



# Gazette

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## THE DEPARTMENT OF THE REGISTRAR, PEO

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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

### **Man-Woon Lai, P.Eng.**

a Member of the Association of Professional Engineers of Ontario, and

### **843812 Ontario Inc., operating as A & M Engineering**

a holder of a Certificate of Authorization.

BETWEEN:

The Association of Professional Engineers of Ontario and

Man-Woon Lai, P.Eng., and 843812 Ontario Inc., operating as  
A & M Engineering

## **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 August 26, 2002 to hear allegations of professional misconduct and incompetence against Man-Woon Lai, P. Eng., and 843812 Ontario Inc., operating as A & M Engineering.

Michael Royce, of Lenczner Slaght Royce Smith Griffin, appeared as legal counsel for PEO.

John V. Kranjc, of Leggat Baldwin Keesmaat & Dickson, appeared as legal counsel for Man-Woon Lai, P.Eng., and 843812 Ontario Inc.

Nancy Spies, of Stockwood Spies, appeared as independent legal counsel to the Discipline Panel.

The hearing arose as a result of the involvement of Man-Woon Lai and A & M Engineering in the preparation of structural plans for two new condominium buildings.

The allegations of professional misconduct set out in the Notice of Hearing and filed as an exhibit are as follows:

### **The allegations**

It was alleged that pursuant to the *Professional Engineers Act*, Man-Woon Lai, P.Eng. (hereinafter referred to as the "Lai") was guilty of incompetence, and that Lai and 843812 Ontario Inc., operating as A & M Engineering (hereinafter referred to as "A & M") were guilty of professional misconduct in that plans prepared for the structural aspects of two buildings at 1272 Ontario Street, in the City of Burlington, Ontario, and 1770 Main Street West, in the City of Hamilton, Ontario, did not comply with the Ontario Building Code (OBC), and contained significant errors and deficiencies that resulted in severe overstressing of some building components. A summary of the allegations is as follows:

1. Lai was at all material times a member of the Association of Professional Engineers of Ontario.
2. A & M was at all times the holder of a

Certificate of Authorization to offer and provide to the public services within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure that its employees, including Lai, carried on the practice of professional engineering in a proper and lawful manner. Lai was the professional engineer responsible for the services provided by A & M.

#### **Re: 1272 Ontario Street, Burlington**

3. Between 1998 and 1999, a 13-storey, reinforced concrete condominium building, known as The Maples (building), was constructed at 1272 Ontario Street in the City of Burlington, Ontario. The structural engineer of record was Lai and his company A & M. The building included two underground parking garage levels and 13 floors including a penthouse level.
4. The structural framing system for the building generally consisted of eight-inch one-way reinforced concrete slabs supported on five reinforced concrete bearing walls. Four of the bearing walls were supported at the ground floor level by reinforced concrete transfer girders, which in turn were supported on reinforced concrete columns. Spread footings supported the reinforced concrete columns, and strip footings supported the reinforced concrete walls.
5. Following a structural review of the building design by Carruthers & Wallace Limited (C & W) in April 2001, C & W advised the city of concerns with respect to shear stresses in the reinforced concrete transfer girders, and the design of the reinforced concrete columns, amongst others. On April 26, 2001, the city issued an Order to Remedy Unsafe Buildings (Order) with respect to the building. The Order indicated the building was structurally inadequate or faulty for the purpose for which it is used. The Order required that shoring be provided under the four transfer girders, and that a design solution be implemented within 90 days to address the structural inadequacy, and remove the unsafe condition.
6. It was alleged that Lai and A & M:
  - a) provided an unsafe structural design of a condominium building;
  - b) provided a building design that contained errors, and deficiencies, and that did not comply with the requirements of the OBC, examples of which include the following:
    - ◆ On the basis of the loads specified on the A & M drawings, the transfer girder on line 3 was overstressed in shear by approximately 11.5%, the transfer girders on lines 5 and 7 were overstressed in shear by approximately 85%, and the transfer girder on line 6 was overstressed in shear by approximately 25%.
    - ◆ On the basis of the loads specified on the A & M drawings, the 12 inch x 48 inch concrete columns reinforced with 10-25 vertical reinforcing bars were grossly under-reinforced as a result of the bending moments induced by the loading conditions. Column F6, which was specified to be 12 inch x 36 inch with 8-25 vertical reinforcing bars, was overstressed by approximately 88% in bearing and 154% in combined axial load and bending.
    - ◆ On the basis of the loads specified on the A & M drawings, the footings at columns G3, G5, G6 and G7 were grossly undersized with respect to the depth of the footing. While the average bearing pressure was about 50% of the specified design bearing pressure on the soil, the footings were overstressed in shear by approximately 80% to 140%, and in flexure by approximately 80% to 140%. The strip footing supporting the wall on line 6 from lines C to D was overstressed by approximately 100% in shear and 140% in flexure.
    - ◆ The typical floor utilized an eight-inch one-way concrete slab with spans up to 24 feet, 11 inches between walls. The negative reinforcement was generally deficient at lines 5 and 7 by 24%, at lines 4 and 8 by 29%, and at a 1500-mm-wide edge strip segment along lines C and G, the negative reinforcement at lines 5 and 7 was deficient by approximately 130%. The long-term creep of the slab will result in a deflection of approximately two inches and would exceed the OBC requirements by 100%.
    - ◆ The reinforcing of the penthouse floor slab supporting the roof slab and penthouse wall at grid line 8x was deficient by approximately 40%.

- ◆ The garage roof slab south of line C was overstressed in flexure by approximately 19% when subjected to the specified 12 kPa live load.
- ◆ The Codes and Standards referenced on drawing S2 were not in accordance with the current OBC, and were corrected by the Building Department on the Permit Issue drawings, but were not corrected on the As-Built drawings.
- c) failed to properly assess the lateral load on the building due to earthquake; and
- d) demonstrated a standard of care that was less than that reasonably expected of a licensed professional engineer.

#### **Re: 1770 Main Street West, Hamilton**

7. Early in 2001, construction began for a nine-storey reinforced concrete condominium building, known as Valley Park (building), at 1770 Main Street West in the city of Hamilton, Ontario. The structural engineer of record was Lai and his company A & M. The building included one basement level with an underground parking garage, and nine floors, with a partial penthouse.
8. The structural framing system for the building consisted of eight-inch, two-way reinforced concrete slabs supported on eight-inch reinforced concrete shear walls in both directions. The building was founded on a 24-inch thick reinforced concrete raft foundation slab, and the parking garage was founded on spread footings.
9. Following a structural review of the building design by Carruthers & Wallace Limited (C & W) in March 2001, C & W advised the city of concerns with respect to the structural design of the raft slab and the garage roof slab of the building. On April 3, 2001, the city placed a Stop Work Order on the building, and issued an Order to Comply to the contractor.
10. It was alleged that Lai and A & M:
  - a) provided a building design that contained errors, and deficiencies, and that did not comply with the requirements of the OBC, examples of which include the following:
    - ◆ The raft slab was under-reinforced in the east-west direction in both positive and negative flexural reinforce-

ment. While the amount of the under-design varied, in the worst case, 80% more positive reinforcement was required, and 38% more negative reinforcement was required.

- ◆ The raft slab was under-reinforced in the north-south direction in negative flexural reinforcement. While the amount of the under-design varied, in the worst case, approximately 300% more negative reinforcement was required.
  - ◆ The garage roof slab in the two-span condition was under-reinforced by up to 72% in negative moment and 29% in positive moment when subjected to the 12 kPa live load specified.
  - ◆ The garage roof slab in the two-span condition was overstressed in shear at the drop panel by up to 22% when subjected to the 12 kPa live load specified.
  - ◆ The garage roof slab in the three-span condition was under-reinforced by up to 15% when subjected to the 12 kPa live load specified.
  - ◆ The formula given on the A & M drawings for assessing the seismic force on the building had been removed from the building code with the issue of the OBC edition in 1990. The A & M drawing S2 indicated the seismic response factor “S” to be 1.0. In order to arrive at an “S” value of 1.0, the period of vibration of the building would have to be less than 0.25 seconds.
- b) failed to properly assess the lateral load on the building due to earthquake; and
- c) demonstrated a standard of care that was less than that reasonably expected of a licensed professional engineer.

**11. By reason of the aforesaid, it is alleged that Lai is guilty of incompetence as defined in Section 28(3) and Lai and A&M are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.**

**12. “Incompetence” is defined in Section 28(3)(a) as: “The member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judge-**

**ment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer”.**

13. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:

- ◆ **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;**
- ◆ **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)(d): failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;**
- ◆ **Section 72(2)(g): breach of the Act or regulation, other than an action that is solely a breach of the code of ethics;**
- ◆ **Section 72(2)(h): undertaking work the practitioner is not competent to perform by virtue of the practitioner’s training and experience; and**
- ◆ **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.**

## Resignation and Undertaking

Counsel for PEO advised the Panel that, prior to the hearing, Lai had asked PEO, through his counsel, whether PEO would accept his resignation in lieu of proceeding with a discipline hearing to consider the

allegations in the Notice of Hearing. Lai is 63 years old. PEO counsel advised that in 2001, Lai and A & M had been found guilty at a Discipline Hearing of professional misconduct and had received a six-month suspension as a result of defects in the structural design of a building in Dundas, Ontario. It was PEO’s position that, if the matter proceeded and a finding of professional misconduct and/or incompetence were made, PEO would seek to revoke Lai’s licence. In that event, however, the Act provides that Lai could apply for reinstatement after two years. The *Professional Engineers Act* provides that a member cannot avoid a discipline hearing by resigning.

Accordingly, the PEO requested that Lai not only resign, but undertake not to engage in the practice of professional engineering again directly or indirectly, which, from PEO’s perspective, provided for a more severe penalty than PEO could otherwise hope to obtain if the allegations were proven. This ensured that PEO’s primary interest of protecting the public was met.

Counsel for PEO then filed the Resignation and Undertaking, dated August 26, 2002, executed by Lai, which provides as follows:

1. I, Man-Woon Lai, P.Eng., hereby resign as a member of the Association of Professional Engineers of Ontario and surrender my licence to engage in the practice of professional engineering issued under the *Professional Engineers Act*, R.S.O. 1990, c. P. 28.
2. I hereby undertake as follows:
  - a) I shall never again participate, directly or indirectly, in the practice of professional engineering nor hold myself out as engaging in the practice of professional engineering anywhere in Canada or the United States of America;
  - b) I shall return immediately to the registrar of the APEO my stamp and certificate as a professional engineer;
  - c) I shall take all steps necessary to terminate and close the Certificate of Authorization (“C of A”) of 843812 Ontario Inc. operating as A & M Engineering, including returning immediately to the registrar my C of A certificate; and
  - d) I shall never again apply for licensing as a professional engineer anywhere

in Canada or the United States of America.

3. I acknowledge that I have been provided with independent legal advice as to the nature and consequences of this Resignation and Undertaking and have signed this Resignation and Undertaking of my own free will and with full knowledge as to its nature and consequences.

Counsel for Lai confirmed the submissions of PEO counsel. Both counsels requested that the Panel accept the Resignation and Undertaking of Lai and authorize PEO to withdraw the allegations in the Notice of Hearing. Counsel for PEO advised that an order of the Discipline Panel was required, because once a matter is referred by the Complaints Committee to the Discipline Committee, the *Professional Engineers Act* provides that the Discipline Committee shall conduct a hearing.

The Panel received advice from its independent legal counsel that pursuant to section 4.1 of the *Statutory Powers Procedure Act*, the Panel had the jurisdiction to authorize the withdrawal of the allegations without a hearing, given the consent of the parties.

Counsel for both parties also advised the Panel that, by agreement, the Panel's decision should be published with names, including a summary of the allegations.

The chair of the Panel questioned Lai and was satisfied that Lai's decision to resign and give the undertaking was voluntary, informed and unequivocal.

## Decision

**The Panel considered the Resignation and Undertaking submitted by Lai and the submissions by the respective counsel and decided as follows:**

- ◆ to accept the written Resignation and Undertaking that Lai has provided this Panel (Exhibit 3) dated August 26, 2002;
- ◆ to grant leave to PEO to withdraw the allegations against Lai and A & M as set out in the Notice of Hearing;
- ◆ to have its decision with reasons, including the Resignation and Undertaking agreement and a summary of the allegations, published with names in PEO's official publications.

## Reasons for penalty decision

PEO would have sought a revocation of Lai's licence if the allegations had been proven. However, the Act provided that he could apply to PEO for reinstatement of his licence after two years.

In agreeing to the Resignation and Undertaking, PEO's position is strengthened as the best possible outcome for protecting the public interest, because it exceeds the maximum penalty that could have been given to Lai. Specifically, in addition to licence revocation, Lai is prevented from practising professional engineering directly or indirectly ever again.

The Panel believed that for these reasons, the manner in which both counsel for PEO and Lai propose to deal with this matter is reasonable and in the public interest. Dated at Toronto this 12th day of September, 2002.

Maximus Perera, P.Eng. (Chair)

For and on behalf of the Panel of the Discipline Committee

Gina Cody, P.Eng.  
Roydon Fraser, P.Eng.  
Santosh Gupta, P.Eng.  
William Walker, P.Eng.

## Enforcement Activity

### The Association of Professional Engineers of Ontario versus Robin Scott Rice

This report chronicles the results of legal proceedings brought under the *Professional Engineers Act* against Robin Scott Rice of Maple, Ontario, for misrepresenting himself as a professional engineer. The Act allows the association to move in two jurisdictions against persons or entities who violate the *Professional Engineers Act*. The association views Robin Rice's misrepresentations to be of a very serious nature, which resulted in the proceedings listed below.

Rice is not, nor has he ever been, licensed as a professional engineer in Ontario.

**March 7, 2002:** An application under Section 39 of the *Professional Engineers Act* was heard in the Ontario Superior Court of Justice before the Honourable Mr. Justice Gans. PEO brought the application after receiving information that Rice had misrepresented himself as a professional engineer on employment applications and in subsequent interviews with prospective employers in the Vaughan and Pickering areas.

Jennifer M. Chalykoff, of McCarthy Tétrault, represented PEO on the uncontested application.

After reviewing the affidavit evidence, the Honourable Mr. Justice Gans declared that Rice had breached several sections of the *Professional Engineers Act* in his use of the term "professional engineer" and the abbreviated title "P.Eng."

In addition, Rice was ordered to:

- ◆ refrain from engaging in or holding himself out as engaging in the business of providing to the public in Ontario services that are within the practice of professional engineering;
- ◆ refrain from using the terms "professional engineer", "P.Eng." or any abbreviation or variation thereof, as an occupational or business designation in Ontario;
- ◆ refrain from using, by any medium, the term "engineer" or any variation or abbreviation thereof that will lead to the belief that he provides to the public services within the practice of professional engineering; and
- ◆ pay costs in the amount of \$1,500.

**April 9, 2002:** At a trial in the Richmond Hill Provincial Court before his Worship Julius Dogbe, Robin Scott Rice was convicted of three breaches of the *Professional Engineers Act* and was fined \$56,250 (including a victim's surcharge of \$11,250) for misrepresenting himself as a professional engineer.

The association was represented by Dana M. Peebles and Jennifer M. Chalykoff, of McCarthy Tétrault. The Court heard

from two prospective employers from Concord, Ontario, who specialized in the civil contracting field, each of whom hired Rice on separate occasions after he had misrepresented himself as a professional engineer on employment applications and in subsequent interviews.

He was eventually terminated from each position when errors were found in his work.

**April 22, 2002:** At a trial in the Whitby Provincial Court before his Worship R.G. Harris, Robin Scott Rice was convicted of three breaches of the *Professional Engineers Act* and was fined \$56,250 (including a victim's surcharge of \$11,250) for misrepresenting himself as a professional engineer.

The association was represented by Jennifer M. Chalykoff, of McCarthy Tétrault. The Court heard from a former employer, a civil contractor from the Pickering area, who hired Rice

after he had misrepresented himself as a professional engineer on an employment application and in subsequent interviews.

He was eventually terminated when errors were found in his work. 

### Note from the Department of Legal and Professional Affairs

Mr. Rice was not found to be practising professional engineering in these matters, but misled potential employers into believing that he was licensed as a professional engineer.

Robin Scott Rice is not the same person as Robert James Rice, P.Eng., a fully licensed professional engineer in the province of Ontario.

## NOTICE

We, as professional engineers, belong to an association that has as its principal objective under the ***Professional Engineers Act*** "to regulate the practice of professional engineering and to govern its members, holders of certificates of authorization, holders of temporary licences and holders of limited licences in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected."

To regulate the profession and to ensure that the public interest may be served and protected, the legislation instructs Council to establish and appoint a Discipline Committee. To fulfill its role, the Discipline Committee hears and determines allegations of professional misconduct or incompetence against a member of the association or a holder of a certificate of authorization, a temporary licence or a limited licence.

In carrying out its duties to protect the public interest, the committee must also be fair and just to any party that comes before it for a hearing. The committee must and does perform its work without any influence from Council or the Executive, much like the judiciary in our civil legal system. To promote fair, just and consistent hearings, the committee has developed and approved ***Rules of Procedure of the Discipline Committee of the Association of Professional Engineers of Ontario***. The Rules became effective on August 1, 2002.

To provide information and to assist any party facing a disciplinary hearing, the committee has also prepared a document titled ***Information Concerning Discipline Hearings at the Association of Professional Engineers of Ontario***.

Both the Rules and the Information document are printed on the following pages. The two publications can also be sourced from the Complaints, Investigations & Hearings section of the PEO website.

L. Brian Ross, P.Eng., Chair, Discipline Committee

# Information Concerning Discipline Hearings at the Association of Professional Engineers of Ontario

Issued: September 5, 2002

## Purpose of Disciplinary Proceedings

A discipline hearing into allegations of professional misconduct and/or incompetence made against a member of the Association of Professional Engineers of Ontario "PEO" or a holder of a Certificate of Authorization, a temporary licence or a limited licence ("holder") takes place before a panel of the Discipline Committee. The Discipline Committee is committed to serving and protecting the public interest in accordance with the *Professional Engineers Act*, R.S.O. 1990, c. P.28, as amended (the "Act"). The Discipline Committee is also committed to ensuring fairness to members and holders against whom allegations of professional misconduct and/or incompetence have been made.

In its role as adjudicator of allegations of professional misconduct and/or incompetence, Discipline Panels perform a quasi-judicial or judge-like function. Discipline Panels act as tribunals independent of PEO Council and PEO, which functions as the prosecutor in discipline hearings.

## Composition of Discipline Panels

Panels of Discipline Committee members are selected by the Chair of the Discipline Committee to hold a hearing into allegations of a member or holder's professional misconduct and/or incompetence. Allegations are referred to the Discipline Committee by either PEO's Council, Executive Committee or its Complaints Committee. Discipline Panels comprise five members of the Discipline Committee, one of whom has been appointed to Council by the Lieutenant Governor-in-Council, and one who has been elected to Council. The remaining members of a Discipline Panel are persons appointed to the Discipline Committee by Council from among

the members of PEO who have not less than 10 years' experience in the practice of professional engineering.

The Discipline Panel may seek legal advice from its independent legal counsel. Independent legal counsel does not participate in the deliberations of the Discipline Panel, when reaching its decision.

## Procedure for discipline hearings

The procedure for discipline hearings is governed by two provincial statutes, the Act and Regulation 941, and the more general *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, ("SPPA"). The Discipline Committee has established rules governing its discipline hearings ("Rules"). A copy of the Rules of the Discipline Committee are attached. In addition, common law rules known as the "principles of natural justice" govern discipline proceedings. In the professional discipline context, those rights entail that the member or holder who is alleged to have engaged in professional misconduct or to be incompetent has certain rights including:

- (i) the right to be notified of the hearing;
- (ii) the right to disclosure of information in the possession of PEO that may be relevant to the allegations of professional misconduct and/or incompetence, or to the penalty to be imposed by the Discipline Panel;
- (iii) the right to a properly conducted hearing;
- (iv) the right to be represented by counsel of his or her choice;
- (v) the right to be heard and to lead evidence;
- (vi) the right to cross-examine PEO witnesses as may be necessary for a full and fair disclosure of the facts;

- (vii) the right to present argument, and the right to have the case judged by unbiased members of the Discipline Committee; and
- (viii) the right to be informed of advice given to a Discipline Panel by its independent legal counsel.

## Disclosure

In accordance with Rule 2, both PEO and the member or holder have disclosure obligations. PEO has a very broad continuing obligation to disclose all relevant information, including the evidence of experts. In the case of the member or holder, evidence of an expert led by the member or holder is not admissible unless PEO is given at least 10 days' notice before the hearing of the identity of the expert, and a copy of the expert's written report, or, if there is no written report, a written summary of the evidence. A Discipline Panel may, in its discretion, allow the introduction of evidence that is otherwise inadmissible as a result of Rule 2 and make directions necessary to ensure that the opposing party is not prejudiced.

## Production of documents and evidence from third parties

As part of the member or holder's right to lead evidence, the member or holder can compel the attendance of witnesses by causing them to be served with summonses issued by the Chair of the Discipline Committee. The member or holder may also compel production of documents in the possession of third parties by causing them to be served with summonses in accordance with Rule 5. Requests for issuance of summonses should be directed to the Chair of the Discipline Committee.

## Standard of proof

PEO bears the burden of proving allegations of professional misconduct and/or incompetence. PEO must prove its case on a balance of probabilities, based on clear, cogent and convincing evidence that is accepted by the panel. It is accepted that the more serious the allegation, the more compelling the evidence must be in order to meet this standard.

## Order of proceeding

Because it bears the burden of proof, PEO presents its case first. The opening address of counsel for PEO is not evidence, but is an indication of what PEO counsel expects the evidence to be. In leading evidence from PEO's witnesses, PEO counsel is prohibited from asking leading questions (i.e. questions that suggest the answer sought) in relation to any disputed issues. At the conclusion of questions by PEO counsel, either the member or holder or his or her counsel may cross-examine the PEO witness. Following this, PEO counsel has a right to re-examine the witness on matters arising from the cross-examination, but is again prohibited from asking leading questions.

The members of the Discipline Panel may then ask questions of the witness. Following this, PEO counsel and the member or holder (or his or her counsel) have the right to ask questions arising out of the panel members' questions.

At the conclusion of PEO's case, the member or holder's counsel (or, if unrepresented, the member or holder) may choose to make an opening statement. (Alternatively, this may have been done after PEO's opening statement.) Following this, evidence may be led. The process is similar to what occurs during presentation of PEO's case, except that the roles are reversed: The member or holder's counsel (or, if unrepresented, the member or holder) must ask non-leading questions in relation to any matters in dispute, PEO counsel can cross-examine, the member or holder's counsel (or the member or holder, if unrepresented) may re-examine in relation to matters arising out of the cross-examination, and, in the event that the panel members ask any questions, both PEO counsel and the member or holder's counsel (or the member or holder) may ask questions arising out of the panel's questions.

To facilitate the orderly flow of proceedings, the Discipline Panel will require counsel for the parties (or, if unrepresented, the member or holder) to have available 10 copies of any exhibit(s) they wish to enter into evidence or of any authorities to which they refer.

At the conclusion of the member or holder's case, PEO may have reply evidence in relation to some matter(s) arising for the first time during the member or holder's case.

Once the evidence has been completed, the hearing process then moves to a stage known as final submissions. The order of proceeding is as follows: PEO counsel makes submissions on behalf of PEO, the member or holder's counsel (or if unrepresented, the member or holder) responds to those submissions, and PEO counsel may make reply submissions in relation to matters arising out of the submissions advanced by or on behalf of the member or holder.

At the conclusion of the submissions, the Discipline Panel commences deliberations as to whether any or all of the allegations against the member or holder have been proven. If, after deliberating, the panel finds that the member or holder has committed an act of professional misconduct and/or is incompetent, the Discipline Panel will proceed to conduct the penalty phase of the hearing. The penalty phase of the hearing proceeds much in the same way as the first part of the hearing and includes the ability of the parties to lead evidence and make submissions.

After reaching its decision, the Discipline Panel prepares written reasons, which provide a rationale for its decision.

In summary, the usual order of proceedings is as follows:

- ◆ opening remarks by Discipline Panel Chair;
- ◆ opening statement and introduction of Notice of Hearing by PEO counsel;
- ◆ presentation of evidence and witnesses by PEO counsel;
- ◆ cross-examination by counsel for the member or holder, or by the member or holder if unrepresented;
- ◆ re-examination by PEO counsel;
- ◆ questions from the Discipline Panel;
- ◆ opening statement by counsel for the member or holder, or by the member

or holder if unrepresented (unless made at the outset of the hearing);

- ◆ presentation of evidence and witnesses by counsel for the member or holder, or by the member or holder if unrepresented;
- ◆ cross-examination by PEO counsel;
- ◆ re-examination by counsel for the member or holder, or by the member or holder if unrepresented;
- ◆ questions from the Discipline Panel;
- ◆ final submissions by PEO counsel;
- ◆ final submissions by counsel for the member or holder, or by the member or holder if unrepresented;
- ◆ reply submissions by PEO counsel;
- ◆ advice from independent legal counsel to the Discipline Panel;
- ◆ questions from the Discipline Panel;
- ◆ deliberations by the Discipline Panel;
- ◆ delivery of decision by the Discipline Panel as to whether the allegations have been proven;
- ◆ submission as to penalty by PEO counsel if any or all of the allegations are proven;
- ◆ submission as to penalty by counsel for the member or holder, or by the member or holder if unrepresented;
- ◆ deliberations by the Discipline Panel;
- ◆ delivery of decision on penalty by the Discipline Panel.

## Admissions

In some cases, the member or holder may wish to agree to certain facts and/or admit certain allegations of professional misconduct and incompetence. In those circumstances, the member or holder's counsel (or, if unrepresented, the member or holder) may enter into an Agreed Statement of Facts with PEO.

The committee considers it essential to ensure that members of the profession who admit allegations of professional misconduct and/or incompetence do so voluntarily and unequivocally and understand the consequences of such admissions. To this end, the panel will ask the member or holder questions to ensure that this is so (see Rule 7). ◆

*Att. Rules of the Discipline Committee*

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# Rules of Procedure of the Discipline Committee of the Association of Professional Engineers of Ontario

(made under s. 25.1 of the *Statutory Powers Procedure Act*)

## Rule 1. Interpretation and Application of Rules

### 1.1 Definitions

In these Rules, unless the context requires otherwise:

“**Act**” means the *Professional Engineers Act*, R.S.O. 1990, c. P.28, as amended;

“**application for reinstatement**” means an application for reinstatement made under section 37 of the Act;

“**Committee**” means the Discipline Committee of the PEO;

“**Committee Chair**” means the Chair of the full committee;

“**Discipline Panel**” means a panel of committee members selected by the committee Chair to conduct a hearing or motion;

“**electronic**” with respect to a proceeding, means a proceeding held by telephone conference call, video conference, or some other form of electronic technology allowing persons to communicate with and hear one another;

“**hearing**” means the process before a Discipline Panel constituted under s. 28 of the Act that commences with the filing of a Notice of Hearing and the member of the association or a holder of a Certificate of Authorization, temporary licence or a limited licence being asked whether he or she admits or denies the allegations contained in the Notice of Hearing;

“**holder**” means a holder of a Certificate of Authorization, a temporary licence or a limited licence, who has been named in a Notice of Hearing;

“**member**” means a member of PEO who has been named in a Notice of Hearing;

“**motion**” is a request made to a Discipline Panel to make an order in a particular proceeding;

“**motion participant**” is a party and any other person who would be affected by the order sought;

“**Notice of Hearing**” means a document issued by PEO that contains one or more allegations of professional misconduct or incompetence against a member or holder;

“**parties**” means PEO and the member or holder;

“**PEO**” means the Association of Professional Engineers of Ontario;

“**Pre-Hearing Conference**” means a stage in discipline pro-

ceedings at which there may be a candid, without prejudice discussion of the strength of PEO’s case, the member or holder’s potential liability for being found guilty of professional misconduct and/or incompetence, procedural issues, and the potential narrowing of issues to be determined by the Discipline Panel assigned to conduct the hearing;

“**proceeding**” means a motion, hearing and/or application for reinstatement before a Discipline Panel; and

“**SPPA**” means the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended.

### 1.2 Application of Rules

The Rules apply to all proceedings referred to the Discipline Committee of PEO for hearing and determination, and take effect on August 1, 2002.

### 1.3 Interpretation of Rules

These Rules shall be liberally construed to secure a determination that is fair and just.

## Rule 2. Disclosure

2.1. PEO will make such timely disclosure to the member or holder, as is required by law, including:

- a) all relevant information (whether inculpatory or exculpatory) in PEO’s possession, unless it is privileged as a matter of law;
- b) in the case of written or documentary evidence, copies of the written or documentary evidence, or an opportunity to examine the evidence;
- c) in the case of evidence of an expert, at least 30 days before the hearing, the identity of the expert and a copy of the expert’s written report, or, if there is no written report, a written summary of the evidence.

2.2 The obligation on PEO to disclose is a continuing one. Consequently, after initial disclosure has been made, it is incumbent upon PEO to provide timely disclosure of information subsequently obtained and information previously considered irrelevant, but whose relevance has subsequently become apparent.

2.3 Evidence led by PEO is not admissible unless PEO has made timely disclosure as required by Rules 2.1 and 2.2.

- 2.4 Evidence of an expert led by a member or holder is not admissible unless the member or holder gives PEO, at least 10 days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence.
- 2.5 A Discipline Panel may, in its discretion, allow the introduction of evidence that is inadmissible under Rules 2.3 and 2.4 above, and may make directions it considers necessary to ensure that the opposing party is not prejudiced.

### Rule 3. Pre-Hearing Conferences

- 3.1 On request of either PEO or the member or holder, the committee Chair may direct that a pre-hearing conference be held.
- 3.2 A pre-hearing conference shall be presided over by a single member of the committee selected by the committee Chair.
- 3.3 During the course of a pre-hearing conference, the parties and the Chair of the pre-hearing may consider, on a without prejudice basis:
- a) the settlement of any or all of the issues to be brought before a Discipline Panel;
  - b) the simplification of the issues;
  - c) the facts or evidence that may be agreed upon;
  - d) the dates by which any steps in the proceeding are to be taken or begun;
  - e) the estimated duration of the hearing;
  - f) procedural and legal issues that might have to be resolved by the Discipline Panel; and
  - g) any other matter that may assist in the just and most expeditious disposition of the hearing.
- 3.4 The member of the committee who presides at a pre-hearing conference shall not be a member of the Discipline Panel assigned to the hearing, unless the parties consent.

### Rule 4. Procedural and Interlocutory Motions

- 4.1 A procedural or interlocutory motion may be brought before a Discipline Panel of one or three members of the committee, selected by the committee Chair pursuant to s. 4.2 of the *SPPA*, or at the discretion of the committee Chair or the Chair of the Discipline Panel, before a Discipline Panel of five members.
- 4.2 All procedural or interlocutory issues shall be raised in a motion as soon as possible and shall be heard on a day that is at least two weeks before the day upon which the hearing is scheduled to commence unless the nature of the motion requires that it be heard during the hearing itself.
- 4.3 A person bringing a procedural or interlocutory motion shall provide to the other motion participants, the Notice of

Motion and materials in support of the motion by the Tuesday that is at least 10 days before the motion is to be heard.

- 4.4 The other motion participants shall provide their materials to the person bringing the motion by the Tuesday that is at least three days before the motion is to be heard.
- 4.5 Where the parties consent, a Discipline Panel before which a procedural or interlocutory motion is brought may hold a written hearing of the motion in accordance with s. 5.1 of the *SPPA*.
- 4.6 Where a written hearing of the motion is held, the Discipline Panel shall fix the dates and times by which submissions and/or evidence shall be provided to the responding party and the Discipline Panel by the moving party, and provided to the moving party and the Discipline Panel by the responding party.
- 4.7 Where the parties consent, a Discipline Panel before which a procedural or interlocutory motion is brought may hold an electronic hearing of the motion in accordance with s. 5.2 of the *SPPA*.

### Rule 5. Production of Documents from Third Parties

- 5.1 A summons for the production of documents that are not in PEO's possession shall not require the production of any documents before the commencement of the hearing.
- 5.2 A motion relating to the production of documents from third parties by summons as described in Rule 4 shall not be heard until the commencement of the hearing.

### Rule 6. Electronic Hearings

- 6.1 Pursuant to s. 5.2 of the *SPPA*, a Discipline Panel may hold all or part of a hearing by telephone conference call, videoconference, or any other form of electronic communication, unless a party objects and satisfies the panel that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice. A party may not object to an electronic hearing where the only purpose of the hearing is to deal with procedural matters.
- 6.2 For the purposes of this rule, a hearing includes a pre-hearing conference, a motion, a discipline hearing, the rendering of an oral reprimand, and an application for reinstatement.
- 6.3 A party requesting an electronic hearing shall give notice of an electronic hearing and the Discipline panel shall provide an opportunity to the parties to make submissions on the issue.
- 6.4 The notice of an electronic hearing shall include:
- a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
  - b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;

- c) a statement that the party notified may, if the purpose of the hearing is to deal with matters other than procedure, by satisfying the Discipline Panel that holding an electronic hearing is likely to cause the party significant prejudice, require the Discipline Panel to hold the hearing as an oral hearing, and an indication of the procedure to be followed for the purpose; and
  - d) a statement that if the party notified neither acts under clause c), if applicable, nor participates in the hearing in accordance with the notice, the Discipline Panel may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.
- 6.5** Subject to Rule 6.1, where the purpose of the hearing is to deal with procedural matters or a pre-hearing conference, the electronic hearing shall proceed by way of telephone conference call, unless the panel orders otherwise.
- 6.6** Subject to Rule 6.1, where the purpose of the electronic hearing is to hear the evidence of a witness or to render an oral reprimand, the hearing shall proceed by way of videoconference, unless the parties consent, or the panel orders otherwise.
- 6.7** If all or part of a hearing is conducted by electronic means, all of the parties are entitled to receive every document that the Discipline Panel receives. For the purpose of this rule, a document includes a sound recording, videotape, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device.
- 6.8** Where it is not reasonably practical to produce a copy of a document (such as a photograph), the parties shall have a right of reasonable access to the document.
- 6.9** At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the parties of the telephone number and location where he or she can be reached for the proceeding.
- 6.10** Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number provided at least five minutes before the proceeding is scheduled to commence.
- 6.11** Every person participating in the electronic hearing shall deliver every document, in sequentially numbered pages, that he or she intends to rely upon, at least five days before the hearing.
- 6.12** Before an electronic hearing proceeds, PEO shall file with the Discipline Panel a consent to the electronic hearing executed by the member or holder. The consent shall include an acknowledgement that the member or holder understands that the member or holder may object to the hearing being held as a electronic hearing, if the purpose of the hearing is not procedural.

## Rule 7. Written Hearings

- 7.1** A Discipline Panel may hold all or part of a hearing in writing if it believes that it is just and equitable to do so, unless a party objects.
- 7.2** If all or part of a hearing is conducted in writing, all the parties are entitled to receive every document that the Discipline Panel receives. For the purpose of this rule, a document includes a sound recording, videotape, film, photograph, drawing, chart, graph, map and information recorded or stored by means of any device.
- 7.3** Before a hearing in writing proceeds, PEO shall file with the Discipline Panel:
- a) a consent to the written hearing executed by the member or holder. The consent shall include an acknowledgement that the member or holder understands that the member or holder may object to the hearing being held as a written hearing;
  - b) a statement executed by the member or holder confirming whether the member or holder admits or denies the allegations contained in the Notice of Hearing;
  - c) where the member or holder admits the allegations contained in the Notice of Hearing, a Plea Inquiry Questionnaire in the form of Schedule "A", executed by the member or holder; and
  - d) an Agreed Statement of Facts executed by the member or holder.
- 7.4** Submissions by counsel for the parties, or the member or holder (in the case of an unrepresented member or holder) as to whether the Discipline Panel ought to make a finding of professional misconduct and/or incompetence, may be made in writing or electronically as the parties agree and the Discipline Panel directs.
- 7.5** Submissions as to penalty (which may include a Joint Submission as to Penalty) by counsel for the parties, or the member or holder (in the case of an unrepresented member or holder) may be made in writing or electronically as the parties agree and the Discipline Panel directs.

## Schedule "A" to Rule 7 Written Hearings PLEA INQUIRY QUESTIONNAIRE

TO: \_\_\_\_\_

*Set out name of member or holder*

The Discipline Committee considers it essential to ensure that members or holders of the profession who admit allegations of professional misconduct and/or incompetence do so voluntarily and unequivocally and understand the consequences of such admissions.

You, the member or holder, have provided a Discipline Panel with a statement that you admit (an) allegation(s) of professional misconduct and/or incompetence. Before accepting your admission, the Discipline Panel asks that you answer the following questions, in order to ensure that your admission is voluntary, informed and unequivocal.

- |    |  |     |    |
|----|--|-----|----|
| 1. | Do you understand the nature of the allegation(s) that has (have) been made against you?   | Yes | No |
| 2. | Do you understand that by admitting the allegation(s), you are waiving the right to require the prosecution to prove the case against you and the right to have a hearing?   | Yes | No |
| 3. | Did you voluntarily decide to admit the allegation(s) against you?   | Yes | No |
| 4. | Do you understand that depending on the penalty ordered by the Discipline Panel, that a summary of the agreed facts and the penalty order may be published in the <i>Gazette</i> , including reference to your name? | Yes | No |
| 5. | Do you understand that any agreement between counsel for the association and you with respect to the penalty proposed does not bind the Discipline Panel?  | Yes | No |

Date: \_\_\_\_\_  
*(To be signed by the member or holder)*

## Rule 8. Withdrawal of Allegations

**8.1** Where the parties consent, a Discipline Panel of one or three members of the committee constituted by the committee Chair under s. 4.2 of the SPPA may make an order authorizing PEO to withdraw the allegations contained in a Notice of Hearing.

## Rule 9. Reinstatement Applications

**9.1** This Rule applies to applications for reinstatement made under Section 37 of the Act.

**9.2** A person making an application for reinstatement (“applicant”) shall deliver a notice of the application, specifying the order sought, the grounds of the application, the documentary and oral evidence that the applicant will introduce, and the anticipated length of the hearing.

**9.3** The committee Chair shall not schedule a reinstatement application for a hearing until the applicant complies with Rule 9.2.

**9.4** After receiving notice of the application, PEO will make timely disclosure to the applicant in accordance with Rule 2. 

## Discipline Committee Members

### LGA Appointees

Nick Monsour, P.Eng.  
 Maximus Perera, P.Eng.  
 Derek L. Wilson, P.Eng.

### Councillors

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 Roydon Fraser, P.Eng.  
 Monique Frize, P.Eng.  
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 Colin T. Moore, P.Eng.  
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 Bill A. Rutherford, P.Eng.  
 Ken Serdula, P.Eng.  
 David W. Smith, P.Eng.  
 Tom G. Smith, P.Eng.  
 Albert Sweetnam, P.Eng.  
 Don Turner, P.Eng.  
 Bill Walker, P.Eng.  
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