

Gazette

THE DEPARTMENT OF THE REGISTRAR, PEO

Discipline Committee of the Association of Professional Engineers of Ontario In the matter of a hearing under the Professional Engineers Act, R.S.O. 1990, Chapter P. 28. and in the matter of a complaint regarding the conduct of

Philip Mavety, P.Eng.

A member of the Association of Professional Engineers of Ontario.

The Association of Professional Engineers of Ontario and Philip Mavety, P.Eng.

Summary of Decisions and Reasons

A panel of the Discipline Committee of the Association met in the offices of the Association on May 27, 1997, to hear allegations of Professional Misconduct against Philip Mavety, P.Eng. Paul Steep, of McCarthy Tétrault, appeared as legal counsel for the Association. Philip Mavety, P.Eng., was not represented by counsel. The hearing arose as a result of Mr. Mavety's involvement in a heating/cooling analysis report and drawings submitted with a building permit application to the City of Vaughan for the heating, ventilating and air conditioning project at a Dairy Queen "brazier" restaurant located on Highway #7 in Woodbridge, Ontario in or about 1993. At the beginning of the hearing,

an Agreed Statement of Facts summarized below was filed as an exhibit.

1. In 1993, East Woodbridge Development Ltd. ("East Woodbridge") undertook to establish a Dairy Queen "brazier" restaurant ("the Project") by altering an existing commercial eating establishment located on Highway No. 7 in East Woodbridge, Ontario.

2. Pipe-All Plumbing ("Pipe-all") of Woodbridge, Ontario was awarded the heating, ventilating and air conditioning (HVAC) contract for the project, Pipe-All subcontracted the work to BerCool Ltd.

3. The contract provided that all HVAC systems were to meet Dairy Queen's specifications and requirements.

4. On or about July 28,

1993, East Woodbridge submitted to the City of Vaughan Building Standards Department a building permit application for the Project: Attached to the application were two sets of: a two-page customer heating/cooling analysis report; a two-page heating/cooling analysis detail report for each of the solarium, shell, entry and server areas; and a three-page heating and cooling design and equipment specification report for each of the solarium, staff and dining areas. As well, Drawing HVAC 1 dated July 14, 1993, was also attached to the application.

5. On one of the reports, Philip Mavety, P.Eng., ("Mavety") sealed with his professional engineer's seal page 1 of the customer heating/cooling analysis report and page 1 of the heating and cooling

design and equipment specification report for the staff area, and dated it July 16, 1993.

6. On the other set of reports, Mavety sealed one page of the heating and cooling design and equipment specification report for the staff area, and dated it July 13, 1993.

7. Other than the pages referred to in paragraphs 5 and 7 above, no other pages of the two sets of reports were sealed by Mavety.

8. The City of Vaughan Building Standards Department issued a building permit for the mechanical systems on August 4, 1993.

In addition to the Agreed Statement of Facts, Mavety confirmed that he stamped reports regarding the calculation of the equipment which did not match either in

heating or cooling capacity, the calculated heat loss or heat gain for the project. Mavety did not admit the findings of an independent mechanical engineer engaged by the PEO to review the calculations stamped by Mavety who gave evidence that:

a) When Mavety applied his professional stamp, he was representing that he had reviewed and approved all of the design calculations. In this case, he should have stamped a cover sheet verifying his review and approval of all calculations or should have stamped all of the individual design calculations; and
b) The heating and cooling capacity of the selected heating and air conditioning units did not match the calculated heat loss or heat gain calculation referenced in the design calculations.

Mr. Mavety denied that he was negligent in the application of his stamp, or in the stamping of two identical information sheets using two different dates. He further denied that he stamped reports in such a way that it was unclear for what information he was responsible, and that he engaged in the provision of professional engineering services to the public without a Certificate of Authorization.

Mr. Joseph L. Merber, P.Eng. was called as an expert witness for the Association. He testified that he had reviewed the drawings and calculations, and it was clear to him that the work was not done under the direct

supervision of Mavety and his review of the content of the documents was not adequate. Mr. Merber testified that the capacities of the equipment shown in the drawings submitted bore very little resemblance to the calculated values, that one or the other was incorrect, but in spite of these discrepancies, Mr. Mavety stamped the calculations thereby warranting that the calculations were adequate for the purposes intended. Mr. Merber testified that the actual equipment selected did not match either in cooling or heating capacity the calculated heat gain or heat loss calculations which Mr. Mavety stamped. Mr. Merber testified that the work carried out constituted the practice of professional engineering, and in his opinion, did not meet the standard expected of a reasonable and prudent engineer.

On questioning by the Committee, Mr. Merber stated that the drawings and calculations did not match and any detailed review by the City should have made it obvious that there were errors. He testified that he did not do an independent calculation, but that the drawings and calculations should be comparative. His review consisted of a comparison between the drawings and the calculations. He also testified that the stamp by the engineer indicated that the calculations were checked to ensure that they were technically correct. In his opinion, the risk is that the building would not perform to its requirements.

Mr. Mavety testified on his own behalf. He stated that he did not make the submission to the Building Department. At the material time, he operated the company of Environmental Engineering Ltd. He stated that he no longer operates this business and is working as a property manager in New Jersey. Mr. Mavety stated that he did not prepare the drawings or the calculations, but that he did review them. He did not realize that he was in violation of providing engineering services to the public without a Certificate of Authorization. He stated that he had never reviewed the Professional Engineers Act.

By way of background, he testified that he graduated as a Mechanical Engineer in 1973. He worked with two companies in the heating, ventilation and air conditioning industry for several years before starting his own business, which specialized in heating and cooling systems for residential properties.

Under cross-examination, he testified that he reviewed the calculations and admitted that there were mistakes contained, in them.

He stated that he placed too much faith in the person who prepared them. While he looked at the calculations, he did not do any independent calculations and did not recognize the mistakes therein. He knew that the calculations were being submitted with an application for a permit;

He agreed that, there should have been a substantive check and that he did not do the checking that he should have done. He admitted that when he received the complaint from the PEO, he checked the calculations and found the mistakes. He testified that he only usually uses his engineering stamp, to stamp passport applications. His own business since 1981, has been in the area of residential heating and cooling systems and his engineering stamp is not required in that field. He testified that he was not aware that it was mandatory to have a Certificate of Authorization. He admitted that while providing engineering services to the public, he did not have a Certificate of Authorization.

On questioning by the Committee, he stated that he was paid approximately \$100 to stamp the calculations.

Environmental Engineering Ltd. was his company, but it did not have a Certificate of Authorization. He stated that most of the work that he did, did not require him to be a Professional Engineer. He stated that he had reviewed a couple of projects previously for the same contractor and applied his seal. He stated that he filed maybe three stamped submissions in the past. In those instances, he stated that he probably did a more in-depth review. He stated that the person who prepared the calculations is now deceased, but was previously the Chief Plans Examiner for Brampton. On re-examination by Mr.

Steep, arising from questions by the Committee, he testified that he had undertaken courses in HVAC in 1980, and 1981.

After hearing submissions from Mr. Steep, and Mavety regarding guilt and considering the evidence and the exhibits filed, the Committee found Philip Mavety, P.Eng. guilty of Professional Misconduct as defined in Section 28(2)(b) of the Professional Engineers Act, R.S.O. 1990 Chapter P.28 and Regulation 941 made under the said Act, particulars of which are as follows:

Section 72(2)(a): Negligence. As defined at Section 72(1): "In this section, "negligence" means an act or 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:

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" ;

Section 72(2)(e):

"signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner";

Section 72(2)(g): "breach of the Act or regulations other than an act that is solely a breach of the code of ethics"

Section 72(2)(h): "Undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience"; and

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."

Submissions were made by Mr. Steep and Mavety as to penalty and the Committee retired to consider penalty.

The Committee was concerned that Mr. Mavety had inadequately reviewed the calculations to confirm their conformity to the drawings, when he knew that the calculations and drawings were being submitted to a Building Department with a permit

application, further he provided these services when he was not a holder of a Certificate of Authorization.

The Committee took into account Mr. Mavety's cooperation with the Association. It noted that he is not practicing professional engineering and is not residing in Ontario at the present time. The penalty imposed by the Committee reflects its concern that he should not practice engineering until he has completed and passed the Association's Professional Practice Examination.

By virtue of the power vested in it by Section 28 of the Professional Engineers Act, the Discipline Committee ordered that:

1. The licence of Phillip Mavety be suspended until he successfully completes the PEO's Professional Practice Examination (PPE), and that his licence be revoked if the examination is not successfully completed within 24 months from the date of this Decision.

2. Phillip Mavety pay costs in the amount of \$535 to the PEO representing the cost of

the application fee and one annual fee for a Certificate of Authorization.

3. Phillip Mavety provide an undertaking to the Association that neither he nor his company will provide professional engineering services to the public unless those services are in accordance with a Certificate of Authorization.

4. The Decision and Reasons be published in summary form with names in the Gazette in the PEO's official publication.

5. Phillip Mavety receive a reprimand from the panel

Note from the Department of Legal and Professional Affairs:

After the penalty was read by the Chairman, Mr. Mavety was advised that the reprimand could be administered at that time, if he was prepared to waive his right to appeal. Mr. Mavety chose to waive his right to appeal and the reprimand was administered by the panel

Dated this 28th day of July, 1997.

David W. Smith, P.Eng. (Chair)

For and on behalf of the committee

Daniela E. Iliescu, P.Eng.

William A. Rutherford, P.Eng.

Nick Volf, P.Eng.

John B. Wilkes, P.Eng.