

DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*,
and in a matter of a complaint regarding the conduct of
A MEMBER of the Association of Professional Engineers of Ontario.

This matter came on for hearing before a panel of the Discipline Committee on March 22, 2007 at the Association of Professional Engineers of Ontario (association) in Toronto. The association was represented by Neil J. Perrier. The member was unrepresented. Christopher Wirth acted as independent legal counsel (ILC).

THE ALLEGATIONS

As set out in the Notice of Hearing dated June 20, 2006, it is alleged that the member is guilty of professional misconduct, the particulars of which are as follows:

1. The member was, at all material times, a member of the Association of Professional Engineers of Ontario.
2. At all times material to this matter, the member was not the holder of a Certificate of Authorization that would permit the member to offer or provide services to the public that are within the practice of professional engineering.
3. In or about August 2003, Felix Heller of Felix Heller Design Service retained the member to provide professional engineering services, including drawings, in relation to the design of electrical and fire-protection systems for the Ontario Racquet Club (ORC) renovation. There was no written contract between Heller and the member. The member did not provide the electrical design drawings for the building permit application by September 12, 2003, as initially promised.
4. By fax dated September 15, 2003, the member requested that Heller pick up the electrical design drawings which, according to the member, were 50 per cent complete. Additionally, the member told Heller that the 50-per-cent-complete drawings would be sufficient for the building permit. Heller believed the electrical drawings were only 15 to 20 per cent complete as the fire-protection portion of the electrical project drawings was not complete. The member only guessed at the electrical design requirements for the ladies' washroom, shower room and change room facilities (these areas were only accessible from midnight to 5:30 a.m.). The member also invoiced Heller \$1,757 for the incomplete design work.
5. By letter dated September 15, 2003 to the member, Heller expressed concerns with the incomplete design and indicated that he would not pay the member.
6. On November 6, 2003, the member filed a claim through the Small Claims Court in Brampton against Heller for the engineering services rendered. The judgment was that Heller had to pay for the services provided by the member.

7. In about January 2004, Heller retained Kamco Technique Ltee. to finish the electrical design work for the ORC addition and renovation.
8. By reason of the aforesaid, it is alleged that the member:
 - (a) breached section 12(2) of the *Professional Engineers Act* by offering and/or providing professional engineering services to the public while not in possession of a Certificate of Authorization; and
 - (b) acted in an unprofessional manner.
9. By reason of the facts aforesaid, it is alleged that the member is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
10. "Professional misconduct" is defined in section 28(2)(b) as:

"the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."
11. The sections of Regulation 941/90 made under the said act and relevant to this misconduct are:
 - (a) SECTION 72(2)(A): negligence as defined at section 72(1): In this section "negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
 - (b) SECTION 72(2)(D): failure 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;
 - (c) SECTION 72(2)(G): breach of the act or regulations other than an action that is solely a breach of the Code of Ethics; and
 - (d) 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.

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 (ASF), which provides as follows:

1. The member was, at all material times, a member of the Association of Professional Engineers of Ontario.
2. At all times material to this matter, the member was not a holder of a Certificate of Authorization that would permit the member to offer or provide services to the public that are within the practice of professional engineering.
3. In or about August 2003, Felix Heller of Felix Heller Design Service retained the member to provide professional engineering services, including drawings, in relation to

NOTICE OF REVOCATION—QUINTE-ECO CONSULTANTS INC.

In a written decision issued on March 12, 2009, the Discipline Committee ordered the revocation of the Certificate of Authorization of QUINTE-ECO CONSULTANTS INC. (QEC), after finding the firm guilty of professional misconduct. In August 2007, QEC had been convicted under the *Environmental Protection Act* of giving false or misleading information to a provincial officer and had been fined. The discipline hearing in this matter took place on December 2 and 3, 2008. QEC did not appeal the decision or the penalty order and the revocation took effect on April 13, 2009. The written decision and reasons of the Discipline Committee will be published in due course.

the design of electrical and fire protection systems for the ORC renovation. There was no written contract between Heller and the member. The member did not provide the electrical design drawings for the building permit application by September 12, 2003, as initially promised.

4. By fax dated September 15, 2003, the member requested that Heller pick up the electrical design drawings which, according to the member, were 50 per cent complete. Additionally, the member told Heller that the 50-per-cent-complete drawings would be sufficient for the building permit. Heller believed the electrical drawings were only 15 to 20 per cent complete as the fire-protection portion of the electrical project drawings was not complete. The member only guessed at the electrical design requirements for the ladies' washroom, shower room and change room facilities (these areas were only accessible from midnight to 5:30 a.m.). The member also invoiced Heller \$1,757 for the incomplete design work.
5. By letter dated September 15, 2003 to the member, Heller expressed concerns with the incomplete design and indicated that he would not pay the member.
6. On November 6, 2003, the member filed a claim through the Small Claims Court in Brampton against Heller for the engineering services rendered. The judgment was that Heller had to pay for the services provided by the member.
7. In or about January 2004, Heller retained Kamco Technique Ltee. to finish the electrical design work for the ORC addition and renovation.

Counsel for the association advised the panel that the association was not calling any further evidence with respect to the allegations set out in paragraphs 8 and 9 of Appendix A of the Notice of Hearing.

PLEA BY MEMBER

The member admitted the allegations as set out in the Notice of Hearing.

The panel conducted a plea inquiry and was satisfied that the member's admission was voluntary, informed and unequivocal.

DECISION

The panel considered the ASF and the member's plea, and found that the facts support a finding of professional misconduct and, in particular, found that the member committed an act of professional misconduct as a result of his having breached sections 72(2)(a), 72(2)(g) and 72(2)(j) of Regulation 941/90. The panel did not find that the member had breached section 72(2)(d) of Regulation 941/90.

REASONS FOR DECISION

The member admitted that he did not obtain a Certificate of Authorization before providing services to the public that are within the practice of professional engineering as required in section 12(2) of the *Professional Engineers Act*. Consequently, the panel determined that the member was negligent [section 72(2)(a) of Reg. 941/90] and in breach of sections 72(2)(g) and 72(2)(j) in not obtaining a Certificate of Authorization prior to undertaking the described work. The panel understood that the intent of section 72(2)(d) concerns the described work that may have been undertaken by the member. There was no evidence presented that the member did not provide quality work, only that he undertook the work without a Certificate of Authorization.

PENALTY

Counsel for the association advised the panel that, in a joint submission, the member and the association agreed that the member be reprimanded and that the reprimand be placed on the register.

In addition, counsel for the association asked that:

1. the member shall forthwith pay costs of the discipline proceedings in the sum of \$1,000 to Professional Engineers Ontario; and
2. the orders and decision of the discipline panel be published in Gazette with the member's name.

DISCIPLINE HEARING SCHEDULE

JULY 13-14 AND JULY 27-28, 2009 (HEARING CONTINUATION)

RAOUF H.M. BALBAA, P.ENG. and HITE ENGINEERING COMPANY INC.

It is alleged that Raouf H.M. Balbaa, P.Eng., is incompetent and/or guilty of breaching the Code of Ethics as defined in the *Professional Engineers Act* and that Raouf H.M. Balbaa and HITE Engineering Company Inc. are guilty of professional misconduct as defined in the *Professional Engineers Act*.

Counsel believed the wording of the joint submission implied the reprimand was for an unlimited time.

The member had agreed to the reprimand, but did not understand the potential time frames for the reprimand. The member also believed that the \$1,000 cost of the hearing was not necessary and did not wish the panel's order and decision to be published in Gazette.

The panel questioned the recommended time frame for the reprimand, as noted in paragraph of 28(4)(f) of the *Professional Engineers Act*.

After further submissions from counsel for the association and the member, the panel ordered the following penalty:

1. the member be reprimanded and the fact of the reprimand be recorded on the register for one year;
2. the member pay \$1,000 in costs to the association; and
3. the orders and decision of this discipline panel regarding the member be published in summary in Gazette without the member's name.

REASONS FOR PENALTY

Based on the fact that the member recognized his mistake in not having a Certificate of Authorization and subsequently obtaining the same forthwith, the panel concluded that the penalty proposed by the association's counsel and the member in the Joint Submission as to Penalty was reasonable and satisfied the public interest. The panel was of the view that the proposed penalty would send a strong message to the public and other members of the engineering community. No new information was brought before the panel by the member to justify reducing the penalty.

The panel also determined that the joint submission between the association and the member regarding the reprimand penalty did not clearly state "...a stated or unlimited period of time," as noted in paragraph of 28(4)(f) of the *Professional Engineers Act*.

In reviewing the appropriateness of the penalty relating to the \$1,000 in costs and publication without the member's name, the panel considered the fact that the member had indicated that he recognized that he did not have a Certificate of Authorization and had already applied for one prior to the hearing.

WAIVER

Counsel for the association and the member advised the panel that the member would not be appealing the decision of the panel and a Waiver of Appeal was filed with the panel.

Following the hearing, the panel delivered the oral reprimand.

The written Decision and Reasons were signed by Richard Hilton, P.Eng., on February 6, 2009, as the chair on behalf of the other members of the discipline panel: Max Perera, P.Eng., and Rakesh Shreewastav, P.Eng.