



Professional Engineers
Ontario

M a k i n g a C o m p l a i n t

A P u b l i c I n f o r m a t i o n G u i d e

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PEO and 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)].

PEO was established under the *Professional Engineers Act* to regulate the practice of professional engineering in Ontario and to govern its practitioners to protect and serve the public interest. PEO is responsible for issuing licences and certificates, 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 them if they are found guilty of professional misconduct (see Appendix B) 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.

Licensure by PEO ensures that only properly qualified people are allowed to practise professional engineering in Ontario and that licence holders practise according to professional standards.

Whether an individual is licensed to practise professional engineering or a firm holds a C of A to offer or provide professional engineering services can be checked by consulting the directories available on PEO’s website at www.peo.on.ca. Anyone with a question about the conduct of a licence holder is encouraged to contact Regulatory Compliance at complaints@peo.on.ca.

The Complaints Process: What You Can Expect

PEO’s complaints process is intended to deal with the incompetence or professional misconduct of engineering

practitioners related to the practice of professional engineering, to ensure the public interest is served and protected. It is not intended to help members of the public obtain financial compensation from licence or certificate holders or to force licence or certificate holders to correct, repair or otherwise modify or alter their professional engineering work. Individuals seeking such remedies should consider filing a lawsuit against the licence or certificate holder in the civil courts. Also, while Regulation 941 of the *Professional Engineers Act* includes a Code of Ethics, a breach of the Code of Ethics alone does not necessarily constitute professional misconduct.

Disputes about engineering fees may be better handled through PEO’s Fees Mediation Committee than through the complaints process. Information on fees mediation may be found on PEO’s website at http://www.peo.on.ca/index.php/ci_id/2260/la_id/1.htm.

When someone submits a complaint to PEO about the actions or conduct of a practitioner, a four-stage process is set in motion:

- Stage 1—Investigation and Evidence Gathering;
- Stage 2—Formal Consideration by the Complaints Committee;
- Stage 3—Prosecution;
- Stage 4—Discipline Hearing.

Stage 1: Investigation and Evidence Gathering

Stage 1 begins with a complainant (i.e. the person submitting the complaint) filling out and submitting a Complaint Form and providing documentary evidence of the facts to support his or her concerns. Complaint Forms are available from the PEO website at http://www.peo.on.ca/index.php/ci_id/1829/la_id/1.htm. PEO will acknowledge receipt of the Complaint Form and assign a file number and staff investigator to the complaint.

The investigator will provide a copy of the Complaint Form (including any attachments) to the practitioner who is the subject of the complaint. The *Professional Engineers Act* provides the practitioner at least two weeks to respond in writing to the complaint.

Working under the direction of PEO’s Complaints Committee, which includes volunteer PEO licence holders, some of whom are also members of PEO’s governing Council,

and may also include non-engineer government appointees, the investigator will investigate the complaint matter, and review and assess the complaint in the context of the *Professional Engineers Act* and associated regulations. The investigation may include interviewing the complainant, practitioner, or third parties, and obtaining relevant documentation from them.

If appropriate, the investigator may retain the services of an independent engineer/consultant to review and comment on the work and/or conduct of the practitioner. If PEO obtains documents through its investigation (such as independent reports), the practitioner will receive copies and have an opportunity to respond.

Stage 2: Formal Consideration by the Complaints Committee

At this stage, the complaint is considered by the Complaints Committee, which must consider all complaints that are duly filed, even if a complainant subsequently indicates a desire to withdraw from the process. The Complaints Committee reviews the complaint investigation documentation, which would include:

- the Complaint Form (with attachments, as submitted by the complainant);
- response from the practitioner (if received); and
- all documentation obtained during the course of investigation.

In making its decision on the disposition of the complaint matter, the Complaints Committee has a number of options available to it under the *Professional Engineers Act*. After reviewing the complaint file material, the Complaints Committee may decide to:

- direct the investigator to obtain further information, which is considered by the Complaints Committee at a subsequent meeting (“defer the matter”);
- not refer the matter;
- ask the practitioner to attend an interview before the Complaints Committee, before making its decision;
- provide a letter of advice (LOA) to the practitioner (“not refer the matter with a LOA”);
- accept a voluntary undertaking (VU) from the practitioner that will address the concerns raised in the complaint (“not refer the matter with a VU”); or

- if warranted, refer the complaint matter, or specific allegations, to the Discipline Committee.

Regardless of the decision of the Complaints Committee, both the complainant and the practitioner receive a copy of the Complaints Committee’s written decision.

Complaints Review Councillor

Where 90 days has passed since the filing of a complaint and the Complaints Committee has made a decision not to refer a complaint 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 does not consider the merits of a complaint, only whether the process was properly followed. Application for review of the treatment of a complaint is not an appeal from the decision of the Complaints Committee, which is final.

Stage 3: Prosecution by PEO

If a complaint is referred to the Discipline Committee, PEO assigns legal counsel to be the prosecuting counsel. The complained against practitioner (the respondent) in a discipline matter will receive a Statement of Allegations, which sets out the details, or particulars, of the facts of the case to be made by PEO.

Once a complaint matter is referred by the Complaints Committee, the chair of the Discipline Committee aims to select a panel to hear the matter from among the members of PEO’s Discipline Committee, designate the panel chair, and set a date, time and place for the hearing within 90 days of the complaint matter being referred.

A Notice of Hearing is prepared, which is served on the respondent. Typically, a pre-hearing meeting between the parties (PEO and the respondent) is scheduled before the hearing date, during which prosecuting counsel meets with the respondent and/or his or her legal counsel, to discuss the nature of PEO’s case. This meeting is chaired by a senior member of the Discipline Committee, and is a “without prejudice” meeting. PEO also seeks to arrive at an “agreed statement of facts”, to eliminate the need to call certain witnesses and hence shorten the discipline hearing. PEO may also negotiate a resolution to the matter, typically involving an admission from the respondent(s), an agreed

statement of facts and a proposed negotiated penalty, which would result in an uncontested hearing, avoiding a lengthy contested discipline hearing. Whether a matter is resolved or not, every referred complaint matter must proceed to a discipline hearing.

The complainant is not a party to the discipline proceedings and has no formal standing. The parties to the proceedings are PEO and the complained against licence and/or certificate holder [respondent(s)].

During Stages 1 and 2, PEO staff and members of the Complaints Committee are required under the Act to keep complaints confidential. Information about the practitioner's conduct becomes public only if the matter proceeds to discipline and once a Notice of Hearing is issued.

Stage 4: Discipline Hearing

If the complaint proceeds to Discipline, a formal hearing is held before a panel of the Discipline Committee. A Discipline Committee panel comprises volunteer PEO licence holders, including at least one elected member of PEO's Council, and two government appointees. To ensure impartiality, the Complaints and Discipline committees share no members in common, and are administratively separate functions. If a complaint proceeds to discipline, the complainant may be required to testify at a discipline hearing.

Discipline hearings are generally 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.

After the panel has heard all of the evidence, the panel deliberates and comes to its decision on any findings of guilt. If a respondent is found guilty of professional misconduct or incompetence, the panel determines an appropriate penalty, after hearing submissions from both parties.

Penalties arising from Discipline Hearings

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

- revoking the holder's licence or C of A;
- suspending the holder's licence or C of A for up to 24 months;
- accepting the undertaking of the practitioner to limit the professional work of the practitioner to the extent specified in the undertaking;
- imposing specific restrictions on the holder's licence or C of A;
- imposing terms or conditions on the licence holder, including requiring the licence holder to complete a particular course or courses, as specified by the Discipline Committee;
- administering a reprimand to the licence holder;
- imposing a fine on the licence holder to a maximum of \$5,000;
- directing that its findings be published in detail or in summary, with or without the name of the licence holder;
- fixing and imposing costs to be paid by the licence holder; and/or
- any combination of these.

The respondent and the complainant receive a copy of the Discipline Committee's written decision. PEO and the respondent have 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 licence holder incompetent. A licence holder 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 or she is unfit to carry out the responsibilities of a professional engineer may be found to be incompetent. A licence holder suffering from a physical or mental condition that makes it necessary to stop or restrict his or 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 engineering to be “any act of planning, designing, composing, evaluating, advising, reporting, directing or supervising that requires the application of engineering principles and concerns the safeguarding of life, health, property, economic interests, the public welfare, or the environment, or the managing of any such act”. 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 licence holder’s actions or conduct are measured to determine if that licence holder is guilty of professional misconduct.

Appendix A. Code of Ethics

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

Note: Section 72 of Regulation 941 sets out that an action that is solely a breach of the code of ethics is not necessarily professional misconduct 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 con-

- nection 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 33 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.



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