

On the job with human rights

by Peter Hiscocks, P.Eng., and Nancy Hill, LLB, P.Eng.

All employers, including professional engineers, are required to comply with the governing human rights legislation. However, it is advisable to obtain assistance in some situations. PEO's *Guideline on Human Rights in Professional Practice* will not only reduce the likelihood of incidents of harassment and discrimination, but may also provide assistance to a professional engineer in the event his or her organization is involved in a complaint.

The PEO guideline provides processes and procedures for professional engineers who need assistance to carry out their work in a professional manner. It's a tool that says: "Here is what you can do without infringing on the rights of others and with appropriate sensitivities to

human relations." That's a good thing, because Ontario's Regulation 941 under the *Professional Engineers Act* now explicitly includes harassment in the definition of professional misconduct.

Developing the standard

PEO's Women in Engineering Advisory Committee (WEAC) worked with the Professional Practice and Complaints committees to develop a standard to which we, as a profession, would be held. The objective of creating the *Guideline on Human Rights in Professional Practice* was to define the boundaries of acceptable behaviour between colleagues, to make it more certain that professional engineers know where the limits are.

The guideline does not set the standard *per se*. Rather, in our opinion, it can be used as a defence if there is an issue in regard to harassment. If the accused engineer has taken all the steps in the guideline, the engineer will have a good defence that everything was done that a reasonable engineer should do. On the other hand, if the engineer has not done everything in the guideline, that in and of itself would not be enough to prove a case of harassment. Ultimately, it will be the Discipline Committee and, potentially, the court that will set the standard.

It is now clear that PEO will hear complaints against members who are accused of employment-related harassment and discrimination as defined in the Ontario Human Rights Code or, as applicable, the *Canadian Human Rights Act*. This was a major clarification, which dedicated women engineers, as well as men, had been working toward since WEAC was first established in 1988 as a forum to propose measures leading to full participation of women in engineering in Ontario.

Steps along the way...

During the last decade, there have been numerous progressive steps along the way toward this goal. The first step to

change public opinion, according to all the top political pollsters, is to measure the opinions that are currently held.

Following this strategy, PEO conducted its first measurement of workplace conditions in 1989. This led to the 1994 *National Survey of Workplace Conditions for Engineers*, commissioned by PEO and eight other provincial associations, which found that women felt they faced at least some attitudinal barriers from their superiors, an opinion that was shared by a substantial proportion of men. This confirmed that a majority of male and female Ontario professional engineers agreed that sexual harassment should be included in the code of ethics.

The 1994 findings suggested that efforts to address workplace equity among employers of engineers would need to address areas of organizational culture, and the unwritten rules and norms that govern behaviour in the workplace. The survey results suggested that workplace equity programs held promise as a positive way to address attitudes and behaviour.

In October 1995, WEAC created a report, entitled *Defining Harassment in the Professional Engineers Act*, which recommended that the Act include a definition of sexual harassment and a clear statement that sexual harassment constitutes professional misconduct.

Including the definition in the legislation was based on two positions that WEAC took at the time:

- ◆ First, that inclusion in the Act would create an opportunity for engineers as a profession to express publicly their position on sexual harassment; and
- ◆ second, that a complainant should have the option of pursuing a sexual harassment complaint through either PEO or the Ontario Human Rights Commission.

WEAC made presentations to both the PEO Complaints and Discipline committees and sought support for a recommendation that PEO include sexual

harassment explicitly in the definition of professional misconduct, which is subsection 72(2) of Regulation 941 made under the Act. These committees passed resolutions indicating that existing provisions and internal communications programs were sufficient to deal with the situations involving sexual harassment. In short, it was considered that complaints about sexual harassment could be dealt with under the definition of professional misconduct as being conduct related to the practice of professional engineering that “would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.”

To WEAC, the existing provisions under the professional misconduct definition and in the Code of Ethics (section 77 of Regulation 941) lacked the necessary clarity and precision to identify sexual harassment as unprofessional conduct. WEAC was of the opinion that “a precise definition of sexual harassment, together with a list of behaviours that constitute sexual harassment, would serve an important educational function for the members of the association.”

A legal opinion was obtained, which recommended a number of actions, including the publication of a guideline to educate members that sexual harassment could be professional misconduct. The legal opinion, however, stopped short of calling for changes to the definition in the Regulation.

Nonetheless, WEAC believed PEO should show leadership on the issue of sexual harassment, clarifying to its members what is acceptable behaviour and what is unacceptable behaviour.

In its 1995 report, WEAC reiterated a statement made in 1992 by the Canadian Committee on Women in Engineering in its *More than Just Numbers* report: “Harassment must be clearly defined because many individuals are not aware that they are being offensive and many women accept mild harassment as part of the working environment.” This was addressed by changes to the definition of professional misconduct and the publication by PEO of the *Guideline on Human Rights in Professional Practice*.

It’s an important achievement that took continued efforts on the part of individ-

uals almost a decade to achieve. As a by-product of the process, PEO Council heard the same message repeated over and over again. You could say the education process began before our objective was obtained.

Gender balancing

Those involved in promoting the changes to the Regulation did so to further the recruitment and retention of women in the profession. We believed that it was necessary for the profession to take every possible step to make engineering workplaces free from sexual harassment. As well, we believed that it is important to demonstrate to the public at large, as well as those men and women considering engineering careers, that the profession should take measures to discourage sexual harassment. We believed that changing the Regulation’s definition of professional misconduct would be instrumental in making the profession fit for women, rather than making women fit for the profession.

In April 1997, PEO Council approved WEAC’s recommendation that Regulation 941 be amended to explicitly include harassment in general (rather than just sexual harassment), in the definition of professional misconduct. When these changes were enacted in 2000, it clarified that harassment is a quantifiable and actionable act for which professional engineers can be held accountable through the PEO discipline process. PEO Council’s decision sent a clear signal that the engineering profession in Ontario would not tolerate any form of harassment in professional practice.

The *Guideline on Human Rights in Professional Practice* supports the change to the legislation by informing members and applicants that PEO considers harassment to be an issue relevant to professional misconduct, as well as providing broad guidelines on human rights issues in the workplace.

By setting out in the Regulation a definition of harassment as professional misconduct, thus ensuring its unambiguous authority to discipline licensed practitioners who breach the required standard of conduct, and by publishing the *Guideline on Human Rights in Professional*

Practice, PEO has established a high level of professional accountability.

While the guideline considers harassment in the employer/employee relationship, what about harassment by clients, contractors or others with whom an engineer interacts? If a client is an engineer, the client is subject to the guideline. Threats and slander are illegal and can be dealt with via the legal route, but part of a professional’s skill set is being able to “get the job done”—even with people who are very difficult. Engineers can learn this from mentors, supervisors or books. If a client isn’t an engineer, try to find an engineer in the client’s company to explain appropriate behaviour. Failing that, a lawyer could write a letter explaining the facts of life to the harasser. Harassment is illegal and can be dealt with by the Ontario Human Rights Commission.

An employer not dealing with harassment is common. Here, point out that supervising engineers are responsible for the behaviour of their subordinates. If no action is taken, the organization could face a crippling lawsuit that it would likely lose and that might lead to very unfavourable publicity.

Engineering and other technical careers are good choices because they give practitioners control over their work environment. Engineering also offers a variety of mental challenges and work experiences: It combines creativity, design, technical skills, organizational expertise and project management. Initiatives like PEO’s change to the definition of professional misconduct and the publication of the *Guideline on Human Rights in Professional Practice* are positive steps toward improving the work environment so that this creativity and these skills can be nourished.

This will go a long way to making the profession fit for everyone, instead of the other way around. The guideline is available from PEO’s publication office or from the Publications section of the PEO website at www.peo.on.ca. ♦

Peter Hiscocks, P.Eng., is a professor of electrical and computer engineering at Ryerson University. Nancy Hill, LLB, P.Eng., is a partner at Hill & Schumacher in Toronto. Both helped write the guideline.