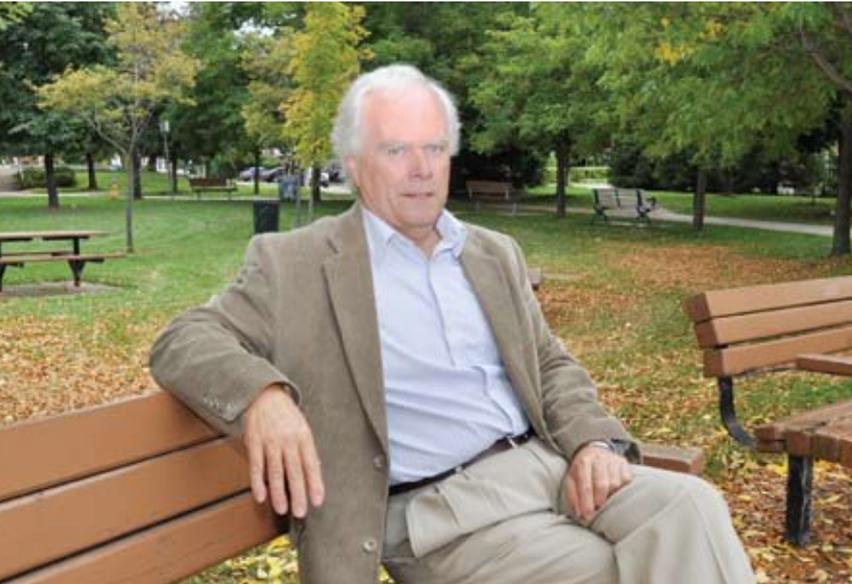


UNDERSTANDING PEO'S COMPLAINTS PROCESS



Bob Hindle, P.Eng., FEC, chair of PEO's Complaints Committee

PEO's complaints and discipline process is often misunderstood among licence holders. We asked Complaints Committee Chair Bob Hindle, P.Eng., FEC, to shed some light on PEO's process to handle complaints against its licence holders, and let us in on some changes the committee has put in place recently to further enhance the fairness and objectivity of the process.

JENNIFER COOMBES: Maybe you could start off by explaining why PEO has a complaints process and what it's designed to do.

BOB HINDLE: Well, the complaints process exists because under the *Professional Engineers Act*, PEO's statutory mandate is to serve and protect the public interest where engineering is concerned. We are also a self-regulating profession. The privilege of self-regulation brings with it the need to ensure that if a member of the public, whose interest we're required by law to protect, has an issue, there's a mechanism that allows them to raise their concerns and have them dealt with appropriately. In essence, that's why the complaints process and the Complaints Committee exist.

JC: Where do complaints against PEO licence holders typically come from?

BH: Complaints can come from anyone: a member of the public, from within the profession [one engineer complaining against another], or occasionally the registrar of PEO itself.

A large number of complaints come from architects who are working with engineers and from building officials. I would say close to 30 per cent of complaints originate from municipal building officials, where a member has submitted drawings and documents for building permit approval that either don't meet the building code or what the building official deems to be reasonably good standards.

Normally, building officials, who I might add are often professional engineers themselves, try to work with the member to resolve the concern, but they complain to us when they've been back to the member and documents still come in that aren't adequate.

Approximately 80 per cent of complaints concern civil and structural engineers, and 10 per cent each concern mechanical and electrical. The vast majority are civil or structural.

We've had a number of complaints related to drainage works in the agricultural community. These drainage projects are designed to enhance production and usually require that land owners pay for remedial work. Often this puts engineers into a delicate position where they resolve one land owner's problem and are viewed to have done it at the expense of another land owner. Engineers in these cases often find themselves at odds with people who they don't have a direct relationship with but who are impacted by their work.

There are also a lot of pressures on small businesses and sole practitioners. If you're a sole practitioner, you have to go out and sell yourself and then you have to deliver. While delivering one project, you're trying to get ready for the next and, to keep things rolling, shortcuts sometimes get taken. Engineers think, nothing's going to go wrong here so I don't have to document this—it'll be fine. Unfortunately, that's when it isn't fine.

JC: Is there anything engineers can do to avoid having a complaint lodged against them in the first place?

BH: Well, yes, the first thing is, of course, to be competent and ethical in all your activities. Communication is another key element. The committee has very definitely noted that when the communication process fails, that's when the complaints come in.

Engineers have to communicate clearly both verbally and, most especially, in writing, what the scope of work is, what the limits are of what he or she is required to do, and what the consequences are of what he or she is recommending might be to various people.

So, we try to get the message out to members that you really need to improve how you document what you've agreed to do. Too many engineers take on assignments on the basis of a telephone call, a handshake, a brief letter or an email, and never get around to getting a contract sorted out.

When there's a lack of clarity as to what you're undertaking to do, there's a lack of clarity when a problem arises. We see this time and again—clarity and documentation are crucial to keeping an engineer out of difficulty.

JC: How are incoming complaints against members handled before they reach the Complaints Committee?

BH: The act requires that a complainant must submit his or her complaint in writing. There's an area on the PEO website where anyone can log on and download a form to write out the nature of their complaint. It's pretty straightforward. They download the form, print it, fill it out, and send it in.

There's also a pamphlet available on the website that explains the process to lodge a complaint and what the steps are to take it through the process.

From there, the complaint goes to the deputy registrar [regulatory compliance] who registers it and gives it a file number. The deputy registrar's staff will assign an investigator to work on the complaint file and work through the documentation that's been provided to get an understanding of the issues.

At the same time, the member being complained against receives a copy of the complaint document. Whatever information PEO has received at that point is passed on to the member.

The member is asked to supply whatever documentation he or she feels to be relevant to the situation and, at that point, also has an opportunity to speak with the complainant to try to resolve the issue. Typically, the complainant is the client of the member so there's a relationship already.

We have an alternative dispute resolution process in place, too, which is a mechanism to help resolve the issue before it moves through the whole complaints process.

If the complaint isn't resolved, the investigator then sifts through the emails, files, reports,

drawings, calculations—whatever is provided—to prepare the documentation before sending the complaint to the Complaints Committee. Quite frequently, particularly in the event the dispute is commercial rather than strictly related to the practise of professional engineering, the investigator will advise the complainant that the matter would be better resolved in civil action rather than through PEO's discipline process.

If the engineering content is dubious or if there are public safety issues at stake, the investigator will continue on with the investigation.

If it becomes a technically complicated issue, PEO may retain an expert witness to review the documentation and provide an opinion. That takes a few weeks.

The circumstances under which an expert report is needed are left to the discretion of the investigator, typically.

Usually, the investigation is completed prior to the Complaints Committee looking at the material, and that is to give both the complainant and the complained-against member an opportunity to provide whatever evidence they're willing to share. The member and the complainant are both given the full opportunity to explain and disclose information.

JC: What do the investigators mainly consider before forwarding a complaint to the committee?

BH: First, let me say that the investigators don't decide whether or not to forward a complaint to the Complaints Committee. All complaints that have been signed by a complainant are reviewed by the committee unless they have been resolved through the alternative dispute resolution process by mutual agreement of the complainant and the complained-against engineer.

The ultimate test is, has what's been done met the actions of a reasonable and prudent engineer in similar circumstances?

We don't expect perfection from professional engineers. People make mistakes. And just because you've made a mistake doesn't necessarily mean you'll be facing discipline.

The issue is, have you continually made the same mistake? Are you willing to acknowledge that you've made a mistake and do something about it? It's really how you deal with a mistake that's the issue.

If a building suffers some sort of failure, or if people are hurt, that's not acceptable because it's indicative that you don't have a process that's appropriate for the work you're doing.

If a mistake has been made that has had a relatively minor consequence but then the member has acknowledged they made a mistake and learned from it, that's fine. We generally wouldn't forward something like that on to discipline. The problems that go to discipline are those where the error is egregious or there is evidence suggesting an act of negligence, or a case where an engineer won't acknowledge that their drawings were inadequate or the calculations weren't appropriate, or whatever it is.

Occasionally, we see engineers who haven't kept up to date with changing codes. People can sometimes apply an out-of-date code and there's no imminent danger to the public, but the work has not been done properly. If the member acknowledges their error, revises their procedures and updates their knowledge to ensure that it doesn't happen again, generally that wouldn't lead to a discipline case.

But if a person says, "Well, I've been working this way for years; it worked back then and it will still work now." Those are the people who cause us concern and may be sent forward to discipline because the consequences of them continuing to use outdated codes or procedures could potentially impact public safety.

[REGULATION]

JC: What happens when a complaint reaches the committee?

BH: A couple of weeks prior to each Complaints Committee meeting, each member receives a file containing the outcome of all the investigative work for the cases that the committee will be considering.

As chair, I appoint one member of the committee to be the lead presenter of the allegations, and the supporting and refuting evidence for each file. At a typical meeting, each committee member will lead on one or two files.

Once the presentation has been made, the lead presenter makes his or her recommendation as a motion. When the motion is on the table, it gets debated, taking into account the substance of the allegations and the member's response and all of the evidence and materials provided to us.

When we look at a file, we have to determine first whether the actions of an engineer are relevant to the practice of engineering and if they are in any way detrimental to the public interest.

Once all discussion has closed, a vote is called to decide whether to accept the lead presenter's recommendation. Sometimes, we feel we don't have enough information and we ask the investigator to go back and gather more information or possibly get an expert opinion before we'll render a decision.

We have various courses of action we can take. If we believe the evidence doesn't support the allegations, or we find the complaint is frivolous or is not relevant to the practice of engineering, we can decide not to refer the case to discipline.

If we believe there is sufficient evidence to support some or all of the allegations, we refer the file to discipline, in which case the member complained against will attend a discipline hearing.

We also have other avenues, depending on the circumstances, the nature of the allegations, and the seriousness of the issues from the perspective of protecting the public. These avenues could involve a member being invited to meet with the committee for an interview, getting a letter of advice from the committee, or requesting a voluntary undertaking from the member, which I'll get into later.

What I want to get across is that the committee takes this work very, very seriously. We fully understand that we are dealing with people's livelihoods, careers and reputations and so I would say we bend over backwards to make sure we've got all the information that's relevant before we make a decision. If we feel the investigative staff has not provided enough information, we'll send them back to get more before we make a decision. It happens every second or third meeting that a case goes back for additional work before a decision is made.

JC: Do you have any advice for members who have had a complaint lodged against them?

BH: I think a good message for all engineers is that the complaints process is not a hearing to decide innocence or guilt. It's just an examination of the evidence and to make a decision as to whether a more formal consideration [i.e. discipline hearing] is warranted.

Sometimes a member doesn't provide information because they've contacted a lawyer who advises them not to co-operate with the complaints process.

Frankly, in my experience, that is not always the best course. We are engineers, too, and we understand how engineers practise. So, if an engineer provides the committee with a properly documented dossier of information, I feel that we are fully capable of making a fair and proper decision.

It is important to note, however, that we are asked to render a decision based on what we see. So, a valuable message for members is that, if a complaint is lodged against you, the more information you can provide that supports your case the more likely it is that the correct decision will result. If a member doesn't tell us anything and all we have is the complainant's side of the story, we don't have any evidence to weigh other than the complainant's evidence. So, under those circumstances, the complaint might very well go to discipline.

Members should consider the consequences of whether they want to co-operate with the process or not. If an engineer really believes he or she has followed PEO guidelines, and has behaved as a prudent practitioner, the probability is he or she will not find themselves going to discipline.

JC: Could you tell me about the members of the Complaints Committee and how they're selected for their posts?

BH: The committee currently has 15 people, one of whom is a non-engineer appointed by the lieutenant governor-in-council. The other 14 are volunteer members of PEO, who are practising engineers representing many disciplines—structural, mechanical, electrical, civil, etc.

I think probably most of the members have been involved for three to five years. We had two new members join last year, but the new members are not asked to present cases until they've been on the committee for a year or so, so they get a feel for how to go through a file and how to present the information.

Most of the committee members are in full-time employment in various areas of practice. Two are academics, who have previously worked in industry or as consultants, the rest are in business—there's a good cross-section. I've been on the committee for 15 years, and chair for the last couple.

People are chosen through PEO's Advisory Committee on Volunteers. We need a variety of different disciplines and we need adequate exposure to the business world. A new graduate who's been working for a couple of years would not be appropriate to have on the committee. You need to have been around, understand well-accepted practices, and be able to make a judgment as to whether actions an engineer has taken are appropriate or not.

Despite the many years of experience of the committee members, we have regular training sessions. We retain law firms to educate the committee members on the legal background

of what we're doing and help us understand the consequences of decisions a, b or c.

The committee meets about every six weeks and, in a typical year, will deal with 50 to 70 complaints. Of these, only about 10 per cent move toward discipline.

JC: I understand that some improvements have been made to the complaints process recently. Could you explain some of the changes?

BH: Yes, at our annual meeting each July, we review the processes we use to assemble and review materials submitted by the complainant, the member complained against, and the work of the investigators. This has helped us significantly reduce the time we take to review cases, present the lead reviewer's assessment, and reach decisions.

VOLUNTARY UNDERTAKING

We had a process called a stipulated order, sort of a modified discipline hearing, where instead of going before a discipline panel a member would accept the circumstances of the complaint and come in and meet with a member of the Discipline Committee to agree on an appropriate penalty.

That process has been replaced with what we call a voluntary undertaking. If we feel a complaint is problematic but not enough to warrant a full discipline hearing—for example, a member needs to improve their internal processes—we can ask that member for a voluntary undertaking to address our concerns. In it, the member would state how they plan to mend their ways, change their processes, improve their procedures—whatever it is.

The voluntary undertaking becomes a legal document so that in future if a complaint is made involving a similar matter against the engineer, there is a document on file.

What we're doing is deferring a decision pending receipt of the voluntary undertaking. If we consider it acceptable, we will not send the matter to discipline at that time. If it isn't acceptable, we'll give the member another go at it. If it still doesn't address the issue, or if the member doesn't take it seriously, we can still send the matter to discipline.

ONLINE COMPLAINT FORM

One of the criticisms we hear of the complaints process is that it takes too long. So, we're trying to speed things up. One change that's helping is the way the complaint form is processed. The complainant now downloads and completes the complaint form on their own so they don't have to wait for a staff member to help them.

This also addresses another criticism that perhaps PEO staff was helping the complainant to the detriment of the member.

ELECTRONIC RECORDS

We're doing things a lot more electronically now, which speeds up the process. The lead reviewer of each file will get a paper copy of the whole file because it's easier to flip back and forth in what can be an extremely complex body of information. But, for the rest of the committee, the documents are scanned and we get secure, password-protected jump drives containing all of the documentation on each case. Now we don't all show up for the meeting with a banker's box full of documents.

ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution [ADR] is a process that happens before a file gets to the committee. It's an opportunity for a complainant and a member to be brought together to shortcut the process and reach a resolution that's acceptable to both parties. The deputy registrar and investigative staff would initiate the ADR process to try to resolve an issue if they felt it wasn't appropriate to take it through the complaints and discipline process.

This speeds up the process and unclogs the system. It saves everyone time and money. But it's only used if both parties agree.

JC: Are there any other improvements in the works that members should be aware of?

BH: One of the other things we're working on is trying to get a decision tree in place. It's essentially a flow chart with decision points that we'll use to review evidence. For instance, one of the first questions we ask is: Does this file relate to the practice of engineering? If yes, then is the matter a commercial dispute or about professional conduct? And so on.

We'll use decision trees to work our way through each case to help speed up the evaluation of material in the file and to process it in a standardized format so that every lead reviewer goes through the same steps when they're looking at evidence. That's not yet in place, but it's something we're working on and will hopefully have within the next six to nine months.

JC: Is there a final thought you want to leave with PEO licence holders with respect to the complaints process?

BH: Well, we don't make these decisions lightly. We do try to get all the evidence before we make a decision.

PEO is the regulator, so the organization is charged with maintaining standards for admission and for appropriate behaviour of members. If we have bridges collapsing and buildings falling down, or pipes bursting and people getting injured, that's not how society wants engineers to behave. So we have to have a process and that process is rigorous.

The folks on the Complaints Committee have a great deal of experience and they take their role very seriously. We understand the consequences to members if they are sent to discipline and so we take all of the evidence we are presented with into account and try our best to ensure that we look after the interests of the public while being fair to engineers. We carefully review materials provided and debate the evidence at great length. Nothing is forwarded to discipline unless we feel there is sufficient evidence to warrant that deeper examination of the matter that a discipline hearing will entail. Σ