

Gazette

THE DEPARTMENT OF THE REGISTRAR, PEO

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.

And in the matter of the proposal of the Registrar to refuse to issue a licence to

An Applicant

Between the Association of Professional Engineers of Ontario and an applicant

Decision and Reasons

A panel of the Registration Committee of the Association of Professional Engineers of Ontario met in the offices of the association on February 5, 1998, at the request of an applicant (the applicant) with respect to a proposal of the Registrar of Professional Engineers Ontario (PEO) to refuse to issue a licence to the applicant.

Both PEO and the applicant were represented by legal counsel.

Legal counsel for PEO filed the Notice of Hearing as an exhibit. The Registrar's decision not to issue a licence was based on the allegation that the applicant had submitted incomplete information in his application.

The allegations contained in the Notice of Hearing are summarized as follows:

1. The applicant made application to PEO to be licensed as a professional engineer on December 4, 1995.

2. In the application under question #2 of section 9, which reads, "Have you ever applied to, or been licensed by any professional engineering body in another province, territory or country?," the applicant indicated that he had been registered with the Institute of Engineers, Australia, as a chartered professional engineer in 1993, and did not provide any additional information.

3. Subsequently, PEO learned from the Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA) that the applicant had applied for a licence with APEGGA, which was pending at the time of his application to PEO.

4. In his response to PEO's request for information regarding the discrepancy in the application, the applicant forwarded a letter dated May 6, 1996, indicating that he believed that the application form provided for making only one entry in reply to the question at issue, and that

he chose to mention his licence in Australia, since there was a reciprocal agreement of acceptance of engineering professionals between Canada and Australia. The applicant also confirmed in his letter that he had been enrolled at that time as an exam candidate with APEGGA. The applicant stated that APEGGA initially asked him to write the "Professional Practices" examinations, which he passed and, later, he was asked to write a few confirmatory examinations in mechanical engineering subjects, which he planned to write in November 1996.

5. In a letter dated June 4, 1996, PEO advised the applicant that it had obtained information from APEGGA that he had failed two of APEGGA's examinations, being 92-MECAZ on November 1, 1995, (26 per cent grade) and 92-MECA2 on November 2, 1995 (17

per cent grade).

6. In a letter to PEO dated June 11, 1996, the applicant confirmed that the above information was correct. However, he indicated that there were extenuating circumstances relevant to his failing the examinations, mainly that he had been sick during the examinations. And, in fact, he had discontinued writing the examinations on the second day of his illness. The applicant obtained a doctor's note to confirm his illness and forwarded it to APEGGA. Thus, the applicant contended that the partial examination result did not reflect his true ability and, therefore, he had not indicated the results in his May 6 letter.

In the June 11 letter, the applicant also explained that he mentioned only his Australian membership in the PEO application because the word "country" appeared in the form.

7. On January 2, 1997, the Registrar advised the applicant that she proposed to refuse the

issuance of a licence to him for failing to advise PEO of his APEGGA application and examination failures, and for the reason that his evasive declarations afforded grounds for the belief that he would not engage in the practice of professional engineering in accordance with the law and with honesty and integrity pursuant to section 14(2) of the Professional Engineers Act.

PEO legal counsel tendered documents as exhibits, which included a Hearing Brief, and correspondence between the association and the applicant and the Alberta association. He reported that the applicant agreed with the facts contained in the Notice of Hearing.

PEO's Deputy Registrar, Admissions, appeared as a witness for the association. His evidence confirmed the allegations as set out in the correspondence, Hearing Brief and the Notice of Hearing.

Under cross-examination by the applicant's legal counsel, the Deputy Registrar said he could not understand why the applicant had not included the information regarding his Alberta application in answer to question #2 of section 9 of the Ontario application form. The applicant's legal counsel argued that the question on the form with respect to membership in other jurisdictions was poorly worded, and there was insufficient space on the form to include more than the name of one jurisdiction. The Deputy Registrar also believed that the applicant should have included in his application that he had failed the

Alberta examinations.

In response to the applicant's legal counsel's concerns about the clarity of the wording in the application from other jurisdictions, the Deputy Registrar stated that he had no knowledge of any other applicants being confused about the wording of the question.

The Deputy Registrar informed legal counsel for the applicant that the Alberta association was waiting for PEO's decision regarding this hearing before rendering a decision on the applicant's application on February 9, 1998.

Prior to introducing his client as a witness, the applicant's legal counsel provided an introductory statement concerning the application. In his remarks, he noted that this was the second time his client had flown from Alberta to Toronto for the hearing. Previously, on June 26, 1997, when the applicant arrived in Toronto for the hearing, he had been advised "that it had been cancelled due to the illness of one of the committee members.

He noted that his client had practiced engineering for over 30 years in three different countries. He complained that PEO's application form was changed in 1995, when two questions in the previous application were combined into one question. This, he contended, caused ambiguity, resulting in his client not providing all the necessary information. He argued that his client had not mentioned his failures of the Alberta examinations because he believed that they were not indicative of

his ability due to his illness at examination time.

He concluded his introductory remarks by requesting that the panel issue a licence with out conditions, send a copy of the licence to Alberta authorities, and revise the PEO application form.

The applicant then gave evidence regarding his extensive work experience of over 30 years with five companies in three countries and his educational background. He had also published five technical papers on corrosion and materials engineering.

He graduated with a bachelor's degree in mechanical engineering from the Institution of Engineers (India) in Calcutta, India, in 1970, and with a postgraduate degree in materials engineering from Bhopal University in India in 1973.

Most of his work experience has been with large multinational firms. He is presently employed by an Alberta company.

He stated that, during his entire work experience, he has never been disciplined, nor have any charges ever been made against him.

He explained that he initially filled out an application to PEO on October 4, 1993, when he was in the Netherlands Antilles. He had not applied to Alberta at that time. However, he did not forward this application to PEO, since he was advised that he must wait until he was a Canadian resident.

In his 1993 application

form, he had indicated in response to question 5 that he was a chartered professional engineer in Australia. He had not mentioned his Indian "membership," since he contended that there was space for listing only one country.

In his 1995 application form (in which questions #2 and #5 of the 1993 form were amalgamated into one question as #2 of section 9 on the 1995 form), he stated that, once again, he listed only his Australian membership since there was space on the form for only one country. He stated that if the question requested him to list all of his memberships, he would have done so. He explained that he used his Australian membership instead of his Indian membership because Australia has a reciprocal agreement with Canada.

He stated that he did not mention his Alberta examination failures because he had been sick during the examination and did not think that the results were relevant to his PEO application. He also noted that he subsequently passed the two examinations, with grades of 67 per cent and 71 per cent.

In concluding his evidence, the applicant stated that he did not deserve the complaints against his character because he had not hidden information, but had just answered the questions on the form according to his understanding. He stated that he had not lied or told untruths, and reiterated that he has good character as demonstrated by his

work experience.

Under cross-examination by legal counsel for PEO, the applicant revealed that he had passed the Professional Practice Examination (PPE) in Alberta. Also, he stated that he was accepted into Australian engineering membership without writing examinations, and only a panel interview had been required. The applicant advised PEO's legal counsel that he had applied to both jurisdictions in Ontario and Alberta because he had job applications in those provinces. He used the Australian reference on his application form because of the reciprocal agreement between Canada and Australia.

The applicant testified under cross-examination that he could not remember reading the instructions on the PEO application form requesting that the applicant attach a separate sheet of paper for more details, if required. PEO legal counsel told the committee that, even when PEO asked for more details regarding his Alberta application in April 1996, the applicant still did not mention his examination failures.

He reiterated his contention that the results were not significant as he had "been sick." He stated that he had nor intentionally withheld information and realized that PEO could obtain that information if it so desired. He testified that his Australian membership had lapsed in 1995 because he had not paid his fees, and not because of any misconduct. He was

reinstated as a member in September 1997.

On reexamination by defense counsel concerning the fact that the applicant provided no extra information to his response regarding other memberships in question #2A of section 9 of the form, the applicant stated that he did not believe that any information other than his Australian membership was required.

Under cross-examination by the panel, the applicant stated that the Alberta authorities had accepted his doctor's certificate, and he was allowed to rewrite his examinations, which he successfully passed.

In summation, legal counsel for PEO argued that the applicant had not been forthright in providing the necessary information requested in the application. Even when queried about his Alberta application, the applicant did not provide the information about his examination failures.

Counsel also noted that the records indicate that no other applicant has found question #2A of section 9 of the form confusing.

He also noted that the applicant had not advised PEO that his Australian membership had been revoked in 1995, for failure to pay dues. He contended that although the applicant had nor provided inaccurate information, he had not been absolutely forthcoming in providing all the necessary information. He concluded that although this was not one of the more serious offences to come before PEO, he believed that the applicant's application

should be delayed a year, and he should be required to write the PPE and any other examination deemed necessary at the time of reapplication.

In summation, legal counsel for the applicant stressed his client's record of over 30 years of engineering experience of excellence. He said he believed that the applicant had made an honest mistake, and that he should not be punished for the problems created by a badly worded question on the application form. He said he believed that just because other applicants have not had problems interpreting the questions on the form does not mean that the questions are clear. He stated that there was not sufficient space on the form for more than one answer. In fact, the instructions for providing additional details on a separate sheet were on a separate page of the form. He said he believed his client had been totally honest, and thus his application with the association should proceed.

After hearing submissions from legal counsel for the parties with respect to the disposition of this matter, the panel retired to consider the evidence and exhibits.

In making its decision, the panel was sympathetic to a certain degree to the criticism concerning the wording of PEO's application for licence. There was evidence that, in completing this form, full

attention was not paid by the applicant to the information on how to complete it. As a result, the form was not completed accurately, and pertinent information was not provided to PEO. In addition, there is considerable doubt as to whether the applicant had behaved in a straightforward and frank manner in his dealings with PEO.

The panel therefore recommended that the decision of the Registrar be confirmed, and that the applicant's application for registration be refused.

It is further recommended that he be permitted to reapply to PEO one year after the date originally set for the hearing on June 26, 1997, on the satisfactory passing the Professional Practice Examination and compliance with any Academic Requirements Committee (ARC) conditions.

This panel directed that this Decision and Reasons be published without names in the official journal of the association.

The panel member, Maximus Perera, P.Eng., prepared a Dissenting Decision and Reasons for this hearing.

Dated at Toronto this 30th day of April 1998

Coeff Scott, P.Eng.

(Chair)

For and on behalf of the committee:

John Wilkes, P.Eng. Oscar Zanatta, P.Eng.

Note from Department of Legal and Professional Affairs: In order to complete the record on this registration case, the Dissenting Decision has been published below. It does not affect the order made by the balance of the committee.

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Dissenting Decision and Reasons

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I agree that full attention was not paid by the applicant in filing the form and, as a result, it gave the appearance that the applicant withheld pertinent information. I believe that he made an honest mistake.

Under cross-examination by the association's legal counsel, the applicant revealed that he had passed the PPE in Alberta. If this is so, I see no reason why he should be required to pass the (PEO) Ontario Profes-

sional Practice Examination.

For the reason stated above, and considering the circumstances of this case and those of another that came before a registration hearing on November 25, 1996, for there to be an appearance of justice I must dissent with the majority view.

Recommendation

I recommend that the application for licensure by the applicant be permitted to proceed, subject to a review by PEO's Academic Requirements Committee without prejudice, because none of the allegations leveled at the applicant are tantamount to moral turpitude.

Dated at Toronto this 6th day of May 1998

Maximus Perera, PEng., MAsc, MBA