



October 7, 2021

Hon. Doug Downey, Attorney General  
McMurtry-Scott Building, 11<sup>th</sup> Floor  
720 Bay Street  
Toronto, ON M7A 2S9

Dear Attorney General Downey,

**SUBJECT: Supporting OSPE's Call for Changes to the *Professional Engineers Act***

The Association of Consulting Engineering Companies – Ontario (ACEC-Ontario) is the industry association representing the business interests of consulting engineering firms in the province of Ontario. We have been copied on the October 4, 2021 letter to you from the Ontario Society of Professional Engineers (OSPE) regarding proposed amendments to the *Professional Engineers Act* (the Act) that might form part of a “red tape reduction” bill during this sitting of the Legislature. ACEC-Ontario endorses the recommended changes, and we would like to emphasize and provide additional rationale in support of three key aspects of the OSPE proposal.

**1) Ceasing PEO's Regulation of the “Consulting Engineer” Title**

ACEC-Ontario strongly endorses the recommended amendments that would eliminate the regulation of the “consulting engineer” title in Ontario. This amendment would be an important step in helping PEO become the professional and modern regulator that it seeks to be, and it would have beneficial business impacts in the engineering community.

The primary tool for regulating the practice of professional engineering in any jurisdiction in Canada is the Professional Engineer licence (P.Eng.). The individual provincial regulators set the academic and experience requirements to grant a licence to engage in the practice of professional engineering, which is a controlled act defined in each province's legislation. There is a good level of harmonization across Canada regarding the regulatory requirements for the P.Eng. licence.

In Ontario, PEO also regulates business entities that offer and provide professional engineering services to the public. PEO does this through its “Certificate of Authorization” (C of A) framework under the Act and Regulation 941. This is an understandable and necessary level of regulation as the greatest public interest risk arises when there is an arm's length relationship between the provider of professional engineering services and the client. Many other jurisdictions in Canada also regulate such entities or those relationships.

Here in Ontario, however, in addition to the P.Eng. licence for individuals and the C of A for businesses, PEO operates an additional layer of regulation. The Act gives PEO the power to make regulations providing for a “consulting engineer” title and prohibiting of the use of that title by others. Sections 56 through 71 of Regulation 941 provide the details of the “consulting engineer” framework. No other jurisdiction in Canada, nor in North America, regulates the use of the “consulting engineer” title as an additional layer above the licence and/or C of A.

PEO’s “consulting engineer” framework is problematic for two reasons: First, it does not advance PEO’s mandate because it provides no public interest protection beyond the P.Eng. licence and C of A. Second, because Ontario is the only jurisdiction to regulate this title, it adversely impacts labour mobility and serves as an impediment to business.

Why do we say that the “consulting engineer” framework does not serve or protect the public interest? Simply put, there are no public interest risk issues associated with the use of the “consulting engineer” title that are not mitigated through the P.Eng. licence and the C of A. PEO’s regulatory framework for the “consulting engineer” title does not convey any exclusive scope of practice beyond that of any other licensed professional engineer. There is nothing that a designated “consulting engineer” can do that any other P.Eng. cannot do, except use the “consulting engineer” title.

Further, PEO’s “consulting engineer” title is not an indicator of superior qualification, and it is not a guarantee or other form of assurance to the public regarding the quality of work of those entitled to use it. The professional liability insurance industry does not recognize the “consulting engineer” title as an indicator of lower risk. In fact, PEO has granted the “consulting engineers” title to firms that do not carry professional liability insurance. In our view, the “consulting engineer” title is a marketing tool intended to create the appearance of a competitive advantage for those professional engineers and firms that choose to pay for it. As a regulator, PEO has no business overseeing a marketing tool.

The key question is: Why does PEO believe that regulation of the “consulting engineer” title is necessary when no other North American jurisdiction does? Why does it believe that the P.Eng. and C of A are not sufficient means of regulation to mitigate the risks and serve and protect the public interest where the independent practice of professional engineering is concerned? PEO has no answers to these questions. PEO has never identified or articulated unique risks associated with using the title, and we submit that there are none. PEO already has more than enough regulatory authority over individual engineers and/or engineering firms enabling them to serve and protect the public interest.

Now consider the labour mobility and business impacts of this framework. Both ACEC-Ontario and OSPE support the harmonization of engineering regulation across Canada. Such harmonization is critical as an element of labour force mobility, consistent with the pan-Canadian Agreement on Internal Trade and its objectives for an open, efficient, and stable domestic market that supports long-term job creation and economic growth, and eliminates

barriers to the free movement of persons, goods, and services. As previously noted, Ontario is the only jurisdiction in Canada to regulate the “consulting engineer” title. This creates an artificial barrier to mobility for individual consulting engineers from other jurisdictions who wish to relocate to Ontario.

The impediments caused by this barrier extend to businesses as well. Consider, for example, anyone seeking to establish a consulting engineering firm in Ontario or expand an existing firm from, say, the Maritimes, into Ontario. In addition to obtaining a C of A from PEO, the firm would also have to apply to have at least one of its engineering staff designated as a “consulting engineer” by PEO, and the firm itself would have to apply for and obtain permission from PEO to use the “consulting engineer” title before it could start business in Ontario. PEO’s Consulting Engineer Designation Committee meets only four times each year to consider applications and PEO estimates that it takes four to five months for an application to be processed. This is an unreasonable impediment to business and economic growth – especially for a title that serves no public interest protection purpose.

## **2) Eliminating the Requirement for 12 Months of Canadian Experience for Licensure**

ACEC-Ontario respects the fact that PEO has responsibility under the Act to establish and maintain standards of qualification, knowledge, and skill among its members. Section 33 of Regulation 941 sets out the current academic, experience, and examination requirements for licensure. Paragraphs 33(1)4 and 33(2), prescribe that 12 months of post-graduate experience must be acquired in a Canadian jurisdiction under the supervision of a professional engineer licensed in that jurisdiction. This is a particularly frustrating requirement for ACEC-Ontario member firms as they endeavour to have experienced and otherwise qualified engineers from outside Canada licensed in Ontario.

PEO’s rationale for this requirement is that it ensures the applicant has “sufficient familiarity with the applicable Canadian codes, regulations and standards for the practice of professional engineering”. As detailed below, we believe this rationale to be specious and the 12-month Canadian experience requirement to be arbitrary and contrary to principles of fairness and good regulation.

The requirement for 12 months of Canadian experience cannot be justified under PEO’s recently adopted principles of “right touch regulation”. While we agree that a lack of familiarity with Canadian codes and standards represents a public interest risk for licensing professional engineers in Canada, there is no magic cause-effect relationship between 12-months of Canadian experience and acquiring an appropriate level of familiarity with Canadian codes and standards. This regulatory requirement is poorly targeted to the risk issue, and it has significant unintended consequences. The requirement serves as a “catch-22” for internationally experienced engineers seeking jobs in Canada. They can’t get a P.Eng. licence without Canadian experience, and many Canadian employers won’t hire such individuals without a P.Eng. licence.

On several occasions since 2014, the Ontario Government's own Office of the Fairness Commissioner (OFC) has identified PEO's 12-month Canadian experience requirement to be an artificial barrier to licensure for applicants who were educated internationally and have significant practical engineering experience acquired outside of Canada. The OFC concluded that PEO's requirement is discriminatory, breaches human rights laws, and breaches PEO's duties under the *Fair Access to Regulated Professions and Compulsory Trades Act*. The OFC has concluded that PEO is non-compliant with the Fair Registration Practices Code. Despite this, PEO has stood by the Canadian experience requirement and no changes have been made to the regulation.

In 2020, PEO established an Anti-Racism & Anti-Discrimination Exploratory Working Group. This group retained independent consultants to identify vulnerabilities to systemic racism and discrimination within the range of activities overseen by PEO. The consultants' May 2021 report 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 on its face and can only be used in very limited circumstances.

ACEC-Ontario believes there are alternative means for PEO to determine whether an applicant has sufficient familiarity with applicable Canadian codes, regulations, and standards. In fact, this "sufficient familiarity" requirement relates more to knowledge than to experience, and could, for example, be addressed through academic means such as completion of a course or an examination.

We note that the majority of the other engineering regulators in Canada do not require any minimum amount of Canadian experience prior to licensure. They have found alternative ways to assure themselves that licence holders are sufficiently familiar with the applicable Canadian codes and standards. Eliminating the 12-month Canadian experience requirement in Ontario will be a step towards harmonization of engineering regulation across Canada.

Finally, we note that eliminating the 12-month experience requirement will in no way handcuff PEO in meeting its public interest protection mandate. The academic and experience requirements under Section 33 of Regulation 941 are broadly worded and rely on the "Council's satisfaction", things that are "recognized by the Council", and "the Council's opinion". Surely PEO Council can identify means of ensuring sufficient familiarity with Canadian codes and standards without imposing a 12-month delay on a significant proportion of its applicants for licensure.

### **3) Time Limits for Licence Application Processing**

For many years now, PEO has acknowledged that it has a significant timeliness problem with its licence application process. A recent independent regulatory performance review commissioned by PEO found that their licensing process met only one of seven standards of

good regulation, and described the PEO process as being lengthy, bureaucratic, complex, and difficult to follow.

Consider the extent of PEO's licence application backlog: At the meeting of PEO Council on September 24, 2021, it was reported that:

- 1) PEO had received 4,773 P.Eng. licence applications between January and August of 2021,
- 2) it had approved 2,443 applications during that time (a proportion very similar to the same period in 2020), and
- 3) there are 21,000 licence applications currently in-process.

At the same meeting, PEO reported that the average licence approval processing time for applicants who do not require confirmatory or specific examinations is 1,186 days. This has increased from 1,149 days at this time last year. If examinations are required, the process takes significantly longer. The current situation is clearly untenable and unsustainable, yet PEO has failed to take corrective action.

These multi-year delays are adversely impacting the livelihoods of individuals seeking their P.Eng. licence and disrupting the businesses of the engineering firms seeking to employ them. The disruptions affect the capacity of engineering firms to deliver the services required to make Ontario's public infrastructure projects a reality.

In the interest of fairness to applicants and engineering businesses, we support OSPE's recommendation that the Act be amended to include a time limit for issuing a licence or a notice of refusal to issue a licence. This change will not create an unreasonable burden on PEO as the association has the flexibility in the current statutory and regulatory framework to find alternative means of processing applications in a timely manner that will still serve and protect the public interest.

## **Summary**

The slate of changes to the *Professional Engineers Act* proposed by OSPE will benefit PEO in its journey towards becoming a professional and modern regulator. They will benefit the people of Ontario by better serving to protect the public interest. They will also benefit engineering applicants and engineering businesses as they contribute to the social, environmental, and economic welfare of Ontario.

We strongly believe that separately regulating the "consulting engineer" title cannot be justified as a matter of public interest risk mitigation and should stop. We believe it is clear that prescribing 12 months of Canadian experience for licensure is discriminatory, and is an ineffective means to ensure applicants have sufficient familiarity with Canadian codes and standards, and should be eliminated. Lastly, we strongly believe that PEO's current licence

application processing timelines are out of control and unsustainable, and would benefit from a statutory level of rigour.

ACEC-Ontario and OSPE, the two largest member service and advocacy bodies for the engineering profession in Ontario, support these changes. We believe that PEO will not oppose these amendments, other than to the extent that they represent change. Making the Act and regulation changes now as part of a “red tape reduction” bill makes sense as the need is urgent and the public interest issues are very real. Promulgation of the changes can be scheduled over the subsequent months to give PEO staff time to plan and adopt alternative processes or otherwise manage the transition.

If you have any questions about these recommended changes, please contact Bruce Matthews at 416-620-1400, ext. 224, or by email at [bgmatthews@acecontario.ca](mailto:bgmatthews@acecontario.ca). We would be happy to work with Ministry staff as required to see these amendments enacted.

Sincerely,



Joe Sframeli, P.Eng.  
Chair, Board of Directors



Bruce G. Matthews, P.Eng.  
Executive Director

cc: Christian Bellini, P.Eng., President, PEO  
Johnny Zuccon, P.Eng., CEO/Registrar, PEO  
Mark Frayne, P.Eng., President & Chair, OSPE  
Sandro Perruzza, CEO, OSPE