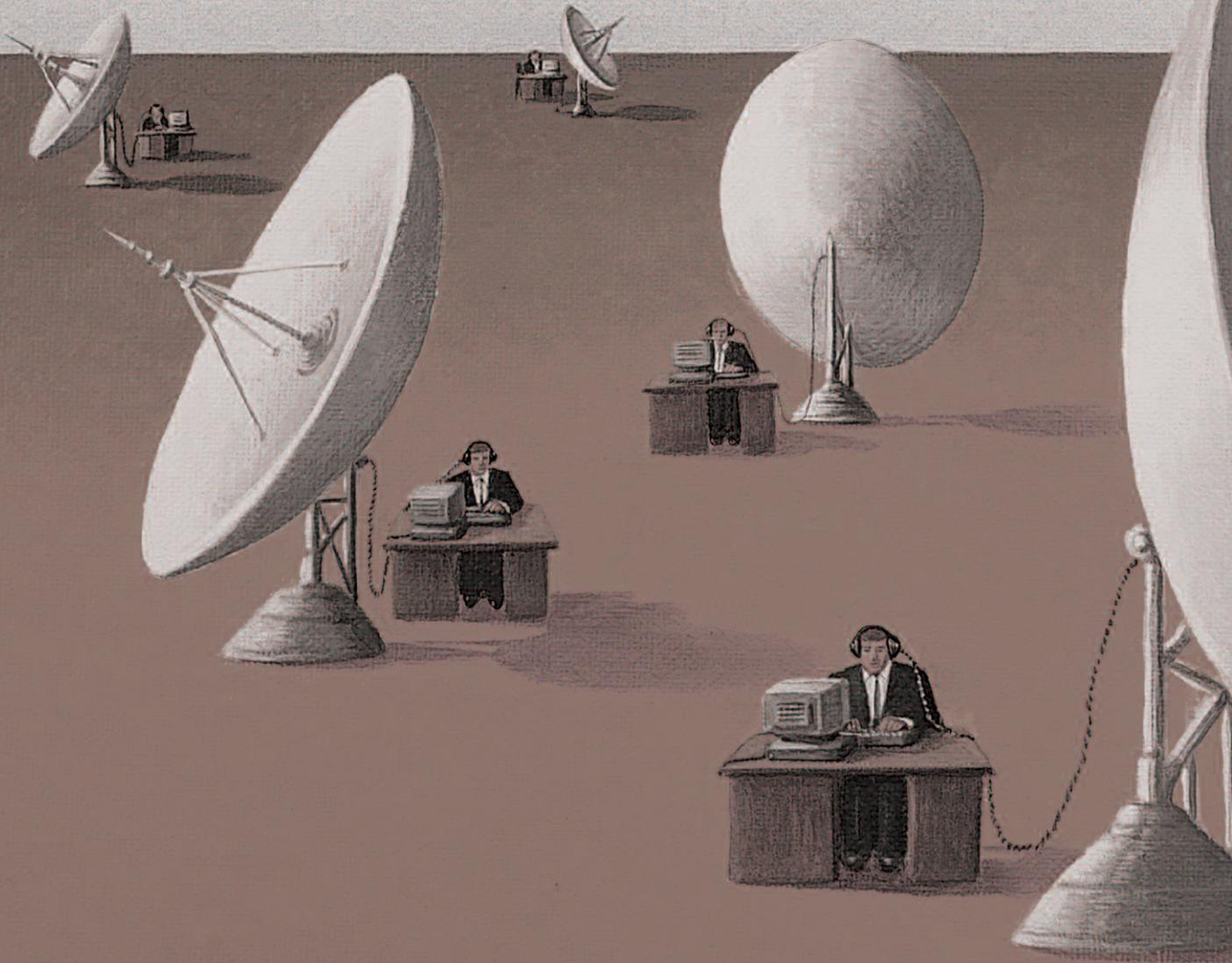
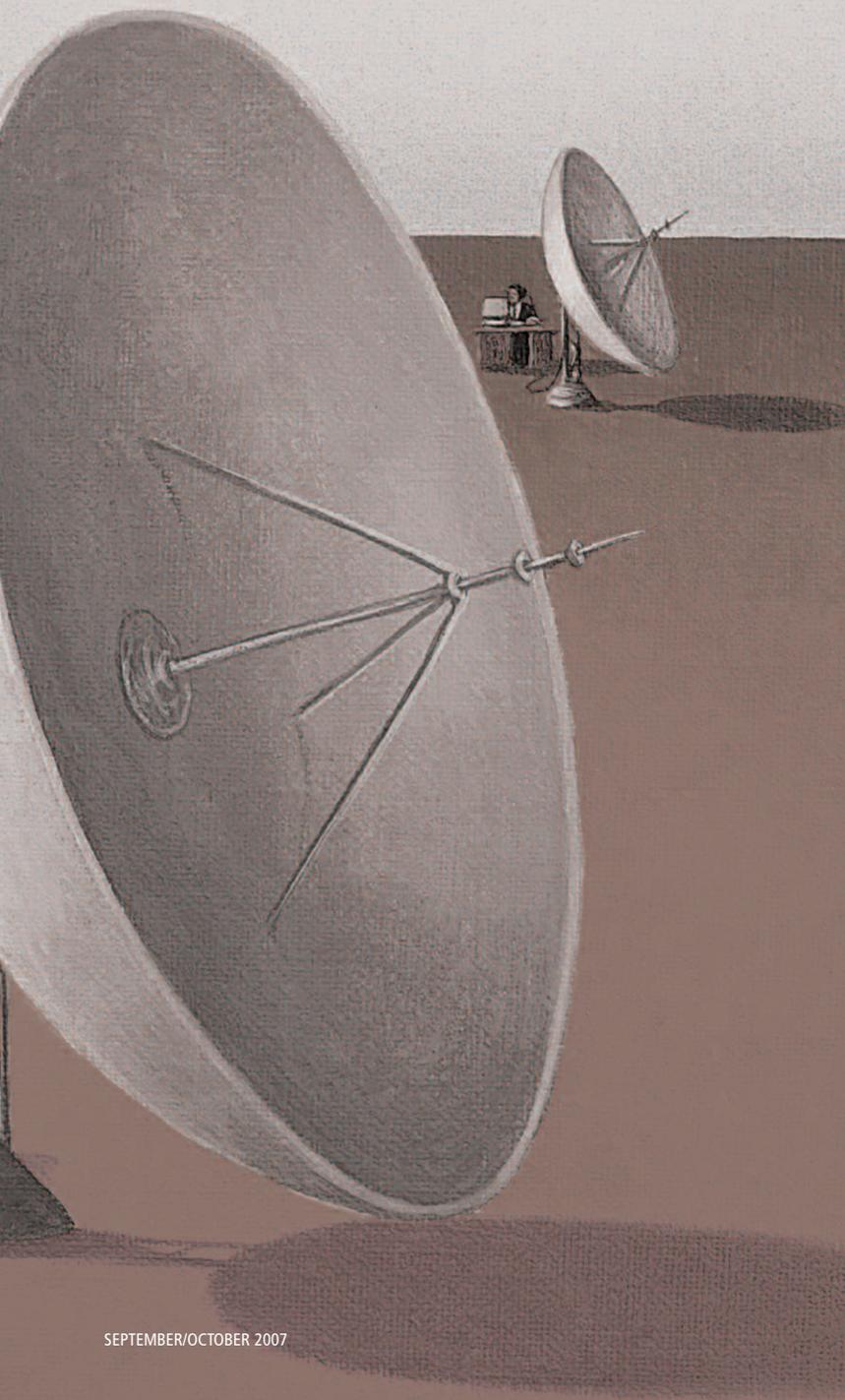


# *Keeping the Act* IN TUNE WITH



# THE TIMES



Regulation of engineering in Ontario has grown increasingly sophisticated since the proclamation of the original *Professional Engineers Act* 85 years ago. Despite the Act's periodic revision over the years, PEO must ensure that its enabling statute reflects contemporary realities "to serve and protect the public interest."

BY MICHAEL MASTROMATTEO

Since its initial enactment in 1922, the *Professional Engineers Act* (PEA) has served as the central reference spelling out PEO's duties, obligations and authority in overseeing the regulation of some 70,000 licensed practitioners in Ontario. So, as the PEA celebrates its 85th anniversary in 2007, it's helpful to consider how it came to be where it is today, and how well it enables PEO to fulfill its mandate as set out in the Act.

The original Act of 1922 was the product of forces driving some form of public recognition of the engineering profession, based on its responsibility for and commitment to public safety and protection.

### The beginning

Thirty-five years earlier, in 1887, the Canadian Society of Civil Engineers had been established to respond to a recognized need among engineers for increased status, more self-control, and a greater sense of public identity. Although the group was a learned society rather than a true regulator, it foreshadowed more formal self-regulating efforts.

In fact, one-time society President P. Alex Peterson recognized that if engineering was to evolve as an independent profession able to serve the needs of society rather than narrow political or economic interests, it needed both improved standards and societal recognition of its role in protecting public safety.

Engineering historian Norman Ball, PhD, described some of the first steps involved in drafting legislation for engineering self-regulation.

"Talk of regulating who might practise engineering was not new," Ball said in a 1992 *Engineering Dimensions* article. "The [founders] of the Canadian Society of Civil Engineers had considered seeking legislation so only its members could practise engineering, but did not pursue the matter because the public was not yet ready. The society later became the Engineering Institute of Canada (EIC), which played a key role in finally obtaining provincial engineering legislation through its efforts lobbying and writing a model act. The Association of Professional Engineers of Ontario, created in 1922, was a result of this intense political activity and pressure."

Failures involving bridges and buildings, most notably the 1907 collapse of the Quebec Bridge, also served as impetus for a more sophisticated form of engineering regulation.

Yet the original PEO had little regulatory clout, especially given that membership was voluntary, and that the association had no authority to prevent anyone from carrying out engineering work.

### Exclusive scope of practice

The Act, however, was bolstered in 1937 when engineering in Ontario became a true profession, in which only licensed practitioners could call themselves engi-

Ethics for engineer members was enacted and prescribed by the Ontario attorney general, the minister responsible for the regulation of engineering.

Other Act amendments between 1948 and the mid-1970s dealt primarily with the administrative and operational procedures of PEO, including interaction between the governing Council and membership, and the eventual establishment of the current chapter system.

For example, in the late 1960s, the Act was amended to permit election of Councillors under a geographical representation system. This same set of amendments, championed by former

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neers and oversee engineering-related activity. Along with this exclusive scope of practice came stepped-up efforts to enforce members' compliance with practice standards, and to discipline engineers for negligence, professional misconduct and acts of incompetence.

Another matter of significance resulting from the 1937 changes was that engineers now had more onus to prove that regulation of engineering was, in fact, dedicated to public safety and protection rather than to looking after members' interests. "Society, through force of law, gave professional engineers the right to look after many of their own affairs," historian Ball said, "but only if they maintained public confidence."

### Additional revisions

As membership in PEO swelled in the middle decades of the 20th century, Act changes came apace. A key revision to the Act occurred in 1948 when a Code of

MPP and licensed P.Eng. Harold MacKenzie (Ottawa Centre), allowed for improved regulation of engineering corporations and updated PEO Council's powers in dealing with matters of enforcement and discipline.

As was becoming apparent, the engineering Act was, in essence, a living entity, open to update and revision to suit new circumstances, changing public expectations, emerging disciplines within the profession, and an evolving understanding of the "public interest."

### A new Act

The changing dynamic between self-regulating professions and the public interest was fully evident between 1976 and 1984, when the province undertook a major review of several professions and their enabling statutes. Headed by former Attorney General Roy McMurtry, the review came to be known as the Professional Organizations Committee (POC).

Operating on principles of fairness of regulation, protection of vulnerable interests, feasibility of implementation, and increased public accountability of regulatory bodies, the POC's work resulted in a new engineering Act.

The new Act, which came into effect in September 1984, would bring about significant changes to Ontario's engineering regulator.

These changes included:

- a revised definition of professional engineering (dispensing with a "laundry list" of activities and incorporating protection of life, health, property and public welfare);
- expanded objects of the association;
- government appointment of some members of Council;
- a more formal complaints procedure (with establishment of a Complaints Committee, Complaints Review Councillor and Discipline Committee);
- fees mediation;
- creation of the limited licence;
- expansion of the requirement for sole practitioners to hold a Certificate of Authorization to offer and provide engineering services to the public;
- a broader range of sanctions for misconduct and incompetence; and
- the ability of PEO Council to make regulations (subject to approval by the Lieutenant Governor-in-Council) regarding matters pertaining to regulating the practice of professional engineering.

As the new engineering Act came into force, PEO's then executive director, Alan Cagney, P.Eng., outlined some personal concerns as to how the changes would impact on engineering regulation. "The new Act and Regulations are far from perfect in that they will not satisfy the expectations of all professional engineers, and they will be much more difficult to

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Historian Norman Ball

administer than was the case in the past," Cagney said. "But from a public perspective, the new Act reflects the social realities of this decade and embraces the principles which must underlie reservation of occupations to, and self-governance by, professionals."

### Regulation making

Despite whatever logistical and bureaucratic issues the new Act created, PEO welcomed the regulation-making authority it bestowed on Council. This regulation-making authority would prove especially advantageous in light of the significant changes that would sweep through Ontario's engineering community throughout the 1990s and beyond.

In addition to grappling with the thorny problem of regulating emerging disciplines within engineering, the regulator has had to face up to whether the Act and Regulations enabled it to deal effectively with the arrival to Ontario of more internationally educated professionals. These newcomers, many of whom have expressed interest in engineering careers, have required PEO to

demonstrate that its procedures for admissions and licensing measure up to government-imposed expectations for transparency, fairness and accountability, and to make changes where required.

Meanwhile, the recent *Fair Access to Regulated Professions Act*, which allows the province to impose heavy fines on regulators that fail to comply with access standards, is requiring PEO to assess the adequacy of its legislation yet again.

It has now been more than 20 years since the PEA went through significant revision. Minor revisions since 1984 have been implemented to address specific issues, not always to optimal effect, leading some to ponder the question of future Act changes.

There is no doubt that PEO's current review of its licensing processes, coupled with a recent complaints and discipline audit, and a campaign for more effective governance, invite some speculation on the state of today's *Professional Engineers Act*.

In as much as the Act is a living document, doesn't it fall upon the regulator to ensure that it is nourished with the stuff of contemporary engineering? And in exercising its stewardship of the Act, PEO has, on occasion, approached the Ministry of the Attorney General, which oversees PEO's administration of the Act, with proposals for future amendment to enable more effective regulation. But it's never something the regulator has taken lightly.

As historian Norman Ball has noted, "the *Professional Engineers Act* was brought into being and continues to this day to protect the public. But there are many interpretations of how to protect: the greatest challenge facing organizations such as PEO is to make sure that their interpretation of that duty fits the present—and what we know of the future—rather than being an unthinking copy of past needs and circumstances." ❖