

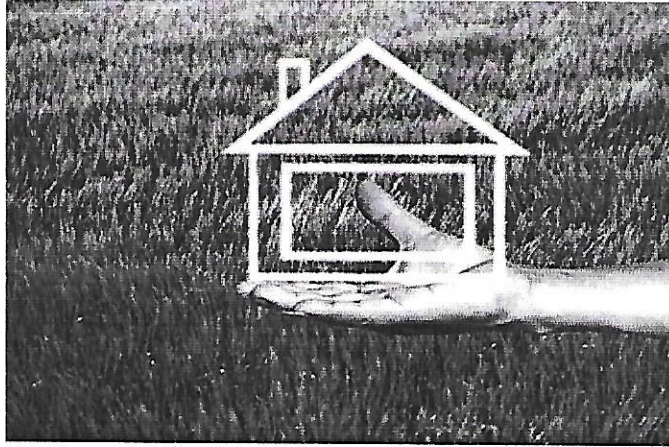
SHANOFF

Bizarre ban at Professional Engineers Ontario

An absurd publication ban on information the public has a right to know raises disturbing questions

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Tarion is the private, non-profit corporation appointed by the Ontario government to administer the Ontario New Home Warranties Plan Act. If it's relying on deficient engineering reports to determine remedies to be provided to purchasers of defective new homes, the public is entitled to openness and transparency, not publication bans, Alan Shanoff argues.

There are two basic categories of publication bans.

First, there are non-discretionary bans.

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These are supposed to protect important societal values. Examples include publication bans to protect identities of youths accused of crimes, victims of sex assaults, children in child protection cases.

Second, we have discretionary bans.

These bans are supposed to apply in narrow circumstances. There are strict rules in place to ensure these bans are not issued without due consideration.

To ensure transparency, media representatives are supposed to be notified when such bans are being sought.

So you can imagine my frustration when I learned about a publication ban issued by the Discipline Committee (DC) of Professional Engineers Ontario (PEO).

It was issued in a disciplinary hearing against a professional engineer who provided an expert report to Tarion Home Warranty Corporation.

Tarion is the private, non-profit corporation appointed by the Ontario government, to administer the Ontario New Home Warranties Plan Act.

Tarion has been the subject of much criticism for the way it handles complaints by new home purchasers.

In this case, the engineering firm and engineer whose names I am not allowed to report was tasked with the job of conducting an investigation into the cause of severe cracking in the basement and foundation of a home shortly after construction.

The homeowner filed a complaint claiming the investigation, analysis and conclusions of the engineer were deficient.

The Complaints Committee of PEO decided the complaint should be referred to the DC for a hearing.

The hearing took place in public over 11 days in 2014 and 2015. Members of the public attended the hearing.

The engineering firm and engineer ultimately entered into a plea agreement in which both admitted to professional misconduct in respect of their “deficient and insufficient” investigations and analyses.

That’s as much as I can tell you.

I was made aware of this situation by Dr. Karen Sommerville, president of the advocacy group Canadians for Properly Built Homes.

I checked the directories of engineers and case summaries published by PEO but couldn’t find any reference to the case or the decision or any findings of professional misconduct.

Dr. Sommerville told me the DC issued a publication ban on their order and decision. That’s pretty incredible.

It was as if the hearing and the admissions of professional misconduct never took place.

Thinking there had to be some mistake I contacted the DC and asked a few simple questions.

Was there a publication ban? What are the terms of the ban? Would they provide me with a copy of the ban? Were reasons for the ban issued? If so, are the reasons also subject to the ban? Was the media given any notice that a ban was being sought? Last, why wasn’t the case and the decision reported with the use of a pseudonym?

I was given the brush-off. None of my questions were answered.

Ravi Gupta, chair of the DC, told me I could, “bring a formal motion to request standing before the Discipline Committee, and you can bring your arguments or concerns, with prior written notice to the parties”. Sure.

With all due respect, that isn’t good enough.

The DC presided over an important public hearing concerning a matter of large public interest.

The expert report provided was relied upon by Tarion to offer a woefully inadequate solution for a home’s foundation problems.

The DC committee is supposed to serve the public.

If the conduct of the committee in this case is standard operating procedure, then it ought to be reconstituted.

What was it about this case that required secrecy? Who benefits from the secrecy? Not the public.

If Tarion, a body designed to protect the public, is relying on deficient engineering reports to determine remedies to be provided to purchasers of defective new homes, the public is entitled to openness and transparency, not publication bans.

This is another issue for the Tarion review being conducted by former Associate Chief Justice J. Douglas Cunningham to consider.

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