

Gazette

THE DEPARTMENT OF THE REGISTRAR, PEO

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Registration 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

Between

The Registrar of the Association of Professional Engineers of Ontario, and

Canadian Home Inspection Services Inc.

An applicant

Decision and Reasons

A panel of the Registration Committee of the association met in the offices of the association on January 26, 1999, with respect to the proposal of the Registrar of PEO to refuse to issue a Certificate of Authorization to the applicant, Canadian Home Inspection Services Inc. (hereinafter referred to as CHISI).

Although this hearing was requested by Thomas Vattovaz, the president of CHISI, neither the applicant, nor any representatives of the applicant, were present.

The Registrar of PEO was represented by Dana M. Peebles, barrister and solicitor of McCarthy Tétrault. After hearing submissions from Peebles, and upon filing of the Notice of Hearing and an Affidavit of Service thereof, the committee agreed to proceed with the hearing in the applicant's absence.

Eric Newton, PEO's Manager of Legal Affairs, was called as a witness on behalf of the Registrar of PEO. In his capacity as Manager of

Legal Affairs, Newton is responsible for the management of enforcement of the regulatory provisions of the Act on behalf of PEO.

He testified that in or about July 1997, PEO obtained an advertising brochure of Canadian Home Inspection Services Inc., in which PEO's corporate logo was prominently displayed.

Upon receipt, he reviewed the records of PEO and discovered that CHISI did not hold a valid Certificate of Authorization from PEO.

On July 17, 1997, Newton wrote to Thomas Vattovaz, the president of CHISI, to advise that only those companies that have PEO's permission to use its corporate logo by virtue of their Certificate of Authorization are entitled to use its corporate logo. He further informed CHISI that, as it did not have a Certificate of Authorization, PEO would require that its corporate logo be removed immediately from all of CHISI's advertising materials, business cards, letterhead and other documentation.

On July 21, 1997, Vattovaz called Newton

and confirmed that he had received the July 17th letter. He informed Newton that CHISI employed an applicant for a licence to practise engineering by the name of Calin Carmazan.

At that time, Newton informed Vattovaz again that he could not use PEO's corporate logo unless CHISI obtained a Certificate of Authorization and that, in order to do so, the company required a licensed professional engineer as an employee, and not just an applicant for a licence like Carmazan.

Newton testified that Vattovaz advised him that he would respond in writing, but no letter was received from Vattovaz or anyone at CHISI.

Newton testified that, early in September 1997, he obtained a copy of a newsletter published by CHISI dated April 1997, featuring in its upper right hand corner a photograph of Carmazan, beside whose name appeared the designation "P.Eng."

Newton stated that he subsequently checked PEO's records and confirmed that PEO had not granted Carmazan a licence to practise engineering. Newton testified that, by letters dated September 10, 1997, he advised Carmazan and Vattovaz that the use of the term "P.Eng." next to Carmazan's name on CHISI's newsletter was barred by the Professional Engineers Act.

In his letter to Carmazan, he requested a written undertaking that Carmazan would delete reference to the term "P.Eng." on all business cards, advertisements and other documents, including CHISI's newsletters, and that he provide PEO with a copy of CHISI's next newsletter show-

ing that this had been done. In his letter to Vattovaz, he requested that he remove the term "P.Eng." from beside Carmazan's name in future editions of the newsletter, and that he comply with PEO's previous requests that CHISI remove PEO's corporate logo from all of its advertising materials.

Newton testified that on September 15, 1997, Vattovaz faxed a reply to him indicating that Carmazan had ceased to be an employee of CHISI as of August 15, 1996. Vattovaz further claimed to have removed Carmazan's name and "P.Eng." designation from all of CHISI's advertising, business records and other advertising literature and to have removed the old advertising literature from circulation. Newton testified that he again wrote to Vattovaz on October 2, 1997, advising that he had not yet dealt with the matter of PEO's corporate logo. He asked Vattovaz to confirm that he had removed PEO's corporate logo from all advertising materials, business cards and other documentation used and distributed by CHISI.

Newton testified that on or about October 17, 1997, he obtained further copies of advertising flyers, business cards and newsletters, obtained by the original complainant from various real estate broker's offices in Grimsby, Burlington and Oakville on October 14, 15, 16 and 17, 1997.

Newton testified that on October 19, 1997, he obtained a printout of the contents of CHISI's "website" on the internet. On page 2 of the website material, CHISI identified Carmazan as a "professional engineer." Under the subheading "About Us," in

paragraph 3 of the website, CHISI identified its inspectors as including "professional engineers."

Newton testified that on October 28, 1997, Vattovaz telephoned him and informed him that he had hired another engineer to work for CHISI. Vattovaz confirmed to Newton that the company was offering and providing professional engineering services. Newton testified that he told Vattovaz that, in light of this fact, CHISI would require a Certificate of Authorization from PEO. Vattovaz indicated that he would write to Newton to request an application form for a Certificate of Authorization.

Subsequent to that telephone conversation, Newton received a letter dated November 3, 1997 from CHISI's new engineer, John Scarcelli, P.Eng., who Newton confirmed held a valid licence from PEO. Scarcelli's letter described his duties with CHISI, which included "structural reports, legal reports and environmental audits." Newton stated that, in his opinion, these services can fall within the practice of professional engineering.

Newton testified that Scarcelli specifically assured PEO in his letter that he was working and would continue to work in an engineering capacity with CHISI.

Newton testified that he wrote to CHISI on February 2, called them on February 17 and wrote to them again on February 18, 1998, without reply. He testified that he spoke with Scarcelli on February 23 and explained to him that either CHISI needed a Certificate of Authorization or it had to purge its public materials.

Newton testified that, on February 25, 1998, Scarcelli left a voicemail message requesting an application form for a Certificate of Authorization. The Certificate of Authorization application form was then sent to Scarcelli on February 25, 1998.

On March 25, 1998, Scarcelli advised Newton that the application form had been given to Vattovaz "almost a month ago." Newton testified that, in his opinion, CHISI was not treating the matter with the appropriate level of seriousness.

Newton testified that on March 27, he finally received the application for a Certificate of Authorization from CHISI signed by Scarcelli, which named Scarcelli as the professional engineer employed by the company. By letter dated April 3, 1998, the Registrar of PEO advised CHISI that, because of its failure to deal appropriately with PEO's previously expressed concerns, PEO proposed to refuse the issuance of a Certificate of Authorization. The letter advised CHISI of its right to appeal the proposal to so refuse the application.

Newton testified that in May 1998, as a result of CHISI's failure to comply with PEO's requests and CHISI's breaches of the Professional Engineer's Act, R.S.O. 1990, Chapter P.28, an application was made to the Ontario Court (General Division) for declaratory and mandatory relief pursuant to Section 39 of the Professional Engineers Act, R.S.O. 1990, Chapter P.28. Newton testified that, with the consent of CHISI, the Order of Justice Wright dated the 17th day of September 1998 was issued, which declared and ordered as follows:

“1) This Court declares that the respondent, Canadian Home Inspection Services Inc. (“CHISI”), breached S.40(3)(a) of the Act in that, without holding a Certificate of Authorization from PEO, it used a term, title or description that will lead to belief that it may offer or provide, to the public, services that are within the practice of professional engineering.

2) This Court declares that the respondent, CHISI, breached S. 12(2) of the Act in that, without holding a valid Certificate of Authorization, it offered to the public services that are within the practice of professional engineering.

3) This Court orders that the respondent, CHISI, refrain from offering to the public services that are within the practice of professional engineering unless and until it holds a valid Certificate of Authorization.

4) This Court orders that the respondent, CHISI, refrain from using the word “engineering” or any abbreviation or variation thereof, including words or terms such as “P.Eng.,” “engineers,” “consulting engineers,” or “professional engineers” in any advertisement or representation to the public, directly or indirectly, by any medium in Ontario, unless and until it holds a valid Certificate of Authorization from PEO.

5) This Court orders that the respondent, CHISI, remove PEO’s corporate logo from all of CHISI’s advertising or other literature, including its advertising brochures, unless and until it obtains a valid Certificate of Authorization from PEO and the permission of PEO to do so.

6) This Court orders that the respondent, CHISI, pay to the

applicant its costs of this matter, fixed at \$2,500 and payable forthwith.”

Newton testified that CHISI complied with the Order on December 17, 1998.

Following the evidence given by Newton on behalf of PEO, Peebles made submissions on behalf of the Registrar of PEO. He submitted that, if the applicant did not require a hearing, PEO could have carried out the proposal of the Registrar to refuse the issuance of a Certificate of Authorization for the reason that Canadian Home Inspection Services Inc.’s conduct afforded grounds for the belief that the company would not engage in the practice of professional engineering in accordance with the law, and with honesty and integrity.

He submitted that, although Vattovaz requested a hearing, he did not attend, and that the Registration Committee could conclude that the failure to attend and participate was an abandonment of the application.

Peebles submitted that it was clear that the applicant had breached the provisions of the Professional Engineers

Act in that it claimed to have a professional engineer on staff when it did not, and provided engineering services when it had no Certificate of Authorization.

He submitted that it took from April 1997 to December 1998 and a Court Application to the Ontario Court (General Division) to get CHISI to comply with PEO’s concerns.

The business card remained in the marketplace six months after concerns had been raised with CHISI. He submitted that CHISI has failed to comply in a timely and effective manner and has provided no defence or explanation.

Peebles submitted that the proposal to refuse the issuance was well founded and that even when CHISI received the proposal, it failed to revise its promotional material until PEO had brought a court application and obtained the Order of the Ontario Court (General Division).

Following submissions by Peebles, the committee retired to deliberate. On review of the evidence presented by PEO, the committee directed that the proposal to refuse to issue

a Certificate of Authorization by the then Registrar, Debra Dileo, P.Eng., set out in her letter to CHISI dated April 3, 1998, be confirmed for the following reasons:

1. The applicant (CHISI) operated in breach of the Professional Engineers Act, R.S.O. 1990, Chapter P. 28 and consented to an Order issued by the Ontario Court (General Division) with respect to those breaches.

2. The applicant (CHISI), in failing to respond in a timely fashion to requests from PEO to observe the requirements of the Professional Engineer’s Act, provided grounds for the belief that the company would not engage in the practice of professional engineering in accordance with the law and with honesty and integrity.

The committee ordered that the Decision be published with names.

Dated at Toronto this 10th day of February, 1999

G.T.G. Scott, P.Eng. (Chair)

For and on behalf of the committee:

Bill Fredenburg, P.Eng.
June Hannah, SMP

Notice to the profession

The Ontario Ministry of Labour is currently drafting an amendment to the industrial regulations under the Occupational Health and Safety Act (OHSA) that will change and clarify the requirements for predevelopment reviews (PDRs).

The current regulations require that, in certain circumstances, an owner or lessee obtain a report signed and sealed by a professional engineer, stating that a particular

piece of equipment, machine or device will comply with the OHSA and regulations, if it is constructed, developed, reconstructed, altered and installed according to the design drawings, layout and specifications. A predevelopment review is a design review of plans, drawings and specifications to confirm compliance with the OHSA and regulations.

The proposed changes are in response to concerns of stakeholders from all sectors

over the practicality of current PDR requirements. The Professional Practice Committee of PEO has been working with the labour ministry to review their proposals for consistency with the Professional Engineers Act.

The ministry anticipates that the new PDR requirements will be available by summer. For further information from the ministry, contact Shal Gewurtz, P.Eng., at (416) 326-7920.

Publications Order Form

	\$	No.	Total
The Professional Engineers Act, R.S.O. 1990, Chapter P.28	N/C		
Ontario Regulation 941	N/C		
By-law No. 1	N/C		
Practice Guidelines			
Acting Under the Drainage Act (1988)	10.00		
Acoustical Engineering Services in Land-Use Planning	10.00		
Building Projects Using Manufacturer-Designed Systems & Components	10.00		
Commissioning Work in Buildings (1992)	10.00		
Communications Services (1993)	10.00		
Engineering Services to Municipalities (1986)	10.00		
Environmental Site Assessment, Remediation & Management (1996)	10.00		
General Review of Construction as Required by Ontario Building Code (1996)	10.00		
Geotechnical Engineering Services (1993)	10.00		
Guideline to Professional Practice (1998)	10.00		
Land Development/Redevelopment Engineering Services (1994)	10.00		
Mechanical & Electrical Engineering Services in Buildings (1997)	10.00		
Professional Engineer as an Expert Witness (1997)	10.00		
Professional Engineer's Duty to Report	2.50		
Project Management Services (1991)	10.00		
Reports as Required by S.7 & S.8, Reg. 851, Ontario Occupational Health & Safety Act	10.00		
Roads, Bridges & Associated Facilities (1995)	10.00		
Solid Waste Management (1993)	10.00		
Structural Adequacy in Arenas (1990)	2.00		
Structural Engineering Services in Buildings (1995)	10.00		
Temporary Works (1993)	10.00		
Transportation & Traffic Engineering (1994)	10.00		
Use of Computer Software Tools Affecting Public Safety & Welfare (1993)	10.00		
Business Publications			
Agreement Between Architect & Consultant (1992) (Guide to CCAC Doc. 6C)	5.00		
Agreement Between Client & Engineer (1993)	15.00		
<small>Sold in packages of 10, including Guideline for the Use of Agreements Between Clients and Engineers</small>			
Agreement Between Prime Consultant & Sub-Consultant (1993) per package of 10	10.00		
Schedule of Fees for Engineering Services (1998)	10.00		
Required Experience for Licensing in Ontario (1995)	10.00		

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