

BY BRUCE G. MATTHEWS, P.ENG.

One aspect of the principal aim of PEO, as found in Section 2(3) of the *Professional Engineers Act*, is to “regulate the practice of professional engineering.” As the regulatory body for the engineering profession, it makes sense that PEO focus on things within the practice of professional engineering as defined in the Act. The other aspect of the principal aim, however, is that PEO must “govern its members” in accordance with the Act, the regulations and bylaws. This gives rise to an interesting question: Does PEO’s governance of members extend to actions and conduct outside the practice of professional engineering?

To answer this question, one must look at the way PEO “governs its members.” While PEO publishes guidelines for professional engineering services in various disciplines or situations, these documents are not standards. They have no formal force or effect under the Act or Regulation 941. In looking at the Act and regulation, governance of the actions and conduct of PEO members is fundamentally addressed by the concepts of incompetence and professional misconduct, and by the Code of Ethics.

Incompetence

The definition of incompetence most frequently quoted by PEO is found in section 28(3)(a) of the Act. This section states that the Discipline Committee can find a PEO member incompetent if the member has displayed in his or her professional responsibilities a lack of knowledge, skill or judgment, or a disregard for the welfare of the public, in turn demonstrating that the member is unfit to carry out the responsibilities of a professional engineer. To the question at hand, the key words in this definition are “professional responsibilities.” The definition does not say that the actions or conduct at issue must constitute the “practice of professional engineering” as defined in the Act. It is not unreasonable to suggest that the “responsibilities of a pro-

Conduct unbecoming



Can you be accountable for non-engineering work? The answer is yes. Professionals should not feel they are immune from the complaints and discipline process simply because their work or conduct is not within a typical understanding of engineering practice. Integrity remains paramount.

fessional engineer” go beyond acts entirely within the “practice of professional engineering” as defined in the Act.

Professional misconduct

When we look at the definition of professional misconduct, it becomes even more apparent that PEO’s governance of members goes beyond matters purely within the practice of professional engineering. Section 28(2) defines professional misconduct in two ways: The first deals with a member who has been found guilty of an offence that is relevant to suitability to practise; the second deals with the specific definitions of professional misconduct found in section 72(2) of Regulation 941.

In the first instance, the key words are “relevant to suitability to practise.” If a PEO member (or a firm holding a Certificate of Authorization) has been found guilty of a criminal offence, or of an offence under some other Act (e.g. the *Occupational Health and Safety Act*), the question to be determined by PEO (and more specifically by the Discipline Committee) is whether that offence has

some relation to the practitioner’s suitability to practise professional engineering. In the past, the Discipline Committee has found that criminal convictions of fraud and/or breach of trust were relevant to suitability to practise, even when the circumstances surrounding those convictions had nothing to do with the practice of professional engineering.

Professional engineers are accountable to the public and must be seen to be trustworthy. If a professional engineer has demonstrated untrustworthy behaviour to an extent that it resulted in a criminal conviction, it is reasonable to suggest that a finding of professional misconduct is warranted.

For the most part, the definitions of professional misconduct found in section 72(2) of the regulation are specific. However, the provisions of section 72(2)(j) are particularly noteworthy. This section states that professional misconduct is behaviour relevant to the practice of professional engineering that would be regarded as disgraceful, dishonourable or unprofessional by the engineering profession.

The key words in this situation are “relevant to the practice of professional engineering.” The conduct or act in question does not have to be something falling within the “practice of professional engineering” as defined in the Act, but need simply be relevant to it.

In a recent discipline hearing, the only allegation against a professional engineer related to failure to obey multiple court orders to pay monies owed to another professional engineer for services rendered by the other engineer. The Discipline Committee found the engineer guilty of professional misconduct because the circumstances pertained to an engineering relationship, and were therefore relevant to the practice of professional engineering, and the failure to obey repeated court orders was both dishonourable and unprofessional.

Code of Ethics

The Code of Ethics is section 77 of Regulation 941. PEO considers the Code of Ethics to be a guideline for how professional engineers should conduct themselves in their professional relationships. The term “guideline” is used because the definition of professional misconduct in section 72(2)(g) of the regulation specifically states that an action that is solely a breach of the Code of Ethics is not professional misconduct. It would thus appear that regardless of whether the conduct in question is within or relevant to the practice of professional engineering, it cannot be seen to constitute professional misconduct if it is solely a breach of the Code of Ethics.

There is, however, some overlap between the Code of Ethics and section 72(2) definitions of professional misconduct. Specifically, issues of conflict of interest and limiting one’s practice to one’s area of competence are found in both. It would appear that when the regulation was drafted, those “ethical” issues were considered serious enough to warrant inclusion also in the definition of professional misconduct. Clearly, PEO should not be seen tolerating undeclared conflicts of interest or ignoring members practising in areas in which they lack adequate training or experience.

Some have tried to suggest that the provisions of section 72(2)(j), as described

earlier, can make the Code of Ethics effectively “enforceable.” The rationale for such thinking is that an act in violation of the Code of Ethics should be seen as conduct that, at the very least, is unprofessional. However, the provisions of section 72(2)(g) get in the way of this rationale. If the conduct falls only within one of the elements of the Code of Ethics, it cannot be considered professional misconduct. If the conduct falls within one of the elements of the Code of Ethics and one of the specific elements of section 72(2) (e.g. negligence), a finding of professional misconduct can be made.

If an “unethical” situation does not appear to be covered by the Code of Ethics, it might still be possible for that conduct to be ruled professional misconduct under section 72(2)(j), provided the Discipline Committee believed the conduct was relevant to the practice of professional engineering and that, having regard to all the circumstances, the conduct would be regard-

that the conduct would reasonably be regarded as disgraceful, dishonourable and unprofessional. Hence there was a finding of professional misconduct under Section 72(2)(j).

- A number of professional engineers are involved in pre-purchase home inspections for residential homebuyers. There are also many non-engineers offering such services. PEO does not consider the typical pre-purchase home inspection to be the practice of professional engineering as defined in the Act. However, professional engineers offering such services often use the fact of their P.Eng. licensure as an indication of superior qualification for such work and to gain a competitive marketing advantage over non-engineers offering the same services. In such circumstances, it is fair to suggest that the pre-purchase home inspection is “relevant to the practice of pro-

Clearly, PEO should not be seen tolerating undeclared conflicts of interest...

ed as unprofessional. The situation described earlier regarding the failure to obey a court order is one such example.

Conduct unbecoming

Here are two more examples where a professional engineer might encounter legitimate allegations of professional misconduct or incompetence for work not directly related to the practice of professional engineering:

- The current issue of *Gazette* features a case involving a professional engineer who swore an affidavit in support of a lawsuit. The professional engineer was not a party to the lawsuit. It was alleged, and admitted, that the affidavit contained statements the professional engineer knew, or ought to have known, were false and that would mislead the court. The swearing of this affidavit was not within the practice of professional engineering. Nonetheless, the Discipline Committee found that the conduct was relevant to the practice of professional engineering, and

professional engineering.” Therefore, a professional engineer providing such services could face disciplinary action, if the conduct relating to those services were determined to be disgraceful, dishonourable or unprofessional.

To summarize, professional engineers or Certificate of Authorization holders should not feel they are immune from PEO’s complaints and discipline processes, and from findings of incompetence or professional misconduct, just because their work or conduct is not the practice of professional engineering. It is incumbent upon all practitioners to conduct themselves at all times with professionalism, and with regard to the honour and integrity of the profession. ❖

Bruce G. Matthews, P.Eng., is PEO’s manager of complaints and discipline. He oversees the investigation and processing of complaints, and the prosecution of matters referred to the Discipline Committee. He is also editor of *Gazette*.