

# COUNCIL APPROVES FUNDAMENTAL COMPLAINTS AND DISCIPLINE REVIEW

469th MEETING, APRIL 7, 8, 2011

By Michael Mastromatteo

PEO COUNCIL HAS provided feedback on an interim report from the Complaints and Discipline Process Task Force (CDPTF) and approved establishing “a task force to examine the fundamentals of complaints and discipline in contemporary society.” The CDPTF is to write the terms of reference for the new task force, for council approval in June.

The CDPTF, chaired by Patrick Quinn, P.Eng., FEC, was set up by council in November “to review concerns expressed by members related to PEO’s complaints and discipline process with a view to strengthening the process and the public’s and members’ confidence in the process.”

The task force presented its interim report, including 24 recommendations, to council at a plenary session on April 7. Besides members of council and the task force, individuals who had made submissions to the CDPTF and the members of the Complaints and Discipline committees were invited to attend the session and participate in the discussion.

Among the recommendations in the interim report were that the Complaints Committee (COC) develop a formal framework to deal with complaint inquiries in advance of a signed complaint and that the *Professional Engineers Act* be amended to allow the COC not to consider and investigate a written complaint if it believes the complaint “does not relate to professional misconduct or incompetence, or is frivolous, vexatious or an abuse of process.”

The interim report also recommends that criteria be developed for the required skills and competencies for members of the COC and the Discipline Committee (DIC), and also for their chairs, and that a mandatory initial and continuing education framework be put in place to ensure the committees’ members are appropriately trained. The report additionally recommends establishing criteria for when to obtain an independent report as part of a complaint investigation and the scope of such reports,

and a qualifying process for independent reviewers. It also recommends the COC determine the specific allegations of professional misconduct or incompetence when it refers a matter to the DIC, and that it investigate a process for using alternative dispute resolution to address matters involving ethics, contractual matters or professionalism.

Recommendations aimed at the DIC include that it review the need for independent legal counsel at hearings, adopt a best practice goal that decisions and reasons should be issued within 60 days of a hearing end, and that a lawyer with tribunal experience be appointed to each discipline panel and be required to write the decisions and reasons.

It was recommended that both committees each report to council in a timely fashion “lessons learned that will strengthen the practice of professional engineering in protecting and serving the public interest.”

Finally, the interim report recommends that council establish “a time-limited task force to examine PEO’s current philosophy and culture in the complaints and discipline areas, consult with members, other stakeholders and the public, and make recommendations regarding the appropriateness of the current philosophy and culture in a modern society.”

In providing its feedback to the CDPTF, council directed it to provide broad definitions of the concerns underlying its recommendations and how each recommendation would address the concerns. In her summary of the discussion, President Diane Freeman, P.Eng., FEC, also noted council’s endorsement of the direction of the recommendations. It was also suggested the CDPTF engage an outside expert, perhaps a retired judge, to work with it in finalizing its report. The complaints and discipline process task force is to bring its final report, including the terms of reference for its successor task force, to council’s June 2011 meeting.

## PRACTICE GUIDELINES

PEO will soon publish three new practice guidelines, with council approval of guidelines dealing with building demolition, the use of software-based engineering tools, and report writing for drinking water systems. The guidelines all emanate from PEO’s Professional Standards Committee (PSC).

The *Guideline for Professional Engineers Providing Services for Demolition of Buildings and other Structures* interprets practice standards council approved in March 2008, which were promulgated as Regulation 260/08, and describes best practices for complying with them. The practice standards were developed in response to the 2003 collapse of the Uptown Theatre in Toronto, which resulted in one death and indicated a lack of clarity as to the role of professional engineers in demolition projects.

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The guideline outlines responsibilities of engineers providing general review of the demotion of certain types of buildings stipulated in section 1.2.2.3, division C of the Ontario Building Code.

The *Guideline for Professional Engineers Using Software-Based Engineering Tools* replaces PEO's *Guideline on the Use of Computer Software Tools and the Development of Computer Software Affecting Public Safety and Welfare*, based on the PSC conclusion that separate guidelines for these different activities are needed.

Finally, the *Guideline for Engineers Writing Evaluation Reports for Drinking Water Systems* was developed to interpret a new practice standard for writing engineering evaluation reports, which council also approved and directed be added to Regulation 260/08.

The guideline responds to environment ministry concerns that drinking water evaluation reports vary in quality and detail and often contain much more or much less information than is required by regulation.

In presenting the guidelines for approval, PSC Chair Allen Jones, P.Eng., noted that the documents fill a real information gap rather than reiterating existing environment ministry or building code requirements.

### JURISDICTION REVIEW PROTOCOL

At its April meeting, council was asked to review an operational protocol for dealing with situations where a practitioner licensed by one of PEO, the Association of Ontario Land Surveyors, the Association of Professional Geoscientists of Ontario or the Ontario Professional Foresters Association might be carrying out an act that might be seen to fall within the jurisdiction of one of the others.

In providing background, PEO Registrar Kim Allen, P.Eng, FEC, said the proposed protocol is based on the belief that it's in the public interest that legislation ensures that professional practice is practised by the appropriate licence holder, unless the work is covered by an exemption, and that some practices relating to the delivery of services/products to the public might fall within the jurisdiction of more than one regulator. The courts, he said, would rather regulators resolve such issues among themselves.

The jurisdictional review protocol includes use of a special panel comprising volunteers from each regulator involved in a jurisdictional matter. The panel would consider any jurisdictional matters that might arise and make recommendations to assist the

appropriate registrar, practitioner and concerned regulators to resolve the matter prior to the registrar proceeding with an enforcement action in the courts.

For the protocol to be implemented, it must be approved by the council of each of the concerned regulators.

To move the process forward, council directed that the jurisdictional review protocol be peer reviewed by PEO's Legislation and Enforcement committees.

### PROVINCE-WIDE MENTORSHIP

At the April meeting, council approved expanding its mentoring program for engineers from the initial five chapters to 16 chapters. The mentorship pilot began in November 2009, with the first phase, involving more than 200 mentor/mentee relationships, rolling out the following June.

The additional 11 chapters to be included in phase 2 of the program will be determined based on geography and interest.

In addition to expanding the program, council has also directed that a subcommittee of PEO's Experience Requirements Committee be established to advise on the role of collaborators and mentors in helping licence applicants obtain the required 12 months of Canadian experience for licensing.

### ENGINEERS GUIDE APPROVED

Just in time for the federal election, council approved publication of a *Professional Engineers Guide to Running for Public Office*.

The guide was prepared by Brown & Cohen Communications and Public Affairs Inc., PEO's government relations consultant. The guide outlines the value of engineers in politics and addresses three major issues: how to secure a nomination, how to win in the local riding, and what is reasonable to expect from your employer when you seek elected office.

Council also approved a policy detailing the extent of its support for PEO staff seeking elected office, which is included in the guide.

Approval of the guide and staff policy is in keeping with PEO's encouragement of professional engineers running for public office, which is part of its Government Liaison Program (GLP).

The guide will be incorporated into the PEO Employee Handbook and is available PEO's website at [www.peo.on.ca](http://www.peo.on.ca) under Publications, then Practice Guidelines. It will also be discussed at regional congresses to promote awareness among chapter GLP subcommittees.

### DEPUTY REGISTRAR APPOINTED

In its consent agenda, council approved the appointment of Linda Latham, P.Eng., as deputy registrar, regulatory compliance. Latham took up her position December 13, 2010.

Consent agenda generally refers to items of a routine or procedural nature, or to which consent has already been achieved.

### PRIVATE MEMBER'S BILL ON OSPE

Council clarified its position on a private member's bill in the Ontario legislature that aims at giving statutory recognition of the Ontario Society of Professional Engineers (OSPE). Council rejected an earlier draft of Bill 148, which passed second reading and was sent to the standing committee on finance and economic affairs in March 2011, at its June 2010 meeting.

Led by Councillor Allen Jones, P.Eng., council voted to seek standing before the standing committee to express its opposition to certain terms of the bill. In particular, council is concerned the bill might contravene the title protection provisions of PEO's act because it does not state categorically that all OSPE members must be professional engineers. Σ