

SUMMARY OF DECISION AND REASONS

Between PROFESSIONAL ENGINEERS ONTARIO and RENZO VILLA, P.ENG.; Heard on April 11, 2018; June 11, 2018; August 7, 2018; September 4 and 5, 2018; October 10, 2018; November 22 and 23, 2018; December 3 and 4, 2018; and January 9, 2019.

The panel of the Discipline Committee of the Association of Professional Engineers of Ontario (“the Association”) met to hear this matter, which was referred to it by the Executive Committee of the Association under section 27.1 of the *Professional Engineers Act* (“the Act”).

The Association’s Statement of Allegations, dated February 17, 2015, alleges that Renzo Villa, P.Eng., is guilty of professional misconduct as defined in the *Act* and Regulation 941 as follows:

1. The Respondent was, at all material times, a professional engineer licensed pursuant to the *Act*.
2. The Respondent was, at all materials times, employed on a full-time basis by the Association as an investigator who was involved in the investigation and prosecution of professional misconduct and incompetence matters regarding licence holders and certificate of authorization holders.
3. It was a condition of the Respondent’s employment with the Association that he maintain his certificate of authorization only for the purpose of completing the forensic files for which he was engaged prior to commencing employment with the Association (the “Permitted Services”).
4. As an employee of the Association, the Respondent was subject to the Association’s Conflict of Interest Policy, which prohibited outside employment or engagement in a conflict of interest capacity or business without the prior written consent of the Chief Executive Officer and Registrar.
5. The Association issued certificate of authorization #10992347 to “Renzo Villa Associates” (“C of A 10992347”). Until August 25, 2004, the Respondent was the licence holder responsible for the professional engineering services provided under C of A #10992347.
6. On August 25, 2004, Giovanni (John) Crimi, P.Eng., assumed responsibility for the professional engineering services provided under C of A #10992347 and per-

formed all of the engineering work on the remaining Permitted Services.

7. In February 2007, the Respondent relinquished all responsibility and rights to C of A #10992347.
8. The Association has no records of issuing a certificate of authorization to “R. Villa Associates Limited”, “R. Villa Associates Ltd. Structural Engineers”, “Renzo Villa Associates Limited” or “Design Engineering”.
9. From at least April 2009 until October 2013, the Respondent provided professional engineering services, other than the Permitted Services, to the public while employed by the Association.
10. From at least April 2009 until October 2013, the Respondent provided professional engineering services to the public during his work hours at the Association or while on sick leave from his employment at the Association.
11. From at least April 2009 until October 2013, the Respondent offered and provided professional engineering services through “R. Villa Associates Limited”, “R. Villa Associates Ltd. Structural Engineers”, “Renzo Villa Associates Limited” or “Design Engineering”.

Based on these particulars, it is alleged that the Respondent is guilty of professional misconduct as follows:

1. The provision of professional engineering services, other than the Permitted Services, to the public while an employee of the Association without the Association’s authorization is conduct 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, amounting to professional misconduct pursuant to section 72(2)(j) of Regulation 941.
2. The provision of professional engineering services to the public during his work hours at the Association or while

on sick leave from his employment at the Association is conduct 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, amounting to professional misconduct pursuant to section 72(2)(j) of Regulation 941.

3. The offering and provision of professional engineering services to the public without the appropriate certificate of authorization is contrary to section 12(2) of the *Act*, amounting to professional misconduct pursuant to section 72(2)(g) of Regulation 941.

Mr. Villa denied all of the allegations.

The parties brought 11 motions in total. The Association brought a motion, that was not disposed of, to compel Mr. Villa to disclose a list of his witnesses. The Association also brought a motion for an adjournment on September 5, 2019, which the panel granted. Mr. Villa brought four motions for adjournment, three motions for the recusal of panel members, a motion to disqualify Independent Legal Counsel (“ILC”), and a motion to stay the proceeding. These are described below.

On April 18, 2018, Mr. Villa brought motions for the recusal of two panel members, one of whom was a member of the Council of the Association, and for an adjournment. The panel denied Mr. Villa’s motion for recusal on the basis that he did not satisfy the panel that the presence of either member raised a reasonable apprehension that they were biased. Mr. Villa’s evidence did not satisfy the test confirmed by the Supreme Court of Canada in *Wewaykum Indian Band v Canada*¹ which is, “what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude? Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?”² Mr. Villa alleged that the panel member who sat on Council would have been present for the discussion of the referral of this matter to discipline. Mr. Villa provided no evidence that the member took any role in any such discussion, but in any event, section 30(3) of the *Act* specifically permits Council members who have considered the referral of a matter to the Discipline Committee to sit on a panel that hears that same matter.

On June 11, 2018, Mr. Villa attended the hearing with Mr. Neil Perrier, who appeared to be representing him as his legal counsel. However, at the beginning of the hearing, Mr. Perrier asked that he be removed as counsel of record for Mr. Villa. Neither party objected to the removal request

and the panel granted it. The hearing continued with Mr. Villa representing himself. Mr. Villa then brought a motion to disqualify ILC. Mr. Villa argued, among other things, that ILC allegedly had an existing years-long relationship with the Interim Registrar of the Association, Mr. Johnny Zuccon, that ILC did not disclose, and that gave rise to a “disqualifying conflict of interest” for ILC and his firm. The panel denied the motion to disqualify ILC as Mr. Villa did not provide any evidence of a disqualifying conflict of interest and did not convince the panel that ILC was unable to provide it independent legal advice in this matter.

Also on June 11, Mr. Villa brought a motion for the recusal of the panel member who sits on Council. The panel denied this motion for lack of evidence of a reasonable apprehension of bias. Mr. Villa then sought an adjournment so that he could have time to retain legal counsel. The panel granted Mr. Villa an adjournment of four to five weeks so that he could obtain legal representation. However, Mr. Villa did not subsequently obtain legal representation.

The panel adjourned the hearing date of August 7, 2018, after Mr. Villa left the hearing due to a medical emergency.

On September 4, 2018, Mr. Villa brought his third recusal motion, this time seeking the recusal of the entire panel. The panel denied Mr. Villa’s recusal motion because he did not satisfy the test for establishing a reasonable apprehension of bias and because it was not filed by the deadline in the panel’s order of June 21, 2018 that set a schedule for preliminary motions. Mr. Villa then brought a motion for adjournment that the panel denied because there were no grounds for granting it. Mr. Villa then asked for an adjournment until the following day so that he could file an application for a judicial review of the panel’s decision to deny his motion for its recusal. Mr. Villa had already attempted to have this hearing dismissed by way of judicial review on March 5, 2018, and the Divisional Court rejected his application as premature.³ After hearing from the parties and receiving advice from ILC, the panel denied Mr. Villa’s fourth motion for an adjournment because it was necessary to proceed and avoid further delay in this hearing. Mr. Villa was free to bring any court application he wished, even a premature one, however, the bringing of a court application was not grounds to adjourn the hearing.

¹2003 SCC 45.

²*ibid*, paragraph 60 quoting from Grandpre J. in *Committee for Justice and Liberty v National Energy Board*, 1978 1 SCR 369.

³*Villa v Association of Professional Engineers of Ontario*, 2018 ONSC 1543.

The panel also adjourned the hearing dates of October 10, 11 and 12 because it was advised, on October 10, 2018, that Mr. Villa had had another medical emergency.

On November 22, 2018, Mr. Villa brought a motion for a stay of the proceeding arguing that there was no reasonable and probable cause for the Association to initiate an investigation of him. He also argued that the proceeding was an abuse of process. Counsel for the Association asked the panel to dismiss the motion because it was untimely and because Mr. Villa did not provide evidence that supports the need for a stay. The panel denied the motion, which Mr. Villa did not bring it in accordance with the panel's June 21, 2018 Order for the filing of motions. Mr. Villa did not satisfy the test for a stay, which is a remedy granted only where there has been an abuse of process that brings the administration of justice into disrepute. In dismissing the motion, the panel relied on the Divisional Court's decision of March 5, 2018, which affirmed that this matter was properly brought to the Discipline Committee through a resolution from the Association's Executive Committee.⁴

OUTLINE OF THE PROCEEDINGS

The Association presented its case through the testimony of four of its current employees, two of Mr. Villa's clients, Mr. Wong's legal assistant, the investigator appointed by the Registrar to investigate Mr. Villa, and Mr. Villa's former business partner.

Mr. Villa testified in his own defence and called as witnesses the Director of Human Resources who was in place when he was hired, and the Interim Registrar of the Association, Mr. Johnny Zuccon.

As rebuttal witnesses, the Association called two former employees, the Manager of Investigations and the Deputy Registrar, Regulatory Compliance of the Association who were in place when Mr. Villa was hired.

DECISION

Mr. Villa offered and provided professional engineering services to the public without the appropriate certificate of authorization contrary to section 12(2), amounting to professional misconduct pursuant to section 72(2)(g) of Regulation 941.

Mr. Villa's provision of professional engineering services, other than the Permitted Services, to the public while an employee of the Association without the Association's authorization is conduct relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession

as dishonourable or unprofessional, amounting to professional misconduct pursuant to section 72(2)(j) of Regulation 941.

Whether or not Mr. Villa provided professional engineering services to the public during his work hours at the Association or while on sick leave from his employment at the Association is an employment matter being addressed in court and is not, on its own, conduct that rises to the level of professional misconduct under section 72(2)(j) of Regulation 941.

Having found Mr. Villa guilty of professional misconduct under sections 72(2)(g) and (j) of Regulation 941, the panel invites submissions from the parties on penalty, as follows:

- the Association shall provide its submissions on penalty to Mr. Villa and the panel by Friday, September 20, 2019
- Mr. Villa shall provide his responding submissions on penalty to the Association and the panel by Monday, October 11, 2019
- the Association shall provide its reply submissions on penalty, if any, to Mr. Villa and the panel by Monday, October 18, 2019

If either party does not consent to conducting the penalty hearing in writing, that party must, in writing, advise the panel by Monday September 9, 2019 and request an oral penalty hearing. If either party requests it, an oral penalty hearing will be convened on Friday, October 25, 2019.

On August 30, 2019, Glenn Richardson, P.Eng., signed the Decision and Reasons for the decision as Chair of this Discipline Panel and on behalf of the members of the Discipline panel: Stella Ball, LL.B., Paul Ballantyne, P.Eng., Aubrey Friedman, P.Eng., and Warren Turnbull, P.Eng.

⁴*Ibid*, at paras 2-4.