

Gazette

THE DEPARTMENT OF THE REGISTRAR, PEO

Published by
the Association of
Professional Engineers
of Ontario

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Certificate of Authorization: Do you need one?

Are you self-employed?

Do you do engineering work for someone other than your employer?

If you answered yes to either of these questions, you may need a Certificate of Authorization. The Certificate of Authorization (C of A), issued by PEO, is a licence that permits you to offer and provide engineering services to the public. The public in this case is considered to be any person or corporation with whom you have an arm's-length relationship. This may be a corporate client, a level of government, or an individual.

Are you offering or providing your services to the public?

A C of A is required if you:

- ◆ "hang out your shingle" as a professional engineer, advertise or promote yourself, either personally or through a legal entity, such as a company or partnership;
- ◆ provide engineering services to the public through the sale of a product that is custom-

designed or an original (as opposed to an off-the-shelf product);

◆ are a full-time employee, but offer engineering services directly to the public on a part-time, moonlighting, or volunteer basis.

Under these circumstances, you should also, as a matter of professional courtesy, inform your employer that you are undertaking such work, to avoid potential conflicts of interest. As well, you should provide your client with a written statement noting your status as an employee and the attendant limitations on your services to the client.

What about contract employees?

Many members have sought advice as to whether a contract employee must hold a C of A. The answer is generally no, although determining whether you are a contract employee or an independent contractor is

sometimes difficult. In most cases, you do not require a C of A if:

- ◆ you work exclusively for one firm;
- ◆ you have set working hours;
- ◆ payment is in the form of salary or hourly wages;
- ◆ expenses are reimbursed;
- ◆ vacation pay is provided;
- ◆ you work at the firm's place of business, using its equipment;
- ◆ your work is covered under the firm's professional liability policy; and
- ◆ your employment contract addresses nondisclosure, ability to control work hours and time off, expectations related to performance, notice and termination.

If your situation meets some of these conditions, but not all of them, you should contact us to discuss whether you need a C of A.

Members should note that a C of A is required no matter what the size of the client or project, or how often the ser-

vices are provided. It is also important to know that a C of A is required to offer engineering services. Obtaining a C of A (or retaining a C of A holder) after you've secured a contract is not sufficient.

Are the services you provide professional engineering?

The definition of the practice of professional engineering is:
◆ any act of designing, composing, evaluating, advising, reporting, directing or super-

vising;

◆ wherein the safeguarding of life, health, property or the public welfare is concerned; and
◆ that requires the application of engineering principles, but does not include practising as a natural scientist.

If your work meets all three criteria, it is professional engineering.

Requirements to obtain and hold a C of A

A C of A may be issued to indi-

viduals, partnerships or corporations. In each case, a professional engineer with at least five years of engineering experience must agree to take responsibility for the engineering works of the C of A holder. The C of A applicant must indicate the area of practice in which services are offered, and the designated engineer must provide a detailed résumé outlining his or her education and/or experience in the area of practice. C of A holders must carry professional liability insurance, or make a mandatory, written dis-

closure to their clients that they do not carry such coverage.

If you have questions about the C of A, or would like an application form, please contact: Laurie Macdonald, P.Eng., director, professional affairs, or Angela Gallant, C of A program coordinator, at:

PEO, 25 Sheppard Ave. W.
Suite 1000
Toronto, ON
M2N 6S9
Tel: (416) 224-1100 or
(800) 339-3716
Fax: (416) 224-8168 or
(800) 268-0496.

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 Discipline Committee Order against

Nunzio J. Pinelli, P.Eng., and Pinelli Engineering Services Port Colborne Ltd.

made under Section 28 of the Professional Engineers Act

Decision and Reasons

A panel of the Discipline Committee of the association reconvened by teleconference on September 17, 1999, to consider extending the terms of an Order against Nunzio J. Pinelli, P.Eng., and Pinelli Engineering Services Port Colborne Ltd., hereinafter referred to as "Pinelli" and "Pinelli Engineering," respectively. The panel included all of its original members, except for the late Nick Volf, P.Eng.

The panel reconvened at the request of Pinelli, who, on July 19, 1999, wrote the association requesting a one-year extension to the conditions imposed by the panel in its February 3, 1998 Order.

Pinelli explained in his letter to the association that he had been unable to fulfill the conditions of the original order in their entirety because of personal, financial and business reasons.

By way of a second letter dated September 13, 1999, Pinelli indicated that, if an extension were granted, he would immediately pay outstanding costs, and complete the ordered confirmatory and professional practice examinations by the spring 2000 sitting.

The panel also considered a September 9, 1999 report from the registrar, prepared at the request of the panel, summarizing the status of Pinelli's compliance with the conditions of the February 3, 1998 Order.

Having considered the facts, the panel found that, although Pinelli had not satisfied many of the substantive conditions stipulated in the February 3, 1998 Order, there were sufficient grounds to grant an extension. **The panel ordered that:**

1. The time for completing the examinations referred to in item 1(a) of the original Order be

extended to no later than June 30, 2000.

2. The time for paying costs to the association referred to in item 1(c) of the original Order be extended to no later than October 31, 1999.

3. The time for completing a practice review and quality assurance plan for PESL referred to in item 3 of the original Order be extended to no later than June 30, 2000.

4. That item 6 of the original Order be amended to read: "That in the event that these items are not completed by

June 30, 2000, Pinelli's licence and Pinelli Engineering's Certificate of Authorization shall be revoked."

5. That the amended Decision and Reasons be published with names in *Gazette*, the association's official publication.

Dated at Toronto this 21st day of September 1999

David Brezer, P.Eng. (Chair)

For and on behalf of the committee:

Boris Boyko, P.Eng.

Cameron Mirza, P.Eng.

John Wilkes, P.Eng.

Note from Department of Legal and Professional Affairs

The previous Decision and Reasons of the Discipline Committee for the case involving Nunzio J. Pinelli, P.Eng., and Pinelli Engineering Services Port Colborne Ltd., dated February 3, 1998, was published in the July/August 1998 issue of *Gazette* (see "Nunzio J. Pinelli, P.Eng., Decision and Reasons," pp. 1-12).

Council approves new professional practice guidelines

At its September 23-24 meeting, PEO Council approved for publication two guidelines prepared by the Professional Practice Committee.

The Guideline for Professional Engineers Providing Reports as Required by Regulation 450/97 Amending Sections 7 & 8 of Regulations for Industrial Establishments, Regulation 851 of the Ontario Occupational Health And Safety Act had been in development since 1987. It was developed in response to changes to Regulation 851 under the *Occupational Health and Safety Act* (OHSA), which give engineers outside of the Ministry of Labour new responsibilities for safety reviews for plans for installing or altering certain hazardous equipment in industry. For-

merly called "predevelopment review" in earlier drafts of the guideline, a safety review is a design review of plans, drawings and specifications to confirm compliance with the OHSA and Regulations.

Safety reviews are required for construction, development, reconstruction, or alteration of, or installation in, a factory, involving any equipment, machine or device that is:

- ◆ used in a process that uses or produces a designated substance, or a substance that is hazardous because of its toxicity, flammability, temperature, pressure or other property; or
- ◆ required by the Regulations under the OHSA to have a shield, guard, operating control acting as a guard, or other device preventing access.

The guideline's purpose is to provide professional engineers undertaking safety reviews with guidance on the level of diligence, methodology and reporting recommended by PEO. The amended Regulation 851 specifies when a safety review is required.

A draft of the guideline was published in the March/April 1998 issue of *Gazette* for members' comment. The final guideline received extensive legal opinion and member review, prior to its approval by Council.

Also approved in September was the *Guideline for Professional Engineers Providing Professional Services in Building Projects Using Manufacturer-Designed Systems and Components*. It covers practices and responsibilities in

design, construction and general review of construction for building projects that fall within Part IV of the *Ontario Building Code* and that use manufacturer-designed building components. It was prepared in response to member inquiries for guidance on the use of manufacturer-designed systems and components, the use of which may be increasing as a result of today's trend toward performance-based requirements in building design.

Both guidelines are available on PEO's website at www.peo.on.ca (click on "Engineering Practice," then "Professional Guidelines," then the guideline title). Printed copies can be purchased by contacting PEO's publications desk. See publications order form on p. 4.

Association of Professional Engineers of Ontario versus

Mohammed A. Hafeez Enforcement Trial and Order

At a trial in the Provincial Offences Court, Old City Hall, Toronto, on June 16, 1998, before his Worship Robert Lewin, Mohammed A. Hafeez was found guilty of the following charge brought under the Professional Engineers Act:

That Mohammed A. Hafeez, on or about the month of July and August 1996 in Toronto, did commit the offence of using a term, title or description that would lead to the belief that a person may engage in the practice of professional engineering, not being the person who was a holder of a licence or a temporary licence, in soliciting renovation work from, and performing renovation work for, a resident of Toronto, contrary to the Professional Engineers Act R.S.O.

1990, Section 40 (2)(b).

The association was represented by Dana Peebles of McCarthy Tétrault. The defendant was not represented, nor did he attend at the court.

His Worship Robert Lewin convicted Hafeez after the owner of a residence in Toronto told the court that Hafeez referred to himself several times as "an engineer" while working on a renovation to the man's property. In addition, Hafeez handed the owner a business card that described him as a "structural engineer" and his company, Delta Engineering Construction, as "civil engineers." Mr. Peebles told the court that Hafeez had previously been convicted of an offence of a similar nature under the Professional Engineers Act on three previous occasions in April 1993, January 1996 and

March 1996, resulting in fines totaling \$60,000.

After hearing submissions with respect to sentencing, His Worship imposed a fine of \$25,000 against Mr. Hafeez, the maximum fine allowable for a repeat offence. In addition, he was placed on probation for one year and ordered to pay restitution in the amount of \$8,000 to his former client.

On July 15, 1998, the association brought a motion before the Ontario Court (General Division) for an Order to address Mr. Hafeez's contempt of an earlier Order of that court (see *Gazette*, January/February 1996, p. 2). A warrant for Mr. Hafeez's arrest was issued.

Mr. Hafeez was arrested in February 1999, and was released after being incarcerated for three days, only after pay-

ing costs to the association in the sum of \$3,250 and surrendering his business cards.

He was found in contempt by Madame Justice Lax and ordered to pay the restitution of \$8,000 to the homeowner, together with a further \$3,500 in costs to the association within a specified time frame.

These amounts were paid in full by June 1999.

Note from Department of Legal and Professional Affairs

The success of the above application and trial is due in no small part to the vigilance of local building departments in reporting their concerns to the association.

