

PROFESSIONAL PRACTICE



PRACTITIONERS AND THE LAW

By Bernard Ennis, P.Eng.

Whether they're consultants preparing construction contract specifications or employees practising in an industrial plant, professional engineers work within a legal environment. Laws such as the *Environmental Protection Act (EPA)* and the *Ontario Water Resources Act* set out the broad, socially acceptable parameters of engineers' work. Regulations, such as the Ontario Building Code and the Electrical Safety Code, provide technical standards that practitioners must use in designing systems covered by these statutes.

OVER 100 PIECES of legislation specifically mention professional engineers, calling on them to perform functions or take on responsibilities not covered by the *Professional Engineers Act (PEA)*. Failure to know which laws pertain to, or understand the implications of those laws on engineering practice can have severe consequences for practitioners, ranging from discipline measures by PEO to fines or litigation.

Practitioners are expected to have an understanding of the laws that directly affect their work. Section 72(2)d of Regulation 941/90 defines one form of misconduct as the failure to take responsible provision to comply with statutes, regulations, standards, codes, bylaws and rules applicable to the work undertaken by or under the responsibility of a practitioner. A quick survey of discipline decisions published in the

Gazette section of *Engineering Dimensions* would show that not complying with standards or laws was a contributing factor in many cases.

This is why all potential professional engineers write the professional practice exam to demonstrate some knowledge of contract law and the PEA. However, PEO council has recently directed the CEO/registrar to investigate the need to include a general knowledge of the EPA, and the *Occupational Health and Safety Act* and its regulations as a requirement for licensing.

UNDERSTANDING THE LEGAL FRAMEWORK

Statutory law comes in two forms: acts and regulations. Acts generally establish a regulatory regime, identify the administering party, and provide that party with certain powers, structure, obligations and basic functions. The PEA, for example, creates the association, defines its objectives, identifies what it regulates (the practice of professional engineering) and governs (licence and Certificate of Authorization holders), delegates to the association powers needed to perform its function, and specifies the basic governance structure of council, the registrar and the major committees.

Regulations are rules made to carry out the functions identified in the enabling act. If the act allows, regulations are created by the body administering the provisions of the act. So, for example, s. 7 of the PEA describes PEO's power to create regulations regarding practice standards, qualifications for councillors, procedures to be used by the legislated committees, and many other functions needed to fulfill the association's mandate under the act.

PRACTITIONERS' OBLIGATIONS

Practitioners should read all the legislation dealing with their areas of practice and understand how it impacts them. The PEA and its regulations can be downloaded from the PEO website. All Ontario statutes are available on the e-Laws website (www.e-laws.gov.on.ca). Become familiar with the roles, obligations and responsibilities these laws impose on practitioners. For instance, the building code requires a professional engineer to provide general review of construction in certain situations. But, despite a PEO standard and guideline on the role, few practitioners know what general review entails and tend to confuse this activity with contract administration and project management. As a result, practitioners may be providing some services to clients under the mistaken belief about what the law requires. Alternatively, practitioners may agree to provide a service without comprehending the liabilities associated with it.

To properly comprehend the impact of applicable statutes, regulations and codes, practitioners need to understand the meanings and implications of legal terms and such common, but often misapplied, words as “certify.” Sometimes, the words of a statute have a plain and straightforward meaning. But, in many cases, there may be ambiguity or technical meaning in the words of the statute that must be resolved through statutory interpretation. Interpretation of legislation is a legal exercise. To find the meanings of statutes, lawyers use various tools and methods of statutory interpretation, including traditional rules of interpretations, judicial decisions in precedent cases, classic texts of statutory interpretation and, occasionally, research of legislative history, to understand the lawmakers’ purposes for creating a law.

Although professional engineers must be aware of legislation affecting their work, they are not expected to be lawyers and should not rely on their own opinions about the meaning of laws pertinent to their work. When legislation is not clear, practitioners should seek an interpretation from a lawyer or from the authority responsible for the statute. For instance, the Technical Standards and Safety Authority is the body responsible for administering regulations governing operating engineers, pressure vessels, boilers, fuel transmission and lifting devices. Similarly, interpretation of the building code is provided by either building officials or by Ministry of Municipal Affairs and Housing code advisors. But it is practitioners who are ultimately responsible for complying with the law. Σ

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By Michael Mastromatteo

Engineers sensitive to their practice obligations under statutes other than the *Professional Engineers Act* can celebrate the profession’s influence in shaping another key piece of safety legislation.

Ontario’s *Occupational Health and Safety Act* (OHSA), which instituted a new era of safety in the workplace, marks its 30th anniversary in 2009. Originally known as Bill 70, the act received royal assent in December 1978, and was proclaimed into law October 1, 1979.

The OHSA is one of the most important pieces of legislation that specifically details responsibilities for professional engineers.

The act is dedicated to health and safety in all provincially regulated workplaces in Ontario. It is especially significant for its introduction of an internal responsibility system (IRS), which was said to change workplace culture by making all parties responsible for health and safety on the job.

The act was also instrumental in giving workers the right to participate in workplace safety, the right to know about potential hazards, and the right to refuse work they consider to be unsafe.

Regulations and amendments to the original act have increased its powers and scope over the intervening 30 years.

ENGINEERING ORIGINS

Professional engineers can take pride in the knowledge that the IRS and many of the key underpinnings of the OHSA originated with an engineer, the late James Ham, P.Eng., a former president of the University of Toronto, PEO Gold Medal recipient, and fellow of the Canadian Academy of Engineering.

It was Ham who promulgated the internal responsibility system that has since become a hallmark of most occupational health and safety legislation. Ham has since become known as Ontario’s “engineer” of workplace health and safety.

In 1975, Ham was commissioned by the Ontario government to prepare a report on the health and safety of Ontario miners. Subsequently known as the Ham Royal Commission, the report came in response to the high number of fatalities, injuries and illnesses among the

province’s miners, particularly in the uranium mining sector.

Although its original focus was mining, the report’s recommendations eventually formed the basis of a new occupational health and safety act that would apply to all regulated workplaces.

NEW THINKING

Sophie Dennis, assistant deputy minister (operations division), Ontario Ministry of Health, says the 30th anniversary is a key time to reflect on the act’s chief virtues. She says the act opened the door to new thinking about risk management, and the participation of management, supervisors, workers, labour unions and government inspectors in enhancing workplace safety.

Its premise has since been adopted for use in the United Kingdom, Australia, New Zealand, and other jurisdictions where the mining industry is prevalent.

Dennis also says the act anticipated many of the labour ministry’s subsequent priorities in health and safety, in particular “right to know” arrangements between employees and managers in the development of safer workplaces.

SCOPE BROADENING

The labour ministry has broadened the scope of occupational health and safety legislation since 1979. Recent amendments to the OHSA cover workplace violence and limits for exposure to hazardous workplace substances.

In keeping with the internal responsibility concept of the original legislation, the labour ministry is now developing an internal responsibility audit to promote compliance and to renew focus on workplace health, a safety culture, and joint responsibilities of employers, supervisors and workers.

Vic Pakalnis, P.Eng., professor of mining engineering, Queen’s University, says one last benefit of the OHSA’s safety model is its adaptability to other situations that might involve risk or injury.

Pakalnis calls the OHSA a testament to good public policy in Ontario and says he believes the engineering profession can be proud of its part in its creation. Σ