

BY KAREN HAWTHORNE

To protect the public, PEO must do more than evaluate the qualifications of licence applicants and license those who meet the requirements. It must also enforce the exclusive right to practise and right to title provisions of the *Professional Engineers Act* (PEA) and discipline those who do not maintain acceptable standards of professional conduct and competence.

PEO's Regulatory Compliance department investigates and prosecutes enforcement and discipline matters, which are two distinct functions. Enforcement is action taken in regard to people who are not licensed by PEO or do not hold PEO certificates of authorization (C of A). Discipline is action taken in regard to practitioners or C of A holders.

Enforcement

PEO's enforcement activities are directed at dealing with unlicensed people who use a term or title that leads others to believe they are professional engineers, or individuals or firms that do not hold Cs of A who offer or provide engineering services to the public, or lead others to believe they are qualified to do so.

Staff in Regulatory Compliance field calls from the public, and investigate the allegations of unlicensed practice and misrepresentation. The department also proactively searches Yellow Page directories, job ads, and website listings for illegal practice issues and improper uses of the title.

"We're about serving and protecting the public interest—not setting up elaborate sting operations," says Bruce Matthews, P.Eng., manager, complaints and discipline. "The fact is the people that we're most concerned with are the people advertising services to the public, who as consumers of engineering services with little or no engineering knowledge place great reliance on the professionals they engage. So, these are appropriate search parameters to pro-

Enforcement vs. discipline

Enforcement and discipline are two key functions of PEO's Regulatory Compliance department, but the terms are often misunderstood.

tect those most at risk from illegal practice or misrepresentation."

PEO's approach to enforcement is based on the "4Ps":

1. *Public Relations.* Regulatory Compliance sends out a helpful letter to the wrong-doer to explain how they are in breach of the PEA, and instructing them to cease and desist.
2. *Persuasion.* Followup communication is made to encourage the person to comply, and advise them of the penalties if prosecuted under the PEA.
3. *Persistence.* Communication continues to warn the person to comply or PEO will initiate a prosecution.
4. *Prosecution in the courts.* For first convictions, maximum fines are \$10,000 or \$25,000, depending on the offence as defined under section 40 of the PEA. Maximum fines for subsequent convictions are \$25,000 or \$50,000. A provision under section 39 of the PEA allows PEO to obtain an order from the court that the person must comply with the PEA or risk being found in contempt of court and spending time in jail.

Although cases taken to court numbered about three or four per year over the last five years, more than 400 cases each year—about 99 per cent—were resolved after step one or two. Says Matthews: "About 99 per cent ultimately comply by becoming licensed or stopping what they're doing. The level of success in enforcement is very good."

Discipline measures

In the Gazette department in each issue of *Engineering Dimensions*, you'll find the

Decisions and Reasons of discipline hearings held under the PEA with regard to the conduct of a licence or C of A holder.

Regulatory Compliance investigates complaints related to licence and certificate of authorization holders, and the Complaints Committee reviews the evidence to ascertain whether it is sufficient to send the matter on to the Discipline Committee for a hearing.

In discipline hearings, PEO, as the prosecutor, must provide clear and convincing proof on a balance of probabilities that the licence or C of A holder is guilty of incompetence or professional misconduct. A licence or C of A holder can appeal a decision and penalty ordered by the Discipline Committee to the Divisional Court, but most discipline hearings are settled by virtue of a plea agreement (11 of 13 hearings conducted last year, for example). The ultimate objectives in discipline matters are preservation of the public confidence in PEO as a regulator and in the profession as a whole, deterring future misconduct, and rehabilitation through compliance.

The discipline process protects the public and publication of Decisions and Reasons in Gazette acts as a general deterrent to the profession. Besides publication, penalties can include licence suspension or revocation, writing examinations, oral or written reprimands, or the ordering of costs or fines.

Passing judgment on colleagues can be a heavy burden for those who sit on PEO's Discipline Committee, but policing the professional conduct of licence or C of A holders is necessary to self-regulation and PEO's core responsibility, says Matthews. "PEO's main mandate is to protect the public and preserve the integrity of the profession in the eyes of the public." ❖