

COMPILED BY BRUCE MATTHEWS, P.ENG.

This matter came on for hearing before a panel of the Discipline Committee on June 6, 2006 at the Association of Professional Engineers of Ontario (PEO) in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. John S. Ivanyi, P.Eng., and Conengr Inc. were represented by Paul Heselden, Barrister & Solicitor. Christopher Wirth of Stockwoods LLP served as independent legal counsel to the discipline panel.

The allegations

The allegations against John S. Ivanyi (Ivanyi) and Conengr Inc. (Conengr), as stated in the Notice of Hearing dated November 22, 2005, were as follows:

It is alleged that Ivanyi is guilty of incompetence, and Ivanyi and Conengr are guilty of professional misconduct, the particulars of which are as follows:

1. Other than as specifically noted in the following paragraphs, Ivanyi was at all material times a member of the Association of Professional Engineers of Ontario.
2. Other than as specifically noted in the following paragraphs, Conengr was at all material times the holder of a Certificate of Authorization (C of A) to offer and provide to the public services within the practice of professional engineering and was responsible for supervising the conduct of its employees and taking all reasonable steps to ensure that its employees, including Ivanyi, carried on the practice of professional engineering in a proper and lawful manner. Ivanyi was the sole professional engineer responsible for the services provided by Conengr.
3. On October 28, 2003, Ivanyi and Conengr were the subject of a discipline hearing held at the offices of the Association of Professional Engi-

Decision and Reasons

In the matter of a discipline hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the conduct of:

John S. Ivanyi, P.Eng.

a member of the Association of Professional Engineers of Ontario, and

Conengr Inc.

a holder of a Certificate of Authorization.

neers of Ontario. At the hearing, Ivanyi and Conengr pleaded guilty to professional misconduct.

4. The penalty ordered by the discipline panel, which was based on a joint submission by PEO and Ivanyi, included a two-month suspension of Ivanyi's licence, requirement for Ivanyi to write and pass the Professional Practice Examination (PPE) and pay \$3,000 in costs to PEO within 12 months of the date of the hearing, failing which his licence would be suspended for a further six months. Should such a licence suspension occur, the discipline panel specifically noted that the \$3,000 in costs would still be owing to PEO.
5. In early March 2005, PEO noted that Ivanyi had not made any attempt to write or pass the PPE and did not pay the cost award to PEO within the allotted time. By telephone conversation on March 8, 2005, it was agreed between PEO and Ivanyi that the six-month suspension would take effect as of April 1, 2005, and run to September 30, 2005.
6. In a letter to Ivanyi dated March 9, 2005, PEO confirmed that the licence suspension would take effect April 1, 2005, and that if Ivanyi wanted the C of A for Conengr to remain in effect, he would have to arrange to have an appropriately qualified individual agree to supervise and take responsibility for the work of Conengr during Ivanyi's suspension.
7. By fax to PEO dated March 17, 2005, Ivanyi acknowledged receipt of PEO's March 9, 2005 letter. In the fax, Ivanyi reported that his epilepsy condition had caused memory problems and that it was only recently that he was "getting a better grasp of the problem and how it has affected" him. He inferred that his epilepsy had caused him to forget about much of the circumstances that led to the October 28, 2003 discipline hearing and also to forget about the requirement to write the PPE.
8. Ivanyi was unable to identify a suitably qualified individual to assume responsibility for Conengr and, hence, PEO suspended Conengr's C of A effective April 15, 2005.
9. On or about May 9, 2005, Ivanyi signed and sealed a series of structural drawings related to a project located at 678 Queen Street West in Toronto,

Ontario. These drawings formed part of a building permit application submitted to the City of Toronto's building division.

10. On or about August 18, 2005, Ivanyi sent a fax to the City of Toronto's building division providing further submissions with respect to the 678 Queen Street West project. The fax was on Conengr letterhead that included reference to Conengr as consulting engineers and as providers of engineering services.
11. It is alleged that John S. Ivanyi, P.Eng.:
 - (a) breached section 12(1) of the *Professional Engineers Act* by engaging in acts of professional engineering at a time when he knew, or ought to have known, that his licence was under suspension;
 - (b) suffers from a mental and/or physical condition of a nature and extent that makes him unfit to engage in the practice of professional engineering or to carry out the responsibilities of a professional engineer; and
 - (c) acted in a disgraceful, dishonourable or unprofessional manner.
12. It is alleged that Conengr Inc.:
 - (a) breached section 12(2) of the *Professional Engineers Act* by offering or engaging in the business of providing to the public services that were within the practice of professional engineering at a time when they knew, or ought to have known, that its C of A was under suspension;
 - (b) breached section 68 of Regulation 941 made under the *Professional Engineers Act* by using the "consulting engineers" title when they had not received permission from PEO Council to do so; and
 - (c) acted in a disgraceful, dishonourable or unprofessional manner.
13. By reason of the facts aforesaid, it is alleged that Ivanyi is guilty of incompetence as defined in section 28(3)(b), and Ivanyi and Conengr are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*, R.S.O. 1990, Chapter P.28.
14. "Incompetence" is defined in section 28(3)(b) as:

"The member or holder is suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member or holder that the member or holder no longer be permitted to engage in the practice of professional engineering or that his or her practice of professional engineering be restricted."
15. "Professional misconduct" is defined in section 28(2)(b) as:

"The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."
16. The sections of Regulation 941 made under the said Act and relevant to this misconduct are:
 - (a) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of a practitioner;
 - (b) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics;
 - (c) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional;
 - (d) *Section 72(2)(k)*: failure by a practitioner to abide by the terms, conditions or limitations of the practitioner's licence, limited licence, temporary licence or certificate; and

- (e) *Section 72(2)(m)*: permitting, counselling or assisting a person who is not a practitioner to engage in the practice of professional engineering except as provided for in the Act or the regulations.

PEO counsel advised that PEO was withdrawing the allegations set out in paragraphs 11(b) and 14 and the allegation of incompetence in paragraph 13 of the Notice of Hearing.

Plea by member and/or holder

Ivanyi and Conengr admitted the remaining allegations against them as set out in the Notice of Hearing. The panel conducted a plea inquiry and was satisfied that their admissions were voluntary, informed and unequivocal.

Agreed Statement of Facts

PEO counsel advised the panel that it was agreed by the parties that the remaining portions of the Notice of Hearing could be considered by the panel as an Agreed Statement of Facts.

In speaking to the Agreed Statement of Facts, PEO counsel indicated that there was no evidence that the member's medical condition was the reason for the misconduct. While the \$3,000 in cost as penalty from a previous discipline panel on October 26, 2003 had been paid after the suspension, the breach of the order was grounds for a finding of misconduct.

Responding to questions from the panel, PEO counsel submitted that an act or omission in Regulation 941, section 72(2)(a) was not restricted to performance standards of a member only, but also included reasonable standards of conduct. With respect to Regulation 941, section 72(2)(m), the member has a responsibility as a practitioner and, as well, the directing mind of the holder.

Counsel for the member and holder questioned how one could advise and counsel themselves; however, the panel accepted the opinion of independent legal counsel that the holder is in law, by being incorporated, "a separate entity from the member."

Decision

The panel considered the Agreed Statement of Facts and Ivanyi's and Conengr's pleas, and found that the facts support a finding of professional misconduct and, in particular, found that Ivanyi and Conengr committed acts of professional misconduct as alleged in the Notice of Hearing.

Reasons for decision

The panel accepted Ivanyi's and Conengr's pleas and the Agreed Statement of Facts, which substantiated the findings of professional misconduct.

The panel considered that the member and holder had knowingly and repeatedly disregarded licensing and regulating provisions of the Act, the Registrar and the previous discipline panel decision by providing engineering services to the public while his licence and the C of A were under suspension.

Penalty

PEO counsel advised the panel that a Joint Submission as to Penalty had been agreed upon. The Joint Submission as to Penalty provided as follows:

- that the licence of Ivanyi be immediately revoked;
- that the Certificate of Authorization of Conengr be immediately revoked; and
- that Ivanyi shall pay the costs of the proceeding fixed in the sum of \$5,000, payable within 12 months of the date of the hearing.

PEO counsel filed the following exhibits to assist the panel in their deliberations:

1. The Decision and Reasons from the discipline hearing on October 28, 2003 involving the same member and holder as published in the November/December issue of *Engineering Dimensions*.
2. The Registrar's notice of proposal to suspend a Certificate of Authorization, dated August 23, 2005.
3. An Affidavit of Service letter and Notice of Hearing served on November 23, 2005.

4. A letter from Bob McKeown, P.Eng., building engineer, City of Toronto, to PEO forwarding a report from Conengr Engineering Services, dated November 15, 2005, and drawing sealed by the member.

PEO counsel indicated the Joint Submission as to Penalty was arrived at after lengthy deliberations. The member was ably represented by his counsel. The Act requires that a principal objective of PEO is that the public interest be served and protected.

Revocation of licence is the only appropriate penalty should a member be unable or unwilling to comply with the provisions of the Act. The member continued to practise engineering after his licence was suspended on April 1, 2005. After being served a letter and Notice of Hearing on November 23, 2005, the member sealed and dated a report and a drawing for Conengr Inc. PEO counsel submitted that the facts demonstrated that the member was ungovernable.

The panel heard from PEO counsel and independent legal counsel the guiding principles in determining penalty, namely that the penalty afforded:

- (a) protection of the public interest;
- (b) maintenance of public confidence in the profession's ability to regulate;
- (c) general deterrence;
- (d) specific deterrence; and
- (e) rehabilitation.

The penalty proposed satisfied these principles and the specific deterrence was, in part, prompted by the fact that lesser penalties had been unsuccessful.

Counsel for the member submitted that, in coming to the decision to agree to the joint submission and accepting revocation, the member appreciated the gravity of the situation and the significant consequences to his action.

Independent legal counsel advised the panel that, based on court precedents, the panel must accept the Joint Submission as to Penalty unless there was good cause to reject it.

Penalty decision

The panel accepted the Joint Submission as to Penalty and, accordingly, ordered that:

1. **the licence of Ivanyi be immediately revoked;**
2. **the Certificate of Authorization of Conengr be immediately revoked; and**
3. **Ivanyi pay the costs of the proceeding fixed in the sum of \$5,000, payable within 12 months of the date of the hearing.**

The panel understands that Ivanyi will return his licence certificate, seal, and C of A to PEO immediately.

Publication

The panel asked the parties for written submissions concerning publication of the penalty order in PEO's official publication. PEO counsel submitted that section 28(5) of the *Professional Engineers Act* required that, where the Discipline Committee orders the suspension or revocation of a licence or certificate, it must cause the order to be published. Counsel for the member submitted that the member's guilty plea did not contemplate such publication.

The panel finds that section 28(5) of the Act requires publication with names, and also ordered that its order be published with reasons in Gazette, including Ivanyi's and Conengr's names.

Reasons for penalty

The panel concluded that the proposed penalty is reasonable and in the public interest. Ivanyi and Conengr have cooperated with PEO and, by agreeing to the facts and a proposed penalty, have accepted responsibility for their actions and have avoided unnecessary expense to PEO.

The panel considered that stamping of drawings and signing reports while the licence and C of A are under suspension bring the profession and PEO into disrepute. The member's unwillingness to comply and the nature of his conduct bring into question the ability of the profession to serve and protect the public interest.

The panel accepted submissions from the member's counsel that, in voluntarily

agreeing to the severe penalty, the member is accepting responsibility. The penalty, while severe, is appropriate based on the totality of the evidence.

The panel noted that the \$5,000 cost penalty, in addition to the unsatisfied penalties of the decision of the

previous hearing on October 28, 2003, could require that a significant commitment be made by the member towards his rehabilitation.

Following the hearing, Ivanyi and Conengr signed a waiver of appeal, which was filed.

The written Decision and Reasons were dated July 31, 2007, and were signed by J.E. (Tim) Benson, P.Eng., as the chair on behalf of the other members of the discipline panel: Colin Cantlie, P.Eng., Jeff Mark, P.Eng., David Robinson, P.Eng., and Derek Wilson, P.Eng.

Decision and Reasons by the Registration Committee

Changes to the *Professional Engineers Act* in 2001 allowed applicants for licensure who were denied a licence due to adverse determinations by the Academic Requirements Committee and/or the Experience Requirements Committee to request a hearing before the Registration Committee.

The summary below chronicles the Decision and Reasons of the Registration Committee in connection with one applicant's request for an adjournment.

It is being published in an attempt to show how these matters are dealt with by the Registration Committee and to reinforce the advice that is given to applicants who request a hearing that they should retain legal counsel in these matters.

In the matter of a hearing under the *Professional Engineers Act*, and in the matter of the proposal of the Registrar of the Association of Professional Engineers of Ontario to refuse to issue a licence to:

An Applicant

This matter came on for hearing before a panel of the Registration Committee on September 12, 2007 at the Association of Professional Engineers of Ontario (PEO) in Toronto, with respect to the matter of a proposal by the Registrar of PEO to refuse to issue a licence to an applicant.

The applicant was not present and was not represented by counsel. The panel waited one-half hour, but the applicant still did not appear. Proof of service of the Notice of Hearing was provided by the Registrar's counsel.

Counsel for the Registrar advised that the applicant had emailed the PEO tribunal office on August 22, 2007, requesting an adjournment of this hearing date. The applicant had started a new job and was relocating

his family within Ontario. He was also having problems obtaining counsel.

The applicant had been invited by the PEO tribunal office to formalize his motion for an adjournment. He was told he could take steps to have it heard in writing or electronically. He did not take those steps.

Counsel for the Registrar advised the panel, as he had previously advised the applicant that the Registrar was prepared to consent to an adjournment as long as it was made preemptory to the applicant that the Registrar be given dates for the new hearing in advance of it being scheduled and allowed the opportunity to canvass those dates with its witnesses, and that the new hearing date be scheduled prior to the end of October 2007.

Independent legal counsel (ILC) to the panel advised that although the applicant had not complied with the forms and technicalities of the Registration Committee's rules regarding motions, the panel could waive those technicalities and consider that the applicant had made a motion for an adjournment of this hearing.

The ILC also advised that adjournment requests are governed by s. 21 of the *Statutory Powers Procedure Act*, as follows:

"A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held."

ILC advised that the panel should balance the parties' right to a fair hearing against the desirability of an expeditious hearing, and that the panel should consider such factors as: 1. whether this was a first adjournment request; 2. the reasons for the proposed adjournment; 3. the length of the proposed adjournment; 4. whether there were concerns about public safety or faith in the profession; and 5. what prejudice would result to the applicant if the request for an adjournment was denied. On the last point, the panel was advised that, since the onus in a Registration Committee hearing is on the applicant and he was not present, refusing his request for an adjournment would mean that the application would be dismissed and this proceeding would be at an end.

Decision

The panel adjourned the hearing to a period not exceeding 90 days hence, on condition that the adjournment be preemptory to the applicant.

Reasons for decision

There was no formal motion before the panel; however, in light of the fact that

the applicant was unrepresented, the panel determined that the applicant's emailed request to the tribunal office was sufficient. The panel relied on the principle that its rules of procedure are to be liberally construed to secure a just and fair determination, and that the panel has the power to waive formal requirements.

The panel was concerned that the applicant did not attend the hearing. He had requested the hearing, and the panel was convened at his request on a

date to which he had originally agreed. The resources of the Registration Committee are limited, and hearing dates are not to be taken lightly.

However, this was the applicant's first adjournment request. He was apparently seeking the assistance of counsel. There were no issues concerning protection of the public. There would have been significant prejudice to the applicant if the adjournment had not been granted.

Accordingly, the panel decided to grant the applicant an adjournment of not more than 90 days. The adjournment is to be peremptory to the applicant, meaning that the applicant must be ready to proceed on the next scheduled hearing date.

The Decision and Reasons in this matter were dated September 12, 2007 and were signed by the chair of the panel on behalf of the other panel members.

New approaches to complaints and discipline

The past 12 months have seen significant attention paid to PEO's complaints and discipline processes. A recent audit of those processes has resulted in numerous recommendations that are now being implemented.

BY BRUCE MATTHEWS, P.ENG.

At a Council meeting on November 10, 2006, then-President Pat Quinn, P.Eng., announced that the Executive Leadership Team at PEO would undertake an informal review of PEO's complaints and discipline processes. The Executive Leadership Team comprises the President, Past President, President-elect and the CEO/Registrar. The informal review was launched in response to certain perceived trends in discipline matters that warranted Council policy direction.

The informal review eventually led to a formal, independent audit of PEO's administrative processes for handling complaints and prosecuting cases that have been referred to the Discipline Committee (DIC). The audit was carried out by law firm WeirFoulds LLP. The audit was intended to investigate whether PEO's complaints and discipline practices were in accordance with the relevant legislation, and whether they complied with the principles of administrative law, including the rules of natural justice. The audit involved

a review of all relevant legislation, a review of PEO statistics regarding the processes, interviews with relevant staff, the chairs of the Complaints Committee (COC) and DIC, and with external legal counsel who support the processes, and a review of a sample of past decisions, orders and rulings by the COC and DIC.

The audit, completed in May 2007, found that most aspects of the complaints and discipline processes were functioning well and in accordance with the relevant legislation and principles of administrative law. Nonetheless, the audit identified a few areas for potential improvement and made recommendations concerning procedural and policy changes. The audit report was received by PEO Council during an in-camera session at its June 22, 2007 meeting. At that time, Council directed the CEO/Registrar to prepare an implementation plan for operational changes reflecting the recommendations contained in the audit report.

In consultation with the COC, DIC and relevant senior staff, the CEO/Registrar

prepared the implementation plan. The plan was approved by PEO Council during the in-camera portion of its meeting on September 28, 2007. The following are some of the highlights of the process changes contained in the implementation plan.

- The complained-against engineer will receive more information about the nature of the complaint earlier in the complaint investigation process;
- The complained-against engineer will be interviewed by PEO investigation staff prior to the complaint being considered by the COC;
- 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 be given an opportunity to respond to it, prior to the complaint being considered by the COC;
- The Stipulated Order process is to be discontinued and the COC will make better use of its powers under the *Professional Engineers Act* to take actions it considers appropriate in dealing with a complaint, other than simply dismissing it or referring it to a discipline hearing;
- Members of the DIC are to receive more frequent and better structured training regarding their role during a discipline hearing;
- The DIC will be empowered to require a pre-hearing conference in

advance of a discipline hearing (previously, such conferences were held only if requested by one of the parties); and

- Council will consider providing PEO staff with more flexibility in negoti-

ating resolutions to discipline matters in advance of a discipline hearing.

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 complaints and discipline processes, and will result in a fair and balanced process that continues to protect the public interest while at the same time enhancing the ability of licence holders to provide a full and complete response to a complaint.

Discipline hearing schedule

This schedule is subject to change without public notice. For further information, contact PEO at 416-840-1083; toll free 800-339-3716, ext. 1083.

Any person wishing to attend a hearing should contact the tribunal office at extension 1083.

All hearings commence at 9:30 a.m.

NOTE: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference regarding the status, qualifications or character of the licence or Certificate of Authorization holder should be made based on the allegations listed herein.

November 19, 2007

Mladin Pazin, P.Eng., and The Environment Management Group Ltd. (EMG)

It is alleged that Pazin and EMG are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(g)*: breach of the Act or regulations, other than an action that is solely a breach of the code of ethics; and
- (b) *Section 72(2)(j)*: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

December 10-14, 2007

Paul S.C. Lim, P.Eng., and P. Lim & Associates Limited (PLAL)

It is alleged that Lim is guilty of incompetence as defined in section 28(3)(a) of the *Professional Engineers Act*. It is alleged that Lim and PLAL are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*. The sections of Regulation 941 made under the Act relevant to the alleged professional misconduct are:

- (a) *Section 72(2)(a)*: negligence;
- (b) *Section 72(2)(b)*: failure to make reasonable provision for the safeguarding of life, health or property of a person who may be affected by the work for which the practitioner is responsible;
- (c) *Section 72(2)(d)*: failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner;

- (d) *Section 72(2)(e)*: signing or sealing a final drawing, specification, plan, report or other document not actually prepared or checked by the practitioner; and
- (e) *Section 72(2)(h)*: undertaking work the practitioner is not competent to perform by virtue of the practitioner's training and experience.

PEO manager elected to board of CLEAR

Bruce Matthews, P.Eng., PEO's manager, complaints and discipline, has been elected to the board of directors of the Council on Licensure, Enforcement and Regulation (CLEAR). Matthews' two-year term began at the conclusion of the CLEAR annual conference in September 2007.

CLEAR was formed in 1980 as a resource for organizations or individuals involved in administering regulated occupations and professions. CLEAR has become the premier international resource for professional regulation stakeholders and counts over 250 North American regulatory bodies among its membership. PEO has been a member of CLEAR since 1999.

Through its conferences, training programs, publications and other services, CLEAR helps its constituent members carry out their shared mission of serving and protecting the public interest. CLEAR focuses its programs on three core areas of professional regulatory activity: professional discipline, licensing (including credentialing/examination issues), and regulatory policy and administration. CLEAR provides a dynamic and interactive forum for exploring and exchanging ideas about these issues. Additional information about CLEAR can be found at www.clearhq.org.

Matthews has been active within CLEAR over the past few years. He serves on various CLEAR committees and has coordinated and delivered presentations at the CLEAR annual conference.

Enforcement explained

BY STEVEN HADDOCK

This Q & A column aims to educate members about some of the issues PEO faces in protecting the public against unlicensed individuals who engage in the practice of professional engineering, and in enforcing the title protection provisions of the *Professional Engineers Act*.

Q. My company is a custom machinery manufacturer. 1. Do we need a Certificate of Authorization (C of A)? 2. Can we use the word engineering to describe our design services? 3. Can we use the word engineering in our company name? 4. Can our professional engineer employee do pre-start health and safety reviews on new installations?

A. These questions often arise in many custom build, design/build and turnkey installations. PEO's position on custom works of manufacturing is clear: "If you provide professional engineering services to the public through the sale of a product that is custom-designed or an original (as opposed to an off-the-shelf product), a C of A is required" (*Certificate of Authorization Requirements: An Information Guide*, January 1998, p. 3). However, in practice, PEO makes a distinction between businesses that do their profes-

sional engineering work in-house and those that hire a professional engineer to do that work for them. Both arrangements are legal, and those manufacturing companies that hire C of A holders to do the necessary professional engineering work do not require their own C of A. The important thing is that there must be a C of A holder taking responsibility for the professional engineering somewhere in the design process, including any legal liability.

Furthermore, PEO takes the position that it must be clear which legal entity is performing the professional engineering work, whether it is performed in-house or contracted out. As such, custom manufacturers without a C of A cannot use the word engineering in their business name or advertise engineering services, unless they make it clear that those services are being provided by third-party engineers. A phrase like "engineering design services provided by

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independent engineering firm" is sufficient for this purpose. For a more detailed discussion of the use of the words engineer or engineering in company names, see "Enforcement explained," *Engineering Dimensions*, July/August 2007, p. 37.

Firms that offer pre-start health and safety reviews (PSRs) to clients are clearly required to hold a Certificate of Authorization. However, there is nothing to prevent a manufacturer or installer that does hold a C of A from using its own in-house professional engineer employees to perform PSRs for its clients. However, engineers in such an arrangement must remember their first duty is not to their employers, but to the health and safety of workers who will be using or working around the equipment.

The vast majority of machinery design requires the application of engineering principles to protect the health, safety and even the lives of machine operators and others in the workplace. This must be the paramount concern of anyone designing industrial machinery, and the law requires that such design services be performed by a professional engineer. This gives rise to the necessity to have a C of A holder take responsibility for the professional engineering involved in the design of custom machinery. Although section 12(3)(a) of the *Professional Engineers Act* allows unlicensed people to undertake acts within the practice of professional engineering in relation to machinery and equipment for use in their employer's facilities in the production of products, this exclusion clearly does not apply to independent custom machinery manufacturers. However, section 12(3)(c) does allow unlicensed people to design and provide tools and dies.

September/October 2007 enforcement statistics	Total inquiries	125
	Major enforcement files opened	3
	Job advertisers contacted	1
	Existing business names reviewed	34
	New corporate names reviewed	3
	Enforcement matters reported	13
	From professional engineers	7
	From PEO staff	3
	From other	3
	Daily Commercial News inquiries	3
	Non Certificate of Authorization holders with liability insurance	2
	Out of province engineers contacted	
	New Brunswick	24
Saskatchewan	24	
Self-employed engineers contacted	13	
Yellow Pages advertisers contacted (followups)	5	

