



IN DEFENCE OF THE ACT

By Michael Mastromatteo

The standards and tribunals team has a winning record in explaining to external groups the extent of the act and regulations in guiding the work of licence holders.

OVER THE LAST SEVERAL YEARS, PEO's standards and tribunals (S&T) department—formerly standards and regulations (S&R)—has had an enviable record in upholding the *Professional Engineers Act* (PEA) against potential encroachments from other legislation.

That's only natural given the department's main objectives of upholding the integrity of the PEA, and developing professional standards and guidelines so the terms and conditions of professional engineering practice are better understood across the board.

And despite a recent administrative shift that gave S&T responsibility for the support of PEO's tribunals—the Discipline and Registration committees—the department has retained elements of its focus on safeguarding regulation of engineering practice from other legislation that would seek to impose its own understanding of what engineers can and cannot do.

However, a good part of the responsibility for upholding the PEA is now shared with PEO's inhouse legal counsel, Mark Baruzzi, LLB, who was added to the staff structure in 2006. But with a history of successful engagements with provincial ministries and delegated authorities on issues of engineering practice as defined under the act, S&T remains poised to assist legal counsel and the registrar in the event any aspect of engineering self-regulation is called into question.

Here is a summary of the department's involvement with threats to the PEA over the last few years.

CHANGES TO THE BUILDING CODE

Through the former S&R group, PEO had been involved in extensive negotiations with the Ontario housing ministry over plans to revise the Ontario Building Code and create an examination regime to qualify and register designers, including engineers, to undertake design and review functions associated with building permit applications. PEO's concerns that a ministry-mandated certification system duplicated, contradicted and otherwise interfered with PEO's statutory role to license, discipline and regulate its members and was not authorized by the *Ontario Building Code Act, 1992* were ignored by the housing ministry. The result was PEO's 2006 application for judicial review, which was ultimately decided in PEO's favour.

QUALIFIED PERSONS

What was called Regulation 153/04 by the Ontario environment ministry caused no shortage of engagement by S&T staff. Designed to delineate the qualifications of people authorized to engage in aspects of Brownfields remediation work, the proposed regulation failed to recognize PEO limited licence holders as "qualified persons" (QPs), and included unlicensed practitioners as QPs.

S&T staff argued that good public policy in this area would preclude any unlicensed practitioners from taking responsibility for records of site condition required by the environment ministry, while a practitioner's limited licence in this area should be viewed as equal in accountability to that of a professional engineer.

Staff made repeated entreaties to the environment ministry to educate them about the limited licence and its link with public safety and professional accountability. Fortunately, this time out no legal action was necessary, as in April 2008 the regulation was amended to recognize limited licence holders as meeting the definition of qualified persons. As a bit of a bonus, by October 1, 2009, the regulation will recognize as QPs only licence holders from PEO or the Association of Professional Geoscientists of Ontario.

WELL TECHNICIANS INTERVENTION

Beginning in 2005, PEO opposed a plan by the Ontario environment ministry to impose requirements on P.Engs to be licensed as well technicians. Known as Ontario Regulation 903 under the *Water Resources Act*, the new measure was deemed unnecessary by PEO on the grounds that Regulation 941/90 under the *Professional Engineers Act* already compels PEO licence holders to determine if they are competent to perform any work they might undertake.

PEO, through the S&T team, asked the environment ministry to exempt licence holders from the additional certification regime, on the grounds of it being a superfluous requirement for professional engineers.

As it turned out, the ministry accepted PEO's arguments and the resulting regulations exempted all PEO licence holders from additional certification.

Despite this positive result, it's important that PEO's challenge of this external certification regime for engineers be properly understood. Johnny Zuccon, P.Eng., deputy registrar, standards and tribunals, says PEO opposes additional or external certifications of licence holders only in cases where the activity is clearly integral to the practice of professional engineering. If an activity were outside the practice of professional engineering, it might be reasonable for a licensed practitioner to have to undertake an additional certification to be qualified to undertake it, and PEO might not oppose such a certification.

ELECTRICAL SAFETY AUTHORITY

Changes to rule 2-010 of the Electrical Safety Code and Regulation 22/04 called S&T staff into action throughout 2006, 2007 and beyond. The Electrical Safety Authority (ESA) regulation initially failed to recognize PEO licence holders as people qualified to participate in electrical safety reviews. PEO considered the regulation *ultra vires*, and asked for amendments, leading to the two provincial ministries overseeing the ESA to ask PEO and the ESA to work together to find an appropriate resolution. Although the ESA is now drafting a revised regulation, PEO remains concerned that it might not address all of the regulator's issues. In the event PEO is not satisfied with the result, it is prepared to have its inhouse legal counsel initiate a legal challenge.

As a veteran of the foregoing engagements, Zuccon says there is a logical continuity to the S&T department's ongoing involvement in upholding the integrity of the PEA. However, it remains to be seen if the department will play as large a role in the future, given its new responsibilities supporting PEO's tribunals. Σ