

## Creating more red tape

The Building Regulatory Reform Advisory Group (BRRAG) was created to recommend improvements to the building permit process. BRRAG identified a need to streamline red tape and equitably distribute liability. Unfortunately, Bill 124 does neither. A review of the information posted on the ministry's own website clearly shows that the new building permit process will actually become more complicated, more costly and more time-consuming (notwithstanding the attempt to impose timeframes on building officials).

David Brezer, in his interview with *Engineering Dimensions* (January/February 2005, pp. 60-61), has now suggested that Bill 124 represents the government's commitment to "public safety." This is surprising since the ministry had repeatedly assured us that neither our engineering competence nor our obligation to public safety has ever been in question and that the objectives of Bill 124 were strictly related to improving the building permitting process.

Furthermore, Mr. Brezer referred to a report prepared by Trow Associates Inc. stating, "Their investigation confirmed that plans being submitted for permits often did not comply with the code and this contributed to delays and public safety risks." This is not an accurate reflection of the Trow report. The Trow report focuses exclusively on "service levels" and contains no suggestions that public safety has been at issue. To suggest public safety as a justification for Bill 124 is disingenuous and serves only to increase resentment in the engineering community.

Government officials have frequently cited the Trow report as part of the justification for Bill 124 and its qualification requirements. In fairness, under a section entitled "Additional Comments," the Trow report observes in passing that if all practitioners were better qualified, service levels would improve. However, that same Trow report also notes that non-compliance was significantly higher among non-professionals than among professionals. Yet the qualification requirements do not apply to

all building practitioners. Ironically, by excluding contractors, the qualification requirements will primarily apply only to professionals who are already subject to a licensing regime and who are already accountable to the public under provincial statutes.

It is also curious that the government has done nothing to expedite site plan approvals and subdivision agreements (and is arguably making them more difficult to obtain), which were identified in the Trow report as contributing to greater delays than the permitting process.

What we have now is a well-intentioned initiative that has resulted in legislation that will unlikely solve any of the problems it was intended to address (and may in fact exacerbate them). The government needs to go back to its stakeholders and try again, not retroactively create justification for the red tape it is creating.

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## Applauding the MMAH

Let me first say that the opinions I am expressing in this letter are my own, not those of my employer. After nearly a decade as an engineer working mainly in civil engineering consulting, I have worked for the Ontario government for the last few years. A significant part of my job is reviewing and approving the work of other engineers as part of legislated approval processes. Seeing first hand the quality of some plans and reports signed, sealed and delivered by "self-declared" competent professionals has been a real eye-opener, to say the least.

While I don't agree totally with the details of Bill 124, and I am afraid the insurance requirements may prove overly onerous for small companies and sole practitioners, I agree that something needs to be done to raise the standard of practice within my small sub-discipline of the civil engineering profession. My general observation is that the overall level of understanding of codes, standards, practices and accepted guidelines among practising engi-

neers is quite poor. One would expect some need for checks and balances in approval processes where public safety is at stake. That is why my current position exists in the first place. But the frequency with which I and my colleagues encounter engineering work falling far short of accepted standards is appalling. It compels me to conclude that something about our profession is terribly broken, and needs to be fixed if we expect our status as a self-regulating group of professionals to endure.

It is tempting to resort to finger pointing when faced with such a daunting conclusion: *Well, something must be wrong with the Canadian Engineering Accreditation Board, because our accredited schools are not turning out the right kind of graduate engineers consistently. Unfortunately, our President, Mr. Comrie, seems to have concluded that the government is the problem, and political activism is the answer.* In my opinion, both of these reactions are rather thinly veiled attempts at appearing to take some action while avoiding the real issue.

Through Bill 124, the Ministry of Municipal Affairs and Housing (MMAH) has sent PEO a very powerful message, and I think it was articulated well by Mr. Brezer in the interview in the January/February 2005 *Engineering Dimensions* (pp. 60-61). The message goes something like this: *PEO, either fix the problems in the engineering profession within powers already extant in the Professional Engineers Act, or the government will enact other powers which will do so outside of the profession.* I applaud the MMAH for boldly going where PEO has heretofore feared to tread.

In such an increasingly diverse and complex field as engineering, it is long past due time that we implement a system that will ensure our members are competent to perform professional engineering services within their particular specialized sub-discipline, and that restricts their practice to their own field of competence. Is competence testing the answer? No building or structural engineer worth his/her salt has anything to fear from a building code

test—the same disciplines of engineers wrote the codes, after all. Is mandatory continuing education the answer? We all can benefit greatly from courses and workshops to hone our skills and ensure they are up to date. Perhaps our employers would be more willing to allow us the time and give us the resources to attend continuing education, if they were mandatory for continued licensure as a professional engineer.

While I cannot speak for the MMAH, I rather doubt that they would be interested in applying Bill 124 to professional engineers if PEO already had in place a continuing education course on the building code, or a competence test on building code knowledge for that type of practitioner.

What is the cost of implementing such a competence framework? There are financial costs to PEO, of course. Raise the annual dues! We are still paying one of the lowest annual licensing fees of any of the self-regulated professions, and I dare say most of us could afford to pay, and would not mind paying, a little more if the fees were used to make a real change for the better. And there is a cost for those who are now practising beyond their competence, and will have to either desist or seek specialized training to expand their expertise. And we will most likely lose from our member numbers when those who are licensed but non-practising learn that it is no longer possible to keep the licence without having the competence to back it up. May I suggest we can afford to lose these, and indeed should?

What about the cost of sticking our heads in the sand, and refusing to adapt to the changing times? I am afraid *that* cost is a continued gradual decline of our profession into irrelevance. This we can ill afford.

Our President and Councillors should have seen the heightened government awareness and willingness to act demonstrated by Bill 124 as an opportunity to enter into a dialogue to discuss ways to implement change to resolve a legitimate problem, and to be in the driver's seat in coming up with the solution within the

purview of the *Professional Engineers Act*. Instead, they took Bill 124 as a threat, and instead of cooperating with the MMAH to find a solution, have now resorted to political lobbying.

If PEO continues to ignore the problem, we can expect that Bill 124 will only be the first in a long line of inevitable legislation to address professional competence and accountability in technical fields involving engineers. Mr. Brezer has extended an open invitation to PEO to develop our own system to ensure building code competence for engineers involved in that type of practice. What if PEO chooses not to embrace this invitation? Then perhaps the words of the poet A.E. Housman will prove prophetic concerning us: “No change though you lie under the land you used to plough.”

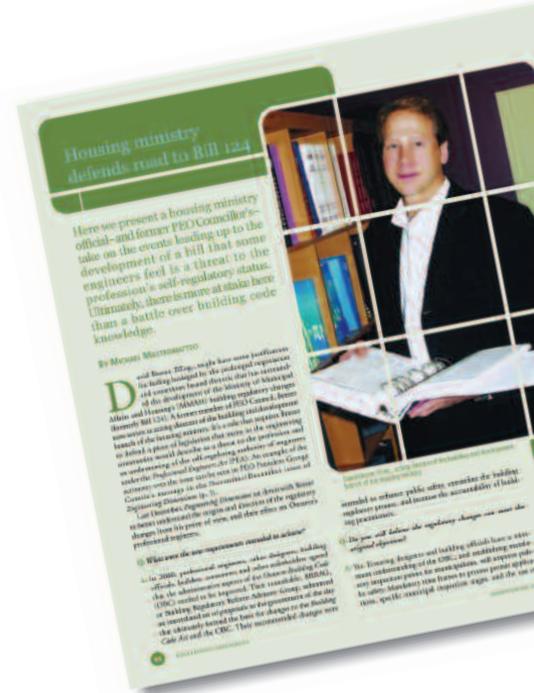
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### Bill 124 fails to meet objectives

I read the article in *Engineering Dimensions* January/February issue regarding the housing ministry's defense of Bill 124 (see pp. 60-61). I would like to take this opportunity to dispute the points made by Mr. Brezer in his answers to the questions being asked of him.

Mr. Brezer states that this bill will result in designers submitting better plans. How does he expect this to happen when there is nothing in the *Ontario Building Code* (OBC) that tells designers what is to be put on the drawings or how to produce drawings? There are guidelines produced by PEO that give engineers guidance on how to produce drawings, but there is nothing from the Ministry of Municipal Affairs and Housing (MMAH) or in the OBC.

Mr. Brezer states that mandatory inspection points for municipalities will improve public safety. How does he expect this to happen? The only entity that knows the exact stage of construction at any one time is the contractor. This means that inspectors will have to rely on the contractors to inform them when these particular points in construction are reached. The problem with relying on the con-



tractor to contact the inspector is that the MMAH let contractors out of Bill 124, which means that contractors will not be aware of the requirements to contact the building inspectors for inspections. Further, the contractors cannot be punished if they fail to contact the inspector because, again, they were let out of Bill 124.

Mr. Brezer states that mandatory time frames for processing building permit applications will streamline the building permit process. As I understand it, the plans examiners will either have to issue a building permit or find reasons why the building permit cannot be issued within the specified period of time. What happens when the plans examiners get a project where they just cannot meet the deadline? They will have to simply rubber stamp the drawings and issue a permit, or they will have to look for some petty reason to reject the permit application. I don't see how putting the plans examiner in this position is going to serve the public's best interests. It certainly does not promote public safety if they are simply rubber stamping the drawings. Further, it will not streamline the building permit process if drawings are being rejected for petty reasons.

Mr. Brezer states that minimum levels of insurance for designers will increase financial accountability. Mr. Brezer doesn't seem to understand that risk transfer is not the same as risk management, and that risk transfer usually results in greater overall risk.



investigation confirmed that plans being submitted for permits often did not comply with the code and this contributed to delays and public safety risks.” I obtained a copy of the Trow report. The report does not state that registered professional engineers contribute to permit delays and public safety risks. If you read through the executive summary, there is not even a statement about permit delays or public safety risks as a result of supposed poor quality drawings.

The report states: “It was almost unanimous that a large proportion of projects require significant correction by the plan review staff with an even higher percentage where plans are permitted to be designed by non-professionals.”

This statement does not say that drawings are not conforming to the OBC requirements. Drawings can be marked up by plans examiners for many reasons that are not related to the OBC. The statement does, however, suggest that registered professional designers produce better drawings than non-professionals.

Interestingly enough, the report clearly states: “Most building officials expressed concerns about the large number of infractions found during the initial inspections on framing of houses. This appears to be an industry-wide problem.” This sure sounds like a public safety issue. However, it has nothing to do with designers. So if Bill 124 were really about public safety, why has the MMAH ignored this clearly written statement? Remember, they let contractors out of the Bill 124 fiasco.

Bill 124 started out as a “red tape” initiative that went completely off the rails when a few bureaucrats got their hands on it. This legislation, in my opinion, will not improve public safety, it will not streamline the permit process, and hence, it has failed to meet its objectives.

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### Staying on top of the game

I have followed PEO's struggle over the implementation of Bill 124 and after reading the interview with David Brezer, P.Eng. (“Housing ministry defends road to Bill 124,” January/February 2005, pp. 60-61), I have finally concluded that our leadership is wrong. Perhaps not about the dubious

benefit in terms of cost effectiveness and expediency in the building permit and inspection process, but certainly wrong in terms of setting competence levels for building design and inspection practitioners.

When I graduated from engineering school 19 years ago I knew nothing about building codes, or any other codes for that matter. I had strong technical knowledge and problem-solving skills that allowed me to absorb and apply that type of knowledge quickly, but no formal understanding. After spending 13 years in various manufacturing environments with some casual exposure to building codes, I made a career change that took me into the middle of building design and inspection. The first thing I did was take courses and pass exams. At that time nobody cared if I passed, except me, and the occasional client who asked me what my qualifications were... despite the P.Eng. at the end of my name!

All that the Ministry of Municipal Affairs and Housing (MMAH) is now asking is that we document our competence, and furthermore they offered to allow PEO to administer this on their behalf with respect to professional engineers.

PEO and our Executive have made a lot of noise over how to show continuing competence to the public. Bill 124 is the same; it just comes a little bit before “continuing.” As professionals, we all know that our biggest challenge is staying on top of the game and showing our customers and the public that we are on top of our game. So let's stop quibbling with the MMAH about who does what and put in place mechanisms to document specialized competence, as required by Bill 124, and ongoing competence, as required to be recognized as a true profession.

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Everyone who has been involved in a lawsuit knows that courts and lawyers are not interested in determining who actually caused the damages. They are more interested in who has the money to pay for the damages. All this legislation does is provide contractors with even more incentive to take more risks by cutting corners during construction because they will know that the law will be looking more towards the design team to bear the costs of construction claims. In my opinion, there is going to be a significant increase in bogus claims against designers, insurance rates are going to skyrocket, and buildings are going to become less safe as a result of Bill 124. If they were really concerned about financial accountability, they would not allow contractors to fold their companies at the first sign of trouble and start up the next day under a new name.

Mr. Brezer states that Bill 124 was implemented to enhance public safety. If this is the case, why does Bill 124 still allow members of the general public (who know nothing about construction) to produce design drawings for their own houses? A registered engineer who makes a living designing buildings will not be allowed to produce drawings for that same house unless they conform to the requirements of Bill 124. The MMAH has argued that individuals have the right to do what they want with their own dwellings. What they failed to address is that these buildings could be sold to unsuspecting members of the general public. The MMAH thinks that this logic enhances public safety?

Mr. Brezer states that “Trow Associates Inc. was retained to look into the issue. Their