



# Assessing the character of PEO licence applicants

By Steven Haddock



**S**ome applicants, although technically competent, clearly demonstrate during the course of the licensing process that they will not practise in a manner befitting the trust the public will place in them as professionals, with knowledge on which the public must rely. In such cases, there is no argument that the applicant should not be licensed.

In other cases, the licensing decision is not as clear. Is bad behaviour on the part of an applicant an indication of deeper character flaws, or merely an aberration? Is past bad behaviour a predictor of future bad conduct? This is a question that can stump even medical and legal experts who are called upon to assess character on a regular basis.

If PEO does eventually decide to refuse to issue a licence because of an applicant's character, it is the Registration Committee that will have the final say if the applicant asks for a hearing. However, staff in PEO's licensing and regulatory compliance departments are faced with the task of initially determining whether an applicant should be issued a notice that PEO is proposing to refuse to license them, or whether their transgressions can be forgiven.

How does staff make such an assessment? Fortunately, there are laws and policies to guide them and assessment mechanisms in place.

## WHAT THE ACT SAYS

Section 14(1) of the *Professional Engineers Act* outlines the minimum requirements for licensure. Subsection 14(1)(e) requires that for an applicant to be licensed he or she must be "of good character." Under the provisions of section 14(2), "The registrar may refuse to issue a licence to an applicant where the registrar is of the opinion, upon reasonable and probable grounds, that the past conduct of the applicant affords grounds for belief that the applicant will not engage in the practice of professional engineering in accordance with the law and with honesty and integrity."

## WHAT IS GOOD CHARACTER?

Under Ontario law, "good character" is generally held to comprise three elements:

1. the ability to tell the difference between right and wrong;
2. the courage to do what's right, no matter the personal consequences; and
3. the ability to assess these issues, within the context of the practice of the profession, in the best interests of the public as a whole.

## HOW DOES PEO MEASURE CHARACTER?

PEO relies on three mechanisms to determine the character of an applicant:

### Professional practice exam

The professional practice exam (PPE) is administered partly to determine if an applicant has a good grasp of legal and ethical matters. Although not a perfect test of character, how well an applicant does on the exam provides a good measure of the first and third elements of good character mentioned previously. Although most applicants pass the PPE, some never do. And although those who pass the exam may not have a better character than those who fail it, PEO is confident that those who never master the PPE will not be well equipped to deal with the normal legal and ethical issues that arise in their practices.

### References

The next mechanism for assessing character is via the professional engineers who act as applicants' referees—those who review applicants' conduct on a daily basis. Once again, this is not an entirely objective screening mechanism. On occasion, a referee may raise what they consider a "character issue," such as that an applicant left his or her job without sufficient notice, which may not be an indication of the applicant's character, particularly where there is a legitimate employment dispute between the referee and the applicant. However, when a referee reports that an applicant is mistreating peers, subordinates, clients and even supervisors, PEO has to consider whether such inappropriate behaviour would improve after licensing.

# PEO policy for dealing with **negative** character issues



At its meeting on June 26 and 27, 2008, PEO council implemented a recommendation of the Licensing Process Task Force by approving a policy for dealing with licensure applicants' negative character issues. Here is the policy:

1. The registrar will always seek further information or evidence to substantiate a "negative" response and to provide context for the response.
2. When the "negative" response is vague and cannot be substantiated, or the source is either unable or unwilling to provide specific evidence, that response may not necessarily be sufficient cause to propose to refuse to issue a licence.
3. For matters related to refusals, revocation or suspensions by other engineering associations, the registrar will consider the seriousness and currency of the matter relating to the applicant engaging in the practice of professional engineering with competence and integrity in Ontario.
4. For matters related to alcohol or drug dependency and medical conditions, the registrar shall consider the specifics of the case; what steps have been taken, how the condition relates to engaging in

the practice of professional engineering with competence and integrity, and the length of any remission.

5. For incorrect responses to questions on the application, incorrect answers that would have been material to the applicant's licensure will be grounds for proposing to refuse a licence.
6. That, when allegations such as the above are substantiated, the registrar will consider both mitigating and aggravating factors related to:
  - (a) the nature of the misconduct (how serious, how relevant to engaging in the practice of professional engineering with competence and integrity);
  - (b) the penalty imposed, and whether that penalty has been served;
  - (c) the duration of the misconduct, and how long ago it took place;
  - (d) whether the applicant has shown remorse for the conduct;
  - (e) whether the applicant has taken any steps to rehabilitate and, if so, the success of such efforts; and
  - (f) the applicant's conduct since the proven misconduct.
7. For criminal matters, the registrar shall act according to the following guidelines:
  - (a) Any conviction for any indictable offence will result in a proposal to refuse to issue a licence, except in extraordinary circumstances (such as a pardon). The presumption is that such offences render an applicant unfit for licensure;
  - (b) Conviction for a summary conviction offence or provincial offence should only result in a proposal to refuse to issue a licence where the offence is more serious, or it is relevant to engaging in the practice of professional engineering with competence and integrity, or the conduct is repeated.

## **Application form**

On the licence application form are a series of questions that are directly relevant to an applicant's character, such as whether they have been refused licensure before (in Ontario or elsewhere), whether they have been disciplined before, whether they have been convicted of a criminal offence, and so on. A negative answer to any of the questions does not mean PEO will not license an applicant, only that their character will require further review before licensing can occur. In June 2008, PEO council implemented a recommendation of the Licensing Process Task Force by approving a policy to guide staff in dealing with character issues, including negative answers on the application form questions (see sidebar).

## **COMMON CHARACTER ISSUES**

When PEO encounters character issues among applicants, they are likely to fall within three areas, which has enabled PEO to establish precedents for dealing with them.

### **Cheating on exams**

Occasionally, an applicant will be found to be using unauthorized aids, such as notes, during the PPE or a technical exam. In addition to leading to a failing result on the exam, such behaviour clearly shows the applicant is not of good character and the registrar almost always issues a proposal to refuse to issue a licence.

### **Criminal record**

Some applicants have been convicted of an offence under the Criminal Code. This clearly brings their character into question. At this point, an applicant convicted of an indictable offence has the burden of showing they have rehabilitated themselves, or the registrar shall, under the council policy, send the applicant a notice of proposal to refuse to issue a licence. A pardon, absolute discharge, or completion of a conditional discharge is taken as proof that the applicant is now of good character. Conviction of a summary conviction offence or provincial offence is unlikely to result in a notice of

proposal to refuse to issue a licence unless the offence is more serious, is relevant to engaging in the practice of professional engineering, or the conduct is repeated.

### **Incorrect answer on application**

When PEO finds an applicant has not been forthcoming on his or her application and has neglected to tell us about a criminal conviction, a previous attempt to be licensed, or prior discipline, the first thing PEO considers is whether the correct answer would have had any bearing on the decision to issue a licence. For example, if an applicant had applied before and the application was closed before the applicant wrote the PPE, it is unlikely their failure to mention it on the next application would be seen as evidence of poor character. However, if an engineer licensed elsewhere fails to inform PEO of a reprimand by the other licensing body, it might well be seen to be evidence of poor character.

### **PROCEDURE**

When a potential character issue arises, PEO staff gather all the available information, including documentation and the names of any witnesses. Staff reviews this information and considers whether PEO would have grounds to deny a licence, if the information is seen in its best light and it is assumed everything that is said is true. In many cases, this preliminary review leads PEO to the belief that the issue is not about character and no further steps need to be taken.

However, if PEO concludes the information would constitute grounds for denying a licence, the applicant is contacted, the information PEO has is outlined, and the applicant is asked for a response. If the applicant can convince PEO that relevant information was not made available to PEO for the initial review, PEO often discontinues its investigation.

In addition, applicants may be able to demonstrate that despite their previous poor behaviour, they are now of good character, by producing a pardon of a criminal conviction, for example. In such cases, the licensing process continues without interruption.

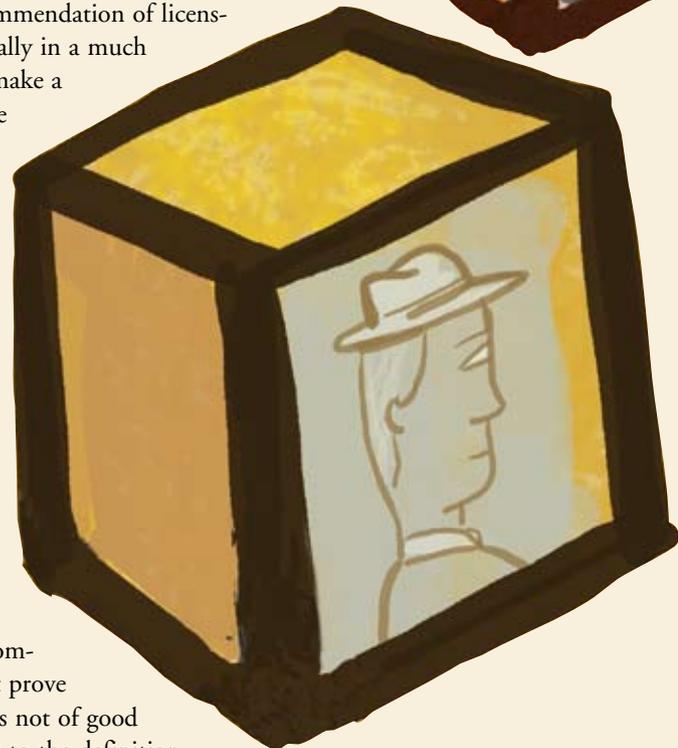
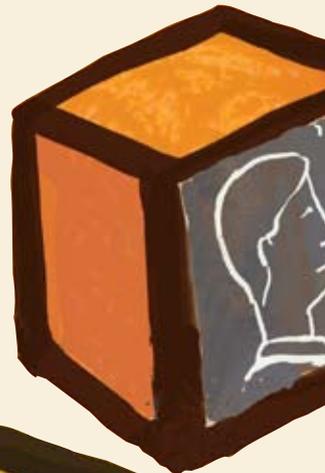
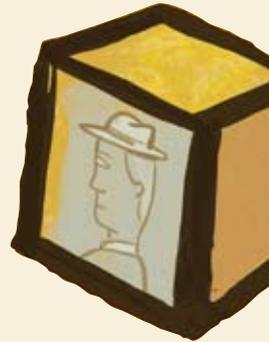
If neither of these mitigating situations occurs, PEO informs applicants that PEO believes the quality of their character may be a barrier to

licensure. If they have completed the other steps for licensure (in particular the experience requirement), PEO refers the matter to legal counsel, who investigate and make a final recommendation to the registrar. If an applicant must still complete parts of the licensing process (e.g. they are a new applicant), a note is made in their file and character is further reviewed when the applicant is otherwise ready for licensure. At that point, the applicant may make further submissions and PEO decides whether to have legal counsel assess the situation. Once again, in the interim, the applicant may be able to show that his or her character has improved.

### **ROLE OF LEGAL COUNSEL**

As licensing staff does not have the expertise or resources to question witnesses or gather evidence, the matter is referred to legal counsel whenever an applicant's character is in question. Legal counsel works directly with the registrar to determine if a notice of proposal to refuse to issue a licence should be issued. In this role, counsel may speak directly to witnesses, direct staff to examine witnesses, make inquiries with law enforcement and regulatory agencies, collect documentation, or deal directly with an applicant. Legal counsel is not bound by the recommendation of licensing staff and is usually in a much better position to make a judgment about the credibility of witnesses or how a court of law would assess the evidence.

In some cases, although the initial investigation might provide cause for concern, in the end it may be determined that insufficient evidence of bad character exists, or that the conduct complained of does not prove that the applicant is not of good character according to the definition





in the act. In such cases, the file is returned to the licensing department and a licence is issued.

However, in the remaining cases, a notice of proposal to refuse to issue a licence is delivered to the applicant. The applicant is advised of their right to appeal the registrar's determination, but may also accept the decision and take no further action.

### REGISTRATION COMMITTEE

An applicant issued a notice of proposal to refuse to issue a licence on the grounds of character may ask for a hearing before the Registration Committee.

In such a proceeding, if it is proposed the applicant be denied licensure under the provisions of section 14(1)(e) of the act, PEO needs only to prove there is evidence of poor character and the applicant must prove that he or she is of good character. However, if the proposal is to refuse to issue a licence under the provisions of section 14(2), PEO must prove on reasonable and probable grounds that there is reason to believe the applicant will not practise engineering with honesty and integrity.

### THE COURTS

If the Registration Committee upholds the registrar's proposal to refuse to issue a licence, the applicant may apply to divi-

sional court for a judicial review of the decision. It is likely the court would review the matter on a standard of correctness in law, rather than the lower standard of reasonableness. Accordingly, when PEO does decide to refuse licensure on the grounds of character, it must ensure there is solid evidence to do so.

### REINSTATEMENT

If a member's licence lapses for non-payment, PEO assumes the former member is of good character if an application for reinstatement is made within one year. After that, the former member must once again prove good character, which can generally be done by providing PEO two references for this purpose. Sometimes, however, negative information has come to light about activities during the time an applicant for reinstatement was unlicensed, such as evidence the applicant was sealing documents while unlicensed, or even taking part in criminal activity. As a result, applicants who want to reinstate after their licence has been lapsed for more than 12 months, will face the same investigations into character as a new applicant encounters.

## PEO case studies concerning assessment of character

**Situation:** A new applicant was convicted 25 years ago of armed robbery for his role as a lookout. He was sentenced to two years of jail time and served the minimum of eight months. He had not been in trouble in the intervening time and had obtained his engineering degree during that period.

**Conclusion:** The file was not referred to legal counsel. Although the criminal conviction was evidence of bad character, the applicant had demonstrated rehabilitation and remorse. He had applied for a pardon and was expected to receive one prior to licensure. His current character could not be reasonably judged against his actions of 25 years ago. He was allowed to continue the licensure process.

**Situation:** An applicant was licensed in another province but had been working as a construction supervisor in Ontario. In this role, he was charged under the *Occupational Health and Safety Act* (OHSa) when a worker was badly injured on the job. He disclosed the charge, which was still pending, but blamed the worker for the incident.

**Conclusion:** The matter was referred to legal counsel. The OHSa is legislation that gives special responsibilities to professional engineers. Blaming the worker seemed to indicate a misunderstanding of the applicant's role as a supervisor under the act.

**Situation:** An applicant licensed in another province answered a licence application question with the information that he had no history of discipline. However, his previous association advised he had been disciplined on three occasions, although the punishment each time had been only a fine. All three discipline incidents were based on similar situations, and the fine was increased on each occasion. When asked for an explanation, the applicant said he believed he wasn't required to disclose the conduct given the wording of the question and that the conduct in question was not serious.

**Conclusion:** The matter was referred to legal counsel. The purpose of the question was clear and the applicant was clearly required to disclose any negative finding by his previous association, no matter how trivial it might have seemed to him. Moreover, the member's response seemed to indicate he felt the conduct for which he was disciplined was justified despite the findings against him.

**Situation:** An applicant was in charge of hiring workers for a project during a down economy. As a condition of hiring these workers, he charged them a weekly kickback.

**Conclusion:** The matter was referred to legal counsel. The applicant would have faced serious disciplinary consequences had he been licensed.

**Situation:** The applicant had disclosed an offence on her application. She explained it was a speeding offence in a safety zone, but claimed she had been wrongfully convicted of the offence due to a conspiracy among the police, provincial prosecutor and justice of the peace.

**Conclusion:** The matter was not referred to legal counsel. A single highway traffic offence did not constitute evidence of bad character. However, PEO communicated reservations to the applicant that although PEO did not see a character issue, because the offence was minor and was not relevant to the practice of engineering, PEO will not second guess a decision of a court of law. The applicant was told that accepting the judgment of the courts is an important part of being a professional.

**Situation:** An applicant had recently been convicted of spousal assault. Although there was no bodily harm, there was physical contact. The applicant was given probation. The applicant claimed the assault was the result of severe provocation.

**Conclusion:** The matter was referred to legal counsel. The applicant's attitude indicated he felt his conduct was justified in the circumstances. Although assault will generally not result in a referral, pleading justification may indicate the applicant will not take responsibility for his conduct in the future. Σ

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