



Position Statement

ISSUE: Clarification of the Practice of Professional Engineering Related to the Ontario Building Code

101-40 Sheppard Avenue West
Toronto, ON M2N 6K9

Tel: 416 224-1100
800 339-3716

Fax: 416 224-8168
800 268-0496

www.peo.on.ca

Enforcement Hotline:
416 224 9528 Ext. 1444

PEO POSITION–November 2009

1. The comprehensive licensing and regulatory scheme afforded by the *Professional Engineers Act* (PEA), under which PEO licence holders are fully governed by PEO, protects the public well.
2. PEO licence holders must always make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under their responsibility.
3. Qualifications, scopes of practice, and standards of practice for PEO licence holders are the exclusive jurisdiction of the *Professional Engineers Act*.
4. Building Code Identification Numbers (BCINs) are not needed by any holder of any licence or certificate issued under the *Professional Engineers Act*. The holder of a provisional licence is entitled to practise professional engineering only under the supervision of a professional engineer, and shall not issue a final drawing, specification, plan, report or other document unless the supervising professional engineer also signs and dates it and affixes his or her seal to it.ⁱ
5. The use of a seal by PEO licence holders is not replaced by the use of a BCIN. The two forms of identification are not synonymous.
6. All work submitted in support of a Building Permit must be sealed by a P.Eng. regardless of the exceptions. A BCIN is not a requirement for those portions of the building for which a P.Eng. has taken responsibility.ⁱⁱ
7. Section 34 of the *Professional Engineers Act* requires that as a condition of every Certificate of Authorization (CofA) that the holder of the certificate shall not offer or provide to the public professional engineering services unless the holder is insured in respect of professional liability in accordance with section 74 of the regulations s.74. Section 74(2) and 74(3) provides for exceptions where a holder of a certificate of authorization is not required to be insured against professional liability.
8. The *Professional Engineers Act* governs the requirement to hold a C of A if an entity is in the business of offering or providing professional engineering services to the public. Building officials are not required to ensure that a design professional holds a C of A.ⁱⁱⁱ

9. PEO and the Ontario Association of Architects (OAA) are legislated to resolve practice disputes between the two professions. Such resolution is not an issue for a Building official to be concerned with. Mechanisms exist within the respective Acts to resolve disputes.^{iv}
10. PEO's position is that the *Professional Engineers Act* and the *Architects Act* are applicable law for the purposes of the *Building Code Act* and further clarity would be achieved by regulation should the Minister so choose.
11. PEO and the OAA issued a Joint Bulletin, entitled *Design and General Review Requirements for Buildings in the Province of Ontario*, which encapsulates the scopes of practice contained in their respective acts. This Joint Bulletin was sent to Chief Building Officials on January 3, 2008 to be used as a guide. <http://www.peo.on.ca/Program/PEO-OAAJointBulletin2008.pdf>.
12. PEO urges Building Officials and the public to check a licence holder's licence status and qualifications and whether they have a Certificate of Authorization with PEO by consulting the online directory at www.peo.on.ca, which can be searched by name, or by licence or certificate number.
13. To seek clarification on matters related to the *Professional Engineers Act* or to file a complaint against a PEO licence or certificate holder, contact PEO.

THE ISSUE OF CLARIFICATION OF THE PRACTICE OF PROFESSIONAL ENGINEERING RELATED TO THE BUILDING CODE

Background

On March 20, 2006, PEO applied to the Ontario Superior Court of Justice to clarify the application of amendments to the *Ontario Building Code* that became effective on January 1, 2006. The amendments purported to require licensed professional engineers to qualify and register under a housing ministry certification scheme to engage in building-related design and general review of construction activities. PEO had long argued the *Building Code* amendments duplicated, contradicted and otherwise interfered with its statutory role to license, discipline and regulate its members and were not authorized by the *Ontario Building Code Act, 1992*.

On May 17, 2007, the court ruled for PEO, finding that certain articles of the *Building Code* are invalid. It also held that certain provisions of the *Building Code Act* and the *Building Code* conflict with the exclusive regulatory jurisdiction of PEO and do not apply to any holder of any licence or certificate issued under the *Professional Engineers Act*.

The court found:

1. Article 2.3.1.1 of the *Building Code* is not authorized by s. 34(1)(10) of the *Building Code Act* and is invalid to the extent that it purports to allocate responsibility for designs between professional engineers and architects and therefore does not apply to PEO and its licence and certificate holders;
2. Article 2.3.1.1(4) of the *Building Code* is not authorized by s. 34 and is invalid and therefore does not apply to PEO and its licence and certificate holders;
3. Clause 1.1(1)(c), subsection 1.1(2), clause 8(2)(c) and subsections 15.11(5) to (7) of the *Building Code Act* conflict with the exclusive regulatory jurisdiction of PEO and do not apply to any holder of any licence or certificate issued under the *Professional Engineers Act*; and
4. Article 2.17 of the *Building Code* conflicts with the exclusive regulatory jurisdiction of PEO and does not apply to any holder of any licence or certificate issued under the *Professional Engineers Act*.

(Note: Renumbering took place in the 2006 Building Code, such that Article 2.3.1.1. of the former Building Code is Article 1.2.1.1. of Division C of the 2006 Building Code; sentence 1.2.1.1.(4) of the former Building Code is sentence 1.2.1.1.(4) of Division C of the 2006 Building Code; section 2.17. of the former Building Code is section 3.2. of Division C of the 2006 Building Code.)

On May 30, 2007, PEO was informed by the province's legal counsel that the province would not be appealing the decision and advised that the ministry intended to work with stakeholders, including engineers, architects and building officials, to monitor the implications of the court's decision on the administration and enforcement of the *Building Code Act, 1992*, and the *Ontario Building Code*.

In September 2007, the Ontario Superior Court of Justice (Divisional Court) found that PEO was entitled to "substantial indemnity costs" for its defence of engineering self-regulation and awarded PEO \$75,000.

Issues

PEO members have reported that some Building Departments will not accept their work in support of a building permit application without a BCIN, if the work is not sealed.

It has been reported to PEO that there is concern that the striking down of the former Article 2.3.1.1. of the *Building Code* as invalid to the extent that it purports to allocate responsibility for designs between professional engineers and architects has left a regulatory gap in relation to who can undertake building design.

Impact on Public Interest

PEO is concerned that there is a belief that the court decision has led to a lack of clarity on the necessary qualifications for undertaking building design. It is unclear to PEO how the court decision has had any affect in this area, since it said only that holders of PEO licences no longer require BCINs and the allocation of responsibility between engineers and architects is properly within the jurisdiction of the *Professional Engineers Act* and the *Architects Act*.

PEO is troubled that there appears still to be a call to include within the *Building Code Act* or the *Building Code* sections or articles establishing qualifications for PEO licence holders for the purpose of issuing a building permit and allocating responsibility to engineers and/or architects. In striking down sections of the *Building Code Act* and of the *Building Code*, the court upheld the exclusive regulatory jurisdiction of PEO over holders of any licence or certificate issued under the *Professional Engineers Act*. The decision of the three Justices was very clear that it is the responsibility of the Ontario Association of Architects (OAA) and PEO to establish and enforce standards of practice and scopes of practice for architects and PEO licence holders.

As a regulator, PEO cannot support overlapping legislative responsibility for its licence holders. Overlapping and/or conflicting legislation is confusing to practitioners and the public, and unnecessarily increases regulatory burden. The *Building Code* and the *Professional Engineers Act* are meant to be complementary: the *Building Code* deals with the public safety objectives of buildings; the *Professional Engineers Act* deals with the qualifications of the professionals who interpret the *Building Code* safety requirements and establishes public accountability mechanisms for their professional practice.

PEO Council is willing to use its regulation-making powers under the PEA to ensure the protection of the public, if there are identified problems with the qualifications, scopes of practice or standards of practice of the holder of any licence or certificate issued by PEO.

PEO Actions to Date

- PEO publishes *Position Statement on Clarification of the Practice of Professional Engineering Related to the Building Code* on its website. Position Statement to be distributed to Building Officials.
- PEO continues to participate in Engineers, Architects and Building Officials (EABO) committee and discuss the implications of the court decision with stakeholders.
- PEO updates its Questions and Answers document on the Building Code legal challenge victory with the subsequent issues arising and republishes on its website at: www.peo.on.ca/registration/Building_Regulation_Registration_Program.htm. The website page also includes links to the legal decision (<http://www.peo.on.ca/Legal/2007canlii.pdf>) and the Ministry of Municipal Affairs and Housing's Questions and Answers (<http://www.obc.mah.gov.on.ca/Page2955.aspx>).
- PEO and the OAA issue a Joint Bulletin, entitled *Design and General Review Requirements for Buildings in the Province of Ontario*, which encapsulates the scopes of practice contained in their respective acts. This Joint Bulletin was sent to Chief Building Officials on January 3, 2008 to be used as a guide. Building Officials were advised they could submit all permit application documents that do not conform to the chart in the bulletin to either OAA or PEO; a Joint Liaison Committee was created to deal with matters that are forwarded.

ⁱ *Professional Engineers Act*. R.R.O. 1990 Reg. 941 – Section 44.1(2)2

ⁱⁱ *Professional Engineers Act*. R.R.O. 1990 Section 12 (4) and (5), O. Reg. 941 – Section 53,

ⁱⁱⁱ *Professional Engineers Act*. Section 12 (2).

^{iv} The Registrar of either PEO or OAA may refer the matter to the Joint Practice Board established under Section 52 (7) or the *Architects Act* or section 47(4) of the *Professional Engineers Act*. The Joint Practice Board will consider the matter in accordance with the rules prescribed in sections 11 and 12 of the respective *Acts*.