



October 16, 2020

The Honourable Lisa Thompson  
Ministry of Government and Consumer Services  
Enterprise Recordkeeping, Access and Privacy Branch  
134 Ian Macdonald Blvd.  
Toronto, Ontario  
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**RE: Ontario Private Sector Privacy Reform**

**About the Ontario Society of Professional Engineers (OSPE)**

The Ontario Society of Professional Engineers (OSPE) is the advocacy body and voice of the engineering profession. Ontario currently has over 85,000 professional engineers, 250,000 engineering graduates, 6,600 engineering post-graduate students and 37,000 engineering undergraduate students.

Engineers generate wealth for the province by developing and commercializing new technologies and by designing innovative and sustainable solutions for the benefit of all Ontarians. Ontario's engineers are uniquely positioned across several industries – from information technology, cybersecurity, artificial intelligence, and automation, to advanced manufacturing, energy storage, advanced oil and gas exploration, mineral extraction, and renewable energy, amongst others – to make significant contributions to the future wealth and health of the province.

Advances in technology have created a data economy where intangible assets drive growth, innovation, and prosperity—but with great power comes great responsibility. The engineering community believes that to effectively leverage the power of data for both public and private sector efficiencies, it is imperative to address transparency of data usage and privacy. The engineering profession's commitment to safeguarding the public interest has always been extremely important. This will ensure public trust while securing continuous development and innovation. However, this is not possible without clear regulation. We commend the government of Ontario for undertaking this consultation with the objective of solving Ontario's privacy challenges and strengthening public trust in digital services to ensure that Ontario remains competitive in the innovation race.

**Avoid fragmentation in regulation**

Private sector organizations in Ontario — outside of the health sector, which is governed by *Personal Health Information Protection Act* (PHIPA) — are governed by the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), but only in respect to personal information collected for commercial use. The federal government is in the process of modernizing PIPEDA. Given that the changes to PIPEDA have been delayed due to the COVID-19 pandemic, this is an opportunity for the Government of Ontario to provide guidance on where legislation can be strengthened.

The engineering community recommends that the Ontario Government work with the federal government to ensure that this modernization process is completed effectively and efficiently. We advise that significant attention be placed on (1) exploring the efficacy of the consent regime (2) firstly, considering enforcement models and (3) exploring whether privacy-embedded-by-design can be prescribed in our legislation to ensure that privacy laws effectively protect the public and provide meaningful direction to innovators. Secondly, we

encourage privacy regulation laws maintain a principled approach to remain flexible to the evolving nature of technology. Third, we would like to emphasize that privacy laws should not prevent innovators from using aggregated or de-identified data. Lastly, we urge that the Ontario government refrain from passing new laws regulating the private sector's use of data and privacy until PIPEDA is modernized and changes are released. This will avoid generating legislation that is contradictory and misaligned. Creating new laws at this time would result in increased costs for businesses and an increased compliance challenges, which may adversely affect Ontario's economy.

The government should only enact legislation for areas that do not fall under current federal jurisdiction, such as non-profits. Harmonization of privacy requirements and outcomes is necessary to fully benefit both businesses and consumers.

### **Regulation of non-commercial organizations**

Currently in Ontario, many non-commercial organizations are not subject to any privacy law (including not-for-profits, charities, professional associations, trade unions, and political parties). As a regulated profession, engineers in Ontario have a significant relationship with the provincial regulator, Professional Engineers Ontario (PEO).

Under s. 21(3) of the *Professional Engineers Act*, PEO is required to "maintain one or more registers containing every revocation, suspension and cancellation or termination of a licence, certificate of authorization, temporary licence, provisional licence or limited licence". To comply with this, PEO keeps a public registry with data pertaining to both currently licenced and practicing engineers but also those who have retired, cancelled, or who is licenced has been revoked or terminated. While this is consistent with other regulated professions, it calls into question where the individuals right to their own data falls.

For example, this was brought to our attention by a recent member who is no longer practicing, has surrendered his licence, and would like to have no affiliation with the regulator. This individual has requested that their information be deleted from the public registry, however, PEO is unable to do so as it contradicts the Act. This raises concerns regarding data erasure.

In instances such as these, where the retired engineer is a member in good standing (meaning no charges or disciplinary actions brought against them by the regulator), it is important for privacy regulation to determine how much individual information to share publicly. An individual's request to delete information must be weighed against the public interest, as this is the regulator's primary priority. However, the provincial government must still examine the gaps that exist in these sectors and modernize current legislation to guarantee an individual professional's right to control their own data in instances where public safety is not compromised.

OSPE believes that these recommendations reflect the importance of safeguarding the public interest and safety, while ensuring that Ontario can compete globally in the innovation race. We look forward to working with the government to further develop these recommendations.

Sincerely,



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