

Gazette

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THE DEPARTMENT OF THE REGISTRAR, PEO

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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

August Apon

Between the Association of Professional Engineers of Ontario and August Apon

Decision and Reasons

The Registration Committee (committee) of the Association of Professional Engineers of Ontario (PEO) met at the offices of PEO, 25 Sheppard Avenue West, Suite 1000, North York, Ontario, on Thursday, September 3, 1998, 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 August Apon.

Legal counsel appeared on behalf of the Registrar. Mr. Apon was also represented by legal counsel.

Legal counsel for the Registrar filed as an exhibit a Notice of Hearing, which Mr. Apon confirmed that he had received, and which indicated that the Registrar proposed to refuse to issue a licence to Mr. Apon.

The Registrar based her proposed refusal upon her opinion that Mr. Apon'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 proposal arose from the allegations that Mr. Apon had practised

professional engineering at a time when his licence to practise was cancelled for non-payment of fees; that Mr. Apon offered and provided professional engineering services on a project in 1997, when his company A. C. & G. Consultants (A.C. & G.) had never held a Certificate of Authorization and had advised his client that his registration was valid after being warned that it had been cancelled; and that Apon carried out two other projects, one with the aforementioned company in 1995, and the other, in 1994, with another company that had not held a Certificate of Authorization since 1991.

Legal counsel for the Registrar informed the committee that Mr. Apon agreed as facts the following paragraphs in the Notice of Hearing:

1. Apon was originally licensed by PEO as a professional engineer in the province of Ontario on July 23, 1970.
2. On two occasions prior to 1997, Mr. Apon's licence was cancelled for nonpayment of fees, on June 22, 1995, and May 30, 1996.
3. PEO cancelled Apon's licence on each

occasion after warning Apon in writing of its intention to do so, if Apon did not pay outstanding fees. Specifically, with respect to fees due on January 1, 1995, notwithstanding that Apon had received an invoice for fees in December 1994, Apon failed to pay the fees when due. PEO wrote to Apon in March 1995, advising of its intention to remove Apon's name from the Register if Apon's fees were not received on or before April 17, 1995. Apon failed to pay the outstanding fees by that date and, accordingly, as set out above, Apon's membership was cancelled on June 22, 1995. Subsequently, on July 12, 1995, Apon paid the outstanding fees and Apon's licence was reinstated.

4. The next year, Apon failed to pay the fees due on January 1, 1996, notwithstanding that Apon received an invoice for such fees during the month of November 1995.
5. Accordingly, PEO wrote to Apon on March 14, 1996, advising of its intention to remove Apon's name from the Register if Apon did not pay the outstanding fees on or before April 16, 1996.
6. Notwithstanding this further warning, Apon failed to pay the outstanding fees by that date, and Apon's licence was cancelled

effective April 16, 1996.

7. On or about June 25, 1996, Apon paid the outstanding fees and Apon's membership was reinstated.

8. In November 1996, an invoice was sent to Apon with respect to the fees due on January 1, 1997.

9. Once again, Apon failed to pay the outstanding fees, and on April 7, 1997, PEO wrote advising Apon that if the outstanding fees were not received by May 7, 1997, Apon's name would again be removed from the Register.

10. Notwithstanding this further warning, Apon failed to pay the outstanding fees, and on May 20, 1997, the association wrote to Apon to confirm that as a result of Apon's failure to pay the outstanding fees, Apon's licence to practice was cancelled effective May 7, 1997.

11. On or about October 15, 1997, a company called McNally Construction Ltd., ("McNally") submitted to the Town of Halton Hills, Building Department, several engineering drawings on the title block of A.C. & G. Consultants Limited ("A.C. & G."), a company of which Apon is a director, in relation to a project at 267 and/or 287 Armstrong Avenue, Georgetown, Ontario, prepared and sealed by Apon.

12. On or about October 29, 1997, the association received a call from the Town of Halton Hills inquiring about the licence and registration status of Apon and A.C. & G. The association reviewed its records and advised a representative of the Town of Halton Hills that Apon was no longer licensed with the association as of May 1997, and that Apon's company A.C. & G. did not hold a Certificate of Authorization from the association.

13. On October 30, 1997, the Town of Halton Hills advised McNally that Apon was not licensed to practise engineering in Ontario, and that the drawings submitted by Apon required the seal of a licensed professional engineer.

14. On or after October 31, 1997, Apon sent a cheque to PEO in the amount of \$139.10, purportedly in payment of the annual licence fee for which PEO had rendered the invoice back in November 1996, provided written warning in April 1997, and advised of cancellation for non-receipt in May 1997.

15. On November 3, 1997, Apon wrote to McNally and advised McNally that he was a registered professional engineer in Ontario and that his registration was valid.

16. In fact, however, the Registrar of the association wrote to Apon on November 11, 1997, advising of her intention to refuse the issuance of a licence to Apon for the reason that Apon's conduct afforded grounds for the belief that Apon would not engage in the practice of professional engineering in accordance with the law and with honesty and integrity.

17. The Registrar confirmed in her November 11, 1997 letter that it had come to the attention of the association that Apon had offered and provided engineering services on the project at 287 Armstrong Avenue, Georgetown, Ontario, at a time when Apon's licence with the association had been cancelled owing to non-payment of Apon's annual fee. In addition, the Registrar advised Apon that a search of the association's records had revealed that a company through which Apon does business, A.C. & G., had never held a Certificate of Authorization under the Professional Engineers Act, which is required by entities offering and providing engineering services.

18. The Registrar advised that a further search of the association's records revealed that Apon Engineering Limited, a company in which Apon is listed as president, had its Certificate of Authorization deleted for non-payment of annual fees effective August 14, 1991.

19. The Registrar also advised Apon that the association had

become aware of projects involving those two companies which appear to have been carried out, while neither of the above companies held a Certificate of Authorization. These projects were a loading dock enclosure for Standard Products Ltd. of Georgetown on the title block of A.C. & G., in June 1995, and repair details for mezzanines "A," "B" and "C" of Mouldmaster of Georgetown on the title block of Apon Engineering Limited in March 1994.

20. In addition to the Registrar's refusal to issue a licence to Apon, PEO has initiated separate legal proceedings in connection with Apon's conduct.

21. The association proceeded with an application to the Ontario Court (General Division) pursuant to Section 39 of the Professional Engineers Act. 22. That application was resolved on the basis of a Judgment, to which Apon consented, containing:

a) a declaration that Apon breached section 12(1) of the Act by engaging in the practice of professional engineering without holding a valid licence, a temporary licence or a limited licence from the association;

b) a declaration that Apon breached section 12(2) of the Act by engaging in the business of providing to the public services that are within the practice of professional engineering without holding a valid licence, temporary licence or limited licence from the association;

c) a declaration that Apon had breached section 40(2)(c) of the Act by using a professional engineer's seal that would lead to the belief that Apon was a professional engineer without holding a valid licence or temporary licence from the association;

d) a declaration that Apon had breached section 40(3)(b) of the Act by using an engineer's seal that would lead to the belief that Apon could provide to the public services that are within the practice of professional engineering without holding a valid Certificate of Authorization from

the association;

e) an Order that Apon refrain from engaging in the practice of professional engineering unless and until Apon holds a valid licence, temporary licence or limited licence from the association;

f) an Order that Apon refrain from offering to the public, or engaging in the business of providing to the public, services that are within the practice of professional engineering unless and until Apon holds a valid Certificate of Authorization from the association;

g) an Order that Apon return his professional engineer's seal and member's Certificate to the association forthwith.

23. The Consent Judgment also contained:

a) a declaration that A.C. & G. had offered to the public services that were within the practice of professional engineering without holding a valid Certificate of Authorization from the association;

b) a declaration that A.C. & G. used a seal that would lead to the belief that it may provide to the public services that are within the practice of professional engineering without holding a valid Certificate of Authorization from the association;

c) an Order that A.C. & G. refrain from offering or engaging in the business of providing to the public services that are within the practice of professional engineering, unless and until it holds a valid Certificate of Authorization from the association; and

d) an Order that Apon and A.C. & G. pay the association's costs of the application in the amount of \$1,000 forthwith.

24. In addition, the association laid a number of charges in Ontario Court (Provincial Division) against Apon and A.C. & G.

25. In respect of those numerous charges, it has been agreed that Apon and A.C. & G. will plead guilty to one charge each, and will make a joint submission together with counsel for PEO for a total fine of \$20,000 (comprising \$10,000 each of

two charges in respect of which the guilty pleas will be entered), which amounts are to be paid over the course of two years. Specifically, a total \$10,000 will be paid in each of two years, comprising \$5,000 paid by Apon personally and \$5,000 paid on behalf of A.C. & G in each such year. Apon has further agreed with the association that the two-year period within which these fines will be paid will commence on the date on which Apon is reinstated as a member in good standing of the PEO.

26. Both the attendance in which, the guilty pleas were to be entered and the joint submission were to take place September 22, 1998, in the Ontario Court (Provincial Division).

Mr. Apon testified on his own behalf, stating that when he became aware of the fact that his licence had been cancelled in 1997, he made a telephone call to PEO asking what steps to take. An unnamed person at PEO had advised him that he would be reinstated if he sent the cheque. He sent the cheque to PEO on or about October 31, 1997.

Following this, he sent the letter to McNally stating that his registration was valid. He added that he did not become aware that he was not registered until December. Mr. Apon claimed that he had to cut his staff substantially to survive due to the economic downturn in 1989. He mortgaged his house and cottage and, after a divorce, took care of his two children at home. He suffered a heart attack in 1994, and again in 1997. He admitted ignoring invoices during this stressful time. Mr. Apon explained that he was aware of the Certificate of Authorization required by PEO for Apon Engineering Limited, but the company was nearing the end of its life, he was struggling to survive and could not pay the fee. He stated he was sorry this had happened, wished to apologize for making wrong decisions, and now wanted to put

this behind him.

Legal counsel for the Registrar in cross-examination asked Mr. Apon about his present sources of income. Apon replied that he was licensed in several states of the U.S. With respect to his registration with PEO, Mr. Apon testified that he had held a licence since 1970. He did not dispute receiving two letters concerning outstanding licence fees sent to him by PEO in 1990 and 1991. He stated that he would have ignored these until he had sufficient funds to make the payments.

With respect to the letter of May 1995, Apon admitted that it ultimately came to his attention in July 1995. Legal counsel for the Registrar observed that Mr. Apon would therefore have been aware that he was not properly licensed. Mr. Apon claimed that he was not sure he was aware, and had no knowledge of his name being removed from the register after making his fee payments in 1995 and 1996. In the situation where he was practising without a licence, he admitted that he did not contact the association. With respect to A.C. & G., Apon explained that it was incorporated by his son-in-law, and was not doing any work in Ontario. Although he was aware that a Certificate of Authorization was required, he was not sure whether it required a yearly fee. He explained that he commenced work again in February 1997, after returning from Iran. He became aware that licence fees had not been paid in October 1997. He admitted that practising without a Certificate of Authorization was a significant issue.

Continuing with cross-examination, legal counsel for the Registrar observed that McNally told Apon that he was not properly registered, and that this would mean that the project could not proceed. Apon claimed that the delay in receiving the building department's approval was usual, but legal

counsel suggested that the real issue was not delay in approval, but practising without a licence. Apon forwarded payment of fees to PEO on the same day that McNally called, and then advised McNally that he was registered. He admitted after further questioning that the first sentence of his letter to McNally was not accurate. With respect to future work, Mr. Apon stated that it was his intention to provide engineering services to his old clients, as information on buildings built some years ago would be useful again, particularly with precast structures. He suggested that if the committee reinstated his licence, he would provide services through A.C. & G., which would pay the fee for a Certificate of Authorization.

In reply to questions from the committee, Apon stated he was licensed to practise in Maine and Massachusetts. With respect to his nonpayment in 1997, Apon claimed that he did not realize that he was not licensed until December. He admitted that he was remiss in not regarding the letter from the association. With respect to having conducted business in Ontario since 1970, and his awareness of having to pay a fee each year, Apon outlined that Apon Engineering Limited's Certificate of Authorization had expired in 1991, the company was in a major downturn, and he was dealing with a divorce. He suggested that he would not likely have been aware that the fee had not been paid, as this would have been taken care of by his administrator. He noted that Apon Engineering Limited dissolved in 1994, due to insufficient work.

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

The committee then reviewed in detail the evidence presented, and was seriously concerned with the apparent past casual attitude

of Mr. Apon toward the question of the registration and the payment of annual dues.

The committee emphasized its concern that it is the individual responsibility of every engineer to ensure that fees to PEO are paid when due, and that the Certificate of Authorization issued to the engineer or his or her business is maintained in a current status. The committee considered that it is not appropriate to place the responsibility of such action in the hands of staff or a third party.

The committee could find no fault in the action of the Registrar who, in her letter of November 11, 1997, proposed to refuse the issuance of a licence to Mr. Apon. It considered that the facts known to her at the time certainly justified that action.

However, in considering all of the circumstances, the committee directed that the Registrar give due consideration to the reinstatement of Mr. Apon as a professional engineer, such reinstatement to be conditional upon the following:

1. **The prior satisfactory completion of the Professional Practice Examination.**
2. **The payment of the \$1,000 costs awarded to the association as set out in the Consent Judgment.**
3. **Decision and Reasons of the committee are to be published in *Gazette* with names.**

The committee also emphasized that the continued registration of Mr. Apon, and the validity of his Certificate of Authorization, would be contingent upon the payment of the associated fees on their due dates.

Dated at Toronto this 11th day of November, 1998

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

For and on behalf of the committee:

William Fredenburg, P.Eng.
June Hannah, SMP
Oscar Zanatta, P.Eng.

Council approves designation and redesignation of Consulting Engineers

At the 383rd meeting of Council held February 18-19, 1999, 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."

Designation of a consulting engineer is for a period of five years; at the end of that time, the member must be redesignated for a further five-year period in order to maintain his or her designation. Anyone wishing further information on the consulting engineers program may contact James Lamont, Department of Professional Affairs, at (416) 224-1100 or (800) 339-3716.

Newly designated Consulting Engineers

Kenneth Hugh Davis, P.Eng.
Reinders Consultants Ltd.
Brampton, ON

Peter Frederick Irwin, P.Eng.
Giffels Associates Limited
Toronto, ON

Robbie Maurice Philippe Larocque, P.Eng.
D.G. Biddle & Associates Limited
Oshawa, ON

John Martin Lorenowich, P.Eng.
JML Engineering Ltd.
Thunder Bay, ON

James Gordon McIntosh, P.Eng.
President
Carp, ON

Stephen Michael Schaefer, P.Eng.
Cosburn Patterson Mather Limited
Markham, ON

Yatindra Prasad Sinha, P.Eng.
Moon-Matz Ltd.
Mississauga, ON

M. Ross Slaughter, P.Eng.
Henderson, Paddon & Associates Limited
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Mark A. Sungaila, P.Eng.
Gartner Lee Limited
Markham, ON

Tony Tarsitano, P.Eng.
Integrated Management Solutions
Toronto, ON

Marc Joseph Trepanier, P.Eng.
Chevalier Engineering Associates Ltd.
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William Gerald Van Ryn, P.Eng.
C.C. Tatham & Associates Ltd.
Bracebridge, ON

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