



October 4, 2021

Ministry of the Attorney General  
McMurtry-Scott Building  
720 Bay Street  
Toronto, Ontario M7A 2S9

**RE: Recommended Changes to the *Professional Engineers Act* to be included as part of a Red Tape Reduction Bill**

Dear Hon. Doug Downey,

The Ontario Society of Professional Engineers (OSPE) is the advocacy body and voice of the engineering profession. Ontario currently has over 85,000 licensed professional engineers who contribute to the social, environmental, and economic welfare of Ontario.

Professional Engineers Ontario (PEO) is established under the *Professional Engineers Act* (the *Act*), legislation that falls under the responsibility of the Ministry of the Attorney General (MAG). The *Act* grants the engineering profession the privilege and powers of self-regulation, but the last major revision to the *Act* was in 1984.

Some amendments were made in 2017, to address a few of the recommendations from the Elliot Lake Commission of Inquiry arising from the Algo Centre Mall collapse. The *Act* does not reflect the recommendations arising from the 2019 Coroner's Inquest into the death of Scott Johnson, as a result of the Downsview Park Radiohead concert stage collapse. OSPE supports and understands the need for a strong and focused engineering regulator in Ontario, but PEO has yet to address a number of known and clearly identified regulatory issues.

PEO is currently undergoing a governance review and is considering changes, based on recommendations from the [External Regulatory Review Report](#) conducted by the Professional Standards Authority in 2019. As part of these changes, PEO has announced that it will move forward with mandatory continuous professional development (CPD). OSPE has been an avid advocate of mandatory CPD, and we are pleased with this commitment from PEO. However, we would like to emphasize the urgency of this, as PEO is the only engineering regulator in Canada that does not have a mandatory CPD program. This poses a public safety risk but also an economic risk, as Canada could be removed from the International Engineering Alliance, which will impact the ability of Canadian engineering firms to do business overseas. As an exporter of engineering talent, this is problematic and will inevitably lead to economic losses for the province and the country.

PEO's Chief Legal Counsel conducted a review of all PEO's activities and identified a number that are, although permitted under the *Act*, not appropriate for a regulator to perform. As a result, PEO Council has or is planning to implement several structural and regulatory changes to its governance and operations. For your convenience, we have included these as an appendix at the end of this document.

To support this change effort, the *Act* needs to be amended. OSPE is presenting several recommendations for changes that will properly serve and protect the public interest and reduce red tape for applicants and engineering businesses. These recommendations come as a result of ongoing engagement between OSPE and the Ministry of the Attorney General, and indication from the Honourable Doug Downey that he is willing to make revisions to the *Professional Engineers Act*. These recommendations are intended to strengthen PEO's ability to regulate the practice of professional engineering.

OSPE is proposing the following amendments to the *Act*:

## 1. Regulatory Focus

**Recommendation:** Amend Section 2 of the Professional Engineers Act by removing Section 2(3) and 2(4) of the *Professional Engineers Act* and replace these with the following:

General duty and responsibilities of the Association<sup>1</sup>

2(3) It is the general duty of the Association at all times to

- a) serve and protect only the public interest with respect to the exercise of a profession, professional governance and the conduct of licensed engineering practitioners in the regulated practice, and
- b) exercise its powers and discharge its responsibilities in the public interest.

2(4) The role of the Association is restricted to the following responsibilities:

- a) to regulate the practice of professional engineering;
- b) to preserve and protect reserved titles or reserved practices, as applicable, in the public interest;
- c) to guard against the unlawful use of reserved titles or the unlawful practice of reserved practices;
- d) to govern the licensed engineering practitioners according to this Act, the regulations and the bylaws;
- e) to establish the conditions or requirements for licensing of a person as a licensed engineering practitioner;
- f) to establish, monitor and enforce standards of practice to enhance the quality of practice so that licensed engineering practitioners avoid
  - a. professional misconduct,
  - b. conduct unbecoming a licensed engineering practitioner, and
  - c. incompetent performance of duties undertaken while engaged in the regulated practice;
- g) to establish and maintain a continuing competency program, including, but not limited to continuing professional development, to promote high practice standards for licensed engineering practitioners;
- h) to establish, monitor and enforce standards of professional ethics among licensed engineering practitioners;
- i) to establish and employ licensing, investigation and discipline procedures that are transparent, objective, impartial and fair;
- j) to establish and employ assessment criteria and processes for the purpose of verifying that licensing, investigation and discipline procedures are transparent, objective, impartial and fair;
- k) to administer the affairs of the regulatory body and exercise its powers and perform its duties under this Act or other enactments; and
- l) any other responsibility that the Lieutenant Governor in Council may prescribe.

2(5) The Association shall establish and maintain only those committees, task forces, working groups, and other organizational structures needed for the purposes of 2(4), and shall eliminate all those that are unnecessary within one year of the promulgation of these amendments.

2(6) The Association shall only act in an advocacy role in accordance with this Act and in accordance with rules, conditions or limits prescribed by the Lieutenant Governor in Council.

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<sup>1</sup> This section is based on a similar section contained in the *Professional Governance Act* of British Columbia.

**Rationale:** The objectives of the Act in section 2 do not provide sufficient direction and constraint on how the Association should govern practitioners and regulate the practice. The external regulatory review noted that PEO has too many committees that generate a huge amount of administrative workload and cost while providing no benefit to the regulatory purpose. The reviewers recommended that Council review all existing committees and eliminate those that have no regulatory purpose. An internal review has been conducted; however, there are some challenges to remove non-regulatory or duplicative committees and task forces.

## 2. Cease Regulating the Consulting Engineer Title

**Recommendation:** Repeal Section 7(1)23 and amend regulation 941 to revoke Sections 56-71 inclusive.

**Rationale:** PEO's "consulting engineer" designation framework does not provide public interest protection beyond that which is already provided by the P.Eng. licence for individuals and the Certificate of Authorization for engineering businesses. PEO's "consulting engineer" framework is voluntary, and it does not convey an exclusive scope of practice beyond that of any other licensed professional engineer. Moreover, as Ontario is the only jurisdiction to regulate this title, this additional level of regulation adversely impacts labour mobility, the ability for businesses to operate across jurisdictions, and adds to the red tape burden these professional engineers and businesses already face. This recommendation is supported by the Association of Consulting Engineering Companies – Ontario (ACEC-Ontario) formerly known as Consulting Engineers Ontario (CEO).

## 3. Backstopping PEO Accountability through Ministerial Action

**Recommendation:** Amend Section 6 to read as follows:

6 (1) In addition to the Minister's other powers and duties under this Act, the Minister may,

- (a) review the activities of the Council and require the Council to provide reports and information;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Act, the regulations and the by-laws and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations, by-laws and procedures;
- (d) direct the Council to make, amend or revoke a regulation.

(2) If the Minister requires or directs the Council to do anything under subsection (1), the Council shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report to the Minister respecting the compliance.

(3) If the Minister directs the Council to make, amend or revoke a regulation under clause (1) (d) and the Council does not do so within the time specified by the Minister, the Minister may make a regulation to do the thing directed of the Association under clause (1) (d).

(4) For the purposes of subsection (3), the Minister may make a regulation with respect to any matter that the Council may make a regulation under section 7.

(5) If there is a conflict between a regulation under section 7 and a regulation made under subsection (3), the regulation made under subsection (3) prevails.

(6) The Council shall ensure that a copy of each regulation made under subsection (3) is available for public inspection in the office of the Association

**Rationale:** PEO has been informed repeatedly that it needs to make changes to its regulations, especially in relation to its licensing requirements and processes, to be an effective regulator. The External Regulatory Review, the OFC reports, the Elliot Lake Commission of Inquiry, and the Coroner's Inquest from the Radiohead stage collapse, and the recent Anti-Racism and Anti-Discrimination Report are only some examples

of where PEO has been asked to make changes. These regulatory changes have been resisted by internal PEO committees, specifically the Academic Requirements Committee and the Experience Requirements Committee, who continue to defend the status quo and fail to acknowledge PEO's identified regulatory deficiencies. As a result, OSPE is recommending that the *Act* be amended to provide the Minister with powers to assist PEO in moving past existing governance obstacles and enact the necessary changes.

#### 4. Time Limits for Licence Application Processing

**Recommendation:** Amend Section 14 to add the following:

“14(8) The Registrar shall:

- a) notify an applicant within 90 days of receipt of the licence application as to whether the applicant meets the licensing requirements set out in the regulations and, if not, notify the applicant as to those requirements that are unmet; and
- b) issue a licence or a notice of refusal to issue a licence within one year of the date the application was received.”

**Rationale:** The External Regulatory Review found that licensing and registration processes were the main weakness in PEO's overall regulatory performance, identifying issues of transparency, subjectivity, bias, fairness, and a lack of rigour. As a result, there is an extensive backlog of applications for licensure. This backlog impacts international engineering graduates (IEGs) disproportionately due to the one year of Canadian experience requirement stipulated in Section 33(1)(4). Therefore, the suggested changes above would ensure an increasingly fair and timely process. This would also be in line with the Pan Canadian Framework for the Assessment and Recognition of Foreign Qualifications agreed to by the Forum of Labour Market Ministers in 2009.

#### 5. Eliminate the Requirement for 12 Months of Canadian Experience for Licensure

**Recommendation:** Amend Regulation 941 to revoke Section 33(1)4 and 33(2).

**Rationale:** Since 2014, the Office of the Fairness Commissioner (OFC) has repeatedly identified PEO's licensure requirement of 12 months of Canadian experience to be an artificial barrier that hinders applicants who are IEGs with significant practical engineering experience acquired outside of Canada. The OFC has concluded that PEO's requirement is discriminatory and breaches PEO's duties under the *Fair Access to Regulated Professions and Compulsory Trades Act*. The OFC has also concluded that PEO is non-compliant with the Fair Registration Practices Code.

Further, in 2020, PEO established an Anti-Racism & Anti-Discrimination Exploratory Working Group. PEO then retained independent consultants to identify vulnerabilities to systemic racism and discrimination within the range of activities overseen by PEO. The consultants' [report](#), issued in May 2021, identified the 12-month Canadian experience requirement as the concern of greatest significance in PEO's licensing process. The report noted that the Ontario Human Rights Commission has stated that a strict requirement for Canadian experience is discrimination, and it can only be used in very limited circumstances.

PEO's defense of the requirement is that it ensures the applicant has “sufficient familiarity with the applicable Canadian codes, regulations and standards for the practice of professional engineering”. This rationale does not survive scrutiny as the majority of the other engineering regulators in Canada have eliminated this requirement and found alternatives to address familiarity with local codes and standards.

## 6. Grants, Scholarships, Bursaries & Prizes

**Recommendation:** Repeal sub-paragraphs 8(1) 20 and 8(1) 21

**Rationale:** As the regulator responsible for developing, establishing, and maintaining the standards of knowledge and standards of qualification (including academic qualifications) for the profession, it is inappropriate for PEO to be involved in the awarding of such grants, scholarships, bursaries, and prizes. These activities do not serve PEO's mandate and pose a risk for conflicts of interest.

## 7. Employment Advisory Service / Voluntary Retirement Savings Plan

**Recommendation:** Repeal sub-paragraph 8(1) 23.

**Rationale:** Sub-paragraph 8(1) 23 of the *Act* gives PEO the power to pass by-laws providing an employment advisory service and for the continuance of the voluntary retirement savings plan. When OSPE was created in 2000, it was agreed between PEO and OSPE that the provision of employment advisory services was non-regulatory in nature and would fall to OSPE. OSPE currently operates an employment advisory service through the Career Services Portal on its website. PEO does not have a voluntary retirement savings plan for its licence-holders, hence it would be impossible to pass a by-law for the "continuance" of such a plan.

## 8. Provide for a Single Type of Certificate of Authorization (C of A)

**Recommendation:** Repeal Paragraph 15(2) and delete the word "standard" from Paragraph 15(3).

**Rationale:** At present, the *Act* provides for two types of Certificates of Authorization – "general" and "standard" - but it is unclear why this differentiation is necessary. There are no differences in requirements that must be met for issuance of either C of A, nor are there any differences in what the holders of the two different certificates may do. Having two versions of the Certificate of Authorization creates regulatory confusion as applicants do not understand when or if they should request the general certificate.

## 9. Joint Practice Board

**Recommendation:** Amend Section 1 of the *Act* to eliminate reference to the Joint Practice Board, and repeal Sections 16 and 47. Corresponding changes to the *Architects Act* should also be made (s.1, s7(1) 23, s.19, s.51, s.52).

**Rationale:** While the provisions for the Joint Practice Board have existed in the statutes for over 35 years it has never met. There are no public interest risk issues associated with the purposes of the Joint Practice Board and it should therefore be eliminated.

## **Additional Consideration:**

This list of recommendations includes the immediate changes necessary to remove red tape and immediately improve the regulatory capacity of the engineering regulator in Ontario. However, OSPE will continue to consult with its members regarding several key consideration which need to be addressed for long-term regulatory success. These include:

- Improved oversight mechanisms
- Mandatory liability insurance
- Financial stewardship
- Accountability
- Role of PEO Chapters
- Governance structure

OSPE believes that these recommendations are essential to safeguard the public interest, enable PEO to be a strong and focused regulator, and will contribute to the overall economic progress of our province. We look forward to working with the government to further develop these recommendations. If you have any additional questions, please contact Andrea Carmona, OSPE Policy and Government Relations Lead at [advocacy@ospe.on.ca](mailto:advocacy@ospe.on.ca).

Sincerely,



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## **CC:**

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