Decision and Reasons

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

Raymond O. Dobbin, P.Eng.

a member of the Association of Professional Engineers of Ontario.

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a single-member panel of the Discipline Committee on November 6, 2006 at the Association of Professional Engineers of Ontario (the "association") in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Raymond O. Dobbin, P.Eng., was represented by Ronald Bildfell of Bildfell & Associates.

The allegations

The allegations against Raymond O. Dobbin, P.Eng., as stated in the Notice of Hearing dated May 11, 2006, were as follows.

It is alleged that Raymond O. Dobbin, P.Eng. ("Dobbin"), is guilty of incompetence and professional misconduct, the particulars of which are as follows:

1. Dobbin was at all material times a member of the Association of Professional Engineers of Ontario and the holder of a Certificate of Authorization.

2. In his Certificate of Authorization Application for Renewal Form dated January 21, 2003, Dobbin provided the following description of his business operation, including professional services provided and major areas of engineering activity:
(a) municipal drainage reports under the *Drainage Act*;
(b) design and construction of water distribution; and
(c) municipal services including storm water management.

3. In or about April 2004, Joseph Wessel, the owner of a property located at Lot 14, 7686 Gillespie Street in Port Franks ("Wessel Lot"), built a retaining wall along the rear yard lot line between his backyard and the abutting backyard of Brad Vodden at Lot 19, 7687 Currie Place ("Vodden Lot").

4. The Wessel Lot was at a higher elevation after grade adjustments and backfilling than the Vodden Lot. The retaining wall consisted of stacked concrete blocks each about 600 mm by 900 mm by 1200 mm in size. The entire wall was about 25 m long and about 3 m high. The west end of the retaining wall was made from railway ties secured by wood poles. The wall was intended to allow filling and allow the construction of a 7 m by 14 m four-bay garage on the filled land.

5. Vodden was concerned about the stability of the retaining wall, which was constructed with no engineering supervision or inspection. Vodden twice requested that Dobbin provide details of the design. Dobbin did not reply to Vodden.

6. On November 30, 2004, Vodden sent an email to Jeff Jilek ("Jilek") of the Lambton Shores Building Inspection Department, requesting documentation and drawings for the retaining wall.

7. On December 1, 2004, Jilek replied by email to Vodden indicating that the site plan, building plan, survey, and concrete block wall detail were available. Jilek subsequently provided the plans, survey and detail to Vodden. The design drawing for the retaining wall was dated March 2004 and had been signed and sealed by Dobbin ("Dobbin Design Drawing").

8. Upon reviewing the information provided by Jilek, Vodden noticed that very little detail was included in the Dobbin Design Drawing. Further, the retaining wall had been constructed without any form of guard or barrier to prevent an automobile or person from falling into Vodden's backyard.

9. Michael Tanos, P.Eng. ("Tanos"), of Terraprobe provided an independent third-party evaluation of the retaining wall design of the Dobbin Design Drawing. In his report dated March 24, 2006, the opinions and conclusions of Tanos included the following:
(a) The design drawing for the retaining wall was insufficient for a building permit application as it was missing considerable information, including the following:
    (i) a plan view of the retaining wall design with dimensional distances showing the location of the wall with respect to the property lines and the garage building,
    (ii) specific specifications (properties) for the wall materials, backfill materials, filter fabric, foundation soil and allowable bearing pressure,

(iii) assumed surcharge loadings at the top of the wall (materials and equipment storage), confirmation of factors of safety for various failure modes, and
(iv) provisions for a guard along the top of the wall as required by the relevant provisions of the *Ontario Building Code* ("OBC");

(b) The design for the retaining wall did not have sufficient factor of safety for global stability;
(c) The design height of the retaining wall was considered to be insufficient and more wall height (buried) was required;
(d) The retaining wall should be redesigned and reconstructed in accordance with the OBC.

10. By reason of the aforesaid, it is alleged that Raymond O. Dobbin, P.Eng.:
(a) stamped, dated and signed a retaining wall design with insufficient technical details;
(b) designed a retaining wall (designated structure) that did not meet the OBC;
(c) disregarded safety concerns by providing a retaining wall design with no railings;
(d) provided no engineering supervision or inspection of the wall construction; and
(e) acted in a disgraceful, dishonourable and/or unprofessional manner.

11. By reason of the facts aforesaid, it is alleged that Dobbin is guilty of incompetence as defined in section 28(3), and that Dobbin is guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

12. "Incompetence" is defined in section 28(3) as:
"The member or holder has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates the member or holder is unfit to carry out the responsibilities of a professional engineer."

13. "Professional misconduct" is defined in section 28(2) as:
"The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."

14. The sections of Regulation 941/90 made under the said Act and relevant to this misconduct are:
(a) *Section 72(2)(a)*: negligence as defined at section 72(1): In this section, "negligence" means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances;
(b) *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;
(c) *Section 72(2)(d)*: failure to make responsible 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;
(d) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
(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.

Counsel for the association advised that the association was withdrawing the following allegations in the Notice of Hearing:
(a) the allegation of "disgraceful, dishonourable or" in paragraph 10(e); and
(b) the allegation that Dobbin is guilty of incompetence as defined in section 28(3), found in paragraph 11.

Plea by member and/or holder

Dobbin admitted the remaining allegations set out in the Notice of Hearing with the exception of paragraph 9(a)(i).

The panel conducted a plea inquiry and was satisfied that Dobbin's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts ("ASF")

Counsel for the association advised the panel that an agreement had been reached between the parties as to an ASF, and that the parties were in agreement that the remaining facts contained in the Notice of Hearing could be treated as an ASF.

Decision

The panel considered the ASF and Dobbin's plea and found that the facts supported a finding of professional misconduct and, in particular, found that Dobbin committed an act of professional misconduct as alleged in parts of paragraphs 10 and 11 of the Notice of Hearing in that he:

(a) stamped, dated and signed a retaining wall design with insufficient technical details;
(b) designed a retaining wall (designated structure) that did not meet the OBC;
(c) disregarded safety concerns by providing a retaining wall design with no railings;
(d) provided no engineering supervision or inspection of the wall construction; and
(e) acted in an unprofessional manner.

As a result, Dobbin was guilty of professional misconduct as defined in section 28(2) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.

Reasons for decision

The panel accepted Dobbin's plea, which, along with the ASF, substantiated the finding of professional misconduct.

Penalty

Counsel for the association advised the panel that a Joint Submission as to Penalty ("JSP") had been agreed upon. The JSP provided as follows.

The Association of Professional Engineers of Ontario and Raymond O. Dobbin, P.Eng., make the following joint submission on penalty:

(a) The Certificate of Authorization ("C of A") of Dobbin shall be suspended for a period of three months;
(b) The Registrar shall impose terms, conditions and limitations on the C of A restricting the services that can be offered or provided as follows:
    (i) municipal drainage reports under the *Drainage Act*;
    (ii) design and construction of water distribution;
    (iii) municipal services including storm water management; and
    (iv) Dobbin is specifically prohibited from offering structural engineering services related to structures under the OBC.
(c) Dobbin shall provide the association and the Discipline Committee with an undertaking that he will not engage in the practice of professional engineering in areas outside those specified on the C of A unless it is under the direct personal supervision of another association member;
(d) Dobbin shall write and pass the Professional Practice Exam ("PPE") within 12 months of the date of the hearing, failing which his licence will be suspended. If he does not write and pass the PPE within 24 months of the date of the hearing, his licence will be revoked;
(e) Dobbin shall receive an oral reprimand, the fact of which will be recorded on the Register of the association;
(f) The order and decision and reasons of the Discipline Committee shall be published in Gazette with reference to names; and
(g) Dobbin shall pay costs to the association fixed in the amount of $7,500 within 12 months of the date of the hearing.

The panel heard submissions from both counsel on the issue of penalty, including the matter of mitigating factors concerning Dobbin's actions. The panel also obtained advice from independent legal counsel on the principles that must guide the panel's decision.

Penalty decision

The panel accepted the JSP and accordingly ordered that:

1. The C of A of Dobbin be suspended for a period of three months;

2. The Registrar impose terms, conditions and limitations on the C of A restricting the services that can be offered or provided as follows:
(a) municipal drainage reports under the *Drainage Act*;
(b) design and construction of water distribution;
(c) municipal services including storm water management; and
(d) Dobbin is specifically prohibited from offering structural engineering services related to structures under the OBC;

3. Dobbin provide the association and the Discipline Committee with an undertaking that he will not engage in the practice of professional engineering in areas outside those specified on the C of A unless it is under the direct personal supervision of another association member;

4. Dobbin write and pass the PPE within 12 months of the date of the hearing, failing which his licence will be suspended. If he does not write and pass the PPE within 24 months of the date of the hearing, his licence will be revoked;

5. Dobbin receive an oral reprimand, the fact of which will be recorded on the Register of the association;

6. The order and decision and reasons of the Discipline Committee be published in Gazette with reference to names; and

7. Dobbin pay costs to the association fixed in the amount of $7,500 within 12 months of the date of the hearing.

Reasons for penalty

The panel concluded that the proposed penalty is reasonable and in the public interest. Dobbin has cooperated with the association and, by agreeing to the facts and the proposed penalty, has accepted responsibility for his actions and has avoided unnecessary expense to the association.

The panel considered the submission of counsel for the association that publishing discipline decisions with names is consistent with the direction provided by the Council for the association, that it is consistent with the trend for such decisions in other professional associations in Ontario, that it is required for general deterrence to other members of the association, and that it is required for transparency to the public interest.

The panel weighed the public interest and mitigating factors by assessing that compliance with most of the factors was required before considering whether or not to publish. Then, the factor to consider was whether any other person would be significantly impacted by the discipline decision or whether there is significant detriment to the public interest in publishing with names.

The panel concluded that the proposed penalty as a whole is reasonable and in the public interest. In particular, the penalty is appropriate in terms of general deterrence to the members of the profession, specific deterrence to Dobbin that is proportionate to the seriousness of his actions, will reinforce Dobbin's rehabilitation, maintain the reputation of the profession in the public's eyes and will ensure that the public is protected.

Oral reprimand

At the conclusion of the hearing, Dobbin waived his right to appeal by signing an Undertaking and Agreement and the reprimand was administered immediately following the hearing.

The written decision and reasons were dated March 1, 2007, and were signed by Santosh K. Gupta, P.Eng., as the chair and sole member of the panel.

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Assigning penalties in discipline matters–balancing justice and mercy

Have you ever wondered how PEO, when prosecuting a discipline case, determines what it believes to be the appropriate penalty, or sanction, to recommend to the Discipline Committee once a finding of professional misconduct has been made? Similarly, have you ever wondered how the Discipline Committee ultimately decides the appropriate penalty terms for a particular case of professional misconduct?

This article examines the issues and influences that affect the determination of the appropriate penalty for a given disciplinary matter. PEO's mandate to serve and protect the public interest demands that both PEO prosecution and the Discipline Committee must put the public interest first. However, there can be many ways to protect the public interest at the conclusion of a discipline hearing, and some of these ways may serve the member's interests more than others.

Penalty principles

It is generally accepted in the realm of professional regulation that there are five principles that govern the selection of penalty terms in discipline matters. They are:

1. protection of the public;
2. maintaining the reputation of the profession in the eyes of the public;
3. general deterrence;
4. specific deterrence; and
5. rehabilitation.

It is important to note that the concepts of punishment or retribution are not considerations in determining penalty. While justice must be done, and be seen to be done, there is no value in a penalty term that is wholly punitive (i.e. that serves only to cause hardship to the member). Neither PEO as the prosecution, nor the Discipline Committee as the jurists, have an interest in inflicting undue hardship on a member who has been found guilty of professional misconduct.

The concept of protection of the public is related directly to PEO's principal object as found in the *Professional Engineers Act*. However, there is a subtle difference between protecting the public in the context of a discipline matter, and protecting the public *interest* in the context of PEO's overarching regulatory responsibility. Not all discipline cases involve harm to the public, either real or potential. However, in those cases where harm took place or where it was a real possibility, it is important that the penalty terms ensure that the circumstances that led to the harm cannot happen again. That is, the public must be protected from the conduct of the member.

The Ontario government has granted the engineering profession the privilege of self-regulation. However, that privilege would not last if the public image of the profession were to be tarnished by discipline penalties that failed to acknowledge the seriousness of certain misconduct. Justice must be seen to be done or else the public confidence in the profession will be eroded. The government has intervened in other professions where it became evident that serious misconduct matters were not appropriately addressed through the discipline process. They did this by establishing mandatory penalties for certain types of misconduct. PEO wishes to avoid this scenario and maintain complete authority and discretion over disciplinary actions.

The concept of general deterrence is to send a message to the profession at large that conduct of the type at issue will not be tolerated. Exceedingly light sanctions can create an impression that certain misconduct is in some way acceptable and will not have any significant consequences. Penalty terms must provide a notable disincentive for other professional engineers to engage in the same sort of conduct that was the subject of the discipline hearing.

Specific deterrence is intended to send a message specifically to the member whose conduct was under investigation. The objective of the message is to convince the member that the member ought never to repeat the conduct. It is possible that certain of the sanctions available to the Discipline Committee will be more meaningful than others to a particular member who has been found guilty of professional misconduct. Some sanctions that may appear to be wholly punitive are actually selected for their specific deterrence value.

It is accepted that in most circumstances a finding of professional misconduct should not mean the end of an engineer's career. Other than in the case of a member who has proven to be "ungovernable," or has engaged in conduct where continued membership would bring disrepute upon the profession, penalty terms can be ordered that will facilitate the rehabilitation of the member with the goal of allowing the member to once again practise professional engineering without limitation. This may involve passing an exam or attending a course related to the subject matter of the discipline hearing. It may also include the imposition of terms, conditions or limitations on the member's licence.

Aggravating and mitigating factors

With the five penalty principles in mind, there is the concept of a baseline penalty that would be appropriate in the particular circumstances of a case. That is, all else being equal, the misconduct in question warrants a penalty within a certain narrow range. The baseline penalty reflects the seriousness of the misconduct.

The reality is, of course, that the circumstances in each case are always different and the "all else being equal" concept does not apply. PEO prosecution and the Discipline Committee must consider the specific factors of the case

at hand to determine if the appropriate penalty should be harsher or lighter than the baseline penalty would suggest.

Aggravating factors are those things that suggest a harsher penalty should be assigned, and include:

- past discipline history;
- the misconduct was repeated over time;
- the misconduct involved dishonesty or breach of trust;
- the member misled the Discipline Committee during the hearing;
- the willful nature of the misconduct;
- misconduct committed for personal gain; or
- lack of remorse.

Mitigating factors suggest a lighter penalty than would otherwise be appropriate, and include:

- evidence of good character;
- absence of prior discipline history;
- signs of remorse;
- a guilty plea and/or cooperation with PEO prosecution;
- misconduct that was a brief, isolated incident;
- restitution already made by the member; or
- wishes of the victim(s).

A decision by the member to defend against the allegations of professional misconduct in a contested hearing is not an aggravating factor and cannot be used as a reason to increase the penalty above the baseline. A member is fully entitled to present a defence during a discipline hearing. However, a decision by the member to enter into a plea agreement should be seen as a mitigating factor that will result in a lesser penalty.

Available sanctions and authority

Under section 28(4) of the Act, after the Discipline Committee has made a finding of professional misconduct or incompetence, it may make a penalty order that could include:

- revoking the licence;
- suspending the licence for up to two years;
- imposing terms, limitations or restrictions on the licence;
- having the member pass an exam or course;
- having the member undergo a practice inspection;
- reprimanding the member;
- imposing a fine;
- awarding costs to PEO; and
- publishing the findings and order.

A penalty order can include any one or a combination of these elements. The specific selection will depend upon the findings of the Discipline Committee, the specifics of the case, and the extent to which each penalty element will address the penalty principles described earlier. In addition, the Act gives the Discipline Committee the ability to suspend or postpone the imposition of any of these penalty terms pending the completion of some other action such as the completion of a course of study or a practice inspection.

The Discipline Committee cannot, however, make penalty orders outside the boundaries of these elements. For example, the Discipline Committee cannot make an order for the member to pay restitution to the people affected by the member's misconduct. Similarly, the Discipline Committee cannot order the member to perform acts within the practice of professional engineering in relation to the project that was the subject of the discipline proceeding or to give the member's client any drawing, report or other document.

While it is generally desirable for the Discipline Committee to be seen to be consistent in its penalty orders, the discipline panel presiding over a given hearing is not bound by past penalty orders that were given in similar circumstances. The discipline panel does not do its own research regarding past penalty decisions but rather relies on submissions from counsel during the penalty phase of the discipline hearing.

In making penalty submissions at the conclusion of a contested hearing, both PEO prosecution and the lawyer for the member will likely make reference to past discipline cases and the associated penalties to help guide the discipline panel in their penalty decision making. However, there is a very slim likelihood that all of the elements of any two cases (e.g. nature of the misconduct, aggravating and mitigating factors) will be identical. Further, regulatory and professional standards change over time, so that misconduct that warranted only a reprimand in the past may warrant a harsher penalty now. Similarly, if the Discipline Committee believes a penalty from a past case did not have the desired general deterrent effect, it can impose a harsher penalty if the conduct in question is similar.

Parallel legal actions

It is not uncommon for a member who is facing disciplinary action to also be facing civil litigation relating to the same circumstances. While less common, it is also possible that the member will be facing criminal or provincial offences prosecution in relation to the conduct that is the subject of the discipline hearing.

PEO generally does not wait for the outcome of a civil litigation before proceeding with a discipline prosecution. A finding of tort liability in the civil courts against a member does not equate to professional misconduct in all cases. Also, civil lawsuits deal with the interests of the individual, not the public. If a civil litigation has concluded prior to the discipline matter and the member was found liable, the Discipline Committee can, if it finds the member guilty of professional misconduct, consider any civil penalties as mitigating factors when considering its own sanctions.

If a member is facing criminal or provincial offence prosecution, PEO typically waits until the conclusion of those proceedings before proceeding with the discipline matter, because a guilty finding in those realms may, in and of itself, be sufficient evidence of professional misconduct (see section 28(2)(a) of the Act). In addition, the member will likely have all of his or her attention and resources dedicated to defending against the criminal or provincial offence allegations, which have the potential for much more serious consequences than a discipline hearing.

Further, the evidence required in the discipline prosecution may be in the custody of the police or other government agencies and would not be available to PEO until the conclusion of those proceedings.

Joint submissions as to penalty

The majority of discipline matters at PEO are resolved through resolution discussions in advance of the discipline hearing (i.e. plea bargaining). The ideal plea bargain will include a joint submission as to penalty–meaning the legal counsel for PEO and the legal counsel for the member jointly submit a recommended penalty to the Discipline Committee. The joint submission may address all, or only a part, of the penalty terms to be imposed. For example, while agreeing about a requirement for a reprimand and examinations, the parties may disagree about publishing names and hence make separate submissions to the discipline panel about that issue.

A discipline panel is not required to accept a joint submission as to penalty. However, the law dictates that a discipline panel should not deviate from a joint submission unless the proposed penalty is so disproportionate to the offence that it would be contrary to the public interest or would bring the administration of justice into disrepute. If a discipline panel plans to deviate from a joint submission, it must advise the parties of its intentions and request further submissions in support of the jointly submitted penalty.

Sentencing guidelines

Some professional regulatory bodies have experimented with developing sentencing guidelines as a means of achieving consistency across discipline cases. Such guidelines would also have the benefit of being a basis for initial negotiations in plea bargain situations.

It is possible, however, for such guidelines to create a pigeon-hole effect regarding professional misconduct and incompetence issues. This could be seen to constrain PEO and/or the Discipline Committee in considering the unique aspects of a case when determining a penalty. Further, if the guidelines are made public, they may be viewed as policy rather than guidelines and it could become increasingly difficult to deviate from them.

At present, PEO does not have sentencing guidelines for discipline matters. We rely on the ability to reference past cases for general guidance and to allow the parties to a discipline hearing to make submissions as to why the penalty in the case at hand should be similar to, or deviate from, that of a past case. While the Discipline Committee has discussed the concept of standardizing certain elements of penalty (e.g. cost awards–setting a fixed cost per day of hearing), it has resisted implementing such concepts in the belief that the penalty in each case should be based on the circumstances of the case itself–that is, the seriousness of the misconduct, the mitigating and aggravating factors, the submissions of the parties, and with due consideration of the penalty principles and objectives.

Conclusion

It is evident that the formulation of an appropriate discipline penalty involves a complex mix of considerations. Neither PEO, in recommending penalties, nor the Discipline Committee, in setting penalties, approaches this task lightly. No one takes pleasure in suspending a licence, or imposing limitations on a member.

While the Discipline Committee's duty to serve and protect the public interest is absolute, it cannot completely disregard the interests of the member. Setting a discipline penalty is a balance of justice and mercy. It is unlikely that either the member or the victim will be fully satisfied with the ultimate penalty order. However, penalties based on due consideration of all of the factors set out here, and for which reasons are well documented in the written decisions of the Discipline Committee, will withstand scrutiny and appeal and serve as benchmarks for future penalty decisions. The public should expect nothing more, and PEO and the Discipline Committee should deliver nothing less.

Enforcement provisions of the *Professional Engineers Act*

As the regulator of professional engineering in Ontario, one of PEO's prime functions is to protect the public against unlicensed individuals who engage in the practice of professional engineering contrary to the *Professional Engineers Act*, and to guard against the confusion caused by inappropriate use of the titles "engineer," "professional engineer," or abbreviations or variations thereof.

Section 40 of the Act defines a series of offences related to unlicensed practice and improper use of titles and reads as follows:

Penalties

40(1) Every person who contravenes section 12 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than $25,000 and for each subsequent offence to a fine of not more than $50,000. R.S.O. 1990, c. P.28, s. 40 (1).

Idem, use of term "professional engineer," etc.

(2) Every person who is not a holder of a licence or a temporary licence and who:

(a) uses the title "professional engineer" or "ingénieur" or an abbreviation or variation thereof as an occupational or business designation;

(a.1) uses the title "engineer" or an abbreviation of that title in a manner that will lead to the belief that the person may engage in the practice of professional engineering;

(b) uses a term, title or description that will lead to the belief that the person may engage in the practice of professional engineering; or

(c) uses a seal that will lead to the belief that the person is a professional engineer, is guilty of an offence and on conviction is liable for the first offence to a fine of not more than $10,000 and for each subsequent offence to a fine of not more than $25,000. R.S.O. 1990, c. P.28, s. 40 (2); 2001, c. 9, Sched. B, s. 11 (59).

Onus of proof

(2.1) In a proceeding for an alleged contravention of clause (2)(a.1), the burden of proving that the use of the title or abbreviation will not lead to the belief referred to is on the defendant, unless the defendant's use of the title or abbreviation is authorized or required by an Act or Regulation. 2001, c. 9, Sched. B, s. 11 (60).

Idem, services of professional engineer

(3) Every person who is not acting under and in accordance with a Certificate of Authorization and who:

(a) uses a term, title or description that will lead to the belief that the person may provide to the public services that are within the practice of professional engineering; or

(b) uses a seal that will lead to the belief that the person may provide to the public services that are within the practice of professional engineering, is guilty of an offence and on conviction is liable for the first offence to a fine of not more than $10,000 and for each subsequent offence to a fine of not more than $25,000. R.S.O. 1990, c. P.28, s. 40 (3).

Idem

(4) Any person who obstructs a person appointed to make an investigation under section 33 in the course of his or her duties is guilty of an offence and on conviction is liable to a fine of not more than $10,000. R.S.O. 1990, c. P.28, s. 40 (4).

Idem, director or officer of corporation

(5) Where a corporation is guilty of an offence under subsection (1), (2), (3) or (4), every director or officer of the corporation who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than $50,000. R.S.O. 1990, c. P.28, s. 40 (5).

Idem, partner

(6) Where a person who is guilty of an offence under subsection (1), (2), (3) or (4) is a member or an employee of a partnership, every member of the partnership who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than $50,000. R.S.O. 1990, c. P.28, s. 40 (6).

Limitation

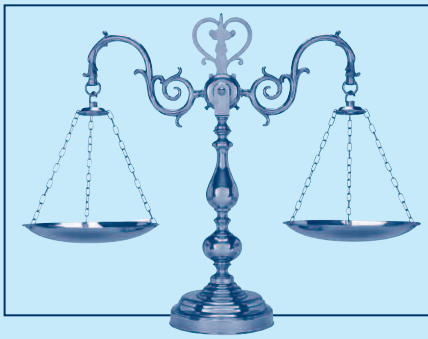
(7) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3), (4), (5) or (6) after two years after the date on which the offence was, or is alleged to have been, committed. R.S.O. 1990, c. P.28, s. 40 (7).

Application of subsection (2)

(8) Subsection (2) does not apply to a holder of a limited licence who uses a term, title or description authorized or permitted by the Regulations. R.S.O. 1990, c. P.28, s. 40 (8).

Section 40(1) establishes an offence for unlicensed people engaged in the practice of professional engineering (other than is allowed under sections 12(3), 12(4) or 12(5) of the Act), and those without a Certificate of Authorization offering to the public or engaged in the business of providing to the public services that are within the practice of professional engineering. Sections 40(2) and 40(3) create offences regarding the use of terms, titles, descriptions or seals that would lead to the belief that the user is a licensed professional engineer or holds a Certificate of Authorization.

PEO's enforcement reach is extended under sections 40(5) and 40(6) to penalize directors and officers of a corporation who have been found guilty of any of the above offences and, similarly, the partners in partnerships, where one of the partners, or an employee of the partnership, has been found guilty of any of the above offences. Clearly, the responsibility for complying with these provisions of the *Professional Engineers Act* extends beyond the individual to the management of an organization.



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Check out our new regular enforcement coverage, including a helpful enforcement Q&A and a summary of PEO's activities, beginning next issue.

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Discipline Hearing Schedule

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

Anyone wishing to attend a hearing should contact the complaints and discipline coordinator at extension 1072.

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 licence or Certificate of Authorization holder should be made based on the allegations listed herein.

June 7-8, 2007

Cristian R. Constantinescu, P.Eng., and Remisz Consulting Engineers Ltd. (RCE)

It is alleged that Constantinescu is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Constantinescu and RCE are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

(a) *Section 72(2)(a)*: negligence;
(b) *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;
(c) *Section 72(2)(d)*: failure to make responsible 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 the practitioner;
(d) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
(e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
(f) *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.

September 24-28, 2007

William L. Haas, P.Eng., and William Haas Consultants Inc. (WHCI)

It is alleged that Haas is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Haas and WHCI are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

(a) *Section 72(2)(a)*: negligence;
(b) *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;
(c) *Section 72(2)(d)*: failure to make responsible 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 the practitioner;
(d) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner;
(e) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
(f) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
(g) *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.

October 9-12, 2007

Wojciech S. Remisz, P.Eng., and Remisz Consulting Engineers Ltd. (RCE)

It is alleged that Remisz is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Remisz and RCE are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

(a) *Section 72(2)(a)*: negligence;
(b) *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;
(c) *Section 72(2)(d)*: failure to make responsible 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 the practitioner;
(d) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
(e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience; and
(f) *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.

November 5-9, 2007

Daniel T. Orrett, P.Eng.

It is alleged that Orrett is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Orrett is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

(a) *Section 72(2)(a)*: negligence;
(b) *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;
(c) *Section 72(2)(d)*: failure to make responsible 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 the practitioner; and
(d) *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.