

Report of the Task Force on Admissions, Complaints, Discipline and Enforcement

**Presented to the Council
Professional Engineers Ontario
September 24, 1999**

The Council
Professional Engineers Ontario
25 Sheppard Ave. West, Suite 1000
North York, ON

The ACDE Task Force is pleased to submit the findings of our review of the admissions, complaints, discipline and enforcement programmes of the association.

Our report includes 68 recommendations concerning the programmes and their management. Their object is to improve the way in which PEO governs its members in the public interest, while demonstrating that it does so in a fair and transparent manner.

We appreciate the untiring efforts of the staff, and those people who wrote letters and made submissions to the Task Force.

We are sure that you will find the report interesting and helpful.

Respectfully submitted,

Hon. Douglas Carruthers, Q.C.
Chair

Maximus H. Perera, M.A.Sc., MBA, P.Eng.
Vice-Chair

Barry Batchelor, Ph.D., P.Eng.

Alberto De-Santis, P.Eng.

Roydon Fraser, Ph.D., P.Eng.

Robert A. Goodings, P.Eng.

Angelo Mattacchione, M.Eng., P.Eng.
Secretary

Jag Mohan, M.Eng., P.Eng.

Glenn Richardson, MBA, P.Eng.

ACKNOWLEDGEMENTS

The Task Force wishes to acknowledge the support of the following individuals:

Roger F. Barker, P.Eng.
John Currie, P.Eng.
Ian Eng, P.Eng.
Larry Gill, P.Eng.
Laurie C. Macdonald, P.Eng.
Connie Mucklestone
Eric Newton
Joyce Rowlands
Richard Schneider, Ph.D.,
Norman S.W. Williams, Ph.D., P.Eng., and
last but not the least, Anne Chhangur, who has patiently made countless changes to the many drafts and logistical arrangements connected with the meetings.

Table of Contents

Executive Summary	5
Chapter 1 Background, Mandate, and Terms of Reference	18
1.0 Background	18
1.1 Mandate	18
1.2 Authority	20
1.3 Jurist as Chair	20
Chapter 2 Task Force Activities and Communications	21
2.0 Task Force Activities	21
2.1 Communications	21
Chapter 3 Guiding Principles	23
Chapter 4 Issues Relating to Admissions	24
4.0 Introduction	24
4.1 Issues Facing PEO	24
4.2 External Conditions Facing Prospective Applicants	25
4.3 Issues Affecting the Applicant	28
4.4 Issues Relating to Academic Credentials	34
4.5 Issues Relating to Assessment of Experience	38
4.6 Work Experience Requirements	39
4.7 Chair's Comments	43
Chapter 5 Issues relating to Complaints and Discipline	44
5.0 Introduction	44
5.1 Complaints Process	44
5.2 Alternative Means of Determining Complaints	49

5.3	Myths about PEO's Regulatory Reach	51
5.4	Confidentiality of the Complaints and Discipline Processes	53
5.5	Discipline Process	54
5.6	Selection of Members for the Discipline Panels	55
5.7	Avoidance of Conflict or Prejudice	56
5.8	Training for Discipline Committee Members	58
5.9	Expert Witnesses	60
5.10	Coaching and Multiple Charges	61
5.11	Open or Closed Hearings	62
5.12	Awareness of the Processes	62
5.13	Chair's Comments	63
Chapter 6 Issues relating to Enforcement		64
6.0	Introduction	64
6.1	Authority	64
6.2	Enforcement Policies and Procedures	64
6.3	Enforcement and Education Programme	66
6.4	New Enforcement Environment	69
6.5	Collection of Fines	70
6.6	Statute of Limitations	70
6.7	Other Related Problems	71
6.8	Standing Committee on Enforcement	72
6.9	General Recommendations	73
Chapter 7 Classification of Recommendations		74
7.0	Introduction	74
	Category A Recommendations: requiring administrative or procedural changes	74
	Category P Recommendations: requiring a policy change	78
	Category R Recommendations: requiring changes to the Act or Regulations following policy decisions by Council	82
Chapter 8 Implications		84
8.0	Introduction	84
8.1	Implications for the Public	84
8.2	Implications for Members	84
8.3	Implications for the Association	85
Bibliography		86
Appendices		87
	Appendix 1: Submissions to the ACDE Task Force	87
	Appendix 2: PEO Licence Application Process	89
	Appendix 3: <i>Professional Engineers Act</i>	90
	Appendix 4: Mattacchione Review: Summary of Findings	112
	Appendix 5: The Enforcement Process	115
	Appendix 6: <i>Nasrula v. Association of Professional Engineers of Ontario</i> , before the Hon. Mr. Justice Maloney, the Hon. Mr. Justice Bell, and the Hon. Mr. Justice Macleod, at Toronto, March 27, 1998.	116
	Appendix 7: Functions of Relevant Sections of the <i>Professional Engineers Act</i>	120
	Appendix 8: Glossary of Acronyms	121

Appendix 4. Mattacchione Review: Summary of Findings

The 1991 TFDE Report Reviewed:

A Demographic Analysis of the PEO Membership, and its Significance to the Practice of Professional Engineering in Ontario

Angelo Mattacchione and Livia Mattacchione

Toronto, March 1999

Background

In March 1991, the Report of the Task Force on Discipline and Enforcement (TFDE) was presented to the then APEO Council. It found that:

the 58,000 licensed professional engineers in Ontario, approximately 15,000 (about 25%) practised under the authority of a Certificate of Authorization (C of A). There were 3,000 Cs of A registered with the APEO.

The majority of members (about 75%) were employees of corporations, government agencies and other bodies, and were not covered by a C of A.

About 25 complaints were received and heard by the Complaints Committee (CC) each year, of which about seven were referred to the Discipline Committee (DC).

Approximately 90% of all complaints filed involved civil or mechanical engineers, which subdivided as:

- 45% structural
- 25% miscellaneous civil
- 20% mechanical.

Most of these cases involved the provision of professional engineering services to the public under a C of A.

Of the complaints heard by the CC,

- 75% involved members who provided professional engineering services to the public under the authority of a C of A.
- 13% involved employee engineers who provided in-house engineering services for their employers.

The final 12% involved individuals, owners and developers.

The association received about 100 inquiries of a complaint nature per year.

The TFDE stated that if their recommendations were not implemented (which included among other things, a call for a fundamental review of the association's responsibility for governing the profession as a whole), then the association's complaints and discipline influence would continue to be effectively applied to only about 25% of the profession.

Reason for a Review

APEO reacted strongly to the allegation that only 25% of its membership was being effectively governed, and initiated a lengthy fundamental review of the profession. This process was costly, controversial and divisive, producing no clear benefits to the public. The process remains incomplete. Before initiating the fundamental review, no in-depth analysis was carried out to confirm or refute the percentages outlined in the March '91 TFDE Report. The numbers were accepted as fact.

The allegation that the complaints and discipline process covers just 25% of the membership continues to be quoted, and appears to form the basis of calls for a more proactive discipline process. The numbers in the March '91 TFDE Report remain unsubstantiated.

This review was undertaken to clarify these matters for the benefit of PEO Council's future deliberations.

Source Material

March, 1991, *Report of the Task Force on Discipline and Enforcement*
1994 APEO Membership Directory (computer database format)
1996 Census Canada data
National Survey of the Canadian Engineering Profession in 1997: Summary of Findings. Ottawa: Canadian Council of Professional Engineers, 1998.
1999 Consulting Engineers of Ontario Directory
1999 Association of Consulting Engineers of Canada Directory
1999 Association of Consulting Engineers of Canada Business Survey, Compass Inc., February, 1999
Canada Yellow Pages

Primary Findings

The 1991 TFDE assertions that about 75% of the membership were employees of corporations, government agencies and other bodies, and not covered by a C of A, are incorrect. The 1994 PEO Membership Database revealed that:
29% of the membership were retired/unemployed/out of province;
35.1% were engaged in non-professional engineering or industrial exemption work;
23.1% were covered by a C of A, and
2% were in non-technical management positions.

Therefore, only 10.7% of the membership were uncategorized.

The 1991 TFDE report's concern that 75% of Complaints Committee (CC) cases involved members who provided P.Eng. services to the public under a C of A, even though these members represented only 25% of the membership, is unfounded. Although the members covered by a C of A make up only 23.1% of the total membership, they make up fully 68% of the membership who are employed in Ontario and who provide engineering services to the public. This bears a strong correlation to the 75% of the complaints that the CC sees directed to members covered by a C of A. The percentage of complaints the Complaints Committee sees relating to members covered by a Certificate of Authorization generally mimics the percentage of the members who are employed in Ontario and who provide engineering services to the public.

The March 1991 Report of the TFDE took issue with the fact that the association received about 100 inquiries per year, against a membership of 57,000. As discussed earlier, the 1991 TFDE incorrectly identified the entire membership as those subject to the Complaints and Discipline process. This has been shown not to be the case. The numbers reviewed lead to the conclusion that the complaints and discipline process is correctly targeted. Instead of considering the 100 inquiries against the entire membership, (which is without ba-

sis) one should consider these inquiries against the C of A holders or against the engineers covered by a C of A (roughly 3% and 1% respectively).

The 1991 TFDE took issue with the fact that approximately 90% of all complaints files involved civil or mechanical engineers, with the breakdown being 45% structural, 20% mechanical and 25% miscellaneous civil. Yet, in Ontario, 79.5% of CEO member firms provide services in the Construction sector, which the CEO identified as made up mostly of Structures (51.9%), Mechanical (29.8%), and Civil (41.5%). Further, the 1999 ACEC Business Survey shows that at 59%, the Building and Construction sector was (by a wide margin) the top sector in terms of revenue generation (and in Ontario the number was even higher). Considering the percentage of firms offering services in the Construction (CEO), or Building and Construction (ACEC) sectors, and that the structural, civil and mechanical disciplines make up the lion's share of these fields, the concern voiced by the 1991 TFDE report was unwarranted. The percentages of complaints, and the sectors to which the complaints are directed, generally mimic the percentages of firms offering services in those areas.

The 1999 ACEC Business Survey identified that 77% of the survey respondents pointed to consulting engineers as their main competition. In fact no other group (contractors, environmental consultants, architects, public sector/government, and other) was identified by even 10% of the survey respondents. If these other groups are not seen as a source of competition to consulting engineers (by the consulting engineers themselves), one can infer that these groups are providing little or no services of a professional engineering nature. Thus a complaint rate of 25% relative to non-C of A holders is not unexpected.

Conclusions

The allegation that 75% of the PEO membership is not being effectively governed by the Complaints and Discipline processes, is unfounded. The number of complaints received yearly by PEO is what would be expected of a well-licensed, self-governing profession. There is no basis for the 1991 TFDE's assertion that the Complaints and Discipline processes needs to be more proactive.