006, is contained in the Joint Document Brief at Tab 6.
9. On March 23, 2006, the City of Burlington issued a 40-point list of deficiencies related to the fire and life safety installation for Building A and Building B. A copy of the fire and life safety installation list issued by the City of Burlington on March 23, 2006, is contained in the Joint Document Brief at Tab 7.
10. On April 5, 2006, Meyer provided a signed, dated and sealed letter regarding sprinkler and fire pump systems for Building A and certified their compliance with the OBC and the NFPA. A copy of Meyer's letter for Building A, dated April 5, 2006, is contained in the Joint Document Brief at Tab 8.
11. Also on April 5, 2006, Meyer provided a signed, dated and sealed letter regarding sprinkler and fire pump systems for Building B and certified their compliance with the OBC and the NFPA. A copy of Meyer's letter for Building B, dated April 5, 2006, is contained in the Joint Document Brief at Tab 9.

Photographs of many of the deficiencies in Buildings A and B listed above are in the Joint Document Brief.

### **COUNSEL FOR THE ASSOCIATION**

Regarding 1122 Pioneer Road, the member signed and sealed a letter to Sure Fire, stating that his delegate, Rooke, had recently inspected the site. Based on this, the member gave his opinion that the installation conformed to the requirements of NFPA 13 and NFPA 20, the OBC, the approved drawings and good practice. Rooke was the president of Sure Fire, which had done the work. The member was relying not upon a third party to conduct the inspection, but on the person who did the work. The conflict of interest was obvious and the member should have recognized it.

Sometime later, the City of Burlington issued an Order to Comply related to fire safety deficiencies. That order was not forwarded to the member. On May 10, 2006, the city issued a second Order to Comply, and Sure Fire forwarded this to the member. The deficiencies were remedied and the building was completed.

Regarding 4041 North Service Road, the member's letter, again, relied on the information provided by Rooke. This letter was sent on February 10, 2006, before the member was aware of the problems at 1122 Pioneer Road. The evidence shows that on March 23, 2006, the City of Burlington provided a 40-point deficiency list and that Meyer and Quartz provided two subsequent letters certifying compliance to the OBC and NFPA. There is no concern that, when the letters were issued, they failed to meet the standard of practice.

The issue was that on two projects Meyer relied on information provided to him by the president of the company doing the work, rather than a third party at arm's length. There is no evidence that Meyer's conduct demonstrated that he was unfit to carry on the practice of engineering. The facts in the Agreed Statement of Facts and the Joint Document Brief supported a finding of professional misconduct, as referred to in the allegations. With respect to the allegations of disgraceful, dishonourable or unprofessional conduct, counsel for the association was only seeking a finding of professional misconduct.

### **COUNSEL FOR THE MEMBER**

Counsel asked the panel to note that the member's letter of February 2006 about the second project was delivered without the knowledge of the deficiencies or the Order to Comply on the first project. He acknowledged his lapse in judgment and his misplaced reliance on Rooke.

Regarding the allegation of incompetence, the member did not admit this and would have had a significant defence. It was an important part of the agreement reached between the member and the association that that charge be withdrawn. The agreement was made considering there would be a vigorous defence. He believed that the overall solution, reached in co-operation, was in the public interest.

Counsel provided a curriculum vitae of the member and four supporting letters. The member had made the writers aware of the allegations against him.

### **ADVICE FROM THE ILC**

Counsel reminded the panel that they had a Statement of Agreed Facts and a plea of guilty to the allegations of professional misconduct by both the member and the holder. The panel should take these and the Joint Document Brief, as well as the curriculum vitae and the letters of reference, as the factual evidence.

The Notice of Hearing was not evidence. The panel should base its decision on the Statement of Agreed Facts, the Joint Document Book and the other evidence it heard. The panel must take the facts in the agreed statement and the other material as an accurate, complete and true record, and as the basis for decision. The panel should also give some weight to the fact that the member, represented by legal counsel, had agreed that the facts amounted to misconduct.

Given those facts, counsel advised the panel should have little difficulty finding the member guilty of professional misconduct.

### **DECISION**

The panel considered the Statement of Agreed Facts, the member's plea and admissions, and the submissions of counsel. The panel finds that the facts support a finding of professional misconduct and, in particular, finds Meyer and Quartz committed an act of professional misconduct pursuant to Regulation 941 of the *Professional Engineers Act* and, in particular, committed professional misconduct pursuant to sections 72(2)(a), 72(2)(b), 72(2)(d) and 72(2)(j). With respect to the finding of professional misconduct pursuant to section 72(2)(j), the panel finds that Meyer and Quartz acted unprofessionally.

### **PENALTY**

Counsel for the association advised the panel that a Joint Submission as to Penalty had been agreed and noted that this included a practice inspection. The Joint Submission as to Penalty provides as follows:

1. Meyer and Quartz Holdings Limited shall be reprimanded and the fact of the reprimand shall be recorded on the register at PEO;

2. There shall be publication of a summary of the Decision and Reasons of the Discipline Committee in Gazette, including reference to names;
3. Meyer shall write and pass the professional practice examination (PPE) within 12 months of the date of the hearing;
4. The licence of Meyer and the Certificate of Authorization of Quartz Holdings Limited shall be suspended if he does not write and pass the PPE within 12 months of the date of the hearing;
5. The licence of Meyer and the Certificate of Authorization of Quartz Holdings Limited shall be revoked if he does not write and pass the PPE within 24 months of the date of the hearing; and
6. Meyer shall co-operate with a practice inspection at his own expense, and in accordance with the terms of reference agreed between the parties.

Counsel also provided the panel with the agreed terms of reference for the practice inspection.

## COUNSEL FOR THE ASSOCIATION

Counsel noted that the practice inspection was to be done by Randal Brown of Randal Brown and Associates. He is well recognized as an expert on fire protection issues.

A member of the panel asked if the practice inspection was to be an audit or a review. He defined an audit as auditing against a standard or code, whereas a review is looking to see if an engineer is using best practices.

Counsel responded that he believed the inspection was more in the nature of an audit. The purpose and scope of this practice inspection was to determine whether or not the professional engineering services provided by Meyer and Quartz relating to projects involving fire protection and life safety systems are in conformance with generally accepted practice and applicable codes and standards. The selection of specific projects will be at the sole discretion of the inspector. The inspector will have a copy of the Notice of Hearing and Statement of Agreed Facts, so he will have an understanding of the conduct that led to this practice inspection. The inspector will submit a final report addressed to the

registrar and the member. The association will act on the information provided by the inspector.

Counsel reminded the panel of the five objectives of penalty:

- protection of the public;
- maintaining the reputation of the profession in the eyes of the public;
- general deterrence;
- specific deterrence; and
- rehabilitation.

The association viewed the misconduct as serious; the member should have recognized the conflict of interest in using Rooke as a delegate. The requirement to write and pass the professional practice examination was included to address the fact that the member had engaged in conduct he should have known was below the standard of practice. The practice inspection was designed to both protect the public and rehabilitate the member. The terms of the penalty make it unlikely the member would ever appear before a discipline panel again.

The association took into account the member's long and unblemished career and that he fully co-operated with the association, admitted the allegations of professional misconduct at the earliest possible opportunity, and entered a plea of guilty at the earliest opportunity. The panel should recognize that this should be considered as a significant mitigating factor.

## COUNSEL FOR THE MEMBER

The joint submission was reached by a face-to-face discussion with prosecuting staff so they had the opportunity to judge the member's behaviour for themselves. In counsel's opinion, the joint submission met all the penalty requirements. The member freely admitted that this was a lapse on his part. The reference letters from those who worked closely with him see this as an aberration, not typical behaviour.

The practice inspection by an acknowledged expert opens up the whole of the member's practice to scrutiny. The member recognized and accepted that this is a very searching look at his practice.

Public policy says that joint submissions should be accepted unless the panel concludes they strongly contravene the public interest. In counsel's opinion, this was a fair agreement in the public interest that dealt with the individual circumstances.

Dealing with questions from the panel, counsel stated:

- He believed the practice inspection process provided an opportunity for the member to have full input in the process and the final report. In his opinion, it would be a mistake to specify the inspection process in too much detail; and
- There was no suggestion that the member's medical fitness had contributed to the event.

### ADVICE FROM THE ILC

The ILC advised the panel that they must satisfy themselves that the joint submission was consistent with the public interest. As a matter of law, the public interest is served when it addresses the protection of the public and also deals with the rehabilitation of the member and his return to practice in a timely way.

The public is protected when the penalty discourages this member and other similarly situated members from similar conduct in the future, and also by addressing any specific practice deficit that may be identified. The public interest is also served by returning the member to practice equipped with the skills necessary to serve his community through the practice of his profession.

As the panel assesses the joint submission, they should remember that there is a strong public interest in encouraging compromise between the association and members who are brought before the Discipline Committee where compromise could be achieved while still serving the objectives of professional discipline.

The terms fall within the range of penalties that would normally be available in a case like this, particularly bearing in mind the member's long membership in the association with no evidence of past misconduct.

The panel is not legally bound to impose the joint submission. They are to judge it and determine whether or not it satisfies the public interest.

Counsel for the association reminded the panel that the Court of Appeal has said that a joint submission should not be rejected unless the panel concludes that to adopt the joint submission would bring the administration of justice into disrepute.

### PENALTY DECISION

The panel accepts the Joint Submission as to Penalty and, accordingly, orders:

1. Meyer and Quartz Holdings Limited shall be reprimanded and the fact of the reprimand shall be recorded on the register at PEO;
2. There shall be publication of a summary of the Decision and Reasons of the Discipline Committee in Gazette, including reference to names;
3. Meyer shall write and pass the professional practice examination (PPE) within 12 months of the date of the hearing;
4. Meyer's licence and the Certificate of Authorization of Quartz Holdings Limited shall be suspended if he does not write and pass the PPE within 12 months of the date of the hearing;
5. Meyer's licence and the Certificate of Authorization of Quartz Holdings Limited shall be revoked if he does not write and pass the PPE within 24 months of the date of the hearing; and

6. Meyer shall co-operate with a practice inspection at his own expense and in accordance with the terms of reference agreed between the parties.

The panel concluded that the proposed penalty is reasonable and in the public interest. Meyer and Quartz have co-operated with the association and, by agreeing to the facts and a proposed penalty, accepted responsibility for their actions and avoided unnecessary expense to the association. The panel thanked counsel for their work in putting together the joint submissions.

### REPRIMAND

The member and the holder waived their rights to appeal and the panel administered an oral reprimand immediately after the hearing.

### RECOMMENDATION

The panel recommends that in future cases similar to this, where the parties have reached a joint agreement, the matter referred to the Discipline Committee shall be provided in writing to the discipline panel, together with written reasons from the parties describing why the joint agreement serves the public interest.

The written Decision and Reasons were dated April 25, 2009, and were signed by J.E. (Tim) Benson, P.Eng., on behalf of the other members of the discipline panel: Richard Hilton, P.Eng., Daniela Iliescu, P.Eng., Ken Lopez, P.Eng., and Don Turner, P.Eng.

## 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 VINCENZO MARCO FERRARO, P.ENG., a member of the Association of Professional Engineers of Ontario, and DALEY FERRARO ASSOCIATES ENGINEERING SERVICES, a holder of a Certificate of Authorization.

### SUMMARY OF FINDING AND ORDER OF THE DISCIPLINE COMMITTEE

At a hearing held on June 3, 2008, and following a guilty plea and Statement of Agreed Facts, the five-member panel of the Discipline Committee found Vincenzo Marco Ferraro, P.Eng., and Daley Ferraro Associates Engineering Services (a partnership of the following corporations, namely, 3525287 Canada Inc. and 3525279 Canada Inc.) guilty of professional misconduct as defined in section 72(2)(d) of Regulation 941 made pursuant to the *Professional Engineers Act*, insofar as they: failed to make adequate provision for the safety of a property in Ottawa regarding the sump pit/pump and drainage facilities; failed to note deficiencies regarding grading and sump elements; and failed to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with work being undertaken by or under the responsibility of a practitioner. No evidence was presented as to allegations of incompetence and of professional misconduct under sections 72(2)(a), 72(2)(b), 72(2)(h) and 72(2)(j) under Regulation 941 and such allegations were withdrawn.

The majority of the Discipline Committee panel ordered that Vincenzo Marco Ferraro, P.Eng., and Daley Ferraro Associates Engineering Services shall be orally reprimanded, the fact of such reprimand shall not be recorded on the register and that a summary of the Decision and Reasons of the Discipline Committee, including names, shall be published in Gazette. Two members of the panel concluded that the names should not be published and thus dissented from the Decision and Reasons. The Decision and Reasons was released on November 12, 2008.

The written summary of the Decision and Reasons was signed by Bill Walker, P.Eng., on November 12, 2008, as chair on behalf of the other members of the discipline panel: Gina Cody, P.Eng., Albert Sweetnam, P.Eng., Santosh Gupta, P.Eng., and Derek Wilson, P.Eng.

### PEO OBTAINS ORDER AGAINST MICHAEL TOLFO

On Monday, November 9, 2009, PEO obtained an order plus costs in the amount of \$2,500 against Michael James Tolfo, requiring that he refrain from using an engineering seal in Ontario. The order was obtained under the *Professional Engineers Act* in the Ontario Superior Court of Justice, at Osgoode Hall, Toronto.

Tolfo has never held a licence to practise professional engineering or a Certificate of Authorization in Ontario.

PEO brought the application after receiving information from a professional engineer, of whom Tolfo was a former client, who complained that his engineering drawings had been altered and his engineering seal had been used by Tolfo without his prior knowledge and consent in an application for a building permit.

PEO's investigation revealed that Tolfo had retained the professional engineer to provide engineering drawings to him for an alteration to his residence. The work was produced and sealed by the professional engineer and formed part of a building permit application by Tolfo to the City of Toronto.

The engineer later found out that Tolfo had altered the drawings and filed them with the building department in support of a new building permit application without the engineer's prior knowledge or consent.

Neil Perrier of Perrier Law Professional Corporation represented PEO on the application. After reviewing the affidavit evidence and hearing the submissions of counsel for PEO, the Honourable Mr. Justice Matlow found that Tolfo had breached the *Professional Engineers Act* and ordered that he refrain from using an engineering seal in Ontario until such time as he is licensed as a professional engineer.

Says Eric Newton, PEO's manager of litigation: "The success of this action was due, in part, to the prompt reporting of the matter by the engineer whose seal was misappropriated, as well as the co-operation of the City of Toronto building department."

# 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 am a professional engineer working for an environmental company and my training is in land-use planning. I volunteer with a non-profit organization that is concerned about land preservation. Recently, a developer submitted a plan for a large development near

environmentally sensitive land. The non-profit has approached me to review the engineering work in the plans, come up with reasons why the development should be limited, and propose alternatives to certain design elements proposed by the developer's engineer. I plan on doing this work in my spare time and it will most likely involve preparing reports to the local municipality. I do not plan on charging the non-profit for my time. Would PEO have any concerns about this arrangement?

**A.** Even if you plan on doing this work in your spare time, as you propose, you will require a Certificate of Authorization (C of A) in addition to your licence. The fact that you will not be paid for any of the work is not relevant, as the C of A requirement in the *Professional Engineers Act* does not make a distinction between paid and voluntary work.

If you perform professional engineering work for another person or entity (like a relative, friend or volunteer organization), you are considered to be acting at arm's length and providing services "to the public," and therefore you require a C of A.

There is no need for you to have a C of A if you are working for a regular employer because your employer takes all the liability risk for any mistakes you may make in your engineering work. Whether you are an employee or an independent practitioner is based on a number of factors, the most important being how much control you have over your work hours and whether you are being provided with resources (such as office space) to perform your work. Doing work on your own time, with your own resources, indicates that you are in independent practice.

The fact that you are working for only one client does not eliminate the requirement to hold a C of A. Although you don't need a C of A for contract employment with a single employer where your work hours are set by the employer/client and you do the work in their premises, you do require one once you are working independently. Several of our C of A holders have a single client, either by design or because of changing business circumstances.

Another factor dictating the requirement for a C of A in these circumstances is professional liability. Although it might be unlikely, it is possible that either you or the non-profit could be sued for deficiencies in your work. The insurance standards in Regulation 941 are there to protect clients (even non-profits) from the results of substandard engineering work. Given the nature of the work you've described, the liability risk could be substantial. Another potential problem is that your work for the non-profit could give rise to a conflict of interest with your regular employer at some time in the future. If you do decide to do the work for the non-profit, your employer will have to be informed about it to avoid such conflicts.

In the final analysis, it may be better for your non-profit to hire a C of A holder and pay them to perform the work. This will help ensure that a professional engineer has the adequate resources to take on the task.

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).

