

## RC changes reflect latest views of natural justice

By MICHAEL MASTROMATTEO

**P**EO's regulatory compliance (RC) department is continuing to fine-tune complaint, discipline and enforcement processes in the aftermath of an administrative shift that saw the regulator's standards and tribunals team take over what might be termed PEO's court system.

The changeover, which was initiated in the spring of 2006 and completed in 2007, left RC more freedom to concentrate on its core functions of investigating complaints, representing PEO in disciplinary hearings, and managing the enforcement provisions of the *Professional Engineers Act*.

The shift of responsibilities ensures that as the agent responsible for the prosecution of discipline matters, RC is not also in a position to oversee the functioning of the Discipline Committee.

The RC team comprises a relatively small group of staff. Led by Deputy Registrar Roger Barker, P.Eng., the team also

PEO's investigation, complaint and discipline activities recently obtained a passing grade from an external audit. Nonetheless, the regulator's regulatory compliance department remains aware of the need to continually enhance its "justice system" and to proactively enforce provisions of the *Professional Engineers Act*.

includes Complaints and Discipline Manager Bruce Matthews, P.Eng., Appeals and Prosecutions Manager Eric Newton, Enforcement Representative Steven Haddock and Investigators Renzo Villa, P.Eng., William Hui, P.Eng., Ken Slack, P.Eng., and Irena Gawelek, P.Eng. A more recent addition to the department is Ted Kamad, P.Eng., who was brought on board in March 2007 to oversee outreach projects.

It is part of a proactive enforcement initiative that forms a key priority for the department in 2007/2008.

Sylvia Millstein and Cheryl Bristol-Matte tend to the administrative side of the department's operations.

Although the bulk of the work focuses on complaint, discipline and enforcement activities, the department has, in the past, managed the registration hearing process,



The regulatory compliance team includes (front row, left to right), Steven Haddock, Bruce Matthews, P.Eng., Ted Kamad, P.Eng., and Renzo Villa, P.Eng., and (back row, left to right), William Hui, P.Eng., Ken Slack, P.Eng., Cheryl Bristol-Matte, Roger Barker, P.Eng., Irena Gawelek, P.Eng., Eric Newton and Sylvia Millstein.

although this responsibility is shifting to PEO's general counsel in 2008. In the event the registrar informs an applicant that his or her application does not meet all the requirements for issuing a licence, the applicant has the right to request a hearing before the Registration Committee. The Registration Committee serves as an additional avenue for applicants seeking licensure.

With its relatively small staff complement, the department relies on the member volunteers with the Complaints Committee (COC) in considering complaints against licence holders, and on the Enforcement Committee in advising staff on enforcement matters.

PEO must be seen to pursue complaints and discipline of practitioners and illegal practice and misuse of the engineering title all with proper diligence. The department must also strive to protect the rights of practitioners facing complaint and disciplinary action.

Deputy Registrar Barker says that like most senior regulators, PEO is continually looking at ways to improve its procedures. At Council's request, PEO recently obtained a legal audit of its complaints and discipline operations. Conducted by WeirFoulds LLP, the audit was essentially designed to determine if the RC and the standards and tribunals departments were operating in tune with the engineering act, general principles of administrative law and the expectations of natural justice and procedural fairness.

The audit concluded that PEO's complaint and discipline processes generally operate at a high level. The audit process comprised a review of PEO statistics having to do with complaints and discipline, interviews with relevant staff and the chairs of the COC and Discipline Committee, interviews with external legal counsel who support the processes, and a review of a sample of past decisions, orders and rulings by the two central committees.

The legal audit did identify a few areas for possible improvement, which led to recommendations and an implementation plan, both approved by Council, aimed

at enhancing the processes in regard to the treatment of complaints against members and the operation of discipline panels.

While some of the changes will take effect almost immediately, others will be phased in over time. These changes will enhance the openness and transparency of PEO's complaint and discipline activities, and result in fair and balanced processes that continue to protect the public interest as well as the ability of a licence holder to provide a full and complete response to a complaint.

Several of the changes proposed by the legal audit will provide complained-against engineers more information about the complaint and an earlier opportunity to respond. A new complaint form and an information guide have already been introduced. In addition, in cases where PEO obtains an independent expert report during a complaint investigation, the complained-against engineer will be provided a copy of the report, and given an opportunity to respond to it prior to the complaint being considered by the COC.

The RC department reports a 38 per cent increase in the number of complaints coming before the COC in 2007 (as compared to the 2001-2006 period), with the annual number of complaints on the upswing since 2001. Although the reasons for this increase have not been fully determined, it could be the result of better communication of PEO's role as the regulator of the profession.

In late 2006, on the recommendation of the Enforcement Committee, PEO Council approved a pilot program of proactive enforcement to assess the extent of unreported illegal practice, in response to member concerns that such practice is widespread, especially in industrial settings.

As part of the effort to measure unreported illegal practice, Enforcement Development Representative Kamad and the RC team recently produced *Licence Please!*, a CD-ROM presentation, which is the latest in a series of communications pieces to bring the message to new audiences.

Completed last summer, *Licence Please!* has been distributed to volun-

teers and PEO chapters, and is used in presentations to stakeholders, such as government departments, building officials, employers, trade associations and clients of engineers. It is also available through the website ([www.peo.on.ca](http://www.peo.on.ca)). Five thousand copies of the CD-ROM have been produced for this initial outreach effort.

As an educational vehicle, the presentation introduces a number of PEO employees who answer common questions about enforcing the engineering act and the use of the engineer title.

The release of the CD-ROM and the stepped-up enforcement effort operate along side the normal enforcement activities within the RC department. In part, enforcement involves investigating cases in which unlicensed individuals engage in the practice of engineering, or pass themselves off to the public as professional engineers. Enforcement Representative Haddock, who appears in *Licence Please!*, takes on the bulk of this traditional compliance monitoring.

"I send out anywhere between 800 and 1200 letters and emails a year, both to members of the public and to professional engineers," Haddock says. "By way of comparison, I usually generate more correspondence every week than the rest of RC combined."

Haddock says many of the inquiries from professional engineers involve the need for a Certificate of Authorization (C of A) to offer or provide engineering services to the public.

Haddock also averages about three email messages per day to people outside PEO—either sending further information to those who have responded to correspondence, or answering general questions about enforcement issues.

Ultimately, the RC department is committed to carrying out its core functions in as timely a manner as possible. As is the case with the discipline of members guilty of professional misconduct or incompetence, deterrence and an emphasis on ensuring compliance have important practical and symbolic value. 