

Lecture 25 — Discipline & Enforcement

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Suppose an engineer has potentially committed professional misconduct.

When an incident occurs, or when a member of the public feels that a practitioner has been less than competent, they may register a complaint.

All complaints are reviewed by a Complaints Committee.

Those complaints that are found to have merit are forwarded on to the Discipline Committee.

With any complaint, the complainant can discuss the complaint with the Complaint Review Councillor.

This councillor can review how a complaint was handled.

He or she may offer additional information to the complainant in the case where a complaint was not found to have merit.

This position is there for transparency; to help the public understand why a particular complaint was not forwarded on for discipline.

The Discipline Committee will hold a hearing for each complaint and determine whether there has been an incident of either incompetence or professional misconduct.

If a practitioner is found guilty of either of these, the Discipline Committee may then apply a penalty.

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(a) revoke any licence or Certificate of Authorization of the practitioner

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(b) suspend any licence or certificate of the practitioner for a stated period, not exceeding 24 months

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(c) accept the undertaking of the practitioner to limit the professional work of the practitioner in the practice of professional engineering to the extent specified in the undertaking

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(d) impose terms, conditions or limitations on the licence or certificate of the practitioner including but not limited to the successful completion of a particular course or courses of study, as are specified by the Discipline Committee

Discipline Committee Penalties

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(e) impose specific restrictions on the licence or certificate including but not limited to,

- i) requiring the practitioner to engage in the practice of professional engineering only under the personal supervision and direction of a member,
- ii) requiring the Member to not alone engage in the practice of professional engineering,
- iii) requiring the practitioner to accept periodic inspections by the Committee of documents and records in the possession or under the control of the practitioner in connection with the practice of professional engineering,
- iv) requiring the practitioner to report to the Registrar on such matters in respect of the practitioner's practice for such period of time, at such times and in such form, as the Discipline Committee may specify

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(f) require that the practitioner be reprimanded, admonished or counselled and, if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the register for a stated or unlimited period of time

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(g) revoke or suspend for a stated period of time the designation of the member or holder by the Association as a specialist, consulting engineer or otherwise

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(h) impose such fine to a maximum of \$5,000, to be paid by the practitioner to the Treasurer of Ontario for payment into the Consolidated Revenue Fund

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(i) subject to subsection (5) in respect of orders of revocation or suspension, direct that the finding and the order of the Discipline Committee be published in detail or in summary and either with or without including the name of the practitioner in the official publication of the Association and in such other manner or medium as the Discipline Committee considers appropriate in the particular case

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(j) fix and impose costs to be paid by the practitioner to the Association

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

(k) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms or for such purpose as the Discipline Committee may specify, including but not limited to,

- i) the successful completion by the member or the holder of the temporary licence, provisional licence or limited licence of a particular course or courses of study,
- ii) the production to the Discipline Committee of evidence satisfactory to it that any physical or mental incapacity in respect of which the penalty was imposed has been overcome

(4) Where the Discipline Committee finds a practitioner guilty of professional misconduct or to be incompetent it may, by order,

Or any combination of the above!

Let's consider some sample cases from the PEO Gazette:

“In the matter of a hearing under the Professional Engineers Act, R.S.O. 1990, c. P.28; and in the matter of a complaint regarding the conduct of JIRI KRUPKA, P.ENG., a member of the Association of Professional Engineers of Ontario, and CAELLIOTT INC., a holder of a Certificate of Authorization”:

http://www.peo.on.ca/index.php/ci_id/28567/la_id/1.htm

Consider the practice of medicine.

At the start of the 20th century, “diploma mills” not associated with any accredited university were churning out “medical doctors”.

In this environment, the quality of doctors was suspect at best.

The poor quality of the medical services provided resulted in the expansion of pseudo-scientific practices such as chiropractic and homeopathy.

Published by the Carnegie Foundation, Abraham Flexner's report made a number of recommendations:

- Reduce the number of medical schools
- Increase the prerequisites to enter medical training
- Train physicians to practice in a scientific manner and engage medical faculty in research
- Give medical schools control of clinical instruction in hospitals
- Strengthen state regulation of medical licensure

Modeled on the Johns Hopkins University School of Medicine

From the Act, section 12:

(1) No person shall engage in the practice of professional engineering or hold himself, herself or itself out as engaging in the practice of professional engineering unless the person is the holder of a licence, a temporary licence, a provisional licence or a limited licence.

(2) No person shall offer to the public or engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a certificate of authorization.

What are the penalties for this?

Every person who contravenes section 12 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$25,000 and for each subsequent offence to a fine of not more than \$50,000.

(Is this “enforcement” or “discipline”?)

It is important that the public can identify engineers.

The Act prevents individuals from holding themselves out as or identifying themselves as being professional engineers or the holder of other licences.

Offence, use of term “professional engineer”, etc.

Every person who is not a holder of a licence or a temporary licence and who,

- (a) uses the title “professional engineer” or “ingénieur” or an abbreviation or variation thereof as an occupational or business designation;
- (a.1) uses the title “engineer” or an abbreviation of that title in a manner that will lead to the belief that the person may engage in the practice of professional engineering;
- (b) uses a term, title or description that will lead to the belief that the person may engage in the practice of professional engineering; or
- (c) uses a seal that will lead to the belief that the person is a professional engineer,

is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$25,000.

Every person who is not acting under and in accordance with a certificate of authorization and who,

(a) uses a term, title or description that will lead to the belief that the person may provide to the public services that are within the practice of professional engineering; or

(b) uses a seal that will lead to the belief that the person may provide to the public services that are within the practice of professional engineering,

is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$25,000.

Liability of directors and officers

40. (5) Where a corporation is guilty of an offence under subsection (1), (2), (3) or (4), every director or officer of the corporation who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than \$50,000.

Liability of partners

40. (6) Where a person who is guilty of an offence under subsection (1), (2), (3) or (4) is a member or an employee of a partnership, every member of the partnership who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than \$50,000.

Enforcement is when an individual who does not hold a license or certificate of authorization engages in the practice of professional engineering.

The Association will enforce the terms of the PEA by asking the courts to step in and grant an injunction.

Order directing compliance

39. (1) Where it appears to the Association that any person does not comply with this Act or the regulations, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the Association may apply to a judge of the Superior Court of Justice for an order directing the person to comply with the provision, and upon the application the judge may make the order or such other order as the judge thinks fit.

An application was brought under Section 39 of the Professional Engineers Act in the Ontario Superior Court of Justice at 130 Queen Street West, Toronto, Ontario, on July 23, 2002 before the Honourable Mr. Justice Somers. The association obtained the following Order against Dan Stolarchuk of Toronto:

1. A DECLARATION that Dan Stolarchuk breached s. 12(1) of the Act in that, without a licence, he held himself out as engaging in the business of providing, to the Ontario public, services that are within the practice of professional engineering
2. AN ORDER that Stolarchuk refrain from holding himself out as engaging in the business of providing, to the public in Ontario, services that are within the practice of professional engineering, unless and until he obtains a licence from PEO;

An application was brought under Section 39 of the Professional Engineers Act in the Ontario Superior Court of Justice at 130 Queen Street West, Toronto, Ontario, on July 23, 2002 before the Honourable Mr. Justice Somers. The association obtained the following Order against Dan Stolarchuk of Toronto:

3. A DECLARATION that Stolarchuk breached s. 40(2)(a) of the Act in that, without a licence, he used the title “professional engineer” and the abbreviated title “P.Eng.” as occupational or business designations
4. AN ORDER that Stolarchuk refrain from using the title “professional engineer” or any abbreviations or variation thereof as an occupational or business designation in Ontario unless and until he obtains a licence

5. A DECLARATION that Stolarchuk breached s. 40(2)(b) of the Act in that, without a licence, he used the titles “professional engineer” and “P.Eng.”, terms which would lead to the belief that he could engage in the practice of professional engineering
6. AN ORDER that Stolarchuk refrain from using, by any medium, the term “professional engineer” or any variation or abbreviation thereof that will lead to the belief that he provides, to the public in Ontario, services within the practice of professional engineering, unless and until he obtains a licence
7. AN ORDER that Stolarchuk turn over to a representative of PEO all promotional materials, business cards, and any other business stationery or printed materials and signage using the title “professional engineer” and/or “P.Eng.”, in combination with his name and/or any other term in violation of this Order, within 21 days of the date of this Order
8. AN ORDER that Stolarchuk pay to PEO its costs of this matter fixed at \$6,750.

The investigation leading to the subsequent application began after PEO received information that Stolarchuk had misrepresented himself as a professional engineer to fellow employees at a Toronto company, as well as describing himself as a “Field Applications Engineer” and “R.D. Engineer” in a resume.

In November 2003, 73-year old Kwiatek, P.Eng., was found guilty of incompetence and professional misconduct under 72(2)(a), (b), (d), (g), (h) and (j) and his licence was revoked.

He inspected a fence and determined it was “structurally adequate, built in accordance with prevailing construction practice in Ontario”.

One month later, it was blown over in a wind storm.

Is this discipline or enforcement?

With his license revoked, Kwiatek continued to perform engineering work.

In 2006, he used a facsimile of a seal to approve a crane inspection despite there being visible cracks in the structure.

A subsequent investigation found he had sealed approximately 60 other inspections since his licence was revoked.

Is this a matter for discipline or enforcement?

Enforcement was used to obtain a court order preventing him from using the term “professional engineer”, “P.Eng.” or using the seal.

He was required to pay \$2,500.

(This case was in the PEO Gazette Nov/Dec. 2006)

Mohammad Hafeez, of Toronto, was jailed June 10, 2005 for 30 days and ordered to pay costs to PEO of \$19,863.81.

He was found in contempt of a previous Order of the Ontario Superior Court of Justice for violating the Professional Engineers Act.

Mr. Hafeez is not, and has never been, licensed as a professional engineer in the Province of Ontario.

in the spring of 2000, Mr. Hafeez had described himself as a “structural engineer”.

Under the terms of the 1995 Order, Mr. Hafeez was ordered to:

- refrain from using the title “professional engineer” or an abbreviation or variation thereof as an occupational or business designation;
- refrain from using a term, title or description that will lead to the belief that he may engage in the business of professional engineering; and
- surrender to PEO, site signs, seals or title blocks in his possession containing the words any business cards “professional engineer”, “engineer”, “engineering”, or any abbreviation thereof.

- [1] D. W. Harder, "ECE 290 Lecture Materials," 2013.
Online; accessed 31-May-2016.
- [2] J. Vale, "ECE 290 Course Notes," 2011.

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