

## DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the conduct of STUART E. CARTER, P.ENG., a member of the Association of Professional Engineers of Ontario, and QUINTE-ECO CONSULTANTS INC., a holder of a Certificate of Authorization.

The matter came on for hearing before a panel of the Discipline Committee on December 2 and 3, 2008, at the Association of Professional Engineers of Ontario in Toronto. The association was represented by Neil J. Perrier. Stuart E. Carter, P.Eng., and Quinte-Eco Consultants Inc., were represented by Bruce McMeekin. David P. Jacobs acted as independent legal counsel (ILC).

### THE ALLEGATIONS

Counsel for the association filed a Statement of Allegations against the accused, Stuart E. Carter, P.Eng. (member or Stuart Carter), and the holder of a Certificate of Authorization (C of A), Quinte-Eco Consultants Inc. (QEC or the holder). The Statement of Allegations was signed by the chair, Complaints Committee of the Association of Professional Engineers of Ontario (PEO or association) and dated April 4, 2008.

It is alleged that Stuart Carter and QEC are guilty of professional misconduct, the particulars of which are as follows:

1. Stuart Carter was, at all material times, a member of the Association of Professional Engineers of Ontario.
2. QEC was, at all material times, the holder of a C of A to offer and provide to the public services that are 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 Stuart Carter and Ronald E. Carter (Ronald Carter), carried on the practice of professional engineering in a proper and lawful manner.
3. At all material times, Stuart Carter was vice president of QEC and was one of the professional engineers responsible for the services provided by QEC. On its applications for C of A renewal in 2005 and 2006, under the heading “Description of Business Operations” (including professional services provided and major areas of engineering activity), QEC listed the following: Environmental Audits: Phase I, Phase II; Certificates of Approval Application Process; NPRI (Reg. 127–National Pollutant Release Inventory); Septic System Design; Air & Noise Monitoring; Water and Waste Monitoring; Water Reg. 170/03 Assistance; Mould Sampling.
4. At all material times, Ronald Carter (Stuart Carter’s father) was president of QEC.
5. James Sinclair (Sinclair) was the owner of a property in Belleville, Ontario, that was the site of a former Union Carbide Canada manufacturing facility that had a known history with respect to possible PCB contamination. Sinclair was planning to have the property rezoned from industrial to residential.
6. In or prior to 2005, Sinclair retained QEC to represent him with respect to dealings with the Ministry of the Environment (MOE) in relation to the subject property.

7. On August 8, 2007, at the courthouse in Belleville, Ontario, QEC and its president, Ronald Carter, were found guilty of three counts of providing false or misleading information to MOE officials in relation to the Sinclair property as follows:
- (a) On or about November 23, 2005, at the City of Belleville, Ronald Carter and QEC verbally gave false or misleading information to Jim Martherus, a provincial officer with MOE, contrary to section 184(2) of the *Environmental Protection Act* (EPA), thereby committing an offence under section 186(1) of the said act;
  - (b) On or about January 20, 2006, at the City of Peterborough and elsewhere in the province of Ontario, Ronald Carter and QEC verbally gave false or misleading information to Jim Martherus, a provincial officer with MOE, contrary to section 184(2) of the EPA, thereby committing an offence under section 186(1) of the said act;
  - (c) On or about February 21, 2006, at Prince Edward County, Ronald Carter and QEC verbally gave false or misleading information to Clint King, a provincial officer with MOE, contrary to section 184(2) of the EPA, thereby committing an offence under section 186(1) of the said act.
8. As a result of the conviction, QEC was fined \$70,000. Ronald Carter was fined \$14,000 and was subject to a probation order stating that he must "...not engage directly or indirectly in the business of environmental consulting, including the taking of samples, the interpretation thereof and/or the reporting thereupon, whether as a 'qualified person' for the purposes of O.Reg. 153/04 in satisfaction of requirements of orders issued by environmental or conservation authorities, for the purposes of advice to clients or otherwise."
9. Ronald Carter and QEC appealed the convictions and sentence referenced in paragraphs 7 and 8 above. On February 14, 2008, the Honourable Mr. Justice S.J. Hunter upheld the convictions on counts #1 and #3 [referenced in paragraph 7(a) and (c)]. Justice Hunter dismissed the conviction on count #2 [paragraph 7(b)]. Justice Hunter decreased the totality of

the fines to \$25,000 for QEC, and to \$5,000 for Ronald Carter personally.

10. It is alleged that Stuart Carter:
- (a) failed in his duty to provide a reasonable and prudent level of supervision and/or direction to the work of QEC in relation to the Sinclair property;
  - (b) failed to make reasonable provision for the safeguarding of life, health or property of those affected by the Sinclair property;
  - (c) failed to make responsible provision for QEC complying with the EPA;
  - (d) allowed QEC to place the interests of Sinclair ahead of the public welfare;
  - (e) permitted Ronald Carter to engage in the practice of professional engineering contrary to the *Professional Engineers Act*; and
  - (f) acted in a disgraceful, dishonourable and unprofessional manner.
11. It is alleged that QEC:
- (a) has been convicted of two offences, each of which is relevant to its suitability to be involved in the practice of professional engineering; and
  - (b) acted in a disgraceful, dishonourable and/or unprofessional manner.
12. It is alleged that QEC is guilty of professional misconduct as defined in section 28(2)(a) of the *Professional Engineers Act*.
13. It is further alleged that Stuart Carter and QEC are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

#### PLEA

Stuart Carter denied the allegations with respect to himself. He admitted guilt on behalf of the firm to the allegations against QEC.

The panel conducted a plea inquiry of the holder and was satisfied the admission was voluntary, informed and unequivocal.

#### OVERVIEW

In the 1940s, Union Carbide Canada constructed a plant at 621 Dundas St. East in Belleville. The plant was sold in 1976 and the new owners continued its operation, producing phenol resins and formaldehyde for use in wood products production. It was

known as the Bakelite property and continued to be identified as such after the plant was shut down and closed in 1992.

The plant was located near the rail line along the north of the property. The property, approximately 50 acres, extended south to the Bay of Quinte on Lake Ontario. There were lagoons for wastewater treatment, a pond and marshlands between the plant and the lake, within the property. A soil and groundwater investigation for final confirmation of environmental quality of soil and groundwater was carried out by Shaheen and Peaker Limited. The study had been commissioned by Bakelite Thermoset Limited, the owner, and the report dated September 28, 1999 indicated the presence of poly-chlorinated biphenols (PCBs) at some locations on the property.

The property was purchased by Sinclair in 2003, whose stated intent was to change the land use and pursue residential development on the property. QEC was retained by Sinclair to assist in resolving some of the environmental concerns. Soil and groundwater samples were taken from various locations over time starting in April 2005, with analysis of these being carried out at an independent, accredited laboratory. Concurrent with the time in question regarding QEC, the owner had moved material and altered drainage on the property, causing concern for regulators and charges being laid against the owner by the Department of Fisheries and Oceans Canada, the Moira River Conservation Authority and MOE.

## EVIDENCE

Association counsel filed a Joint Document Brief, indicating no other evidence was to be called. The basis of the complaint was the conviction of Ronald Carter and QEC. Stuart Carter was the responsible engineer under section 47(1) of Regulation 941 of the *Professional Engineers Act*, and had signed the applications for renewal of the C of A for QEC. Association counsel indicated there was no evidence to suggest that Stuart Carter was complicit with Ronald Carter's actions that resulted in conviction. The allegations against Stuart Carter relate to omission rather than commission, but he should have acted more responsibly.

Counsel for the member indicated that clauses 1 through 9 of the Statement of Allegations could be accepted as a Statement of Agreed Facts, but that clause nine should be corrected to indicate the totality of the fines was \$45,000 and \$9,000, respectively.

In summary, the Joint Document Brief contained:

1. the conviction record and probation order, as well as transcripts of the reasons for judgment and sentence related to clauses 7 and 8 of the allegations;
2. transcript of the judgment on appeal, clause 9; and
3. applications for renewal of the C of A for the holder in 2004, 2005 and 2006.

The brief also contained the relevant sections of the EPA and a copy of the reasons for judgment on charges laid against the owner by the Department of Fisheries and Oceans Canada, and the Moira River Conservation Authority.

The member gave evidence, through which the panel received:

- a summary of his work experience and training with industry and the holder;
- a site plan of the property;
- the Shaheen and Peaker report, September 28, 1999, commissioned by the previous owner;
- the sampling results for QEC samples from April 1, 2005 to February 2, 2006;
- copies of the MOE order (December 14, 2005) and the fisheries and oceans direction (January 12, 2006) issued to the owner relating to other work on the property;
- the QEC sampling summary report for the site dated February 6, 2006; and
- the MOE report, January 12, 2006, on sampling conducted November 23, 2005.

The evidence showed that Ronald Carter had worked at the Bakelite plant for 22 years and had progressed from maintenance responsibilities to director of environmental affairs, responsible for environmental matters for all of the firm's North American plants. Following the plant closure, he established Quinte-Eco Consultants, a small environmental firm specializing in environmental assessment and remediation, in 1993. As president, he was extensively involved in marketing, with sampling, analysis and report writing delegated to others. He was described as the operating mind and he approved and signed the reports that were generated. Stuart Carter joined the firm on a part-time basis in 1995 as a technical associate and was appointed vice president in 2005.

The member graduated in chemical engineering in 1989 and was licensed as a professional engineer in

1991. He completed his MBA in 2001 and continues as an advisor in the program. Since 1989, he has been employed on a full-time basis with another company working at a number of sites in eastern Ontario. His responsibilities with this company evolved from process engineering through operations management to human resource management in 2004. He has extensive training particularly related to hazardous materials and emergency response. He participates and shares responsibility for the firm's emergency response team, which can respond to the firm's needs throughout Canada or the needs of others in eastern Ontario. His employer was aware of his work with QEC and allowed his use of vacation credits to attend to work during regular hours.

The member testified Ronald Carter was well known and respected in the community. His reputation and contacts were instrumental in establishing and growing QEC. At the time in question, there were eight employees. Ronald Carter had suffered humiliation as a result of the conviction. The workload of QEC had diminished to the extent that the current staff complement was reduced to one full-time employee and three part-time technicians.

Employees of QEC were typically graduates of university or college in environmental sciences. Work was assigned by the project manager based on the skills required, and a log setting out the progress of each project was maintained. The staff carried out field work and analysis, and drafted the reports. The member, the only professional engineer with the holder, monitored the progress of work through the log and responded to staff questions and needs on a weekly basis. Reports were subject to peer review by another member of staff before being reviewed and cleared by the member for signature. Typically, the member spent four hours per week on weekends and evenings on work with the holder and most of his contact was through Ronald Carter.

Prior to November 23, 2005, 16 samples had been collected by QEC, and two taken April 1, 2005 and November 8, 2005 had indicated a presence of PCBs of 0.706 ppm and 0.46 ppm, respectively. The uncontested evidence by the member was that the tolerable limit for industrial land is 25 ppm, residential is 5 ppm and aquatic areas is 0.07 ppm; however, subject to the method detection limits, there is zero tolerance for PCBs migrating off property and affecting water quality. The finding of the justice of the peace, upheld on appeal, was that these results had not been included in sampling summary reports provided to MOE provincial

officers on two occasions, namely November 23, 2005 and February 21, 2006. The finding, based in large part on the credibility of witnesses, refuted allegations that the presence of PCBs on the property was non-detectable. The trial court transcript confirmed by the member was that a QEC staff person had assisted in compiling Table #1, the summary of laboratory results and sampling locations for the February 6, 2006 report. The member indicated that he was aware of the sampling results, but not aware that they had been excluded from information provided until he received a copy of the February 6, 2006 report approximately a week after the February 2 occurrence.

The member testified that he had not reviewed and signed off on the February 6, 2006 report, and it should not have been issued. It was unusual for Ronald Carter to issue reports and his work did not show up on the work log; thus, the report had not been subject to peer review or the member's approval. Remedial measures have been effected to capture all work through the log and have all information reviewed by the member before it is released to a regulatory authority or the public. Under cross-examination, the member agreed that there were deficiencies with the report. The scope of work had been omitted, the table summarizing sample results did not include all results and, without limitation, the report did not satisfy the stated purpose of identifying potential environmental concerns with regard to PCBs. The member testified that he was of the opinion MOE was told and understood there were PCBs present on the site, but that he did not realize the significance placed on the February 6, 2006 report until MOE laid charges in August 2006. Neither the member nor the holder took steps to remedy the deficiencies of the report and correct the information that was in the public domain.

In his closing submission, association counsel accepted that the onus to demonstrate and prove the allegations was the association's responsibility. To this extent, the level of proof was a balance of probabilities based on clear and cogent evidence. He referenced the Bernstein precedent as articulating properly the standard of proof.

The holder had pleaded guilty and the agreed facts in clauses 1 through 9 of the allegations supported allegation 11(a) and 12. The burden of proof for the strict liability offences under the EPA is beyond a reasonable doubt. The crown had alleged risk to human health, the environment and future owners

of the property, and the judge accepted there was a potential harm and that PCBs remain a concern for our environment. The February 6, 2006 report was found to be misleading by the courts and was a detriment to the credibility of the defence. These facts supported the allegation of disgraceful, dishonourable and unprofessional conduct as alleged in 11(b).

Association counsel argued that the evidence supported the allegations against the member. His part-time involvement after normal working hours allowed little or no direct contact with the staff. He took no action to correct the inaccurate information contained in the report of February 6, 2006. The report should have been reviewed and ought to have been corrected before release. This constituted a failure to provide a reasonable and prudent level of supervision as alleged in 10(a). Association counsel stated that, regardless of what MOE knew or ought to have known, information provided could have been used by others. The transcripts of the court decisions supported the allegations 10(b) through 10(e). He asserted that omission is as bad as commission and that the totality of evidence supported a finding of all three as alleged in 10(f).

The member's counsel argued that the court transcripts referenced submissions by the crown; however, there was no evidence called to attest to environmental harm or the potential for harm and no evidence on environmental impact to the bay. There was no evidence before the panel to support allegations 10(b) and 10(d).

The presence of PCBs on the property had been documented previously; thus, it was considered general knowledge that was known by the ministry. The member was not present at the meetings that occurred November 23, 2005 and February 21, 2006. He was aware of the sampling results, but was unaware that they were conveyed and/or interpreted inappropriately until a week after the second meeting.

The member accepted that he has a duty to be responsible for the holder's work under the C of A. A procedure to discharge that responsibility was in place and had worked satisfactorily for over 10 years. He had trust in the established process and respect for the integrity of the people involved. He had taken steps to avoid further occurrences of reports being generated and information released outside the process once he became aware. The member's counsel argued the actions of the member were what one might reasonably expect of a professional engineer in discharging his responsibilities under the C of A.

ILC affirmed the onus to prove the allegations was with the association and the panel was bound to make findings on the basis of the allegations and evidence presented. In response to a question of the chair as to the distinction between disgraceful, dishonourable and unprofessional behaviour, the opinion accepted by all three counsel was that disgraceful behaviour was the most severe and would be applicable to a situation where information was misleading, was known to be misleading, remained uncorrected and could result in harm to the public or property.

## DECISION

The panel accepts the plea and finds QEC guilty of misconduct under section 28(2)(a) of the *Professional Engineers Act*, as alleged in allegation 12, and acted in a disgraceful, dishonest and unprofessional manner, as cited in allegation 11.

The panel accepts that the QEC report of February 6, 2006 was prepared without the direction of Stuart Carter and outside the process established within the firm to make him aware of such a report so that he could properly supervise; however, he did not satisfactorily exercise appropriate supervision or direction by failing to take complete and appropriate corrective action after such a report came to his attention. On this basis, PEO allegation 10(a) was satisfied.

The burden of proof to support allegations 10(b) and 10(c) was not satisfied. Stuart Carter is acquitted of these charges.

There was no probative evidence to support allegations 10(d) and 10(e). Stuart Carter is acquitted of these charges.

The conduct that satisfied allegation 10(a) was unprofessional; thus, satisfying allegation 10(f), but did not satisfy criteria to find Stuart Carter guilty of disgraceful or dishonourable conduct.

As a result, Stuart Carter and QEC are found guilty of professional misconduct pursuant to section 28(2)(b) of the *Professional Engineers Act* by virtue of contravening section 72(2)(j) of Regulation 941 (unprofessional conduct).

## REASONS FOR DECISION

The panel accepted that the guilty plea and agreed facts indicating the holder had contravened section 184(2); thus committing an offence under section 186(1) of the EPA was relevant to the holder's suitability to practise. Accordingly,

the holder was guilty of misconduct under section 28(2)(a) of the *Professional Engineers Act*. The firm had competent staff who generated misleading information and could have initiated corrective measures. All involved had a public duty to be responsible. The panel considered that this constituted disgraceful, dishonourable and unprofessional conduct contravening section 72(2)(j), Regulation 941, R.S.O. 1990, and was professional misconduct under section 28(2)(b) of the *Professional Engineers Act*.

The panel was of the opinion that the responsible engineer under the C of A must be in a position to discharge this responsibility effectively. The limited time spent in direct supervision may have impaired the member's ability. The responsible engineer needs to be in a position to control the outcome regardless of personal or professional respect of others. The report generated did not meet the expected standard and was, subsequently, determined as misleading. As the responsible engineer, the member had a duty, but did not effect corrective measures. The evidence on events preceding the February 6, 2006 report did not support a finding of guilt; however, the member's omission to correct the deficiencies was unprofessional.

The panel accepted that the results of samples by the holder showed relatively low concentrations of PCBs within tolerable limits for industrial and residential property. There was no evidence to suggest that the results applied to waterways. The burden of proof to satisfy allegations 10(b) and 10(c) was not satisfied.

There was no evidence in the court transcripts to support allegations 10(d) and 10(e). The member was not complicit with the actions resulting in conviction and was unaware until after the fact.

### PENALTY SUBMISSIONS

Association counsel requested time to seek specific instructions on penalty from the association. In the interest of fairness to all, the panel agreed. The parties agreed to exchange written submissions and a schedule for these to be submitted to the panel through the tribunal office. The panel deliberated and rendered a decision on penalty on January 21, 2009.

Association counsel submitted that he was instructed to seek the following order on penalty:

- (a) revocation of the holder's certificate of registration; and

- (b) revocation of the member's licence or, in the alternative, a suspension of the licence for a period of six to nine months.

Counsel indicated the member's and holder's position was that the order be:

1. a verbal reprimand for the member or, in the alternative, a reprimand and a 30-day suspension; such suspension to be suspended upon the member successfully completing appropriate association courses in the near future;
2. publication of the decision without the member being named; and
3. a 24-month suspension of the holder's C of A; such suspension being suspended should Ronald Carter divest any and all interests in Quinte-Eco Consultants by May 2, 2009.

Association counsel submitted, and the member's counsel agreed, that it was the duty and responsibility of the association to regulate the profession "in order that the public interest may be served and protected." The principles relevant to penalty were:

- (a) protection of the public;
- (b) maintenance of the reputation of the profession in the eyes of the public;
- (c) the objective of general deterrence;
- (d) the objective of specific deterrence; and
- (e) rehabilitation of the offender.

In applying these principles, it is appropriate to consider the nature of the misconduct, the risk or potential risk to the public, and mitigating or aggravating circumstances, or lack thereof.

Association counsel argued that the facts underlying the convictions and findings of misconduct in respect to the holder are serious and had the potential of causing harm to the public and the environment. The root of the convictions was a lack of honesty and integrity in communications with MOE. Only revocation would fulfill the relevant principles. The profession needs to know that acts of dishonesty on serious matters will not be tolerated and revocation is necessary to maintain public confidence in self-regulation by the profession.

The association was most concerned with the member's failure to take any steps to notify MOE about his stated concerns regarding the February 6, 2006 report.

It was submitted that, when the member became aware of the report and its deficiencies, he had a positive duty as a responsible engineer to advise MOE of his concerns regarding accuracy. It is necessary that the engineer's duty to the public take precedence over any other feelings of duty or loyalty to employers or family. Failure to take steps to alert MOE that the report falsely represented that all of the sampling results were provided, but in fact failed to include results that indicated the presence of PCBs, was a serious dereliction of the engineer's responsibility to the public.

The member's counsel argued that confusion had existed as to whether MOE's interest applied to the whole parcel or was distinct to the excavated marshland sediments and the migration of contaminants into the bay. It was not until MOE laid charges in August 2006 that the member understood the circumstances and realized the report had been misleading. The samples detecting PCBs were well within regulating triggers and no PCBs were detected in any samples taken of the excavated marshland sediment. The charges and evidence before the trial court did not include the escape of PCB-laden sediments into the Bay of Quinte and, thus, there was no foundation for the member to be concerned that a potential for environmental harm existed.

It was further submitted that the probation period for Ronald Carter is set to expire May 2, 2009. The holder's business has dropped off dramatically. The holder has effected changes and reinforced procedures so that the likelihood of there being a repeat of the circumstances leading to the convictions is extremely remote. The holder has no previous record of professional misconduct and admitted guilt to the two charges brought by the association. These are mitigating factors in assessing penalty, with the guilt plea reflecting remorse. Ronald Carter is considering resigning and severing all ties with the holder. The holder admits that the allegations to which it admitted guilt are serious, meriting revocation; however, with the circumstances set out above, a lengthy period of suspension would address all the requirements of sentencing.

The member has been a licensed professional engineer for almost 20 years with no prior history of misconduct. He was remorseful in his testimony and accepted his responsibility for the acts of the holder and its employees. He agreed, in retrospect, that he should have corrected the report provided to MOE. A reprimand would obtain the objectives of general

and specific deterrence. He has progressed in industry and has been recognized for his performance and professionalism. While his work in industry was never an issue, his current employment may be compromised by the outcome of this proceeding and publication would increase this risk. Revocation, or a lengthy suspension, would only serve to punish the member. In view of the circumstances, rehabilitation should be a lesser concern; however, the alternative course work suggested would be appropriate, if deemed necessary.

ILC affirmed the principles relevant to findings of misconduct. The principles are of equal importance. The penalty should be commensurate with the seriousness of the offence. Revocation is the most serious penalty and applies to the most grievous acts of misconduct or a pattern of repeat offences. In response to a question of the panel, ILC clarified the options available to the panel under sections 28(4)(i) and 28(5) of the act, which apply to the publication of names as a result of orders the panel may issue.

### **PENALTY DECISION**

**The panel considered the submissions and makes the following order as to penalty:**

- 1. the holder's certificate of registration shall be revoked;**
- 2. the member shall be issued a verbal reprimand; and**
- 3. the Decision and Reasons shall be published, with names, in the association's official publication.**

### **REASONS FOR PENALTY DECISION**

The panel accepted that the facts underlying the misconduct were serious and concerning. The holder had been convicted on two counts of providing false and misleading information to MOE officials and had admitted guilt to the allegations before the panel. The panel deemed the licence to provide engineering services to the public is a privilege and all members of the holder share in the responsibility to maintain the integrity of the licence. While the unblemished record and admission of guilt were mitigating factors, the panel deemed the lack of respect for the responsibilities implicit in the licence was a serious aggravating factor. The provisions of the licence are paramount in ensuring the public is protected and the interests of the public and the profession are served. The admission

of guilt and the seriousness of the offences deemed disgraceful, dishonourable and unprofessional merited revocation of the licence.

The member had a full appreciation and accepted his responsibilities under the holder's C of A. He was respectful and contrite in providing evidence. He had effected measures to remedy shortcomings in a process designed to allow him to discharge his duties as a responsible engineer and accepted, in retrospect, he should have taken further steps to correct information on public record. He demonstrated a willingness to take courses as rehabilitation; however, the panel deemed this unnecessary in view of the order with respect to the holder. The finding was limited to unprofessional conduct. A verbal reprimand was appropriate and the fact on record would mitigate the possibility for reoccurrence.

The panel accepted that the member's activities and conduct with his regular employer were not an issue in this proceeding. The agreement allowing the member to attend to the needs of the holder was not an issue. The circumstances did not relate to the firm or its

values and there was no need for the member's regular employer to be identified. The panel was concerned that this proceeding could negatively affect the member's regular employment, but this concern should not influence the decision on penalty by the panel.

Section 28(5) of the act requires that the holder's name be published as a result of this order. The member was the sole professional engineer with the holder. While publishing the member's name could be cause for personal embarrassment, disclosure would demonstrate openness and transparency in regulating the profession as required by the public. Publishing the Decision and Reasons would serve as a general deterrence for other members of the profession who may be involved or contemplate involvement in similar circumstances.

The written Decision and Reasons were signed by Ken Lopez, P.Eng., on March 12, 2009, as chair on behalf of the other members of the discipline panel: James Lee, P.Eng., David Robinson, P.Eng., Virendra Sahni, P.Eng., and David Spacek, P.Eng.

## PEO OBTAINS ORDER AGAINST TORONTO MAN AND HIS COMPANY

On Friday, August 7, 2009, PEO obtained an order against Frank Bellini, requiring that he refrain from engaging in the practice of professional engineering and that both he and his company, ARCA Design Inc. (ARCA), refrain from providing professional engineering services to the public and, further, that they refrain from using an engineering seal.

A PEO investigation revealed that Bellini and ARCA had provided engineering drawings and documents to a contractor and the local building department that purported to bear the engineering seals and signatures of two professional engineers, in support of a renovation project to a shoe store in the Ottawa area. The order was obtained under the *Professional Engineers Act* in the Ontario Superior Court of Justice in Toronto. Bellini and ARCA were also ordered to pay costs to PEO in the amount of \$3,000.

Bellini has never held a licence to practise professional engineering and neither he nor ARCA have ever held a Certificate of Authorization (C of A) in Ontario.

Under the *Professional Engineers Act*, only individuals who are licensed by PEO may engage in the practice of professional engineering. Further, only

those individuals or entities who hold a C of A from PEO may offer or provide professional engineering services to the Ontario public.

The order was sought after a complaint was received by PEO from two professional engineers who reported that copies of their engineering seals and signatures were placed on electrical and mechanical engineering drawings filed with the local building department in connection with a renovation to an Ottawa-area shoe store without their knowledge or consent. The subsequent investigation resulted in PEO obtaining the order.

After reviewing the affidavit evidence filed in support of the application, the Honourable Mr. Justice Stinson found that both Bellini and ARCA had breached several sections of the *Professional Engineers Act* and ordered that they refrain from engaging in the practice of professional engineering and from holding themselves out as engaging in the business of providing to the public in Ontario services that are within the practice of professional engineering, and from using an engineering seal, unless Bellini obtains a licence and both obtain a C of A from PEO.