

Proposed amendments to the Professional Engineers Act under Bill 139, Less Red Tape, More Common Sense Act, 2023

Standing Committee on Justice Policy

November 8, 2023



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Whitney Block
Room 1405
99 Wellesley Street W
Toronto, ON M7A 1A2

Re: Proposed amendments to the **Professional Engineers Act** under Bill 139, Less Red Tape, More Common Sense Act, 2023

Dear Committee Members,

The Ontario Society of Professional Engineers (OSPE) represents and advocates for the engineering profession in Ontario. With over 85,000 professional engineers, 250,000 engineering graduates, 6,600 engineering post-graduate students, and 37,000 engineering undergraduate students in the province, OSPE is committed to ensuring the legislation that governs the practice of engineering in Ontario ensures the health and safety of the public, reflects global best-practice, and meets the evolving needs of the engineering community.

The *Professional Engineers Act* (the Act) grants the profession of engineering the ability to self-regulate and establishes Professional Engineers of Ontario (PEO) as the entity responsible for regulating Profession of Engineering in Ontario. It is important to note that OSPE operates as an advocacy and members association for Ontario's engineering community, independently of PEO.

We would like to take this opportunity to submit our comments on Bill 139. This Bill proposes a series of amendments to the Act which will affect the operations of PEO. **OSPE is supportive of the proposed amendments under this Bill**, particularly the amendments to subsection 7 (1) which removes authority from the PEO Council to prescribe forms of applications for licences, temporary licenses etc. and instead grant this authority to the Registrar. We have raised concerns around the authority of the PEO Council to self-regulate engineering licensure applications, and therefore supports greater authority being granted to the Registrar in this case.

OSPE views the ability to self-regulate as a privilege and not a right. Professional Bodies that self-regulate, do so under the authority of an Act, and under the authority of the Provincial government. Self-regulation is one of many instruments government may choose in an effort to protect the public and reduce risks associated with incompetent and unethical practice. It is for this reason, OSPE continues to raise our concern that **PEO is currently an ineffective regulator that operates with inappropriate governance procedures.**

Therefore, OSPE continues to advocate for the **urgent need for further amendments to the Act to ensure good regulatory performance and good governance procedures** are mandated for PEO.

A review issued in 2019 by the Professional Standards Authority revealed alarming governance issues within the internal operations of the PEO requiring urgent legislative amendment. In addition, the current legislation leaves room for discriminatory processes within the engineering licensing process, PEO Chapter Associations, and PEO's internal policy and operations, as revealed in an independent consultant report released in 2021.

For example, the PEO received about 80 complaints in a year alleging poor conduct by chapter members and candidates, including acts of exclusion and 'in fighting'. Interviewees reported evidence of racism and sexism, with men forming cliques and excluding women and BIPOC individuals from rising in the chapter executive. It was also reported that BIPOC individuals faced difficulties in breaking through the cliques to rise in the chapters, particularly in metropolitan areas where there were the largest chapters and most clique issues. Shockingly, instances of physical violence against a female engineer were also reported, with no process to remove the perpetrators from the chapter undertaken.

Regarding regulatory performance, the aforementioned review assessed the below pre-agreed areas of regulatory functions the PEO holds responsibility for:

- Licensing and registration (7 standards)
- Complaints, discipline, compliance and enforcement (11 standards)
- Professional standards (4 standards)

The review revealed that PEO **only met one out of seven Standards** for licensing and registration. For complaints, discipline, compliance, and enforcement, PEO met six Standards and partially met one out of eleven. For professional standards and guidance, PEO met one Standard and partially met two out of four.

A summary of the issues outlined in the two reviews undertaken on PEO is outlined below:

Poor Governance:

- The "ANTI-RACISM & ANTI-DISCRIMINATION: A Bridge to PEO's More Successful Future" report, issued on May 3, 2021, reveals discriminatory practices within PEO governance, where BIPOC individuals are excluded from meetings and elections.
- Instances of exclusion, racism, sexism, and ethnicity-related issues within PEO are reported, with allegations of cliques formed by men that exclude women and BIPOC individuals.
- Concerns about the lack of transparency and accountability in PEO chapters and election processes, favoring white candidates.

Systemic Discrimination:

- The report identifies vulnerabilities to systemic racism and discrimination in the engineering profession, including the perpetuation of disadvantages faced by

marginalized groups and notable underrepresentation of Black and Indigenous individuals in PEO's Council, staff, and committees.

- Concerns about a discriminatory "Canadian experience" requirement for licensure and other barriers facing immigrants and BIPOC individuals.
- Specific examples of discriminatory conduct are highlighted, further emphasizing the need for change.

Toxic Organizational Culture:

- The report underscores a culture of exclusivity, insularity, and marginalization within the engineering profession, favoring white, male, and socio-economically elite individuals.
- The departure of women from engineering roles due to mistreatment and a lack of recognition of their competence.
- A perception that the dominant group may not make accommodations required by the Ontario Human Rights Commission and sees no value in Black individuals, leading to further discrimination.

Concerns on Discipline to Licensees:

- Allegations of racial differential treatment in the PEO disciplinary process for licensees.
- Concerns about the composition of the discipline committee and its hearing panels not adequately representing diversity.
- Allegations of conflicts of interest in PEO's procurement processes.
- The report suggests concerns about fairness and diversity in PEO's disciplinary and procurement processes.

Material Risks in the Licensing Process:

- The report raises concerns about the discriminatory Canadian experience requirement for licensure.
- The licensing process is criticized for its subjectivity, inconsistency, bias, and lack of transparency.
- Despite recommendations, little action has been taken to address these concerns and improve the process.

Poor Regulatory Performance:

- The review of the regulatory performance of PEO, issued on April 2019 by the Professional Standards Authority, based on the Standards of Good Regulation, reveals shortcomings in licensing and registration, complaints, discipline, and professional standards.
- Issues with privacy, transparency, and the regulatory force of guidance are highlighted.
- PEO's reliance on volunteers and its historical role as a professional association are noted as hindrances to effective regulation.
- PEO's lack of investment in modern business infrastructure, especially information technology, is criticized.

Poor General Performance:

- The environmental scan presented to Council on May 2, 2022 underscores concerns regarding illegal practice, confusion between PEO and OSPE roles, lack of understanding of PEO's role, and government trust issues.
- PEO's failure to ensure quality in practicing engineers and adherence to high ethical standards is of concern.
- The report highlights the need for better communication and education regarding PEO's role.

These reviews clearly indicates that the organization is struggling to fulfill its mandate to obstruct and regulate illegal practices, ensure the quality of practicing engineers, and enforce high professional ethical standards. These three issues are of paramount importance in safeguarding the public's well-being, and it's essential that PEO performs well in these tasks. Without adequate performance in these areas, PEO cannot be considered a positive force in protecting the public.

To conclude, OSPE supports the amendments in this Bill, but urges the Government to consider further amendments to the *Professional Engineers Act*. When governments have identified a deficiency in self-regulated bodies, they have a responsibility and accountability to rapidly respond to restore confidence with the public that they are acting to protect the public interest.

OSPE has developed a list of suggested amendments to the Act, which can be found at Appendix A.

Sincerely,



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Chair and President
Ontario Society of Professional Engineers



Sandro Perruzza
Chief Executive Officer
Ontario Society of Professional Engineers

Appendix A

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 Association¹

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.

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

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.

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. 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.

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.