

SUMMARY OF 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 NIDHAL NAAMI, P.ENG., a member of the Association of Professional Engineers of Ontario, and ORION PACIFIC ENGINEERING INC., a holder of a Certificate of Authorization.

This matter came to a hearing before a panel of the Discipline Committee on March 17, 2015, and June 16, 2015. The Association of Professional Engineers of Ontario was represented by Leah Price. The member (Naami) and the holder (Orion Pacific Engineering Inc.) were represented by Harpeet Khukh. David Jacobs provided independent legal advice to the panel.

The parties entered into an Agreed Statement of Facts and the member and the holder admitted the allegations of professional misconduct set out in the Agreed Statement of Facts.

The member was the president of Orion Pacific Engineering Inc. (the holder), an engineering firm that held a Certificate of Authorization under the *Professional Engineers Act*. The member was the responsible professional in the application for the Certificate of Authorization.

The member and the holder entered into an agreement with a client to provide engineering services for modifications to an existing building. The assignment included development of conceptual plans to convert the existing structure into a two-storey office building, preparation of detailed engineering plans bearing a professional engineer's seal for the approved concept, preparation of short-form specifications for the work, preparation of the required submission to the Town of Caledon for a building permit, making application on behalf of the client for the building permit, expediting the processing of the building permit application, and provision of field review services during construction.

The member and the holder submitted a package of documents to the town on behalf of their client.

The town responded, identifying approximately 22 deficiencies that needed to be addressed in order to issue a building permit for the project.

The client subsequently made numerous attempts to communicate with the member and the holder, in order to address the concerns raised by the town and seek updates. The member and the holder either did not respond to inquiries or responded but failed to carry out their promises. The member eventually provided a "full revised set of architectural drawings" to the client as an attachment to an email. The client requested that the revised drawings be submitted to the town, but the member and the holder failed to do so. No revised drawings were ever submitted to the town by the member or the holder. The revised drawings did not bear any revision notations or dates and did not address a number of the deficiencies listed in the town's original response to the building permit application.

Thereafter, following further unsuccessful attempts to have the member and the holder provide the required materials to the town, the client formally terminated the retainer and requested that the member and holder provide the client with CAD files that had been created by them, so that the client could move forward with the project. These requested materials were not provided.

It was agreed that the drawings and the work carried out by the member and the holder fell below the expected standard of practice for engineering work of this type, and consequently, that the member and the holder were guilty of professional misconduct.

The panel found that the facts supported findings of professional misconduct and, in particular, found that the member and the holder were guilty of professional misconduct as alleged in the Agreed Statement of Facts in that:

- (a) They provided deficient professional engineering services in respect of an addition to an office building as detailed above, amounting to negligence and professional misconduct as defined by section 72(2)(a) of Regulation 941;
- (b) They failed to make responsible provision for complying with applicable statutes, regulations, standards, codes, bylaws and rules in connection with professional engineering services in respect of the design of an addition to an office building, as detailed above, amounting to professional misconduct as defined by section 72(2)(d) of Regulation 941;
- (c) They engaged in conduct through their work and dealings in providing professional engineering services that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional as defined by section 72(2)(j) of Regulation 941, as detailed above and, in particular, as follows:
 - by failing to respond to their client's multiple requests for communications, updates and action in respect of obtaining a building permit,
 - by failing to take the necessary steps to rectify the deficiencies in the design drawings they had prepared,
 - by failing to submit revised drawings to the town,
 - by failing to provide their client with the soft files specified by the retainer, which they had prepared on the client's behalf and that were required in order to permit the client to retain other service providers to complete the work left incomplete by Naami, and
 - by acting in a negligent manner in providing deficient structural engineering design services to their client.
- (a) Pursuant to s. 28(4) (f) of the *Professional Engineers Act*, the member and the holder shall be reprimanded, and the fact of the reprimand shall be recorded on the register for a period of six months;
- (b) The finding and order of the Discipline Committee shall be published in summary form under s. 28(4)(i) of the *Professional Engineers Act*, with reference to names;
- (c) Pursuant to s. 28(4)(d) of the *Professional Engineers Act*, it shall be a term or condition on the member's licence that he shall, within eighteen (18) months of the date of pronouncement of the decision of the Discipline Committee, successfully complete the Professional Practice Examination (PPE);
- (d) Pursuant to s. 28(4)(b) and (k) of the *Professional Engineers Act*, in the event that the member does not successfully complete the PPE within the time set out in (c) above, his licence shall be suspended for a period of six (6) months thereafter, or until he successfully completes the PPE, whichever comes first; and
- (e) There shall be no order as to costs.

The parties waived appeal rights and a written reprimand was imposed with the release of the Decision and Reasons.

This summary of the Decision and Reasons was signed by William Walker, P.Eng., as chair of this discipline panel and on behalf of the other members of the discipline panel: Bruce Clarida, P.Eng., Charles Kidd, P.Eng., Sharon Reid, C.Tech., and Santosh Gupta, P.Eng.

The parties agreed on a Joint Submission as to Penalty and Costs. The panel accepted that the proposed penalty in the joint submission was reasonable and in the public interest, and the panel accordingly ordered:

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.

FORMER PROFESSIONAL ENGINEER FINED \$10,000 FOR USING PROFESSIONAL ENGINEER'S SEAL

On December 3, 2015, Michael Martin Cook of Belleville, Ontario, was fined \$10,000 for continuing to use a professional engineer's seal while no longer licensed or acting under a Certificate of Authorization.

Cook was convicted on four counts of breaching the *Professional Engineers Act*. The counts pertained to using a professional engineer's seal on a technical document and signing a Commitment to General Review by an Engineer. These documents were submitted to the Ottawa Building Department in support of a building permit application for a large covered structure for storing recycling waste.

Licensed by Professional Engineers Ontario (PEO) in 1981, Cook's licence and Certificate of Authorization were suspended in 2012 as a result of a Discipline Committee hearing and order. His licence was revoked in 2014 when he failed to pass specific technical examinations required by the order. Cook surrendered his seal to PEO in late 2014.

However, he had made a duplicate seal, which was used on the documents in question.

The matter came to PEO's attention when a building official checked Cook's licensure status after receiving documents bearing his seal and signature.

His Worship Justice of the Peace Jacques Desjardins, of the Ontario Court of Justice in Ottawa, levied a fine of \$10,000. Justice of the Peace Desjardins acknowledged the significant risk posed to the public by unlicensed practitioners. Upon conviction, the court further imposed a 25 per cent victim fine surcharge as required by the *Provincial Offences Act*. The surcharge is credited to a special provincial government fund to assist victims of crime.

Representing PEO in this matter was Nick Hambleton, associate counsel, regulatory compliance.

PEO thanks the Ottawa Building Department and the owner of the project in question for their co-operation with its investigation. The success of this enforcement effort was possible due to the diligence of a PEO member in immediately reporting unlicensed practice.

FORMER ENGINEERING FIRM ORDERED TO STOP USING TERMS "ENGINEERING" AND "ENGINEER," PRINCIPAL NOT TO CALL HIMSELF AN "ENGINEER"

On January 11, 2016, PEO obtained an order against Emmanuel de Guzman and Falcon Group International Inc. requiring that they cease holding themselves out as being qualified to practise professional engineering contrary to the *Professional Engineers Act*.

Emmanuel de Guzman, Falcon Group's principal, has never been licensed as a professional engineer.

Professional Engineers Ontario (PEO) granted a Certificate of Authorization (C of A) to Falcon Group in March 2011. PEO revoked Falcon Group's C of A in December 2014 after receiving reports that de Guzman had held himself out as a professional engineer and applied a professional engineer's seal bearing his own name.

An enforcement investigation led to an application being brought under section 39 of the *Professional Engineers Act* before the Honourable David G. Stinson of the Ontario Superior Court of Justice at Toronto. Witnesses attested that their employers contracted Falcon Group to provide

engineering services while under the belief that de Guzman was a duly licensed professional engineer. While Falcon was a C of A holder at the time of the events in question, it had continued to hold itself out as a professional engineering company after the revocation of its C of A.

After considering the evidence, Justice Stinson ordered de Guzman to refrain from using the titles "professional engineer," "P.Eng." and "engineer," and not to use a professional engineer's seal. Falcon Group was further ordered to refrain from using the words "engineer," "engineering," or any other term, title or description that will lead to the belief that it may provide professional engineering services to the public. PEO was awarded \$6,600 for its costs of applying to the court for the order.

Under the *Professional Engineers Act*, only individuals who are licensed by PEO may use the titles "P.Eng.," "professional engineer" and "engineer." Further, only those holding a C of A from PEO may offer or provide professional engineering services to the public.

Nick Hambleton, associate counsel, regulatory compliance, represented PEO on the application.

The success of the above application is due in no small part to the vigilance of members of PEO and the Ontario Association of Architects in reporting their concerns.



PUBLICATIONS ORDER FORM

	\$	No.	Total
The Professional Engineers Act, R.S.O. 1990, Chapter P.28	N/C		
Ontario Regulation 941/90.....	N/C		
Ontario Regulation 260/08.....	N/C		
By-law No. 1	N/C		
Practice Guidelines			
Acting as Contract Employees (2001).....	10.00		
Acting as Independent Contractors (2001)	10.00		
Acting Under the Drainage Act (1988).....	10.00		
Acoustical Engineering Services in Land-Use Planning (1998).....	10.00		
Building Projects Using Manufacturer-Designed Systems & Components (1999)	10.00		
Commissioning Work in Buildings (1992).....	10.00		
Communications Services (1993).....	10.00		
Conducting a Practice Review (2014)	10.00		
Developing Software for Safety Critical Engineering Applications (2013).....	10.00		
Engineering Evaluation Reports for Drinking Water Systems (2014).....	10.00		
Engineering Services to Municipalities (1986)	10.00		
Environmental Site Assessment, Remediation & Management (1996)	10.00		
Forensic Engineering Investigations (2015).....			
General Review of Construction as Required by Ontario Building Code (2009).....	10.00		
Geotechnical Engineering Services (1993).....	10.00		
Guideline to Professional Engineering Practice (2012)	10.00		
Human Rights in Professional Practice (2009).....	10.00		
Land Development/Redevelopment Engineering Services (1994)	10.00		
Mechanical & Electrical Engineering Services in Buildings (1997).....	10.00		
Professional Engineer as an Expert Witness (2011).....	10.00		
Professional Engineering Practice (2012)			
Professional Engineer's Duty to Report (1991)	N/C		
Project Management Services (1991).....	10.00		
Reports for Pre-Start Health and Safety Reviews (2001).....	10.00		
Reports on Mineral Properties (2002).....	10.00		
Reviewing Work Prepared by Another Professional Engineer (2011).....	10.00		
Roads, Bridges & Associated Facilities (1995).....	10.00		
Services for Demolition of Buildings and other Structures (2011)	10.00		
Solid Waste Management (1993).....	10.00		
Structural Engineering Services in Buildings (1995)	10.00		
Temporary Works (1993)	10.00		
Transportation & Traffic Engineering (1994)	10.00		
Use of the Professional Engineer's Seal (2008)	10.00		
Using Software-Based Engineering Tools (2011).....	10.00		
Business Publications			
Agreement Between Prime Consultant & Sub-Consultant (1993) per package of 10	10.00		
Selection of Engineering Services (1998).....	10.00		
Use of Agreements Between Clients & Engineers (2000) (including sample agreement).....	10.00		

Fax to: 416-224-8168 or 800-268-0496
Phone: 416-224-1100 or 800-339-3716
Mail to: Professional Engineers Ontario
 40 Sheppard Ave. W., Suite 101
 Toronto, ON M2N 6K9
 Attn: Margaret Saldanha

Name _____
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(please list all numbers on card)	Expiry Date

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I have enclosed a cheque or money order made payable to Professional Engineers Ontario.

Membership # _____