



# Gazette

THE DEPARTMENT OF THE REGISTRAR, PEO

Published by  
the Association of  
Professional Engineers  
of Ontario

25 Sheppard Avenue W.  
Suite 1000  
Toronto, Ontario  
M2N 6S9  
Tel: (416) 224-1100  
(800) 339-3716

Editor: Eric Newton  
Staff Contributors:  
Roger Barker, P.Eng.  
Ian Eng, P.Eng.

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

**Samuel W.S. Lui, P.Eng.**

A member of the Association of Professional Engineers of Ontario

## Decision and Reasons

A Panel of the Discipline Committee of the association met in the offices of the association on December 21, 1999, to hear allegations of professional misconduct against Samuel W.S. Lui, P.Eng., hereinafter referred to as "Lui".

William Black of McCarthy Tétrault appeared as legal counsel for the association. Lui was not present at the hearing and was not represented by legal counsel. Nancy Spies of Stockwood Spies appeared as legal counsel to the Panel.

The hearing arose from Lui's involvement as a consultant and project manager in the design and construction of two custom-built houses in a subdivision near Kemptonville, Ontario, in the Township of Oxford-on-Rideau.

Lui was at all times a member of the Association of Professional Engineers of Ontario (PEO) and the sole director and officer of Wilsam Corporation (Wilsam). Neither Lui nor Wilsam held a Certificate of Authorization.

At the commencement of the hearing, Mr. Black filed as an exhibit a Notice of Hearing, Affidavit of Service and a letter from the association to Lui dated September 29, 1999, stating the hearing date and noting that the hearing would proceed in Lui's absence.

Mr. Black also noted that since the time of the hearing was delayed approximately one hour past the appointed time of 9:30 a.m., it was assumed that Lui would not be in attendance. The Chair entered a plea of not guilty on behalf of Lui.

It was alleged that Samuel W.S. Lui, P.Eng., was guilty of professional misconduct, the particulars of which are set out in Appendix A and B to the Notice of Hearing and are summarized as follows:

### Appendix A

1. In or about February, 1994, Grant Kimmons (Kimmons) purchased a lot in a subdivision near Kemptonville, Ontario, in the Township of Oxford-on-Rideau (Township) for the purpose of constructing a custom-built house.
2. In or about June, 1994, Kimmons discussed and negotiated with Lui, who had been recommended to him as an experienced engineer, with a structural specialty, for the design and construction of his custom-built house. Kimmons also understood that Lui was a quantity surveyor.

3. Lui proposed that Kimmons act as the general contractor, with Lui acting as the consultant/project manager. Lui advised Kimmons that it would cost an additional \$10,000 to \$15,000 to register the house with the Ontario New Home Warranty Program (ONHWP), but that it was not necessary since the house would be warranted by him under their contract. Kimmons subsequently learned that registration of his house was required under the Ontario New Home Warranty Program Act (ONHWPA).
4. In September, 1994, Lui prepared the following drawings: site plan and cross-section plan; foundation plan; main floor plan, second floor plan; and elevation plan. The title block indicated that the drawings were drawn by "SL"; however, the drawings were not sealed, signed nor dated by Lui. The drawings were included as part of a building permit application.
5. On October 27, 1994, Lui provided a drawing showing the roof truss plan and proposed changing the 2-2"x10" @ 16" o/c design to 9 1/2" superjoists @ 16" o/c.
6. On October 31, 1994, Lui faxed a copy of his October 30, 1994, drawing showing the top and side elevations for the septic system design, to the Township Health Department as part of Kimmons' permit application for a class 2-6 sewage system. The Certificate of Approval was issued on November 3, 1994.
7. On November 3, 1994, Lui faxed a letter to Jim Hunter (Hunter), Building Inspector for the Township, advising that his preliminary test from his soil investigation indicated the soil bearing pressure of 1500 psf (71.82 kPa), that he would conduct a further test after the excavation for the foundation, and if necessary, that he would provide an engineering design for the revised footing and pad details.
8. On November 8, 1994, the Township issued construction permit No 177-94 to Kimmons for the erection of a 2228-square-foot residential dwelling.
9. On November 10, 1994, Kimmons and Wilsam entered into a contract for the construction of the house. The contract was signed on behalf of Wilsam by Lui. Wilsam's scope of services for the construction of the house included:
  - (a) "to provide all materials and perform all work shown on the plans specifications";
  - (b) "select, coordinate and supervise all the required services and sub-trades";
  - (c) "ensure all work to comply with the plans and specifications, The Ontario Building Code, the requirements of the Township of Oxford-on-Rideau, Ontario Hydro, and other relevant agencies"; and
  - (d) "paying the sub-trades from draws as outlined in Schedule F of the contract."
10. Lui also undertook and agreed:
  - (a) to warrant the workmanship and the materials for a period of one year from the date of completion;
  - (b) to rectify any defects in workmanship or materials;
  - (c) to manage and supervise all required sub-trades for the project; and
  - (d) to complete the house on or before February 28, 1995, at a total cost of \$161,400.
11. Construction of the house began in late November, 1994. During construction, events related to the construction of the house included the following:
  - (a) in a December 15, 1994, letter to Hunter, Lui advised that he performed a soils review and confirmed a maximum allowable bearing pressure of 75 kPa (1566 psf);
  - (b) Lui requested and received from Kimmons cash draws, which were not included in the contract, stating to Kimmons that he could not continue to build unless he was provided with the money when requested. By a statement of account to Kimmons, dated March 5, 1995, Lui acknowledged that he received a total of eight cash draws totaling \$91,750;
  - (c) Kimmons was advised by sub-trade workers that Lui provided little direction and supervision on the project, including not showing up with monies and supplies required by them to carry out their work;
  - (d) during visits to the project site, Kimmons observed that Lui was rarely present to supervise hourly-rated workers, resulting in their logging of hours while accomplishing little work;
  - (e) Lui departed on March 2, 1995, for a four-week vacation, leaving the house in such a state that an occupancy permit could not be issued by the Township; and
  - (f) Lui failed to pay for some materials and services included in the contract, resulting in Kimmons having to make additional payment for these despite having provided Lui with the requested cash draws. These included payment to Ontario Hydro for electricity, to Johnston Baker Fuels for fuel used during construction and to Nepean Plumbing Supplies for a shower door.
12. From March, 1995, to June, 1995, Kimmons attempted, unsuccessfully, to contact Lui. Lui had abandoned the project.
13. In June, 1995, Kimmons contacted ONHWP and as a result of an investigation by ONHWP, charges were laid against both Lui and Wilsam under section 6 (unregistered builder) and section 12 (unenrolled house), respectively of the ONHWPA.
14. On November 30, 1995, both Lui and Wilsam were convicted, in absentia, of the unregistered builder charge. A fine of \$5000 each was imposed and, in addition, Lui was placed on probation for two years.
15. As a result of the conviction against Lui and Wilsam, Kimmons' house was enrolled by the ONHWP to enable the necessary repair and/or completion of the house construction to be carried out with the costs incurred by the ONHWP to be assessed against both Lui and Wilsam.
16. By letter dated April 22, 1996, to Kimmons, ONHWP provided a work schedule and deficiency list identifying 68 items which were warranted completion items or incomplete items. The estimated cost to complete the 68 items identified was \$8,575. The ONHWP maximum allowable coverage for warranted completion

items is \$5,000. Therefore, the estimated additional cost to Kimmons for these items was \$3,575.

## Appendix B

1. In or about September, 1994, Tom Barradas (Barradas) discussed and negotiated with Lui, who had been recommended to him, for the design and construction of a custom-built house on a lot owned by Barradas in a subdivision near Kemptville, Ontario, in the Township of Oxford-on-Rideau (Township).
2. Lui proposed that Barradas act as a general contractor, with Lui acting as consultant/project manager. Lui advised Barradas that this arrangement would avoid registering the house with the ONHWP, resulting in cost savings of \$15,000. Barradas subsequently learned that registration of his house was required under the ONHWPA, and the cost was only \$300.
3. In October, 1994, Lui prepared the following drawings: site plan and roof plan; foundation plan; main floor plan, second floor plan; elevation plans; and cross-section plan. The title block indicated that the drawings were drawn by "SL"; however, the drawings were not signed, sealed nor dated by Lui. The drawings were included as part of the building permit application.
4. On October 31, 1994, Lui faxed a copy of his October 30, 1994, drawing showing the top and side elevations for the septic system design to the Township Health Department, as part of Barradas' permit application for a class 2-6 sewage system. The Certificate of Approval was issued on November 3, 1994.
5. On November 3, 1994, Lui faxed a letter to Jim Hunter (Hunter), Building Inspector for the Township, advising that his preliminary test from his soil investigation indicated the soil bearing pressure of 1500 psf (71.82 kPa), that he would conduct a further test after the excavation for the foundation, and if necessary, that he would provide an engineering design for the revised footing and pad details.
6. On November 8, 1994, the Township issued construction permit No. 178-94 to Barradas for the erection of a 2262-square-foot residential dwelling.
7. On November 10, 1994, Barradas and Wilsam entered into a contract for the construction of the house. The contract was signed on behalf of Wilsam by Lui and the scope of service was similar to those listed in Appendix A, paragraphs 9 and 10.
8. Construction of the house began in late November, 1994. During construction, events related to the construction of the house included the following:
  - (a) Lui requested and received from Barradas several large cash payments in order to pay trades directly to qualify for a "best possible pricing";
  - (b) during visits to the project site, Barradas observed that there were several days during which no trades could be found working on his house;
  - (c) Barradas observed that Lui's inability to manage the trades resulted in deficient work and construction errors;
  - (d) Lui departed the project in early March, 1995, for three weeks because of a prior business commitment, but assured Barradas that upon his return, he would be resuming the project full-time to wrap up the project and bring everything into a satisfactory conclusion; and
  - (e) Lui failed to pay for some labour and material, resulting in Barradas being approached by various sub-trades for payment of services and material. It was Barradas' belief that these costs were included in their cash payments to Lui.
9. From April, 1995, to July, 1995, Barradas attempted, unsuccessfully, to contact Lui. Lui had abandoned the project.
10. As a result of complaints made to the ONHWP in June, 1995, charges were laid against Lui and Wilsam under Section 6 (unregistered builder) and Section 12 (unenrolled house), respectively of the ONHWPA relating to the construction of the Barradas' house.
11. On November 30, 1995, both Lui and Wilsam were convicted, in absentia, of the unregistered builder charge. A fine of \$5,000 each was imposed and, in addition, Lui was placed on probation for two years.
12. As a result of the conviction against Lui and Wilsam, Barradas' house was enrolled by the ONHWP to enable the necessary repair and/or completion of the house construction to be carried out with costs incurred by ONHWP assessed against both Lui and Wilsam.
13. By letter dated May 14, 1996, to Barradas, ONHWP provided a work schedule and deficiency list identifying 60 items which were warranted completion items or incomplete items. The estimated cost to complete the 60 exceeded the \$5,000 maximum allowable coverage under the ONHWP. Barradas was responsible for the excess.

An independent structural engineer engaged by PEO reviewed the drawings and documentation for both houses and found that:

  - (a) the plans and specifications prepared by Lui for both the Kimmons and Barradas houses constituted design as defined in the practice of professional engineering as set out in the *Professional Engineers Act*;
  - (b) the November 10, 1994, contracts between Wilsam and Kimmons and Wilsam and Barradas identified the consultant who would be responsible for all aspects of the design, construction, project management and administration of the work. This constituted directing or supervising where the safeguarding of life and property are concerned and requires the application of engineering principles. The services proposed by Lui constituted the practice of professional engineering as defined in the *Professional Engineers Act*;
  - (c) Lui identified himself as a professional engineer and Kimmons and Barradas relied on his qualifications for an expected level of performance. This was relevant to the practice of professional engineering;
  - (d) Lui's recommendation to Kimmons and Barradas that it was not necessary to register the homes with

- ONHWP and the resulting cost savings were not correct; and
- (e) Lui left the projects without supervision, and never returned to complete the work. This was not representative of professional conduct.

Mr. Black called Mr. Grant Kimmons as the association's first witness. Mr. Kimmons explained that he and Mr. Barradas purchased lots in the same subdivision in February, 1994. Kimmons inquired about Lui's previous projects, and Lui directed him to a house in Kanata that he had recently completed. Lui stated he was a structural engineer, and could design and build the house that Kimmons chose. Kimmons asked him to prepare drawings. With the contract agreement, Lui presented a schedule of payments required to properly maintain the progress of the work. Kimmons found that work was progressing at the site until late December, when he observed an apparent lack of supervision. Lui assured him that winter construction would not be a problem. Kimmons advised that Lui did not follow the payment schedule, but required additional cash to pay the trades and buy materials.

The house was not completed by February 28, 1995, and an occupancy permit had not been issued. Kimmons was concerned that Lui substituted unprotected wood window frames for vinyl covered frames specified, live electrical wires were loose, toilets were not completed, and the furnace system was not operating properly. Kimmons had to move in, and experienced headaches which he attributed to a faulty furnace system. Kimmons contacted the Ontario New Home Warranty program (ONHWP), who warned him of Lui's past record. When Kimmons confronted Lui concerning this, Lui dismissed it as being erroneous.

In February, 1995, Lui advised Kimmons that he was about to take a trip to the Orient but would look after all items when he returned. After many telephone calls and registered letters Mr. Kimmons was able to contact Lui once, but he did not hear from Lui again after the second week in March.

In May and June of 1995, Kimmons contacted the ONHWP again. Kimmons confirmed Lui's past convictions with fines totaling \$20,000. The ONHWP laid further charges against Lui and Wilsam, and enrolled Kimmons in the program.

The deficiency list included the replacement of the entire roof covering, which

was leaking, the replacement of the heating system, the correction of numerous electrical problems, and the reconstruction of floor slabs. Kimmons advised that the cost of the deficiencies exceeded the contract by \$50,000.

The Panel questioned whether Kimmons obtained legal advice before signing the contract. Kimmons stated that Lui had explained to him that the clause "the Owner acts as his own builder in this project" did not imply a sharing of the responsibility for construction with Kimmons, as Lui was to take charge of building the house. With Lui's explanation, Kimmons did not seek legal advice. Concerning funds paid to the building supply and to a neighbouring tradesman hired by Lui, Kimmons clarified that these payments made by him were in addition to the contract price. With respect to the overall design, Kimmons stated the foundations, framing and the outline of the house were satisfactory. Kimmons also clarified that all payments called for in the contract were made to Lui, but Lui did not account to Kimmons for monies expended.

Mr. Black called Mr. Tom Barradas as the association's second witness, and noted that many of the events for the Barradas' house were similar to those of Kimmons. Lui told Barradas he had built 30 homes in Manotick, and took Barradas on a tour of five of them. Barradas was aware that Lui was a professional engineer. Barradas confirmed that framing design details provided by Lui were attached to the construction permit of November 8, 1994.

Barradas also confirmed that Lui provided receipts for the payments Barradas made according to the payment schedule. Lui also asked Barradas for cash, which Barradas understood Lui was using to pay the trades and for materials. Lui assured Barradas that all payments were being made within the contract.

The house was not completed as of February 28, 1995. Exterior stairs leading to the house were not in place, the lot was not graded, slabs were not poured, the roof was leaking, and a burnt oil smell permeated the house. He was particularly concerned when the dining room ceiling collapsed due to a leaking bathtub above, where no bracing had been inserted. Lui told Barradas not to worry, but to make a final list which he would deal with in three weeks time. Barradas observed that Lui assured him that subcontractors would offer warranties under the contract. Barradas had difficulty in contacting Lui. He

also found a balance was owing to the building suppliers, and that some of the trades on site were not paid. The ONHWP then advised Barradas of Lui's past violations. The ONHWP deficiency list included the replacement of a leaking roof, correction of a poorly constructed skylight, removal of bare electrical wires and completion of many interior details.

In response to questions from the Panel, Mr. Barradas advised that Lui's plan to be away came as a surprise. Lui advised Barradas that his associate at Wilsam would be in charge of the project. Barradas did not question whether another person from Wilsam could act in Lui's absence. Barradas told the Panel that at the time, there was no reason to believe that Lui would not complete the work. Following the involvement of the ONHWP, he was reasonably satisfied with the house. Barradas suggested he was not competent to judge whether the drawings Lui prepared were satisfactory. The Panel noted that these drawings were not stamped by Lui.

Mr. Black called Stephen J. Blaney, P.Eng. (Blaney), whose qualifications as an expert witness in structural and construction engineering were accepted by the Panel.

Blaney referred to his report of April 2, 1997, entered as an exhibit, and confirmed that the design and drawings for the septic tank systems for both the Kimmons' and Barradas' homes constituted the practice of professional engineering. He explained that the Ontario Building Code Act requires that homes under 6460 square feet in gross area do not require the design of a professional engineer or architect, but may be designed under Part 9 of the Code. He observed that the Chief Building Official would rely upon drawings that were prepared by a professional engineer. He noted that a drawing stamped by a professional engineer should have been provided for the Kimmons residence where the joists were changed to 2" x 10" superjoists, not covered in Part 9. Blaney explained that the Township Building Inspector required a soil evaluation report for the Kimmons site, which, had Lui not signed as a professional engineer, would not likely have been accepted. Blaney noted that many items of work for both houses were covered by construction contracts, which constituted construction management rather than the practice of professional engineering. This would include warranties and the guarantee of completion dates.

Blaney referred to his report of March 8, 1996, entered as an exhibit. He noted that the cost of registration with ONHWP was not correct, and resulted in the homes not being registered for warranty protection. The contracts required Lui to carry out the work in accordance with the Ontario Building Code, which Lui did not appear to do. He noted that some of the items on the ONHWP report related to the practice of professional engineering, and that a leaking roof, improperly supported masonry and lack of ground fault electrical circuits affected public safety and would fall within the Ontario Building Code Act.

In response to questions from the Panel, Blaney observed that while there were no obvious problems with the design, Lui failed to properly implement the work. He failed to properly supervise the work to ensure the protection of life, health and safety. The heating system was an example. With respect to Lui sharing the responsibility with Kimmons and Barradas for the construction, Lui knew that Kimmons and Barradas had no knowledge of construction.

Concerning the responsibility of registering with the ONHWP, Blaney suggested that in a strictly legal sense Kimmons and Barradas should have registered with the ONHWP. Blaney noted that he was unable to inspect the homes, and could not comment on the deficiencies.

Both Mr. Black and Ms. Spies cautioned the Panel that some of the evidence that had been heard was hearsay evidence and ought not to be given any weight. Ms. Spies advised the Panel that the association bears the onus of proving the allegations, and that the proof must be clear and convincing based on cogent evidence accepted by the Panel, before it can make a finding against the member.

Mr. Black submitted that Lui was at all times a member of the association, and that his activities did involve the practice of professional engineering. Lui's misrepresentation of ONHWP requirements would constitute deceit, and should be considered a violation of Regulation 941, Section 72(2)(j). Lui did not stamp the truss details, septic system design and soils report, but he signed them with a P. Eng. designation. Lui supervised the construction, which involved public safety and welfare. It was very clear that the contracts designated Kimmons and Barradas as own-

ers, and that they were not involved with the implementation of the projects. Part of the advice Lui gave was with respect to the ONHWP, which was erroneous advice.

**After considering the evidence and exhibits filed, the Panel found Lui guilty of professional misconduct as defined in Section 28(2) of the Professional Engineers Act, R.S.O. 1990, Chapter P.28, and Regulation 941 made under the Act, the particulars of which are as follows:**

◆ **Negligence as defined in Section 72(1) of the Regulation: "In this section, "negligence" means an act or an omission in the carrying out of the work that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances."**

The Panel found that abandoning the work without assigning someone to take over, and not returning to discuss the issues with the client was negligent.

◆ **"failure to make responsible 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)(b)] of the Regulation.**

The Panel found that Lui had failed to ensure that the building was properly constructed in accordance with the plans and specifications with respect to the electrical and heating systems, and had failed to make responsible provision for life, health and property.

◆ **"breach of the Act or Regulations, other than an action that is solely a breach of the code of ethics," [Section 72(2)(g)] of the Regulation.**

The Panel found that Lui was practising professional engineering when he was not the holder of a Certificate of Authorization.

◆ **"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," [Section 72(2)(j)] of the Regulation.**

The Panel found that Lui misled both owners about registration with ONHWP. He promised to correct deficiencies but never did so.

**Lui was found not guilty of incompetence as defined in Section 28(3) of the Act and not guilty of a breach of Section 72(2)(d) of the Regulation.**

The Panel heard submissions from Mr. Black with respect to penalty.

The Panel was concerned about the need for specific deterrence, and what it would take to get the member's attention.

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

- 1. Lui's licence be suspended until he successfully completes the PEO Professional Practice Examination, and if the examination is not successfully completed within 24 months, his licence be revoked.**
- 2. Lui provide an undertaking that neither he nor his company will provide professional engineering services in Ontario unless those services are provided in accordance with a valid Certificate of Authorization.**
- 3. The Decision and Reasons be published in summary form with names in the *Gazette*, the official publication of the PEO.**

**The Panel considered that Lui's conduct was reprehensible, and that the penalty imposed would not be sufficient without a provision for revocation.**

Dated at Toronto this 27th day of October 2000.

Kam Elguindi, P.Eng. (Chair)

For and on behalf of the Committee

Barry Hitchcock, P.Eng.

Daniela Iliescu, P.Eng.

Jim Lucey, P.Eng.

Nick Monsour, P.Eng.

## ENFORCEMENT

### The Association of Professional Engineers of Ontario

#### Versus

#### Sevenwood Management Consultants Limited

At a trial in the Provincial Offences Court, Newmarket, Ontario, on December 20, 2000, before His Worship R. Leggette, Sevenwood Management Consultants Limited was found guilty of the following charge brought under the *Professional Engineers Act*:

- ◆ That Sevenwood Management Consultants Limited on or about the months of December 1997 to July 1998 at Woodbridge, Ontario, did commit the offence of using a seal that would lead to the belief that it may provide to the public services that are within the practice of professional engineering, not being the holder of the necessary Certificate of Authorization from the Association of Professional Engineers of Ontario using its own name and the business name of "Duo Designs," contrary to the Professional Engineers Act, R.S.O. 1990, C. P. 28, Section 40(3)(b).
- ◆ Neither Sevenwood Management Consultants Limited nor Duo Designs held a Certificate of Authorization under the Professional Engineers Act, nor was its principal Vincent Fulgenzi ever licensed as a professional engineer in the province of Ontario.
- ◆ The association was represented by Dana M. Peebles of McCarthy Tétrault. Vincent Fulgenzi appeared as the representative for the defendant.
- ◆ Mr. Peebles informed the Court that between December of 1997 and July of 1998 Sevenwood Management Consultants Limited was retained to provide mechanical and electrical engineering services in connection with a proposed restaurant in the Burlington area. He further informed the Court that contractors became concerned with the contents of the drawings and this resulted in the clients checking with Professional Engineers Ontario and determining that neither Fulgenzi nor his business entities were licensed to offer or to provide professional engineering services to the public.
- ◆ In addition, Sevenwood applied the seal and signature of a professional engineer without his knowledge when it submitted the design drawings to the Burlington Building Department.
- ◆ The company pleaded guilty to the charge and joint submissions, which had been negotiated with Sevenwood's counsel, were made. His Worship fined Sevenwood Management Consultants Limited \$20,000, plus a Victims Fine Surcharge of \$5,000 and further ordered that the company pay \$2,000 in restitution to the former client.
- ◆ The company was given one year in which to pay the fine.
- ◆ As a result of the guilty plea by Sevenwood Management Consultants Limited two other charges were withdrawn.

### PRACTICE BULLETIN FOR ENGINEERS: Completing RSCs for Site Assessment and Remediation

This practice bulletin will be of interest to professional engineers involved in site assessment and remediation, specifically those completing Records of Site Condition (RSCs) under the *Guideline for Use at Contaminated Sites* (MOE, 1997). The Ontario Ministry of the Environment (MOE) re-staffed its Central Audit Team through 2000 and is actively auditing RSCs submitted to the ministry. The audit team is auditing rigorously and RSCs are failing the audit for a number of reasons, including but not limited to:

- ◆ method detection limits which exceed the clean-up criteria;
- ◆ absence of confirmatory sampling following removal of high concentration zones;
- ◆ absence of soil sampling following removal of an underground storage tank;
- ◆ absence of sampling from 0-5 cm at a site being re-zoned from industrial to residential use;
- ◆ inconsistencies in applying the new guidelines to clean-ups initiated prior to 1997; and
- ◆ exceeding any guideline criteria, anywhere on the site, regardless of the amount of the excess or its statistical significance.

PEO's Environment Committee believes that professional engineers should be aware of this rigorous interpretation and the apparent lack of opportunity for professional judgment in completing RSCs. The committee raised this issue when the RSC was last revised, but such provisions were not incorporated into the current RSC. The Environment Committee plans to raise this issue when the RSC wording and content are revisited as part of proposed legislative changes outlined below. In the meantime, there appears to be little room for interpretation within the current RSC.

In auditing RSCs, MOE typically contacts the environmental practitioner who took responsibility for and signed the RSC. Clarifications may be requested from the consultant and copies of the detailed technical reports may be requested from the owner to resolve any audit issues. Further work or testing may be requested to clarify any discrepancies before the RSC can be deemed to be acceptable. The Audit Team can refer RSC failures to MOE's Investigation and Enforcement Branch (IEB) for further follow-up, although indications are that this is not common practice. In cases where a professional engineer has signed an RSC, MOE may also make a complaint to PEO for investigation through the complaints and discipline process. If evidence of professional misconduct exists, PEO's Complaints Committee may refer the issue to a disciplinary hearing. If a professional engineer is found guilty of professional misconduct, the penalty may range from a reprimand to publication of the decision and reasons, to suspension or revocation of his/her licence.

In May 2001, the province tabled draft legislation entitled, *The Brownfield Statute Law Amendment Act*, which may change the requirements for an RSC. More importantly, professional engineers with the appropriate training and experience, may be among the few professionals who will be permitted to take responsibility and sign-off on RSCs. Such statutory responsibility would mean that the government would be relying on PEO's licensing system and the ability of professional engineers to safeguard public health and well being. Bestowing this responsibility on professional engineers offers an opportunity for engineers to establish a leadership role in this evolving practice area. The Environment Committee is actively working with MOE and with other professional organizations, in particular the Association of Professional Geoscientists of Ontario, to assist the government in regulating this area through the provisions of the *Professional Engineers Act*. An unblemished audit record for RSCs would help considerably in building support for this approach.

NOTE: PEO's submission on the draft legislation is posted on the website at [www.peo.on.ca](http://www.peo.on.ca).