

Building code impasse headed for court

By MICHAEL MASTROMATTEO

Aftershocks from the Ontario Ministry of Municipal Affairs and Housing's (MMAH) *Ontario Building Code Act* (OBCA) amendments continue to reverberate throughout the province's professional engineering community.

At its March 3 meeting, PEO Council, including its 12 government appointees, unanimously agreed that the regulator must turn to the court to clarify the jurisdictional boundaries of the OBCA and the *Professional Engineers Act* (PEA) over regulation of building-related design and general review of construction activities. Under amendments to the OBCA, introduced by Bill 124/02, and amendments to the *Ontario Building Code* (OBC), introduced by Regulation 305/03, individuals who have not met the qualification and registration requirements in the OBC are prohibited from engaging in building-related design activities or preparing reports on general review of construction. PEO maintains that this prohibition was never meant to apply to its licence holders, because their practice is regulated under the PEA.

Since the report of the government's Building Regulatory Reform Advisory Group in July 2000 and introduction of the *Building Code Statute Law Amendment Act* (Bill 124/02) and Regulation 305/03, PEO has been on record as supporting the government's objectives of streamlining the building permitting process, including the testing of unlicensed designers. However, PEO has also never ceded to the MMAH any of its exclusive jurisdiction under the PEA over the practice of professional engineering, which includes certain design and general review activities now also regulated by the OBCA.

It is PEO's position that the comprehensive licensing and regulatory regime established under the PEA appropriately regulates this practice, and PEO has been provided no evidence that its licences do not adequately protect the public in matters involving building design or general review.

Although the recommendations of the BRRAG report dealt mainly with streamlining the building permit submission process in Ontario, in introducing the legislation to implement them, the housing ministry stated explicitly that the changes to the OBCA would enhance public safety.

The designer qualification and registration requirements in the OBC came into effect on January 1, 2006, after having been postponed from an original July 1, 2005 implementation date. Prior to the January implementation, PEO had worked diligently and cooperatively with the MMAH and the Ministry of the Attorney General to resolve the regulatory conflicts. However, every proposal from PEO was met with a response from the MMAH to drive discussion back toward implementation of a PEO system that would be parallel to the MMAH requirements, as a condition for exempting PEO licence holders from those requirements. When PEO President Bob Goodings, P.Eng., received a mid-December letter from the MMAH that made it clear that as of that date no agreement existed on the issues and that "professional engineers would continue to be subject to" the OBC qualification requirements, President Goodings informed the ministry PEO was withdrawing from the discussions, and would develop and write amendments to its own Regulation 941/90 to support a Building Design Specialist Designation as a possible means of satisfying the housing ministry's building code registration and qualification system.

In reviewing the situation, however, PEO's BRRAG Task Force agreed that establishing a designation to appease the MMAH would do nothing to clarify jurisdiction over building design or general review activities, and might even be interpreted as acquiescing to the MMAH's regulatory claim. The task force, and ultimately Council, when the



PEO Council member Chris Roney, P.Eng. (centre), receives the first certificate showing he has the right to use PEO's new Building Design Specialist official marks. With him are President Bob Goodings, P.Eng. (left), and CEO/Registrar Kim Allen, P.Eng.

task force brought its recommendations to them, unanimously agreed that as a regulator PEO cannot support overlapping legislative responsibility for, and requirements imposed upon, the same licence holders, and must seek judicial clarity. Accordingly, Council directed that all work on developing regulations to support a Building Design Specialist designation cease.

PEO will continue to sign licensing agreements with its licence holders for their use of PEO's "official marks" of Building Design Specialist and BDS under the *Federal Trademarks Act*. PEO is licensing the official marks to licence holders who provide proof they have qualified under the MMAH regime as a method of PEO obtaining information as to which of its members have qualified (the MMAH apparently does not have a way of tracking which of those who have written and passed its exams are P.Engs), as well as providing additional recognition to them.

President Goodings says PEO remains committed to working with building officials and the housing ministry to address any concerns about engineers' submissions of building plans and drawings.

He says PEO believes jurisdictional clarity can be easily achieved by making minor wording changes to the OBC, a regulation and therefore relatively easily amended.

PEO is committing \$500,000 to the court challenge.

Dedicated service, outstanding accomplishments to be rewarded at Order of Honour ceremony

BY JENNIFER COOMBES

PEO will once again honour exemplary volunteer service to the profession of engineering. The Professional Engineers Ontario Order of Honour will induct six outstanding engineers who have dedicated themselves to supporting and guiding the profession, at a ceremony in Toronto on April 28.

Richard W. Braddock, P.Eng., will be invested as a Companion of the Order.

Braddock, retired president of Mitchell, Pound and Braddock, has made substantial volunteer contributions to PEO and the profession across Canada. He served on the Willowdale-Thornhill Chapter's executive from 1968 to 1973, in the posi-

tions of Secretary, Vice Chair, Chair and Past Chair, and again as Vice Chair in 1996.

He was a member of the executive committee for the Ontario Region of the Canadian Society for Civil Engineering, subsequently serving on the board of directors.

His involvement with PEO Council began in 1997, when he joined as a Regional Councillor. He later served as Vice President (appointed) and President, from 2002 to 2003. Braddock provided strong leadership while President during a time of transition following the formation of the Ontario Society of Professional Engineers, which he sup-

ported as a member of the Joint Advocacy Implementation Committee.

Braddock has worked on numerous task forces and committees, including the Executive, Nominating, Regional Nominating and Regional Councillors committees, and as chair of the Advisory Committee on Committees (now Advisory Committee on Volunteers).

Kenneth C. McMartin, P.Eng., will also be invested as a Companion of the Order for his invaluable and unwavering leadership of PEO. For over 18 years, McMartin, manager, Civil and Environmental Engineering Laboratories, Carleton University, has provided exceptional leadership to the profession. He spent eight

years on Council, holding positions of Eastern Regional Councillor, Vice President, President-elect, President and Past President. It was during his presidency from 2003 to 2004 that he championed PEO's Student Membership Program, which enables engineering students in Ontario to begin building a relationship with PEO.

He has been a strong voice for the chapter system, having begun his PEO volunteer service with his involvement on the executive of the Ottawa Chapter in 1987. He was chapter chair from 1991 to 1992.

McMartin has participated actively on and led numerous PEO committees and task forces. His many accomplishments include becoming the first chair of the Enforcement Committee and reviewing and updating PEO's financial policy, as chair of the Finance Committee.

David J.D. Sims, Q.C., will be invested as an Honorary Member of the Order for six years of service as a non-engineer appointee to PEO Council. During that time, he showed an extraordinary and unselfish commitment to the engineering profession. He has been described by a past president of PEO as the conscience of Council.

His training and experience in law have allowed him to bring a different perspective to Council discussions. In addition to his commitment to Council, he was an active participant on several committees and task forces, including the Enforcement, Registration and Executive committees, and the Changes to the Act, Admissions Appeal Process and Governance task forces. Sims also served as Complaints Review Councillor, providing insightful feedback for potential improvement to the complaints process.

He is a strong advocate for the separation of the regulatory and advocacy roles in the engineering profession, and his insight and advice were especially valuable during the establishment of the Ontario Society of Professional Engineers and PEO's governance review.

Captain Corneliu E. Chisu, CD, MEng, PMSC, C.E.T., P.Eng., construction engineering officer, Department of National Defence, Land Forces Central Area Training Centre, Meaford, will be invested as a Member of the Order for his

dedication to making a difference in his profession. In particular, he will be honoured for raising the profile of the Scarborough Chapter—now one of the most visible and active PEO chapters—and of the profession in his community.

He was presented with his licence certificate 17 years ago at the Scarborough Chapter and has been involved with the chapter ever since, joining the executive in 1989. Chisu has spent two terms as chair. He was instrumental in revitalizing the chapter through his initiation and leadership of such education outreach activities as local science and career fairs, the Engineers-in-Residence program, and National Engineering Week activities. He has also carried the message about the value of the profession to high school and university students.

A former applications process administrator at PEO from 2000 to 2001, Chisu contributed greatly to the Evolution of Engineering Admissions Task Group and helped to develop the actions to address the Admissions, Complaints, Discipline and Enforcement Task Force recommendations. Last year, he was a member of PEO's Government Affairs Committee.

Jerry Dudzic, MBA, CMA, CSP, P.Eng., president, Norstar Consulting, will be invested as a Member of the Order for his many years of dedication to

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enhancing the stature of the London Chapter and the profession of engineering in his community.

Actively involved in the London Chapter executive since 1991, Dudzic has served as Treasurer, Vice Chair, Chair and Past Chair. It is this experience, natural leadership, and thorough understanding of PEO policies and protocols that makes him a valuable resource when advice is sought on matters of chapter operations. Demonstrating a passion for volunteerism, he has mentored many colleagues.

For over 10 years, Dudzic has been the chapter's Certificate Presentation

Coordinator and has transformed the ceremony into one of London's most successful events, now staged twice a year at the Highland Country Club, an exclusive facility of which he is a member.

Dudzic's participation in National Engineering Week events and his outstanding promotion of the profession to London's business community have heightened the public's awareness and recognition of engineers.

Sean P. McCann, M.A.Sc., P.Eng., senior manager, research and development tax, Deloitte & Touche LLP, will be invested as a Member of the Order for his dedication to influential activities aimed at the future of his profession.

A tireless advocate of PEO and the engineering profession for almost a decade, McCann has a strong commitment to education outreach—recruiting judges for local science, technology and engineering fairs;

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chairing the selection committee for chapter-sponsored engineering awards; and organizing orientation events to encourage graduating students to enroll in PEO's Engineers-in-Training program. His efforts, in conjunction with several other members, resulted in the development of the Education Committee, through which he has made presentations to elementary and high school students, and worked to increase the ranks of women in the profession.

His years of service on the Windsor-Essex Chapter executive have included

terms as Director, and two terms each as Treasurer, Chair, Past Chair and Vice Chair. McCann has organized the Windsor-Essex Chapter's licence certificate presentations, annual general meetings, and presentations of licence and practice requirements to internationally educated graduates. As his chapter's director of communications, McCann also edits and publishes the chapter's newsletter.

Tickets to the presentation ceremony and gala dinner may be ordered through the PEO website at www.peo.on.ca.

Realignment to increase transparency, accountability

BY JENNIFER COOMBES

A review by CEO/Registrar Kim Allen, P.Eng., and the senior management team has determined that PEO can enhance its accountability and objectivity and the transparency, consistency and fairness of some of its processes by making changes to some reporting relationships and/or functions.

Two of the main changes will be a separation of PEO's tribunal operations from its investigative/prosecutorial functions, and the consolidation of all of Council's support, policy and secretariat functions into the executive office.

In the first instance, the change allows for a separation of duties where a potential structural conflict might exist. For example, tribunal processes and procedures should be inherently separate from investigative/prosecutorial and adjudicative functions to be as transparent and as free from actual or perceived systemic bias as possible.

Currently, the Regulatory Compliance department is charged with investigation and prosecution functions and with supporting the adjudicative function of PEO's two tribunals—the Discipline Committee and the Registration Committee. When the realignment of functions is fully implemented, administrative support for the tribunals, including the deployment of independent legal counsel, will be taken on by the Standards and Regulations department. Support for the Complaints Review Councillor will also fall under Standards and Regulations.

Since this department already provides support for Council's general-application law-making functions, the administration of rulings arising from the tribunals will now be applied to the ongoing improvement of PEO Council's law-making functions.

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Changes to the executive office will enable activities to be consolidated. As part of the transition, recruitment is underway to fill a new corporate secretary position within the Governance department, the group within PEO that, under Council direction, establishes and monitors long-term direction and ensures optimal use of services and enforcement of corporate policies. The corporate secretary will work closely with the CEO/Registrar and, among other duties, support Council and the Executive Committee, manage corporate legal issues and insurance, operate as the chief privacy officer, and facilitate policy development on behalf of Council.

The transfer of the policy support and secretariat functions and staff to Governance means that the Policy and Communications department will now be known as the Communications and Chapters department.

To streamline activities further, the Licensing and Registration department will become responsible for institute accreditation and exam development and the Seamless Transition Subcommittee of the Education Committee.

The transition will happen gradually and seamlessly over the next several months within the existing budget.

PEO to gain investigative body status

BY JENNIFER COOMBES

Last year, PEO, along with other engineering regulators in Canada, applied to Industry Canada to be designated as an investigative body for exemption from the requirements of the *Personal Information Protection and Electronic Documents Act* (PIPEDA). On November 19, a proposed regulation designating PEO as an investigative body was published in the *Canada Gazette*. The regulation is expected to be finalized shortly.

PIPEDA establishes rules for the collection, use and disclosure of personal information by organizations in the course of their business. Under the act, an organization that is disclosing personal information must obtain the individual's consent, in most cases. An exception to the rule permits the disclosure to and from an investigative body, without the knowledge or consent of the individual, if the organization has been so designated.

Without investigative body status, voluntary reports of practitioner conduct to PEO would be prohibited in many circumstances. For example, individuals and organizations who, in the course of their business, learned of a professional engineer's incompetence or misconduct, would

be prohibited by PIPEDA from reporting the conduct without the engineer's consent—something that would be difficult, if not impossible, to obtain. With investigative body status for PEO, there will be no legal barrier to prevent cooperation with PEO investigations.

To obtain investigative body status under PIPEDA, PEO was required to demonstrate that it has a rigorous privacy policy and procedures in place. To read PEO's privacy policy, visit the website at www.peo.on.ca.

Changes to liability limitations looming

BY JENNIFER COOMBES

Under the *Limitations Act*, the limitation of liability is 15 years on contracts negotiated with professional engineers and architects. But that could change with the attorney general's announcement late last year of Bill 14: *Access to Justice Act*, 2005. Contained in Bill 14 are provisions that could eliminate the established limitation of liability period, potentially allowing parties in an agreement to extend limitation of liability beyond its original 15-year term. The concern is that these extensions may result in time-consuming and costly litigation.

The Ontario Society of Professional Engineers (OSPE) is closely monitoring Bill 14 and on January 4 met with the Ministry of the Attorney General to discuss the possible impact on professional engineers of extending liability beyond the current 15-year limit. Although the bill is expected to go ahead, OSPE reports that the attorney general promises to work with stakeholders to mitigate any effects on the professions concerned. OSPE also met with the Ontario Association of Architects and Consulting Engineers of Ontario to discuss the bill's effects on their respective members. More meetings between OSPE and industry stakeholders are scheduled.

PEO moves toward custom, online experience

By PAULA HABAS

Every organization constructing an expandable online enterprise must balance accessibility with security, and privacy with transparency. PEO is no different.

In the midst of a growing demand to extend access to sensitive PEO

resources to an ever-growing number of individuals, including Councillors, committee and task group members, employees and chapter volunteers, PEO needs to manage who, and which applications, have access to which parts of the organization. To do this, PEO must

set up secure identities for the users of its web resources.

Starting in January, PEO began requiring all licence holders and Engineers-in-Training (EIT) to authenticate themselves to access its Internet-based services, applications and programs. This change in procedure requires each licence holder or EIT to set up his or her own account, complete with username and password, to enable them to pay fees online or to update personal contact information. In the future, PEO will use the details of these accounts to customize a range of services specific to each individual when he or she logs in.

Setting up secure identities is the first step in the development of Voluntary Annual Reporting, one of the 2005-2009 Strategic Plan projects (see *Engineering Dimensions*, November/December 2005,

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p. 18, 21). Ultimately, the project will involve developing and implementing a voluntary, online, member-maintained reporting mechanism to enable licence holders and EITs to easily update their personal profile of areas of practice or expertise and continuing education.

To manage the identities and relationships that make up our network, PEO has implemented Windows Server 2003 and Active Directory. Active Directory provides additional user benefits, including increased user productivity, lower ongoing cost of operations, simplification of administrative tasks, and an improvement in the overall security and reliability of PEO's information technology systems.