

## A STATUS WORTH FIGHTING FOR

By George R. Comrie, P.Eng., CMC, FEC

PEO's vice president tells the story of what PEO, and the engineering profession as a whole, has gained by taking a stronger role in public policy and governance issues.

THE PAST 10 YEARS have witnessed a fundamental and dramatic change in the ethos of Ontario's engineering profession, from one that was focused mainly on the "internals" of the profession, to one that places equal emphasis on the external/political environment and the constraints within which engineering takes place.

For much of its existence as a self-regulating profession, engineering in Ontario has "stuck to its [regulatory] knitting" and tried to stay below the radar screen of government and the general public. Not long ago, the prevalent opinion among PEO's leadership was that PEO had no place speaking out on matters of public policy or trying to inform or advise government. Historically, engineers have been largely unrepresented in public office at any level of government, although that trend now appears to be changing.

This is not a new issue for us engineers. I came across an old issue of the association's magazine—a predecessor to *Engineering Dimensions*—from April 1954 that bears the headline "Silent service is not enough." It seems as though engineers have long had a tendency to keep their heads down—to focus on problems that lend themselves to rigorous analysis and technical solutions, and to avoid those that are less well-defined and subject to the vagaries of public opinion.

### BUILDING CODE SUCCESS

With the inauguration of its current Government Liaison Program in January 2005, PEO council asserted the Ontario regulator's role as a stakeholder in government and public policy. Thus far, its largest action to raise our respect with government has been the successful fight over an ill-advised amendment to the Ontario Building Code regulations in 2004. Overnight, professional engineers became a force to be reckoned with in Ontario politics.

To refresh your memory, the previous Conservative government had introduced a provision in Bill 124 that required all designers of buildings, including professional engineers and architects, and all chief building officials in municipalities, to pass examinations set by the Ministry of Municipal Affairs and Housing (MMAH) on various parts of the Ontario Building Code. Designed and championed by staff within MMAH, this initiative came out of the Building Regulatory Reform Advisory Group (BRRAG), where concerns had been expressed that building designers were failing to comply with provisions of the code, thereby causing additional

work for building officials and delaying the permitting process.

Notwithstanding the fact that they had opposed this provision while in opposition, the current Liberal government continued with its implementation despite protests from architects and engineers, who argued that the regulation was an unwarranted incursion into the mandates of their respective regulatory bodies.

This matter first came to my attention during PEO's annual general meeting in 2004 when several members, including (now Western Region Councillor) Len King, P.Eng., raised it as an issue from the floor and urged PEO council to resist it. PEO subsequently formed a task force comprising members who were knowledgeable on the building code and related issues, including King and Chris Roney, P.Eng., BDS, FEC. During my term as PEO president, I received and responded to literally hundreds of communications from PEO members concerned about this issue. Since the Fundamental Review of 1997, I can't recall a single issue that so galvanized the membership as this one did.

During 2004 and 2005, numerous meetings with then Minister of Municipal Affairs and Housing John Gerretsen and his staff and officials were held in an attempt to obtain some form of exemption for professional engineers from the building code knowledge examination and registration provisions. One approach was to create a Building Design Specialist (BDS) designation for professional engineers that would satisfy the intent of the building code regulations—but the ministry remained adamant on its testing requirement. The offending regulations came into force on January 1, 2006. At this point, we engineers were on our own in opposing the legislation, the Ontario Association of Architects (OAA) having already agreed to administer the building code knowledge examinations for its members.

At PEO, the whole matter came to a head at a Bill 124 Task Force meeting on February 24, 2006, attended by myself as past president, Councillor Roney, then President Bob Goodings, P.Eng., FEC, then President-elect Pat Quinn, P.Eng., FEC, CEO/Registrar Kim Allen, P.Eng., FEC, Deputy Registrar (Tribunals and Regulatory Affairs) Johnny Zuccon, P.Eng., FEC, Director of Communications Connie Mucklestone, and government affairs consultant Howard Brown. After weighing all options and their potential outcomes, the task force decided

unanimously to recommend to council that PEO take the Ontario government to court—to seek a judicial review and clarification of the apparent conflict between the building code regulations and PEO’s enabling legislation. It was a gutsy move, especially in light of the low probability of success foreseen by our legal counsel, Richard Steinecke. But as Zucon sagely pointed out, we had nothing further to lose by trying, and everything to gain.

## PEO GOES TO COURT

I look back on that courageous decision as one of PEO’s finest hours, at least in my memory. Clearly, it was a defining moment. It stands as a shining example of what is possible when leaders reach consensus on an important issue and step forward boldly. Council approved the task force’s recommendation on March 3, 2006 and authorized the unbudgeted expenditure of up to \$500,000 to proceed with the legal action. On March 20, 2006, PEO filed an application for a judicial review with the Ontario Superior Court of Justice.

The hearings were held on October 26 and 27, 2006 with a panel of three Superior Court justices. The compelling arguments prepared by PEO’s legal counsel appeared to be well received. At the same time, the government did not appear to be opposing them as vigorously as they might have.

The judges’ ruling was received on May 17, 2007. It essentially vindicated PEO’s position, declaring that the knowledge-testing provisions of the building code regulations did not apply to professional engineers and architects, and that licensed designers could not be required by municipalities to possess a MMAH-issued Building Code Identification Number (BCIN).

Ironically, the court’s decision benefited architects as well as professional engineers, even though the OAA had chosen initially to capitulate to the MMAH and participate in its building code knowledge testing scheme. About the same time that PEO council decided to seek the judicial review, the OAA council (which had changed substantially in their recent elections) altered course and agreed to support PEO’s legal challenge as an intervener. It was also ironic that the building officials, whose organizations (the Ontario Building Officials Association and the Large Municipalities Chief Building Officials group) had vigorously opposed PEO’s initiatives to obtain exemption from the testing, were

the only ones “left standing” (i.e. to whom the requirement for a BCIN applied). (To read PEO’s position statement, *Clarification of the Practice of Professional Engineering related to the Ontario Building Code*, visit [www.peo.on.ca/POSITION/PS-BldgCode-%20Nov%2009.pdf](http://www.peo.on.ca/POSITION/PS-BldgCode-%20Nov%2009.pdf).)

While the court decision was based on legalities, and while there is no doubt the government could find legally defensible ways to infringe on PEO’s regulatory mandate, it nevertheless represents an important vindication of our Canadian model of self-regulating professions and a reinforcement of how that model is intended to work. Further, it serves as a deterrent to other government incursions into PEO’s regulation of the profession.

We must, however, remain vigilant to initiatives at any level of government that threaten our mandate and status as a self-regulating profession, and we must always be prepared to fight them legally and politically if necessary. Σ

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## LETTER TO MEMBERS

After the judges’ ruling on May 17, 2007, PEO issued the following statement to its members.

Dear Colleague,

On May 17, 2007, the Ontario Superior Court of Justice released its decision on PEO’s judicial review of amendments to the Ontario Building Code, finding that certain articles of the Building Code are invalid. It also found that certain provisions of the *Building Code Act* and the Building Code conflict with the exclusive regulatory jurisdiction of PEO and do not apply to any holder of any licence or certificate issued under the *Professional Engineers Act*.

We have now been informed by the Province’s legal counsel that the Province will not be appealing the decision, and have been advised that the Ministry of Municipal Affairs and Housing intends to work with stakeholders, including engineers, architects and building officials, to monitor the implications of the court’s decision on the administration and enforcement of the *Building Code Act*, 1992, and the Building Code. The government’s statement on the decision is posted on the Ministry’s website at [www.obc.mah.gov.on.ca/Page1400.aspx](http://www.obc.mah.gov.on.ca/Page1400.aspx).

The court has, in effect, said that Building Code Identification Numbers (BCINs) are not needed by professional engineers when submitting drawings for building permits and that PEO seals are sufficient. Already, building departments in Barrie, Kitchener, Milton, Mississauga, Pickering and Toronto are complying with the law and are not requiring BCINs from professional engineers.

PEO asks that professional engineers or Certificate of Authorization holders who experience any difficulties arising from not using a BCIN report this promptly to PEO’s BCIN hotline at [BCIN@peo.on.ca](mailto:BCIN@peo.on.ca).

Regards,

Kim Allen, P.Eng., CEO & Registrar