

Gazette

Volume 18, No. 2
March/April 1999

THE DEPARTMENT OF THE REGISTRAR, PEO

Published by
the Association of
Professional Engineers
of Ontario

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Registration 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 the proposal of the Registrar to refuse to issue a licence to

an applicant

Between the Association of Professional Engineers of Ontario and An Applicant

Decisions and Reasons

The Registration Committee of the Association of Professional Engineers of Ontario (PEO) met at the offices of the association at 25 Sheppard Avenue West, Suite 1000, Toronto, Ontario, on Wednesday, July 17, 1996, at the request of an applicant ("the applicant") with respect to the matter of a proposal by the Registrar of PEO to refuse to issue a licence to the applicant.

Legal counsel appeared on behalf of the Registrar. The applicant was not represented by legal counsel.

Legal counsel filed as an exhibit a Notice of Hearing, which the applicant confirmed that he had received, and which indicated that the Registrar had proposed to refuse to issue a licence to the applicant due to an omission on his licence application form filed with PEO. In his application, the applicant omitted the fact that he had applied for a licence with another provincial engineering licensing body and that he had been assigned an examination program approximately three months before submitting his PEO application.

Legal counsel informed the committee that the applicant had agreed as facts the following paragraphs in the Notice of Hearing:

1. He made application, dated August 23, 1994, to PEO for a licence.

2. He answered negatively question number two in the "Professional" section, which reads: "Do you have an application (pending or closed) in another province or territory?"

3. He was advised by a letter dated January 31, 1995, that PEO's Academic Requirements Committee ("ARC") had assessed the information he provided in support of his licence application and determined that he met the academic requirements. The letter further advised that he was now eligible to write the Professional Practice Examination ("PPE").

4. He wrote the PPE at the April 29 sitting, and on June 27, 1995, he was advised that he had passed the PPE.

5. On July 6, 1995, as part of its routine inquiries with respect to applications, PEO learned that he had applied to another provincial engineering licensing body.

6. By letter dated July 14, 1995, he was advised that PEO had learned of his application pending in the other province, was now concerned about the apparent deliberate omission in his application, was considering withdrawing his application for licensure, and had requested a written explanation from him concerning the omission.

7. By letter dated July 25, 1995, he responded to PEO's letter of July 14, 1995. He advised PEO that his incorrect answer to question number two

in the "Professional" section of his PEO application related to a misinterpretation of the question and/or the status of his application in the other province, rather than any intention to answer the question falsely. As part of that letter, he stated that the Assistant Registrar of the other licensing body had "advised" him to "try other provincial associations for membership."

Legal counsel called the Deputy Registrar, Admissions ("the Deputy Registrar"), of PEO as his only witness, who testified that, after reviewing the applicant's licence application, he wrote a letter to the applicant on July 14, 1995, advising him that his "no" answer to question number two of the application was incorrect because a recent check with the other licensing body revealed that the applicant had made application to it a few months before applying to PEO. The letter concluded with a request for an explanation from the applicant.

The Deputy Registrar further testified that the applicant replied by letter dated July 25, 1995, explaining that he was unable to provide the other licensing body with a detailed description of the course he took at the Moscow Power Institute, from which he had graduated. The letter also explained that the other licensing body assigned him two examinations, more than six months after he completed his MSc degree in engineering at the University of Saskatchewan. The applicant advised the Assistant Registrar of the other province that he did not accept that he was assigned examinations five years after his application. He believed that the other licensing body had not treated him fairly. In addition, the letter explained that the Assistant Registrar then advised him to try other provincial associations for membership, and that the applicant decided to pursue this course of action.

The Deputy Registrar testified that in the letter the applicant said

he answered "no" to question number two, because he believed that his application to the other licensing body was neither pending nor closed.

The Deputy Registrar said that if the question had been answered correctly, PEO's Academic Requirements Committee ("ARC") would likely have reviewed the examination program from the other licensing body, and would have added any examinations to the PEO program that the applicant did not pass.

In questioning the Deputy Registrar, the applicant asked him whether his failure to pass examinations in another province would also be considered by PEO to be a failure. The Deputy Registrar confirmed that failed examinations would be reassigned by PEO.

The applicant testified on his own behalf. He indicated that he had attended the Moscow Power Institute in 1965, and received a masters degree in 1972. He had come to Canada in 1988, registered for his masters degree at the University of Saskatchewan, but left after the loss of his wife, and subsequently returned to Ghana to look after his children. When he submitted his papers to the other licensing body in 1989, he could not believe that his qualifications from the Moscow Power Institute would not be accepted in Canada. He attempted to obtain the syllabus through the Russian ambassador, but was unsuccessful in doing so.

Upon his return to university, however, he found that he was more relaxed, as his children were with him in Canada. After completing his second masters degree from the University of Saskatchewan, he again attempted to obtain licensure in the other licensing body, but was unsuccessful.

He submitted all of his qualifications to PEO, and applied for a job in Ontario. He thought his application to the other licensing body had been dropped. He apologized for the omission. He filed as exhibits

letters of reference from a professional engineer in Ontario and the Anglican Church in Saskatchewan.

Under cross examination by legal counsel for PEO, the applicant advised that he had not completed the examinations assigned by the other licensing body, was currently living in Saskatchewan, planned to move to Ontario, and did not intend to reactivate his application with the other licensing body. In response to a question from the committee, he outlined that the other licensing body advised him in May 1994 that he would be required to write two examinations following his application of 1989, and again after he approached the other licensing body in 1993-1994.

He testified that he did not expect one province to require exams that another province did not. He thought his qualifications would be relevant to Ontario.

When asked why he thought question number two was asked on the application form, the applicant answered that if he thought the question was relevant, it would have made no sense for him to hide the answer. He admitted having difficulty with semantics.

Concerning the affidavit of the other licensing body's Assistant Registrar, which was filed as an exhibit, the applicant disagreed with her explanation. The Assistant Registrar's affidavit stated that she did not "advise" him to "try other provincial jurisdictions," and that, as a general practice, she does not take it upon herself to "advise" applicants to take such actions. The affidavit further stated that, with applications such as this, she would tell applicants that they are welcome to contact other associations if they wish to do so. The applicant maintained that he went to the Assistant Registrar purely for advice, and he acted on this advice. He agreed that to practise professional engineering with honesty and integrity, it would have been more appropriate for him to pro-

vide more information to PEO.

Following submissions from legal counsel and the applicant concerning the disposition of this matter, the committee retired to consider the evidence and exhibits. It found that:

◆ An attempt made by the applicant to apply to PEO in order to avoid the more extensive admission requirements of the other licensing body was not an issue, as the ARC found that his qualifications were acceptable.

◆ The applicant's misunderstanding of the Assistant Registrar's advice did not appear to be deliberate, as it was difficult to believe the Assistant Registrar's suggestion in the manner that the applicant interpreted it.

◆ Although the applicant's explanation as to why he answered question number two negatively was not convincing, he apologized for the omission and for any inconvenience it caused. His sincerity and integrity were evident in his position as he described it.

◆ Although the committee was concerned that the applicant did not complete the application form with due diligence, as indicated by his answer to question number two, it found no evidence to suggest that the applicant would not engage in the practice of professional engineering in the future in accordance with the law and with honesty and integrity.

The committee directed that:

1. the applicant's application be allowed to proceed, and that the admissions process continue without additional considerations or delay;
2. all of the requirements for admission be satisfied; and
3. the details of these proceedings be published in Gazette without names.

Dated at Toronto this 25th day of November 1996

Geoff T. G. Scott, P.Eng. (Chair)

For and on behalf of the committee:

June Hannah, SMP
Keitha J.F. Buckingham, P.Eng.
John B. Wilkes, P.Eng.

Note from Legal and Professional Affairs

The applicant was licensed by PEO in September 1996.

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Decisions and Reasons

The Registration Committee of the Association of Professional Engineers of Ontario ("PEO") met at the offices of PEO at 25 Sheppard Avenue West, Suite 1000, Toronto, Ontario, on Tuesday, September 17, 1996, at the request of the applicant with respect to the matter of a proposal by the Registrar of PEO to refuse to issue a licence to the applicant.

Legal counsel appeared on behalf of the Registrar. The applicant was not represented by legal counsel.

Legal counsel for PEO filed as exhibits a Notice of Hearing and an Agreed Statement of Facts, both of which the applicant confirmed that he had received, which indicated that the Registrar proposed to refuse to issue a licence, based on her opinion that the applicant's conduct afforded grounds for the belief that he would not engage in the practice of professional engineering in accordance with the law and with honesty and integrity. The Registrar's opinion arose from the finding that the applicant had offered and provided professional engineering services on two projects at a time when his licence with the association had been cancelled, owing to non-payment of annual fees.

Legal counsel for PEO advised that the applicant agreed to the particulars of the allegations in the Notice of Hearing, which were set out in the following paragraphs of the Agreed Statement of Facts:

1. The applicant made application to the Association of Professional Engineers of Ontario ("PEO") to be licensed as a professional engineer by application, dated March 16, 1962.
2. On or about April 27, 1962, he was granted a license.
3. On or about October 10, 1967, he was deleted as a licensee for non-payment of the annual fee.
4. He reapplied for licensure on or about September 1986, and was reinstated on or about February 25, 1987.
5. He was again deleted as a licensee for non-payment of the annual fee on or about May 31, 1993.
6. The applicant prepared, signed and sealed a drawing dated August 24, 1994, for the installation of a wood stove at a

Georgetown, Ontario, residence. The drawing was submitted in support for an application for a building permit to the Town of Halton Hills on December 9, 1994.

7. On or about August 24, 1994, he prepared a drawing for the renovation of a commercial building in Halton Hills (Georgetown), Ontario. The drawing was signed and sealed by the applicant on September 15, 1994, and was submitted in support of an application for a building permit to the Town of Halton Hills on September 16, 1994.

8. On or about October 13, 1994, he prepared, signed and sealed a revised drawing, which was submitted to the building department of the Town of Halton Hills on or about October 14, 1994, together with a Letter of Undertaking by the owner and a General Review Commitment Certificate signed by him as the professional engineer for the project.

9. On or about March 1, 1995, he prepared, signed and sealed drawings for a second-floor apartment conversion in Halton Hills (Georgetown), Ontario. The drawings were submitted in support of an application for a building permit to the Town of Halton Hills on or about March 6, 1995.

10. By application dated May 26, 1995, he reapplied for reinstatement of his licence. By a letter dated September 11, 1995, the applicant was advised that PEO had learned that he had offered and provided professional engineering services when his licence with the association had been cancelled, and that, by reference to Section 14(2) of the Professional Engineers Act, R.S.O. 1990, Chapter. P.28, PEO proposed refusing the issuance of a licence to him.

11. By a letter dated September 16, 1995, the applicant responded to the Registrar's September 11, 1995 letter, requesting a hearing before the Registration Committee.

12. On October 23, 1995, he was charged under Section 40 of the Professional Engineers Act with the following offences: (a) while not the holder of a licence, temporary licence or a limited licence, engaged in the practice of professional engineering by preparing a revised drawing dated October 7, 1994, for the renovation of a building in Halton Hills (Georgetown), Ontario;

(b) engaged in the business of providing to the public services that are within the practice of professional engineering without a Certificate of Authorization, by preparing drawings for the renovation of a building in Halton Hills (Georgetown), Ontario;

(c) while not the holder of a licence, temporary licence or a limited licence, used a seal that would lead to the belief that he was

a professional engineer, by applying a professional engineer's seal to a revised drawing dated October 7, 1994, for the renovation of a building in Halton Hills (Georgetown), Ontario;

(d) while not the holder of a licence, temporary licence or a limited licence, used a seal that would lead to the belief that he was a professional engineer, by applying a professional engineer's seal in his name to a drawing for the renovation of a building at Halton Hills (Georgetown), Ontario, dated August 24, 1994;

(e) while not the holder of a licence, temporary licence or a limited licence, engaged in the practice of professional engineering by preparing a drawing for the renovation of a building in Halton Hills (Georgetown), Ontario, dated August 24, 1994, which was submitted in support of an application for a building permit to the Town of Halton Hills on September 16, 1994; (f) engaged in the business of providing to the public services that are within the practice of professional engineering without a Certificate of Authorization, by preparing drawings for a second-floor apartment conversion in Halton Hills (Georgetown), Ontario;

(g) while not the holder of a licence, temporary licence or a limited licence, used a seal that would lead to the belief that he was a professional engineer, by applying an engineering seal in his name to drawings dated March 1, 1995, for the second-floor apartment conversion in Halton Hills (Georgetown), Ontario;

(h) while not the holder of a licence, temporary licence or a limited licence, engaged in the practice of professional engineering by preparing drawings dated March 1, 1995, for a second-floor apartment conversion in Halton Hills (Georgetown), Ontario.

13. On March 18, 1996, the

applicant pleaded guilty to the charges as set out in paragraphs 12(a) and (b) above, and a conviction was registered against him. The charges as set out in paragraphs 12(c) to 12(h), inclusive, were withdrawn.

14. The applicant was fined the sum of \$6,000, plus a victim surcharge of \$1,200, for a total fine and surcharge of \$7,200. With the consent of PEO on appeal, the fine was reduced to a total of \$6,000. The total fine owing was paid on July 11, 1996, to the Ontario Court (Provincial Division) in Milton.

Legal counsel for PEO filed as an exhibit a Registration Committee Hearing Brief. Legal counsel read a letter dated September 11, 1995, from this brief, which outlined the Registrar's proposal to refuse to issue a licence to the applicant. The letter also indicated that the applicant was required to cease and desist from offering or providing engineering services to the public, and surrender his professional engineer's seal and membership certificate to the association, and that he had the right to appeal the Registrar's proposal.

Legal counsel also read the applicant's response of September 16, 1995, contained in the brief, in which he agreed to cease and desist from the practice of professional engineering, enclosed his membership certificate and professional engineer's seal, requested a hearing to determine if his licence could be reinstated, and apologized to the association for his misconduct.

Legal counsel for PEO suggested to the committee that, since the applicant agreed with the particulars of PEO's allegations, the committee could consider disposition of the matter. Legal counsel submitted that the committee could consider requiring that the applicant take and pass the Professional Practice Exami-

nation ("PPE") and publishing its decision in *Gazette* without names.

In giving evidence on his own behalf, the applicant testified that he had followed a very tempered career over the last 40 years; his engineering licence had given him support; he considered engineering to be a serious matter; he had taken time to consider his conduct, and after review, he wished to change; and he hoped that the facts would speak for themselves.

In response to a question from the committee as to whether he was aware that his licence had been revoked, the applicant replied that he was. He explained that the heating and ventilating equipment industry had encountered difficult times, and the business in which he was involved failed in 1981. At that time, he began to rely more heavily on his engineering qualifications.

In response to the committee's question "Do you think that the PPE is necessary?," the applicant replied that he would welcome writing it as he was now out of touch after having graduated in 1962.

A member of the committee asked the applicant why he did not maintain his licence following 1990, when the requirement should have been obvious to him. The applicant replied that the company declared bankruptcy in 1992. The extent of the owner's involvement had placed a severe strain on his finances, which he had found to be emotionally upsetting. In reply to the committee's observation that he was holding himself out to the public as a professional engineer when he undertook the projects in Halton Hills, the applicant stated that he did not undertake any advertising; the owner asked him to do the work, and the services he provided were for only one client.

The committee retired to

consider the evidence and the exhibits.

The committee expressed its concern with the competence and professionalism of the applicant if he was again reinstated. However, the particulars of the allegations under consideration did not involve the matter of competence. A penalty of writing and passing the Professional Practice Examination (PPE) would, in the committee's view, provide an indication of the applicant's ethical behaviour.

The evidence indicated that the applicant failed twice to pay his membership fee, but he appeared to be sincere, apologetic and cooperative with PEO.

The committee was not at all impressed by the applicant's conduct, specifically in the period following the deletion of his licence for non-payment of the annual fee in May 1993. There was no apparent excuse for his conduct, and the committee trusted that the expressions of regret and remorse that the applicant demonstrated would be reflected in his future conduct as a professional engineer.

On this basis, the committee agreed to accept the joint submission from PEO and the applicant that the approval of his application for reinstatement be conditional upon passing the PPE. The committee ordered that the details of these proceedings be published in *Gazette* without names.

Dated at Toronto this 25th day of November 1996

Geoff T. G. Scott, P.Eng.,
(Chairman)

For and on behalf of the committee:

William Fredenburg, P.Eng.
Alawi Mohideen, LL.B.
John B. Wilkes, P.Eng.

Note from Legal and Professional Affairs

The applicant's licence with PEO was reinstated in February 1998, after he successfully completed the Professional Practice Examination.