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The 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,
c. P.28;

And in the matter of a complaint regarding the conduct of

A licensee (hereinafter referred to as “the member”) and a holder of a Certificate of Authorization (hereinafter referred to as “the company”).

BETWEEN:

The Association of Professional Engineers of Ontario and
The member and the company

Decision and Reasons

A Panel of the Discipline Committee of the Association of Professional Engineers of Ontario met in the offices of the association on January 9, 2002, to hear allegations of professional misconduct against the member and the company.

Legal counsel appeared for the association and legal counsel represented the member and the company. Independent legal counsel for the discipline panel was present.

The hearing arose as a result of the member and the company's involvement in the design of an HVAC system for an Ontario office building.

The allegations of professional misconduct are set out in Appendix “A” to the Fresh Notice of Hearing, dated January 7, 2002, filed as an exhibit and summarized as follows:

Appendix A

1. The member was at all material times a member of the Association of Profession-

al Engineers of Ontario (“PEO”). The member was first licensed by PEO in February 1994.

2. The company was at all material times the holder of a Certificate of Authorization to offer and provide to the public services within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure that its employees, including the member, carried on the practice of professional engineering in a proper and lawful manner. The member was the professional engineer designated on the Certificate of Authorization as being responsible for the services provided by the company.

3. On or about May 16, 2000, the owner of a combined retail/office building (hereinafter referred to as “the owner”), which was located in a city (hereinafter referred

Notice of Resignation

At a Discipline Hearing held on August 26, 2002, the Discipline Committee accepted the resignation of **Man-woon Lai**, along with a signed undertaking that he would never again participate, directly or indirectly, in the practice of professional engineering anywhere in Canada or the United States of America. Mr. Lai will also undertake steps to terminate and close the Certificate of Authorization of **843812 Ontario Inc.**, operating as **A & M Engineering**. The full Decision and Reasons of the Committee will be published in a future edition of the *Gazette*.

- to as “the city”) in Ontario, retained the services of the member and the company to design a HVAC system for two offices on the second floor of the said building.
4. The member submitted a written proposal to provide services for the project stipulating a fee of \$950 for the design and drawings including “2 changes, 2 site inspections, (5) sets of drawings and submitting to the city”.
 5. In the original application for, and in all subsequent renewals of its Certificate of Authorization, the company opted for “Compulsory Disclosure” with respect to liability insurance. Under Section 74(2)(d) of Regulation 941 made under the Professional Engineers Act, the company must notify its potential clients that they are not insured in accordance with the minimum requirements of Section 74(1) of the Regulation. This notification must be given before entering into an agreement to provide professional engineering services. Section 74(2)(d) also requires the company to obtain from such clients written authority to provide professional engineering services without the minimum insurance. The company did not notify the owner of its lack of insurance, nor did it request any written authority from the owner to provide services without insurance.
 6. On or about May 19, 2000, the member and the company issued drawing M-1, signed and sealed, but not dated by the member, as part of the submission to the city’s Development Services Department. The said drawing specified two HVAC units of 3-ton capacity each.
 7. In reliance upon the said drawing, the owner entered into a contract for the supply and installation of two 3-ton capacity HVAC units in the two office buildings in question.
 8. In reviewing the May 19, 2000 drawing, the owner noted errors with respect to the return air grills and duct diameter. He advised the member of these errors and obtained the member’s agreement to make the necessary corrections to the drawing.
 9. On or about June 3, 2000, the member and the company issued Revision 1 to Drawing M-1. This drawing was signed and sealed, but not dated, by the member and specified two HVAC units of 6-ton capacity each. The member did not inform the owner of this change in the capacity of the two HVAC units. This drawing was used as the basis for the city to issue the necessary building permit.
 10. In June 2000, the owner found a tenant for one of the offices. Interior designs for a washroom and partitions necessitated for this tenancy required a revision to the HVAC system and thus to the building permit. In the meantime, the owner paid to the member and the company the full amount of the agreed upon fee for its professional engineering services.
 11. When the city inspector conducted a final inspection of the project in July 2000, he noted that the HVAC units installed in the buildings were of 3-ton capacity, whereas the drawing called for 6-ton capacity units. The city therefore refused to approve the HVAC system.
 12. The owner contacted the member with respect to this discrepancy and, at the request of the member, provided him with the model numbers of the two, 3-ton capacity HVAC units in order that he might revise the drawing accordingly to include such additional baseboard heaters and other changes as might be necessary to provide adequate heating capacity.
 13. On or about July 31, 2000, the member and the company issued Revision 2 to Drawing M-1. This drawing was signed and sealed, but not dated, by the member.

The drawing specified two HVAC units of 4-ton capacity each, notwithstanding the fact that the owner had specifically instructed that the revisions to the drawings were to be made to incorporate the already installed 3-ton capacity units.
 14. After the issue of Revision 2, the member and the company issued an invoice for \$250 for “Revision twice”.
 15. The owner then decided to change the HVAC unit of the north office building to a 4-ton unit and add electric baseboard heaters to the south office building.
 16. The member was therefore requested to prepare a revised drawing to reflect these changes. On or about September 6, 2000, the member and the company issued Revision 3 to Drawing M-1. This drawing was signed and sealed, but not dated, by the member and specified one HVAC unit of 4-ton capacity and one of 3-ton capacity. The member delivered the drawing to the owner along with another invoice for \$250 for “Revision 06 Sep 2000”.
 17. The owner disputed this invoice and submitted the Revision 3 drawing to the city.
 18. By fax dated September 7, 2000, the member and the company advised the owner that he was withdrawing his services and would not allow the owner to use the revised drawing for any purpose. The member further stated that he was informing the city of this action, with the result that the city declined to provide a revised building permit for the HVAC system.
 19. By letter dated September 19, 2000, the owner offered to pay the member the outstanding balance on the invoice, provided that the member reversed his withdrawal of services and informed the city that his drawings could be used to issue a revised HVAC permit. The member refused or neglected to respond to this offer.
 20. In summary, the member and the company, with respect to the aforementioned two offices:

- a) breached Section 74(2)(d) of Regulation 941 by failing to advise the owner that the company did not have the minimum professional liability insurance required under the Section 74(2) of the Regulation;
- b) breached Section 74(2)(d) of Regulation 941 by failing to obtain written authorization from the owner to perform professional engineering services without the minimum required professional liability insurance;
- c) issued a sealed drawing and subsequent revisions containing numerous errors; and
- d) failed to notify the owner of a significant change in the design specification.

By reason of the facts aforesaid, it is alleged that the member and the company are guilty of professional misconduct as defined in Section 28(2)(b) of the Professional Engineers Act, R.S.O. 1990, Chapter P.28.

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

- ◆ **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;**
- ◆ **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”;**
- ◆ **Section 72(2)(g): “breach of the Act or regulation, other than an action that is solely a breach of the code of ethics”;**

◆ **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 unprofessional”;**

◆ **Section 74(2)(d): “A holder of a Certificate of Authorization is not required to be insured against Professional Liability under Subsection (1) of Section 72 if, before entering into an agreement to provide professional engineering services, the holder notifies each person to whom the holder intends to provide professional engineering services that the holder is not insured in accordance with the minimum requirements of this section and receives from each such person written authority to provide these services without that insurance”;**

◆ **Section 74(3): the notice under Section 74(2)(d)**

- (a) shall include a statement that the regulation under the Professional Engineers Act requires the holder to notify any person to whom professional engineering services are to be provided if the holder is not insured for professional liability in accordance with the minimum requirements of that regulation;
- (b) shall include a statement to be signed by the person to whom the services are to be provided that the person understands that the holder is not so insured; and
- (c) shall prominently display the following statement above the statement referred to in clause (b):

“the undersigned hereby advises you that the undersigned is not insured for professional liability in accordance with the minimum requirements of Regulation 941 of the Revised Regulations of Ontario, 1990 made under the Professional Engineers Act”.

Plea by Member

The member admitted all of the allegations set out in the Fresh Notice of Hearing. The Panel conducted a plea inquiry and determined that the member’s admission was voluntary, informed and unequivocal.

Decision

The Panel considered the admitted allegations and submissions by both parties and finds that the facts support a finding of professional misconduct and, in particular, finds that the member committed acts of professional misconduct as alleged in paragraphs 20 to 22 of the Fresh Notice of Hearing.

Penalty

Counsel for the association advised the Panel that a Joint Submission as to Penalty had been agreed upon. The Joint Submission as to Penalty provides as follows:

- ◆ The licence of the member and the Certificate of Authorization of the company be suspended for a period of four months.
- ◆ These suspensions be suspended if the member writes and passes two examinations of the Association of Professional Engineers of Ontario: the Professional Practice Examination and 98-Mec-B2 Environmental Control in Buildings. Both of these examinations are to be passed within one year from the date of the decision of the Discipline Panel.
- ◆ If the prescribed examinations are not passed within the required one-year time frame, the licence of the member and the Certificate of Authorization of the company will be suspended for a period of four months, and if the examinations are not passed within that four-month period, the licence and Certificate of Authorization will be revoked.
- ◆ This decision be published without names in the official publication of the association.

Counsel for the member advised the Panel that this was a first offence, that there had been no previous complaints to the association regarding the member's practice, that the member had already taken the advice of counsel and implemented changes in his practice to avoid a future reoccurrence, and now had liability insurance.

Reason for Penalty Decision

The Panel accepts the Joint Submission as to Penalty and accordingly orders that:

- ◆ **The licence of the member and the Certificate of Authorization of the company be suspended for a period of four months.**
- ◆ **These suspensions be suspended if the member writes and passes two examinations of the Association of Professional Engineers of Ontario: the Professional Practice Examination and 98-Mec-B2 Environmental Control in Buildings. Both of these examinations are to be passed within one year from the date of the decision of the Discipline Panel.**
- ◆ **If the prescribed examinations are not passed within the required one-year time frame, the licence of the member and the Certificate of Authorization of the company will be suspended for a period of four months, and if the examinations are not passed within that four-month period, the licence of the member and Certificate of Authorization of the company will be revoked.**
- ◆ **This decision is to be published without names in the official publication of the association. In the event that the member does not pass both examinations within the prescribed time, and the licence and Certificate of Authorization are suspended or revoked, then the decision will be published with names in the official publication of the association as required by section 28(5) of the Professional Engineers Act.**

The Panel reviewed the provisions of the Joint Submission as to Penalty and finds that the interests of the public, the profession, and of the member are well served by the terms of this penalty.

Dated this 5 day of February, 2002.

David Smith, P.Eng., (chair)

for and on behalf of the Panel of the Discipline Committee

Daniela Iliescu, P.Eng.
Ken Lopez, P.Eng.
Thomas Smith, P.Eng.
William Walker, P.Eng.

Note from Department of Legal and Professional Affairs

The member passed both of the prescribed examinations within the allotted time frame.

Council approves designation and redesignation of consulting engineers

At the 411th Meeting of Council held on September 12th and 13th, 2002, the following members were designated or redesignated as Consulting Engineers pursuant to Ontario Regulation 941 of the *Professional Engineers Act*. Also listed are firms to which Council has granted permission to use the title "Consulting Engineers."

Designation as a Consulting Engineer is for a period of five years; at the end of that time, the member must be redesignated. Anyone wishing information on the Consulting Engineers Designation Program, may consult Angela Gallant, C of A Coordinator, Department of Professional Affairs, at (800) 339-3716 or (416) 224-1100, ext. 491; email: agallant@peo.on.ca.

411th Meeting of Council

Newly Designated Consulting Engineers

William Allan, P.Eng.
Earth Tech Canada Inc.
Markham, ON

Barry Cooke, P.Eng.
Decommissioning Consulting Services Ltd.
Richmond Hill, ON

Winson Elzinga, P.Eng.
Thames Valley Engineering Inc.
Chatham, ON

William Gauley, P.Eng.
Veritec Consulting Inc.
Concord, ON

Michael J. Hribljan, P.Eng.
Acres & Associated Environmental Ltd.
Toronto, ON

William LeMaistre, P.Eng.
Sabourin Kimble & Associates Ltd.
Ajax, ON

Hoda Seddick, P.Eng.
AMEC Earth & Environmental
Hamilton, ON

David Thompson, P.Eng.
Group Eight Engineering Ltd.
Hamilton, ON

Redesignated Consulting Engineers

Ralph Balbaa, P.Eng.
Richard Brummer, P.Eng.
Andrew Chevier, P.Eng.
Bruce Crozier, P.Eng.
Michael Dent, P.Eng.
Raymond Field, P.Eng.
James Hrycay, P.Eng.
Richard Ksander, P.Eng.
John Lamarre, P.Eng.
George Matsis, P.Eng.
Jeffrey Maxwell, P.Eng.
Chris J. Parker, P.Eng.
Rod Peters, P.Eng.
Harold Reinthaler, P.Eng.

Young Ro, P.Eng.
John Tattle, P.Eng.
Robert Wood, P.Eng.

Firms granted permission to use the title "Consulting Engineers."

AWS Engineers & Planners Corp.
Hamilton, ON

G.D. Jewell Engineering Inc.
Belleville, ON

Hanny A. Hassan, P.Eng. (o/a)
Alef Consulting
Toronto, ON