

COMPLAINTS COMMITTEE: VOLUNTARY UNDERTAKING UNDER SUBSECTION 24(2)(C) OF THE PROFESSIONAL ENGINEERS ACT

In the matter of a complaint regarding the actions and conduct of John H. Vincent, P.Eng., a member of the Association of Professional Engineers of Ontario (Vincent), and 509228 Ontario Limited, O/A J.H. Vincent Services (JHVS), a holder of a certificate of authorization (C of A).

BACKGROUND

1. The complaint relates to three Lot or Block Grading Plan Certificates signed and sealed by Vincent and issued by JHVS. The certificates were in connection with the construction of a single-family dwelling located in London, Ontario (the property). Certificate 2 certified that the proposed building "will be compatible with the proposed lot grading, which is in general conformity for drainage and relative elevations of the adjacent properties." Certificate 3 certified that the "building construction and the grading is in general conformity with the accepted Grading Plan and the "Certified Lot Grading Plan" [Certificate 1] previously submitted."
2. A concrete block retaining wall was constructed along the east and south property lines of the property during its development. This wall was not approved by the city. The certificates made no mention of this concrete block wall. Further, the actual lot grading of the property did not conform to the grading plan referred to in the certificates.
3. The grading issue was discovered when the adjacent owner complained to the city about wet muddy conditions in his backyard.
4. Vincent reported that he had suffered serious health problems. Vincent had not actively engaged in engineering for some time and planned to retire and not undertake any further engineering work. According to PEO records, JHVS' C of A was closed (cancelled December 20, 2016); however, Vincent's licence to practise remained active, with an expiry date of September 30, 2019.

THE COMPLAINT

5. The complaint raised issues concerning Vincent's approval of a grading plan that did not match actual grading conditions on the property as built and included the fact that Vincent failed

to note the existence of, and therefore failed to account for, the impact of the concrete retaining wall.

6. The Complaints Committee received candid and contrite responses from Vincent. Vincent stated that, had he been "aware that blocks were being installed he would have amended the original grading plan and submitted it to the city..." Vincent acknowledged that he made an error in signing-off on the Certificate 3. He relied on the measurements taken by the surveyors instead of personally attending at the building site.

THE CONSIDERATION OF THE COMPLAINTS COMMITTEE

7. The committee considered the complaint on February 6, March 20 and May 15, 2019.
8. The committee was very concerned about the actions of the respondents and the impact on affected property owners.
9. The committee considered the responses received from the respondents, and carefully considered the issues raised in this matter. The committee considered whether a referral to the Discipline Committee was warranted in all the circumstances, and whether it was in the interest of the public and the profession to proceed with the matter. The committee decided that if its concerns were addressed through a voluntary undertaking on the part of the respondents, as well as publication of a summary of this matter, that the public interest issues raised by the complaint would be addressed.

VOLUNTARY UNDERTAKING

10. Vincent agreed as follows:
 - a) He would tender resignations of both his licence and the C of A and commit not to reapply for licensure at any time in the future;
 - b) He would surrender his licence certificate, seal and C of A certificate to the deputy registrar, regulatory compliance within two weeks of the resignation; and
 - c) A summary of this matter, including the Voluntary Undertaking, would be published, with reference to names.
11. Vincent did resign and tendered his certificates, as agreed above.
12. The Voluntary Undertaking described above was accepted by the committee as a dispositive measure, and pursuant to its powers under section 24(2)(c) of the act, the committee decided that this matter would not be referred to the Discipline Committee.