

SUMMARY OF DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of a complaint regarding two members of the Association of Professional Engineers of Ontario, and a holder of a Certificate of Authorization.

In this matter, the panel of the Discipline Committee found, on the basis of an agreed statement of facts, that two members and a holder were guilty of negligence, as defined in section 72(2)(a) of Regulation 941 under the *Professional Engineers Act* and section 28(2)(b) of the act, in that they did not adequately discuss or address the impact of a motor vehicle accident on the structural wood framing of a house beyond the point of impact.

The parties made a joint submission as to penalty, which the panel considered. The panel determined that the joint penalty was not disproportionate to the offence in the circumstances, or was it contrary to the public interest and, otherwise, was appropriate. The panel, therefore, ordered that: one of the members and the holder was to be reprimanded and the fact of the reprimand will be recorded on the register for one year; the other member was to be reprimanded and the fact of the reprimand will not be recorded

on the register; it shall be a term and condition of the licences of the members and the Certificate of Authorization of the holder that they provide, to the satisfaction of the registrar, and within six months of the date of the hearing, a comprehensive policy statement from the holder and a separate guidance document for the holder's staff regarding the conduct, documentation and reporting of forensic engineering damage assessments and analyses; publication of a summary of the finding and order of the panel, however, the publication will not include the name or identifying details of the members and holder; and there shall be no order with respect to costs.

The written summary of the Decision and Reasons was signed by Ed Rohacek, P.Eng., on behalf of the discipline panel: Ishwar Bhatia, P.Eng., David Spacek, P.Eng., Ken Serdula, P.Eng., and Bill Walker, P.Eng.

PEO OBTAINS ORDER AGAINST ROBERT JONES

On May 12, 2011, PEO obtained an order under section 39 of the *Professional Engineers Act* in the Ontario Superior Court of Justice, Osgoode Hall, Toronto, Ontario, against Robert Jones of Guelph, ON.

PEO alleged in an application before the court that Jones had held himself out as being a professional engineer and had used the designation “P.Eng.” without being licensed by PEO.

Jones has never held a licence with PEO.

PEO brought the application after receiving information from a former employer who reported that Jones had misrepresented himself as a professional engineer to the employer and in subsequent business dealings with clients of the employer.

A PEO investigation revealed that these misrepresentations included informing clients in correspondence that “he has had the status of a P.Eng. for the last 20 years.”

After reviewing the affidavit evidence and hearing from Symon Zucker of the law firm of Danson & Zucker, counsel for PEO, the Hon. Mr. Justice Strathy issued a declaration that Jones had breached the *Professional Engineers Act* and ordered that Jones refrain from using the title “engineer,” “professional engineer” and “P.Eng.” or any abbreviations or variations as a business designation unless or until he obtains a licence from PEO.

Jones was also ordered to pay costs to PEO in the amount of \$5,000.

Eric Newton, PEO’s litigation manager, told *Engineering Dimensions* the investigation in this matter clearly revealed that Jones had led a member of the public and, on two separate occasions, clients of the member of the public into believing that he was a professional engineer.



PEO OBTAINS ORDER AGAINST BENABDALLAH COUCHAOU AND WINDSOR INDUSTRIAL DEVELOPMENT LABORATORY INC.

On May 30, 2011, PEO obtained an order under the *Professional Engineers Act* in the Ontario Superior Court of Justice, Osgoode Hall, Toronto, Ontario, against Benabdallah Chouchaoui (Chouchaoui) and his company Windsor Industrial Development Laboratory Inc. (Windsor) of Windsor, ON.

PEO alleged in an application before the court that Chouchaoui had held himself out as being a professional engineer and had used the designation “P.Eng.” without being licensed by PEO and that Windsor held itself out as an engineering firm without holding a Certificate of Authorization (C of A).

Chouchaoui has never held a licence and neither he nor Windsor has ever held a C of A with PEO.

PEO brought the application after receiving complaints from prospective clients, who reported that Chouchaoui had misrepresented himself as a professional engineer by using the term “P.Eng.” in promotional materials, which also described Windsor as an “engineering firm.”

After reviewing the affidavit evidence and hearing from Symon Zucker of the law firm of Danson & Zucker, counsel for PEO, and from Chouchaoui, the Hon. Mr. Justice Strathy ordered that Chouchaoui refrain from using the title “engineer,” “professional engineer” and “P.Eng.” or any abbreviations or variations as a business designation unless or until he obtains a licence from PEO.

Both Chouchaoui and Windsor were also ordered to refrain from offering or providing professional engineering services to the public, unless or until they obtain a C of A from PEO.

Chouchaoui and Windsor were also ordered to pay costs to PEO in the amount of \$6,000.

Eric Newton, PEO’s litigation manager, says the success of this prosecution was due in large part to the diligent reporting of the matter by the prospective clients and their ongoing co-operation throughout the investigation and subsequent legal proceedings.

ENFORCEMENT EXPLAINED

This Q & A column aims to educate members about some of the issues PEO faces in protecting the public against unlicensed individuals who engage in the practice of professional engineering, and in enforcing the title protection provisions of the *Professional Engineers Act*.

By Steven Haddock



Q. A friend has asked me to provide him with a report that he plans to use in a small claims court action. His legal agent has told him that his case will not succeed without something from a professional engineer saying the contractor didn't do the work properly. Can I prepare this report for him under these circumstances?

A. PEO has consistently held that this sort of work falls clearly within “the practice of professional engineering” and engineers performing such work must meet all the necessary licensure and authorization requirements. This applies not only

to the initial report, but also to any appearance as a witness at trial. As such, in addition to your licence, you will need to hold a Certificate of Authorization. This requirement also applies to any work in relation to a case before a provincial administrative tribunal.

PEO's first direct experience with this issue was in 2003 when a defendant in a case in Hamilton objected to the use of an engineer licensed elsewhere to support the plaintiff's argument that the roadway where an accident occurred was improperly designed. The court ruled that under the rule in the Supreme Court of Canada case *R. v. Mohan*, a person giving opinions within the practice of professional engineering who isn't licensed in Ontario is not “properly qualified” and that person's expert opinion evidence is inadmissible.

In a PEO discipline case in 2009, the divisional court also supported the need for a person giving expert opinion evidence in the field of engineering to be a professional engineer, as the giving of such evidence is a part of the safeguarding of public welfare. In the words of the court: “An expert's report that is to be used in civil litigation is likely to affect the interests of the parties to the litigation and, therefore, the public welfare, whether it is used during mediation, settlement discussions or, finally, in a trial.”

Like any other work you may plan to undertake, giving an expert opinion for use in a court proceeding is something you shouldn't do unless you have the necessary education and experience to do so. Like any other field of engineering, forensic engineering requires much practical experience and changes to the field come quickly. For example, Ontario's Superior Court of Justice addressed their concerns about the quality and impartiality of expert testimony in 2008 by adding Rule 4.1 to the Ontario Rules of Civil Procedure, which outlines the duties of an expert, and amending Rule 53.03, concerning the content of expert reports.

In addition, before you undertake such work, you should remember that:

- if your regular area of practice is not directly connected to the particular issue in the litigation, it is unlikely it will be helpful to the court;
- any report delivered for use in litigation has to be delivered under seal, and will eventually have to be disclosed to the opposing party;
- the time demands of even minor litigation can be overwhelming, including tight deadlines for completion of work and numerous uncontrollable delays;
- although you cannot be sued by the opposing party for anything you say in court, you can be subject to a lawsuit by your own client if your work appears to have been negligently performed; and
- the work you perform for a lawsuit may still form the basis for a complaint of negligence or professional misconduct to PEO.

PEO's own policy with respect to expert witnesses for discipline matters requires that they at least hold a Certificate of Authorization. We reject out of hand anyone who doesn't hold a Certificate of Authorization or have experience testifying.

Please report any person or company you suspect is violating the act. Call the PEO enforcement hotline at 416-224-9528, ext. 1444 or 800-339-3716, ext. 1444. Or email your questions or concerns to enforcement@peo.on.ca.

