

## Decision and Reasons

This matter came on for hearing before a panel of the Discipline Committee on June 17, 2003, at the Association of Professional Engineers of Ontario in Toronto. The association was represented by Michael Royce of Lenczner Slaght Royce Smith Griffin. Denis Bedard, P.Eng., was not present and was not represented by legal counsel.

### The Allegations

In the Notice of Hearing dated April 24, 2002, it is alleged that Denis G. Bedard, P.Eng. (“Bedard” or the “member”) is guilty of professional misconduct as defined in sections 28(2)(a) and 28(2)(b) of the *Professional Engineers Act*, R.S.O 1990, Chapter P.28 in that he:

- (a) prepared and recommended the awarding of contracts for engineering services with the intention of defrauding the Government of the Northwest Territories (“GNWT”) for personal gain;
- (b) abused the power of his position as the municipal planning engineer for the GNWT in order to commit fraud;
- (c) failed to declare a conflict of interest in that he was to financially benefit from the contracts he was preparing and recommending for award on behalf of the GNWT;
- (d) recommended the award of an engineering services contract to a company that he knew, or ought to have known, was not authorized to offer or provide professional engineering services to the public; and
- (e) was found guilty of criminal offences relevant to his suitability to practise professional engineering.

Section 28(2) of the *Professional Engineers Act* provides that:

(2) A member of the Association or a holder of a Certificate of Authorization,

In the matter of a discipline hearing under the Professional Engineers Act and in the matter of a complaint regarding the conduct of:

**Denis Bedard, P.Eng.**

a member of the Association of Professional Engineers of Ontario.

a temporary licence or a limited licence may be found guilty of professional misconduct by the committee if,

- (a) the member or holder has been found guilty of an offence relevant to suitability to practise, upon proof of such conviction;
- (b) the member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the Regulations.

The sections of Regulation 941 made under the said Act and relevant to the alleged professional misconduct are:

- (a) *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;
- (b) *Section 72(2)(d)*: failure to make reasonable 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 a practitioner;
- (c) *Section 72(2)(g)*: breach of the Act or Regulations, other than an action that is solely a breach of the Code of Ethics;

(d) *Section 72(2)(i)*: failure to make prompt, voluntary and complete dis-

closure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client and, in particular, without limiting the generality of the foregoing, carrying out any of the following acts without making such a prior disclosure:

1. accepting compensation in any form for a particular service from more than one party,
  2. participating in the supply of material or equipment to be used by the employer or client of the practitioner,
  3. contracting in the practitioner's own right to perform professional engineering services for other than the practitioner's employer,
  4. expressing opinions or making statements concerning matters within the practice of professional engineering of public interest where the opinions or statements are inspired or paid for by other interests;
- (e) *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; and
- (f) *Section 72(2)(m)*: meeting, counselling or assisting a person who is

not a practitioner to engage in the practice of professional engineering except as provided for in the Act or in the Regulations. R.R.O. 1990, Reg. 941, s.72.

### Plea by the Member

Because neither Bedard nor counsel representing him was present, the chair directed that a plea of not guilty be entered on Bedard's behalf, and the hearing proceeded as a contested hearing.

### Overview

The hearing arose as a result of an investigation in 1997 into alleged irregularities involving certain activities of Bedard, who was the municipal planning engineer in the Fort Simpson area office of the Department of the Ministry of Municipal and Community Affairs ("MMCA") of the Government of the Northwest Territories ("GNWT"). Bedard was at all material times a member of the Association of Professional Engineers of Ontario.

As a result of the GNWT investigation, criminal charges were laid against Bedard. He was committed to trial in the Supreme Court of the Northwest Territories on five counts. On November 17, 2000, he was found guilty on two counts and sentenced to two 15-month conditional sentences to be served concurrently.

### Evidence

Michael Royce, counsel for the association, entered into evidence an Agreed Statement of Facts from the Supreme Court of the Northwest Territories between her Majesty the Queen and Denis Bedard. This included the following:

### Background

Bedard was hired as a professional engineer by GNWT in 1991 and, as such, was bound by the Codes of Ethics of his professional associations. In 1995, he transferred to the Fort Simpson area office. He became a friend of Heino Zubke ("Zubke"), vice-president of Fred H. Ross and Associates Ltd.

("Ross") and a director of Kalaaq Corp. ("Kalaaq"). Kalaaq was not registered with Northwest Territories Association of Professional Engineers, Geologists and Geophysicists (NAPEGG) and was therefore not eligible to directly provide professional engineering services to the GNWT.

On December 2, 1997, Bedard was suspended from his position as a result of an internal investigation. On February 5, 1998, Bedard resigned effective the same day, to stop what he characterized as "slandering tactics" on the part of the audit investigators with his friends, and senior departmental and professional colleagues.

### Wrigley Project

Bedard recommended awarding a \$20,000 contract to Kalaaq without competition to complete an "Environmental Assessment and Predesign-Sewage/Solid Waste site" at Wrigley.

Zubke, acting for Kalaaq, submitted an invoice for work done on the contract. The invoice was stamped "Completed as per service contract S C 355507" and stamped with Bedard's P.Eng. stamp. A cheque for \$20,000 was issued to Kalaaq. Bedard sent an invoice to Kalaaq for \$15,000 dated July 22, 1996. The invoice stated that Bedard had completed a preliminary design, prepared layout and site drawings, conducted soil sampling and prepared, stamped and certified final drawings. Kalaaq issued a cheque for \$15,000 to Bedard that he endorsed. Bedard received \$15,000 for what he held out to be his engineering services on a project that was neither completed nor even begun.

Bedard confirmed to the GNWT auditors that he prepared the contract specifications, recommended the contract be awarded to Kalaaq, received reports and recommended payment.

The general manager of the Local Development Corp. in Wrigley, Les Christopher, stated that he had never heard of Kalaaq or Bedard and that no consulting work was done on water and sewage projects in Wrigley in 1996.

### Trout Lake Project

Bedard prepared a contract and specifications for the installation of a water filter system in Trout Lake at a cost of \$21,607.37. The contract was approved on July 24, 1996, and awarded to Ross without competition. It named Bedard as the contact person.

Zubke invoiced MMCA on July 24, 1996—the date of contract approval—for \$21,607.37 for the project. Bedard signed and stamped the contract as being inspected, installed and tested as per the contract, indicating that the inspection was on August 6, 1996. No water filter was ever installed.

The arrangement between Zubke and Bedard was that the funds would be used by Ross to buy two sophisticated computer colour printers, which would then be sent to Bedard.

Bruce Leblanc ("Leblanc") told police that sometime in the summer of 1996 Bedard asked him to pick up two colour printers in Yellowknife. Bedard told him one was for the Fort Rae office and the other was for the Fort Simpson office. Leblanc transferred one valued at \$8,500 to Bedard's vehicle and took the other to the Fort Rae office. About a year and a half later, after Bedard was suspended, he asked Leblanc to collect the printer from Bedard's residence in Fort Simpson. Ultimately, Bedard admitted to the RCMP that he had the printer in his home for about 18 months and had been using it for personal business pertaining to minor hockey.

### Criminal Proceedings

On November 17, 2000, in the Supreme Court of the Northwest Territories in Yellowknife, Bedard pleaded guilty to two criminal charges. Madame Justice J.V. Schuler convicted him of breach of trust in connection with the duties of his office, contrary to section 122 of the Criminal Code, and defrauding the Government of the Northwest Territories, contrary to section 380(1)(a) of the Criminal Code.

In sentencing Bedard, Judge Schuler said in part:

“Mr. Bedard is 45 years old, divorced, the father of three children. He obtained his engineering degree in 1979 and worked teaching and as an engineer and consultant in Ontario. In 1991, he came north and worked as the municipal engineer for the Government of the Northwest Territories in Cambridge Bay, and then, from 1995 in Fort Simpson. After an audit revealed these offences, he was suspended and then resigned from that employment and worked for two years in Iqaluit as the town’s director of public works. In April of this year, he resigned from that position and is now the director of public works for the town of Calabogie, near Ottawa.

“The three character witnesses called by the defence, and the letter submitted from his supervisor in Iqaluit, all spoke well of Mr. Bedard and his work. The witnesses knew of no problems in his work; they knew of no personal problems. All spoke of his commitment to minor hockey and the time and effort he has spent on that community activity. He has been involved in other volunteer activities and was a volunteer member of the fire department in Cambridge Bay, and, according to Mr. Crossley’s evidence, on at least one occasion exhibited determination and bravery in trying to save the victims of a fire.

“Mr. Bedard spoke from counsel table and apologized to the court and his colleagues for what he had done. He said that he used the printer for minor hockey work, and that he had intended to do the work on the Wrigley contract but never got to it. He acknowledges that even if he had done the work the transaction was in breach of his obligations as a government employee and the guidelines of his profession.

“Sometimes, in this type of case, there is a clear motive or explanation for the offence. For example, people steal from or defraud their employer to support a lavish lifestyle or a gambling habit, or sometimes there are alcohol or drug or other problems in the background. The puzzling cases are the ones, as here, where there is no obvious motive or explanation.

“I do not put a lot of weight on Mr. Bedard’s intentions in this regard. He certainly knew that he was not entitled to the printer and the money and that he was doing wrong in endorsing as done work that was not, in fact, done. He made a good salary; his child and spousal support obligations were not out of the ordinary; and no personal or financial problems have been identified. So I have to wonder: Was it just greed? Was it perhaps a desire to see if he could just get away with it that motivated him? And I find I really can’t answer those questions on the evidence before me.”

### Decision

The association bears the onus of proving the allegations in accordance with the standard of proof set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977), 15 O.R. (2d) 477. The standard of proof applied by the panel, in accordance with the *Bernstein* decision, was proof on a balance of probabilities with the qualification that the proof must be clear and convincing and based upon cogent evidence accepted by the panel. The panel also recognized that the more serious the allegation to be proved, the more cogent must be the evidence.

**Having considered the evidence and the onus and standard of proof, the panel finds that Bedard is guilty of professional misconduct as defined in sections 28(2)(a) and 28(2)(b) of the *Professional Engineers Act R.S.O 1990, c. P.28.***

**The basis for this finding is:**

- **Bedard was found guilty of two criminal offences (breach of trust and fraud), both of which are relevant to his suitability to practise as an engineer as set out in section 28 (2)(a) of the Act;**
- **Bedard failed to make reasonable provision for safeguarding of property of persons who may be affected by the work for which he was responsible, contrary to section 72(2)(b) of Regulation 941;**

- **Bedard failed to make reasonable provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by and under his responsibility, pursuant to section 72(2)(d) of Regulation 941; breach of the Act and Regulations contrary to section 72(2)(g) of Regulation 941;**
- **Bedard’s failure to make prompt, voluntary and complete disclosure of a direct interest that might be, or be construed as, prejudicial to his professional judgment in rendering service to the public, and to his employer by accepting compensation for his services from more than one party, participating in the supply of equipment to be used by his employer, contracting to perform professional engineering services for other than his employer, and expressing opinions or making statements where the opinions or statements are inspired or paid for by other interests, contrary to section 72(2)(i) of Regulation 941;**
- **Conduct by Bedard that would reasonably be regarded by the engineering profession as disgraceful, dishonourable and unprofessional contrary to section 72 (2)(j);**
- **Bedard’s conduct in assisting a person who is not a practitioner to engage in the practice of professional engineering pursuant to section 72(2)(m).**

### Reasons for Decision

The panel heard evidence Bedard was convicted of two criminal acts and finds that these were relevant to the practice of engineering. Bedard approved two projects as

completed, where in each case no work had been done. In doing this he failed to safeguard the health of the community and the properties of the GWNT, his employer.

Bedard failed to disclose his personal interest in both the Wrigley and Trout Lake projects. He accepted compensation from Kalaq for the Wrigley Lake project.

Bedard acknowledged that the contract for the water system at Trout Lake was a scheme to obtain funds to buy two sophisticated colour printers. One of these printers was delivered to his house, where he kept it for about 18 months and used it for personal business involving minor hockey.

Bedard recommended awarding a contract to Kalaq knowing that Kalaq was not registered with NAPEGG and was

not eligible to provide professional engineering services.

The panel finds Bedard's actions would be regarded by the profession as disgraceful, dishonourable and unprofessional.

### Penalty

**The panel directs that Bedard's membership be revoked, that costs of \$2,500 be awarded to the association and that the decision of the Discipline Committee be published in full in the official journal of the association, with names.**

### Reasons for Penalty

The panel finds the evidence of Bedard's misconduct to be so serious

that his membership should be revoked. As a consequence, any future application for reinstatement after a period of two years will be directed by the Registrar to a panel of the Discipline Committee.

The panel finds an award of \$2,500 costs to be reasonable, considering that the member did not argue the case and unduly extend the proceedings.

The written Decision and Reasons in this matter were dated November 13, 2003, and were signed by the Chair of the panel, Tim Benson, P.Eng., on behalf of the other members of the Discipline Panel: Kam Elguindi, P.Eng., Phil Maka, P.Eng., Nicholas Monsour, P.Eng., and Don Turner, P.Eng.

## Note from the Regulatory Compliance Department

Bedard did not appeal the Decision of the Discipline Panel. The cost award has yet to be paid.

## Notice of Withdrawal of Allegations

At a discipline hearing held on May 5, 2004, PEO sought and obtained an order from a Discipline Panel authorizing PEO to withdraw allegations of incompetence and professional misconduct against Ping Guo, P.Eng., and Future Steel Buildings Intl. Corp. This was done pursuant to Rule 8.1 of the Rules of Procedure of the Discipline Committee.

The hearing date and the allegations against Guo and Future Steel had previously been published in the *Gazette* and on the PEO website. At no time were there any findings of incompetence or professional misconduct against Guo or Future Steel. This Notice of Withdrawal of Allegations is being published at the request of Guo.

## Summary of Scheduled Discipline Hearings

This schedule is subject to change without public notice. For further information, contact PEO at 416-224-1100; toll free 1-800-339-3716.

Any person wishing to attend a hearing should contact the Complaints & Discipline Coordinator at extension 496.

All hearings commence at 9:30 a.m.

NOTE: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference

regarding the status, qualifications or character of the member or Certificate of Authorization (C of A) holder should be made based on the allegations listed herein.

Further details regarding the allegations against the members and C of A holders listed below can be found on PEO's website at [www.peo.on.ca](http://www.peo.on.ca).

### September 7–10, 2004

**Kwang-Ray Hsu, P.Eng.**

It is alleged that Hsu is guilty of

incompetence as defined in Section 28(3)(a) of the *Professional Engineers Act*.

It is alleged that Hsu is guilty of professional misconduct as defined in Section 28(2)(b) of the *Professional Engineers Act*.

### September 27–30, 2004

**David E.J. Brouillette, P.Eng.**

It is alleged that Brouillette is guilty of incompetence as defined in Section 28(3)(a) of the *Professional Engineers Act*.

It is alleged that Brouillette is guilty of professional misconduct as defined in Section 28(2)(b) of the *Professional Engineers Act*.

### October 13–15, 2004

**Mohammad R. Panahi, P.Eng. and Pancon Engineering Ltd.**

It is alleged that Panahi and Pancon are guilty of professional misconduct as defined in Section 28(2)(b) of the *Professional Engineers Act*.