



Professional Engineers
Ontario

MAKING A COMPLAINT

A PUBLIC INFORMATION GUIDE

December 2007

Contents

Professional Engineering in Ontario	3
The Complaints Process: What You Can Expect	4
Stage 1: Investigation and Evidence	6
Initiating a Complaint	6
Stage 2: Consideration by the Complaints Committee	7
Stage 3: Discipline Hearing	8
Penalties Arising from Discipline Hearings	8
Glossary	10
Appendix A. Code of Ethics, Section 77 of Regulation 941 made under the <i>Professional Engineers Act</i>	11
Appendix B. Definition of Professional Misconduct, Section 72 of Regulation 941 made under the <i>Professional Engineers Act</i>	13

Professional Engineering in Ontario

This document is intended to help you understand how Professional Engineers Ontario (PEO) deals with complaints against and discipline of engineering practitioners [i.e. those who hold a full, limited, temporary or provisional licence, or a Certificate of Authorization (C of A)].

Engineers are licensed professionals, as are doctors, accountants and lawyers. Many professional engineers are employed within industry, the government, or education, and others provide services directly to the public. In Ontario, there are over 70,000 licensed professional engineers, working as designers, administrators, project managers and consultants in such industries as manufacturing, municipal services, construction, information technology, transportation and the environment.

PEO was established under the *Professional Engineers Act* to regulate the practice of professional engineering in Ontario and to govern its licence and certificate holders in order that the public interest may be served and protected. PEO is responsible for licensing practitioners, maintaining standards of knowledge, skill and practice, and

developing a Code of Ethics (see Appendix A), all of which govern practitioners in their relations with the public, employers and other practitioners. Practitioners are accountable to PEO for their professional conduct and PEO has the power to discipline practitioners found guilty of professional misconduct or incompetence (see Glossary).

Subject only to the exceptions defined in the *Professional Engineers Act*, anyone practising professional engineering (see Glossary) in Ontario must be licensed by PEO. “P.Eng.” stands for professional engineer. Only people who hold a full or temporary licence may use this designation. Individuals or firms offering or providing engineering services directly to the public are also required by law to have a C of A, also granted by PEO.

PEO ensures that only properly qualified professional engineers are allowed to practise engineering and that members practise according to professional standards. Anyone with a question about the conduct of a practitioner is encouraged to make their concerns known to PEO.

The Complaints Process: What You Can Expect

Consistent with PEO’s regulatory mandate, the complaints process is intended to deal with the actions and conduct of practitioners, to ensure the public interest is served and protected. The complaints process cannot be used to obtain financial compensation from a practitioner. Similarly, PEO is not empowered to force a practitioner to correct, repair or otherwise modify or alter any work performed by the practitioner. Individuals seeking such remedies should consider filing a lawsuit against the practitioner in the civil courts.

Disputes about engineering fees should be handled through PEO’s Fees Mediation Committee and not through the complaints process. Contact PEO’s Regulatory Compliance department for additional information about Fees Mediation.

When someone reports a concern to PEO about the actions or conduct of a practitioner, a three-stage process is set in motion:

- Stage 1—Investigation and Evidence Gathering;
- Stage 2—Formal Consideration by the Complaints Committee;
- Stage 3—Discipline Hearing.

Stage 1 and Stage 2 activities involve the Complaints Committee. The Complaints Committee comprises volunteer PEO licence holders, including some members of PEO’s governing Council. Stage 1 begins with the complainant (i.e. the person lodging the complaint) filling out and submitting a Complaint Form and providing documentary evidence of the facts to support his or her concerns. A copy of the Complaint Form and the related documents are provided to the practitioner, who may provide a written response. PEO staff members assist the Complaints Committee during this stage by identifying and obtaining relevant evidence. PEO staff members will also interview the practitioner about the conduct described in the Complaint Form. At the conclusion of the investigation, PEO staff members prepare a complaint summary, which will include specific allegations based on the results of the investigation. A copy of the complaint summary is provided to the complainant and the practitioner.

At Stage 2, the complaint is considered by the Complaints Committee. The Complaints Committee will review the Complaint Form, the response from the practitioner, the investigation file compiled by PEO

staff and the complaint summary. The Complaints Committee then decides what the next step should be.

Depending on the nature of the complaint, the complexity of the work involved and the possible need to obtain evidence from third parties, these first two stages can take anywhere from two or three months, and possibly as long as a year, to complete.

If the complaint proceeds to Stage 3, a formal hearing is held before a panel of the Discipline Committee. The Discipline Committee comprises volunteer PEO licence holders and members of PEO's Council. To ensure impartiality, the Complaints and Discipline committees share no mem-

bers in common. If a complaint proceeds to the third stage, the complainant may be required to testify at a discipline hearing.

It typically takes six months to a year to hold a discipline hearing after the Complaints Committee has referred a complaint to the Discipline Committee.

During Stages 1 and 2, complaints are kept confidential by PEO staff and the members of the Complaints Committee. Information about the practitioner's conduct becomes public knowledge only if the matter proceeds to Stage 3 and a discipline hearing is held.

Stage 1: Investigation and Evidence Gathering

If someone has concerns about the actions and conduct of an engineering practitioner, PEO would like to hear about it. Staff within PEO's Regulatory Compliance department can answer questions about the conduct expected from a practitioner, regardless of whether a formal complaint is to be filed. Regulatory Compliance staff can also verify whether someone is a PEO licence holder or a C of A holder.

Initiating a Complaint

1. The complaints process begins when a complainant completes a Complaint Form and sends it to PEO. PEO will acknowledge receipt of the Complaint Form, assign a file number to it and assign a staff investigator. A copy of the Complaint Form is provided to the practitioner who is the subject of the complaint.
2. The investigator will review and assess the complaint in the context of the *Professional Engineers Act* and associated regulation. The investigator will interview the practitioner and may obtain relevant documentation from the practitioner or from third parties. If appropri-

ate, the investigator will retain the services of an independent engineer to review and comment on the work of the practitioner. If the complaint does not appear to fall within PEO's jurisdiction, the investigator will advise the complainant of this and may suggest other means of addressing the concerns raised. However, the complainant does have the right to have the complaint considered by the Complaints Committee.

3. The *Professional Engineers Act* provides the practitioner with at least two weeks to respond in writing to the complaint. If the investigator obtains an independent report, the practitioner will receive a copy of that report and he or she will be given an opportunity to respond.
4. At the conclusion of the investigation, the investigator will prepare a complaint summary, which will summarize the relevant facts and the documentary evidence in support of the facts, and list the specific allegations arising from the investigation (if any). The complainant and the practitioner will receive a copy of the complaint summary.

Stage 2: Consideration by the Complaints Committee

At this stage, the complaint is presented in confidence to the Complaints Committee. The Complaints Committee reviews the Complaint Form, along with the practitioner's response, the independent engineer's report (if any), the documents in the investigation file prepared by the investigator, and the complaint summary and allegations. After reviewing this material, the Complaints Committee may take one of the following actions:

- refer the complaint, in whole or in part, to the Discipline Committee, as explained in Stage 3;
- seek a voluntary undertaking from the practitioner to take action that would address the concerns raised in the complaint;
- provide written recommendations, advice or a caution to the practitioner;
- ask the practitioner to attend an interview before the Complaints Committee;

- dismiss the complaint; or
- direct the investigator to obtain further information, which would be considered by the Complaints Committee at a subsequent meeting.

The Complaints Committee does not allow the complainant or the practitioner to make oral submissions before it makes a decision. Regardless of the nature of the decision of the Complaints Committee, both the complainant and the practitioner receive a copy of the written decision.

In a case where the Complaints Committee has made a decision not to refer a matter to the Discipline Committee, a complainant who is dissatisfied with the handling of the complaint has the right to apply to PEO's Complaints Review Councillor for a review of the treatment of the complaint. The Complaints Review Councillor's review cannot address the merits of the complaint. It is not an appeal from the decision of the Complaints Committee.

Stage 3: Discipline Hearing

If the complaint is referred to the Discipline Committee, a written Notice of Hearing is prepared by PEO's Tribunal Office and served on the practitioner. Before the hearing, PEO's lawyer usually meets with the practitioner, or his or her lawyer, to disclose the nature of PEO's case. PEO also seeks to arrive at an "agreed statement of facts", which would eliminate the need to call certain witnesses and, hence, shorten the discipline hearing. PEO may also negotiate a resolution to the matter that would avoid a contested discipline hearing.

Discipline hearings are open to the public and are held at PEO's offices. The procedures followed during a hearing are similar to those of the courts. A court reporter is present and witnesses are sworn before giving testimony. A panel of the Discipline Committee, typically comprising five members, serves as judges for the hearing.

The complainant may be asked to testify at the discipline hearing, but the complainant is not a party to the proceedings and has no formal standing. After the panel has heard all of the evidence, the panel deliberates and announces its decision with respect to guilt or innocence. If the engineer is found guilty of professional miscon-

duct or incompetence, the panel then determines an appropriate penalty, after hearing submissions from both sides.

Penalties Arising from Discipline Hearings

If the Discipline Committee finds a practitioner guilty of professional misconduct or incompetence, its powers under the *Professional Engineers Act* include:

- revoking the practitioner's licence or holder's C of A;
- suspending the practitioner's licence or holder's C of A for up to 24 months;
- limiting the practitioner's professional work;
- imposing terms or conditions on the practitioner for continued practice;
- requiring the practitioner to demonstrate engineering knowledge through specific technical examinations;
- administering a reprimand to the practitioner;
- imposing a fine on the practitioner to a maximum of \$5,000;

- directing that its findings be published in detail or in summary, either with or without the name of the practitioner; and/or
- taking other actions as specified in the *Professional Engineers Act*.

The practitioner and the complainant receive a copy of the Discipline Committee's written decision. The practitioner has the right to appeal the decision to the Divisional Court of Ontario.

Note: *The procedures followed during the complaints and discipline processes are fully described in sections 23-30 of the Professional Engineers Act. If you require additional information, you should refer directly to these sections of the Act. Regulatory Compliance staff can help you interpret this information.*

Glossary

Incompetence

Section 28(3) of the *Professional Engineers Act* describes the circumstances under which the Discipline Committee may find a PEO member incompetent. A member who has displayed a lack of knowledge, skill or judgment, or who has disregarded the public's welfare in a manner that demonstrates that he/she is unfit to carry out the responsibilities of a professional engineer, may be found to be incompetent. A member suffering from a physical or mental condition that makes it necessary to either stop or restrict his/her practice of professional engineering may also be found to be incompetent.

Practice of Professional Engineering

The *Professional Engineers Act* defines the practice of professional engineer-

ing to be “any act of designing, composing, evaluating, advising, reporting, directing or supervising wherein the safeguarding of life, health, property or the public welfare is concerned and that requires the application of engineering principles.” To fall within the practice of professional engineering, an activity must involve all three components of this definition.

Professional Misconduct

Professional misconduct is defined in section 72 of Regulation 941 (see Appendix B). The definition of professional misconduct sets out the minimum legal standards against which a practitioner's actions or conduct are measured to determine if that practitioner is guilty of professional misconduct.

Appendix A. Code of Ethics

Section 77 of Regulation 941 made under the *Professional Engineers Act*

77. The following is the Code of Ethics of the Association:

1. It is the duty of a practitioner to the public, to the practitioner's employer, to the practitioner's clients, to other members of the practitioner's profession, and to the practitioner to act at all times with,
 - i. fairness and loyalty to the practitioner's associates, employers, clients, subordinates and employees,
 - ii. fidelity to public needs,
 - iii. devotion to high ideals of personal honour and professional integrity,
 - iv. knowledge of developments in the area of professional engineering relevant to any services that are undertaken, and
 - v. competence in the performance of any professional engineering services that are undertaken.
2. A practitioner shall,
 - i. regard the practitioner's duty to public welfare as paramount,
 - ii. endeavour at all times to enhance the public regard for the practitioner's profession by extending the public knowledge thereof and discouraging untrue, unfair or exaggerated statements with respect to professional engineering,
 - iii. not express publicly, or while the practitioner is serving as a witness before a court, commission or other tribunal, opinions on professional engineering matters that are not founded on adequate knowledge and honest conviction,

- iv. endeavour to keep the practitioner's licence, temporary licence, provisional licence, limited licence or certificate of authorization, as the case may be, permanently displayed in the practitioner's place of business.
3. A practitioner shall act in professional engineering matters for each employer as a faithful agent or trustee and shall regard as confidential information obtained by the practitioner as to the business affairs, technical methods or processes of an employer and avoid or disclose a conflict of interest that might influence the practitioner's actions or judgment.
4. A practitioner must disclose immediately to the practitioner's client any interest, direct or indirect, that might be construed as prejudicial in any way to the professional judgment of the practitioner in rendering service to the client.
5. A practitioner who is an employee-engineer and is contracting in the practitioner's own name to perform professional engineering work for other than the practitioner's employer, must provide the practitioner's client with a written statement of the nature of the practitioner's status as an employee and the attendant limitations on the practitioner's services to the client, must satisfy the practitioner that the work will not conflict with the practitioner's duty to the practitioner's employer, and must inform the practitioner's employer of the work.
6. A practitioner must cooperate in working with other professionals engaged on a project.
7. A practitioner shall,
 - i. act towards other practitioners with courtesy and good faith,
 - ii. not accept an engagement to review the work of another practitioner for the same employer except with the knowledge of the other practitioner or except where the connection of the other practitioner with the work has been terminated,
 - iii. not maliciously injure the reputation or business of another practitioner,

- iv. not attempt to gain an advantage over other practitioners by paying or accepting a commission in securing professional engineering work, and
 - v. give proper credit for engineering work, uphold the principle of adequate compensation for engineering work, provide opportunity for professional development and advancement of the practitioner's associates and subordinates, and extend the effectiveness of the profession through the interchange of engineering information and experience.
8. A practitioner shall maintain the honour and integrity of the practitioner's profession and without fear or favour expose before the proper tribunals unprofessional, dishonest or unethical conduct by any other practitioner. R.R.O. 1990, Reg. 941, s. 77; O.Reg. 48/92, s. 1; O.Reg. 13/03, s. 21.

Appendix B. Definition of Professional Misconduct

Regulation 941 made under the *Professional Engineers Act*

72. (1) In this section,

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known as unwelcome and that might reasonably be regarded as interfering in a professional engineering relationship;

“negligence” means an act or an omission in the carrying out of the work of a practitioner that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the circumstances. R.R.O. 1990, Reg. 941, s. 72(1); O.Reg. 657/00, s. 1(1).

(2) For the purposes of the Act and this Regulation, “professional misconduct” means,

- (a) negligence,

- (b) failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible,
- (c) failure to act to correct or report a situation that the practitioner believes may endanger the safety or the welfare of the public,
- (d) failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner,
- (e) signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner,
- (f) failure of a practitioner to present clearly to the practitioner's employer the consequences to be expected from a deviation proposed in work, if the professional engineering judgment of the practitioner is overruled by non-technical authority in cases where the practitioner is responsible for the technical adequacy of professional engineering work,
- (g) breach of the Act or regulations, other than an action that is solely a breach of the code of ethics,
- (h) undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience,
- (i) failure to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client, and in particular, without limiting the generality of the foregoing, carrying out any of the following acts without making such a prior disclosure:
 1. Accepting compensation in any form for a particular service from more than one party.
 2. Submitting a tender or acting as a contractor in respect of work upon which the practitioner may be performing as a professional engineer.

3. Participating in the supply of material or equipment to be used by the employer or client of the practitioner.
4. Contracting in the practitioner's own right to perform professional engineering services for other than the practitioner's employer.
5. Expressing opinions or making statements concerning matters within the practice of professional engineering of public interest where the opinions or statements are inspired or paid for by other interests,
 - (j) conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional,
 - (k) failure by a practitioner to abide by the terms, conditions or limitations of the practitioner's licence, provisional licence, limited licence, temporary licence or certificate,
 - (l) failure to supply documents or information requested by an investigator acting under section 34 of the Act,
 - (m) permitting, counselling or assisting a person who is not a practitioner to engage in the practice of professional engineering except as provided for in the Act or the regulations,
 - (n) harassment. R.R.O. 1990, Reg. 941, s. 72(2); O.Reg. 657/00, s. 1(2); O.Reg. 13/03, s. 19.



Professional Engineers
Ontario

40 Sheppard Avenue West
Suite 101
Toronto, Ontario
M2N 6K9

Tel: 416 224-1100 or 1-800-339-3716
Fax: 416 224-8168 or 1-800-268-0496

Enforcement Hotline: 416 224-9528 Ext. 1444

Website: www.peo.on.ca