

THE FEES MEDIATION COMMITTEE— ONE OF PEO'S BEST-KEPT SECRETS

By Bruce Matthews, P.Eng.

PEO has had a Fees Mediation Committee since 1984 to deal with fee disputes between practitioners and clients. Until recently, however, it's had little activity, despite its potential to save both parties time and money.



WHEN THE *Professional Engineers Act* was significantly revised in 1984, one of the changes made was the addition of a Fees Mediation Committee (FMC) to deal with fee disputes between PEO licence and Certificate of Authorization holders and their clients. Prior to 1984, such disputes would typically result in expensive and time-consuming civil litigation in the public court, or engineering practitioners writing off the amount owed as bad debt. Providing an alternative to civil litigation for engineering fee disputes was seen to be consistent with PEO's legislated mandate to serve and protect the public interest.

The relevant provisions of the act (see sidebar) require the FMC to mediate any written complaint by the client of a practitioner regarding fees charged for professional engineering services provided by the practitioner. The FMC may also determine, for whatever reason, that it is not appropriate to mediate a particular fee dispute. In proceeding with a matter,

the committee can mediate or arbitrate a fee dispute, depending on the wishes of the parties involved.

PEO does not charge a fee to access the FMC. Anyone interested in having a fee dispute dealt with by the FMC can begin the process by submitting a written complaint to the attention of the deputy registrar, regulatory compliance.

Despite the 1984 act changes and the lack of cost involved, only a few fee disputes come to PEO's attention each year. Until recently, none of them have resulted in a mediation or arbitration being carried out. In most cases, when an engineer or engineering firm has learned that a client has brought a fee dispute to the attention of PEO, they have acted promptly to resolve the dispute privately without involving the FMC and, once resolved, the client typically withdraws the fee complaint.

In a few cases, engineers have declined to participate in a mediation, which is, by its nature, a voluntary process—both parties must be willing to participate if there is to be any chance of success.

Within the past six months, however, the FMC has dealt with two fee disputes, both by arbitration. In each case, the fee dispute was brought to PEO's attention by an engineer, not a client and, in both cases, the parties agreed to binding arbitration (see section 31 of Regulation 941). The arbitration hearings were held at PEO's offices and each lasted less than a day.

During the course of the arbitration hearings, the parties offered sworn testimony and presented documentary evidence to support their positions. One of the clients also called a witness to provide evidence as to the quality of work produced by the engineer.

The decision of the FMC in an arbitration is final and binding on the parties. It cannot be appealed within PEO or to the outside courts. If required, the order issued by the FMC can be enforced by the courts as a judgment.

Members may be aware that prior to 2002, PEO periodically issued a *Schedule of Suggested Fees for Professional Engineering Services*. The regulations under the *Professional Engineers Act* allowed for this schedule to be produced by a committee established by council and, when the schedule was approved by council, to be published by PEO. The FMC had no role in producing the fee schedule. After the Ontario Society of Professional Engineers formed in 2000, that organization

ultimately took on responsibility for producing the fee schedule, as it was considered to be a non-regulatory function of PEO.

The FMC is unique among PEO's committees. It is a legislated committee, but does not exist on a day-to-day basis. It is formed only when fee disputes are brought to PEO's attention. There is no standing chair of the FMC—only potential committee members who have been identified by PEO council as “eligible to act as members” of the FMC in accordance with the regulation. These individuals typically have some background in mediation or arbitration in addition to being members of PEO. Σ

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EXTRACT FROM THE *PROFESSIONAL ENGINEERS ACT*:

32. (1) No person who is a member of the Complaints Committee or the Discipline Committee shall be a member of the Fees Mediation Committee.
- (2) The Fees Mediation Committee,
 - (a) shall, unless the Committee considers it inappropriate to do so, mediate any written complaint by a client of a member of the Association or of a holder of a certificate of authorization, a temporary licence, a provisional licence or a limited licence in respect of a fee charged for professional engineering services provided to the client; and
 - (b) shall perform such other duties as are assigned to it by the Council.
- (3) The Fees Mediation Committee, with the written consent of all parties to the dispute, may arbitrate a dispute in respect of a fee between a client and a member of the Association or a holder of a certificate of authorization, temporary licence, provisional licence or limited licence and in that case the decision of the Fees Mediation Committee is final and binding on all parties to the dispute.
- (4) Where the Fees Mediation Committee acts as arbitrator under subsection (3), the Arbitrations Act does not apply.
- (5) A decision by the Fees Mediation Committee under subsection (3), exclusive of the reasons therefor, certified by the Registrar, may be filed with the Superior Court of Justice and when filed the decision may be enforced in the same manner as a judgment of the court.

EXTRACT FROM REGULATION 941

30. (1) The Fees Mediation Committee is continued.
- (2) The Council shall, from time to time, designate Members as eligible to act as members of the Fees Mediation Committee.
- (3) Where a written complaint is received under section 32 of the Act, the Registrar shall select not less than three and not more than four eligible Members to serve on the Fees Mediation Committee with respect to such complaint.
- (4) The Committee shall review the complaint and determine whether it is appropriate to mediate the complaint, and if so, whether the mediation should be conducted by one, two, three or four members of the Committee so selected and which of the members should conduct the mediation, which number and members shall then constitute the Committee.
31. (1) Where, pursuant to subsection 32(3) of the Act, all parties to a dispute consent to arbitration by the Fees Mediation Committee by filing with the Registrar a consent in writing signed by all of the parties to the dispute, this section shall apply.
 - (2) Each of the parties to the dispute shall prepare and submit to the Registrar a brief written outline of the dispute within ten days following the date of the filing of the consent referred to in subsection (1) or such longer period as may be determined by the Registrar.
 - (3) The Registrar shall then select three Members to serve as the Fees Mediation Committee with respect to the dispute and the Committee may arbitrate the dispute on terms and conditions acceptable to it.