

# Inquiry Hearing

## IN THE MATTER OF THE ENGINEERS AND GEOSCIENTISTS ACT

and

## IN THE MATTER OF S W PETER LO PENG (#18180)

### Judgment

A Discipline Committee Panel of the Association of Professional Engineers and Geoscientists of the Province of British Columbia ("the Association"), under the authority of the *Engineers and Geoscientists Act*, RSBC, 1979, Chapter 109, as amended ("the Act"), held an Inquiry on Monday, October 16, 1995 to examine alleged contraventions of the Act and the Code of Ethics of the Association by S W Peter Lo Peng.

The charge against Mr Lo was:

"That he has been convicted in Canada or elsewhere of an offense that, if committed in British Columbia, would be an offense under an enactment of the Province or of Canada, and that the nature or circumstances of the offense render him unsuitable for registration or licensing; specifically, he was convicted of the following charges on April 7, 1993:

- i) Between the 1st day of February, 1989 and the 7th day of December, 1991, at or near the City of Vancouver, in the Province of British Columbia, he had possession of twenty Government of Canada bonds of a value of \$2,000,000, the property of Scotia-McLeod Inc, a value in excess of \$1,000, knowing that the said property was obtained by the commission in Canada of an offense punishable by indictment, contrary to Section 355(a) of the *Criminal Code*;
- ii) Between the 1st day of February, 1989 and the 1st day of October, 1991, at or near the City of Vancouver, in the Province of British Columbia, he did by deceit, falsehood or other fraudulent means, defraud ScotiaMcLeod Inc of money, of approximately \$600,000, by cashing coupons to the Government of Canada bonds that he was not lawfully entitled to, contrary to Section 380 of the *Criminal Code*; and
- iii) Between the 27th day of November, 1991 and the 6th day of December, 1991, at or near the City of Vancouver, in the Province of British Columbia, by deceit, falsehood or other fraudulent means, he did attempt to defraud ScotiaMcLeod Inc of money of approximately \$200,000, by attempting to sell two of the Government of Canada bonds that he was not lawfully entitled to, contrary to Sections 463(b) and 380 of the *Criminal Code*."

Mr Lo was not present at the Inquiry and was not represented by legal counsel, but had submitted his affidavit, sworn the 12th day of October, 1995, with supporting exhibits, for consideration by the Discipline Committee Panel. In his affidavit, Mr Lo denied the above charge, which was contained in the Notice of Inquiry dated the 12th day of September 1995 that had been served on him, and stated that he had not committed a crime. For the purposes of the Inquiry, it was considered that Mr Lo pled not guilty.

After hearing submissions from the Association's legal counsel, reading the full text of Mr Lo's affidavit, and ex-

amining the supporting exhibits and the documents submitted by legal counsel, including the Notice of Inquiry, the Information of the RCMP concerning the offenses, the Indictment presenting the charges and the Reasons for Sentence of the trial judge, the Discipline Committee Panel ordered that Mr Lo's membership in the Association of Professional Engineers and Geoscientists of British Columbia be revoked, effective immediately, and that this action be recorded on the Register of the Association.

Mr Kerry Short, assisted by Ms Beth Allard, of Bull Houser & Tupper, acted as legal counsel for the Association.

### Facts in the Case

1. S W Peter Lo Peng ("Mr Lo") is a person registered as a member of the Association of Professional Engineers and Geoscientists of the Province of British Columbia pursuant to the *Engineers and Geoscientists Act* and has been so registered at all relevant times.
2. The *Engineers and Geoscientists Act*, RSBC, 1979, Chapter 109, as amended and the Bylaws of the Association apply to the Inquiry by the Panel of the Discipline Committee of the Association.
3. Mr Lo was charged with the offenses contained in the Charge above and was found guilty by a jury of those offenses on April 7, 1993.
4. Mr Lo was sentenced to imprisonment for five years on each of the first two counts and two and a half years on the third count, the sentences to be served concurrently. The circumstances leading up to Mr Lo's conviction are noted below.
5. Mr Lo was employed as a messenger by Scotia-McLeod Inc in Toronto, Ontario, from September of 1988 and worked there until the end of October 1988.
6. Mr Lo resigned his position with ScotiaMcLeod Inc on or about October 31, 1988, several days after \$2,000,000 in Government of Canada bearer bonds, the property of his employer ScotiaMcLeod Inc, disappeared during the course of a transaction in which he was involved. The same bonds, serial numbers and attached coupons, those that were left after some three years, were found in Mr Lo's possession in December 1991 at the time he was arrested.
7. Mr Lo returned to Vancouver after resigning and started cashing the coupons from the bonds and, during the period from March of 1989 through until September of 1991, he collected some \$600,000 in cash on the sale of those coupons.
8. Mr Lo's cashing of the coupons from the bonds was totally undetected and would have remained so except that, in November 1991, he tried to sell two of the bonds to Green Line brokerage operations in Vancouver. This attempt led to his arrest and conviction for the offenses contained in the Charge above.
9. In the Reasons for Sentence, it was noted that Mr Lo consistently denied guilt during the trial of the criminal charges; it was also noted that he had shown no remorse for his actions throughout the proceedings, and that factor was taken into account in passing sentence.
10. In the Reasons for Sentence, speaking of fraud cases in general and an earlier case in particular, the state-

ment on deterrence from that earlier case was quoted as follows:

"Public opinion about sentencing in cases of this nature must concern the court. Sentences imposed by the court for criminal conduct of this nature must have the support of concerned and thinking citizens. If they do not give such support, the system will fail. *Punishment inflicted for breach of trust situations must reflect the repudiation felt by the majority of citizens for such betrayals.*" (emphasis added)

### Reasons for Judgment

After hearing evidence as described in the Facts above, the Discipline Committee Panel adjourned to consider the evidence and to reach a decision; when the Discipline Committee Panel reconvened, the Chair declared that the Panel found Mr Lo guilty of the charge. At this juncture, the Discipline Committee Panel heard submissions from the Association's legal counsel with respect to the sentence to be imposed on Mr Lo.

Section 24.5 of the Act reads, in part, as follows:

- 24.5 (1) The discipline committee may, after an inquiry under section 24.4, determine that the member, licensee, or certificate holder
- (a) has been convicted in Canada or elsewhere of an offence that, if committed in British Columbia, would be an offence under an enactment of the Province or of Canada, and that the nature or circumstances of the offence render the person unsuitable for registration or licensing,
  - (2) If the discipline committee makes a determination under subsection (1), it may, by order, do one or more of the following:
    - (a) reprimand the member, licensee or certificate holder;
    - (b) impose conditions on the membership, licence or certificate of authorization of the member, licensee or certificate holder;
    - (c) suspend or revoke the membership, licence or certificate of authorization of the member, licensee or certificate holder;
    - (d) impose a fine, payable to the association, of not more than \$25,000 on the member, licensee or certificate holder.

- (3) The discipline committee shall give written reasons for any action it takes under subsection (2).

The Discipline Committee Panel finds that Mr Lo has been convicted of offenses in British Columbia, under an enactment of the Province of British Columbia or of Canada, and that the nature and circumstances of the offenses are such as to render him unsuitable for registration in the Association of Professional Engineers and Geoscientists of British Columbia.

The Discipline Committee Panel finds that the specific offense, the commission of fraud upon an employer while in a position of trust, is also a very serious and direct contravention of the provisions of the Code of Ethics dealing with the standard of conduct expected of members of the Association. The preamble to the Code clearly states that members shall uphold the values of truth, honesty and trustworthiness and that employers, clients and the public must be able to rely upon our members honouring those values when they are entrusted with professional responsibilities for others.

Breach of trust by a member, even when the breach occurs in circumstances not directly related to the member's professional capacity or practice, as in this case, reflects negatively on the member and on the standard of conduct that can be expected in his professional undertakings. When such conduct occurs, and is brought to the attention of the Association, it is incumbent that appropriate action be taken to ensure that the profession as a whole is not perceived to be unworthy of the high level of trust and confidence in which it has traditionally been held by the public.

In view of this, the Discipline Committee Panel finds that the only appropriate sanction, given the nature and circumstances of the offenses in this case, is to revoke the membership of Mr Lo, effective immediately, and has so ordered.

Dated at the City of Burnaby, in the Province of British Columbia, the 23rd day of October, 1995.

Discipline Committee Panel:  
W E Royds PEng — Panel Chair  
R D Russell PGeo — Panel Member  
J F Watson PEng — Panel Member