

BY BRUCE MATTHEWS, P.ENG.

Consistent with PEO's mandate under the *Professional Engineers Act* (the Act), the complaints process is intended to deal with the actions and professional conduct of engineering practitioners (meaning PEO members and holders of limited licences, provisional licences, temporary licences and Certificates of Authorization) so that the public interest is served and protected.

When someone reports a concern to PEO about the professional 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; and
- Stage 3: Discipline hearing (if deemed necessary).

Stages 1 and 2 involve the Complaints Committee. The Complaints Committee is made up of volunteer PEO licence holders, including some members of PEO Council, and is responsible under section 24 of the Act to investigate and consider complaints.

If the complaint proceeds to stage 3, a formal hearing is held before a panel of the Discipline Committee. The Discipline Committee is also made up of volunteer PEO licence holders and members of PEO Council. To ensure impartiality, the Complaints and Discipline committees share no members in common.

Depending on the nature of the complaint, the complexity of the work involved and the possible need to obtain evidence from third parties, the first two stages can take from two to three months, and possibly as long as a year, to complete. It typically takes another six months to a year to hold a discipline hearing after the Complaints Committee has referred a complaint to the Discipline Committee.

Complaints regarding engineering fees must be handled through PEO's Fees

Making a complaint

PEO is in the process of implementing changes to its complaints and discipline processes. Here is a description of the new process for dealing with complaints.

Mediation Committee and not through the complaints process (see section 32 of the Act and sections 30 and 31 of Regulation 941). Contact PEO's regulatory compliance department for additional information about the Fees Mediation Committee.

The PEO complaints process also cannot be used to obtain financial compensation from a practitioner. PEO is not empowered to force a practitioner to correct, repair or otherwise alter any work performed by the practitioner. Individuals seeking such remedies should consider filing a lawsuit against the practitioner in the civil courts.

Stage 1: Investigation and evidence gathering

Stage 1 of the process 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 investigators assist the Complaints Committee during this stage by identifying and obtaining evidence, as appropriate. The investigator will review and assess the complaint in the context of the Act and the associated regulations. The investigator will interview the practitioner and may obtain relevant documentation from the practitioner or from third parties. If the complaint does not appear to fall within PEO's jurisdiction, the investigator will advise the complainant and may suggest other means of addressing the concerns raised. However, the complainant has the right to have the complaint considered by the Complaints Committee.

In certain circumstances, the investigator will retain the services of an independent engineer to review and comment on the work of the practitioner. At the conclusion of the investigation, the investigator will prepare a complaint summary, which will summarize the relevant facts, the documentary evidence in support of those facts, and list the specific allegations arising from the investigation (if any). A copy of the complaint summary is provided to the complainant for response and to the practitioner for information.

The Act provides the practitioner with a period of at least two weeks to respond in writing to the complaint. If the investigator obtains an independent report, a copy of that report is provided to the practitioner and he or she is given an opportunity to respond.

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 several actions:

- refer the complaint, in whole or in part, to the Discipline Committee, as explained in stage 3;
- seek/accept 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 to receive recommendations, advice, or a caution;
- dismiss the complaint; or
- direct the investigator to obtain further information, which would then 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 decides which action to take. Regardless of the nature of the decision of the Complaints Committee, both the complainant and the practitioner are provided with a copy of the written decision.

In circumstances 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. A review by the Complaints Review Councillor is not an appeal from the decision of the Complaints Committee and the review cannot address the merits of the complaint.

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 prosecuting lawyer provides disclosure of the nature of PEO's case to the practitioner. In addition, PEO's prosecuting lawyer and a member of PEO staff meet with the practitioner, or his or her lawyer, to attempt to arrive at an "agreed statement of facts" that 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 altogether.

Discipline hearings are open to the public and are held at PEO's headquarters. A schedule of PEO's upcoming hearings appears on our website and in Gazette in each issue of *Engineering Dimensions*. The procedures followed during a hearing are similar to those of the courts. A court reporter is present and witnesses are sworn in 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 misconduct 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 Act include:

- revoking the practitioner's licence or holder's Certificate of Authorization (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 practise;
- 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 Act.

The Discipline Committee provides a copy of its written decision to the practitioner and to the complainant. 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 to 30 of the *Professional Engineers Act*. If you require additional information, you should refer directly to these sections of the Act. PEO's regulatory compliance staff can help you interpret this information.

Notice of licence revocation

Pursuant to an order of the Discipline Committee dated December 7, 2005, the licence of **Eric Desbiens** was revoked effective November 23, 2007, because he failed to write and pass the Professional Practice Examination within the specified timeframe. The Decision and Reasons of the Discipline Committee relating to this matter were published in Gazette in the July/August 2006 issue of *Engineering Dimensions*.

BY STEVEN HADDOCK

Q. We hired an engineering firm to prepare drawings for a mechanical system. We tried for several weeks to reach the engineer about them, but he didn't return our calls. We called PEO to complain about his conduct and found out that his licence had lapsed for non-payment of dues several months before we hired him, although his Certificate of Authorization (C of A) didn't lapse until after we hired him. What will PEO do in this case?

A. Over the past several years, we have been faced with practice and title violations by people who once held a valid licence or C of A that has subsequently lapsed for non-payment. We have an escalating system of enforcement action when such cases arise.

Once the registrar issues a notice that a licence has lapsed for non-payment (about 90 days after the renewal date), that person is no longer a professional engineer and is not entitled to practise or to use restricted titles. PEO has a grace period of 15 days to allow members to bring their dues up to date with no penalty. After that, a person must formally apply for reinstatement. This entails an additional cost, the need for character references and a wait of about four weeks. It is illegal for a person to practise or use the P.Eng. title from the date the licence has lapsed to the date of reinstatement.

If the licence of the responsible engineer for a C of A lapses, the C of A is automatically suspended (section 15(5) of the *Professional Engineers Act*) even though the C of A may not formally lapse for non-payment until its renewal date. In the case you described, the C of A would be treated as suspended from the date the engineer's licence lapsed.

There is no justifiable excuse for a licence lapsing, apart from clear error on PEO's part. Members are sent several notices before their licences lapse, and making sure the licence and C of A are current is the responsibility of the member, not PEO staff or the engineer's employees or employer. It is also the licence holder's responsibility to ensure

Enforcement explained

This Q & A column aims to educate members about some of the issues PEO faces in protecting the public against unlicensed individuals who engage in the practice of professional engineering, and in enforcing the title protection provisions of the *Professional Engineers Act*.

November/December 2007 enforcement statistics	Total inquiries	50
	Major enforcement files opened	4
	Existing business names reviewed	31
	New corporate names reviewed	2
	Enforcement matters reported	8
	From professional engineers	7
	From other	1
Self-employed engineers contacted	5	

the contact information in PEO's register is current.

PEO is not obliged to automatically reinstate lapsed members, particularly if there is evidence of poor character. Knowingly practising without a licence qualifies as a character issue, as do outstanding criminal charges, use of a forged seal, or producing substandard work. Where appropriate, PEO's enforcement staff may ask that a licence not be reinstated pending an investigation. If the investigation clearly indicates an intention to practise without being licensed, legal proceedings will be commenced without notice to the lapsed individual.

However, in most cases where PEO discovers someone practising or using a title without the necessary licence or C of A, our usual first course of action is to inform the person that the licence has lapsed and advise him or her to apply for reinstatement

(or a new C of A) within 30 days. Many cases are settled in this manner. However, merely submitting the forms is not sufficient. Applicants must also complete any other steps necessary for reinstatement (such as providing references) within a reasonable period of time after the application is submitted.

When no application is received, or applications are submitted without necessary supporting documents, legal proceedings are almost always commenced. The first step will be to inform PEO's licensing or corporate licensing staff not to issue a licence or C of A until enforcement staff have dealt with the file. The matter is then turned over to legal counsel for legal proceedings. Should a former member persist in seeking reinstatement at this point, we would ask the registrar to issue a notice of proposal to refuse on the grounds of bad character.

Discipline hearing schedule

This schedule is subject to change without public notice. For further information contact PEO at 416-840-1083; toll free 800-339-3716, ext. 1083.

Any person wishing to attend a hearing should contact the tribunal office at extension 1083.

All hearings commence at 9:30 a.m.

NOTE: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference regarding the status, qualifications or character of the licence or Certificate of Authorization holder should be made based on the allegations listed herein.

January 28-29, 2008

Mohamad Farooq, P.Eng.

It is alleged that Farooq is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(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; and
- (b) *Section 72(2)(n)*: harassment.

January 30-31, 2008 (postponed from an earlier date)

Paul S. C. Lim, P.Eng., and P. Lim & Associates Limited (PLAL)

It is alleged that Lim is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Lim and PLAL are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (b) *Section 72(2)(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) *Section 72(2)(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;
- (d) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner; and

- (e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience.

February 12-13, 2008

Daniel R. Piescic, P.Eng., and Piescic Engineering Inc. (PEI)

It is alleged that Piescic is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Piescic and PEI are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (b) *Section 72(2)(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) *Section 72(2)(e)*: 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;
- (d) *Section 72(2)(g)*: breach of the Act or regulation, other than an act that is solely a breach of the Code of Ethics; and
- (e) *Section 72(2)(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.

Record volume of complaints in 2007

The Complaints Committee considered 47 complaints during 2007. This represents an increase of 38 per cent over the average annual volume of complaints between 2002 and 2006. The annual volume of complaints has been trending higher since 2001. The reasons for this increase have not been determined. Possible explanations include an increase in the number of investigators at PEO and better communication regarding PEO's role as the regulator of the profession.

Interestingly, 2007 saw a steep reduction in the number of complaints that were referred directly to the Discipline Committee. Only nine complaints were disposed of in that manner in 2007, representing a decrease of 38 per cent compared to the average of the past five years. For the complaints not referred to discipline, the Complaints Committee issued 10 "letters of advice" to members—an increase of more than 75 per cent over the 2002 to 2006 average.

The changes being made to the complaints process for 2008, which are described on pp. 35-36, will make it difficult to compare 2008 statistics to prior years. The revised process may, by its nature, result in a higher volume of complaints being considered by the Complaints Committee. The workload for investigative staff, however, is not expected to change.

Notice of licence resignation

On October 23, 2007, **Joseph M. Venditti** resigned his licence and returned his seal and licence certificate to PEO. In addition, Venditti provided PEO with a written irrevocable undertaking that he would never again apply for a professional engineering licence or engage in the practice of professional engineering in Ontario or any other Canadian jurisdiction.

In return for these actions, PEO sought and obtained on November 19, 2007, an order from the Discipline Committee allowing PEO to withdraw allegations of incompetence and professional misconduct against Venditti that were referred to the Discipline Committee by the Complaints Committee. The order was obtained pursuant to rule 8 of the Discipline Committee Rules of Procedure. At no time did Venditti admit to any incompetence or professional misconduct.