



in whose interest? self-regulation under

Increasing expectations for accountability are putting new pressure on Ontario's regulators of professions to prove they are truly focused on the public good.

PEOSURE

The Ontario organizations that license and regulate the practice of its major professions feel themselves under pressure to require licensed members to demonstrate ongoing competence and professional development as a means of maintaining public confidence in the effectiveness of self-regulation. That's one of the findings in an *Engineering Dimensions* survey of the issues facing the regulating bodies for Ontario's doctors, nurses, chartered accountants, teachers, architects, and lawyers.

Most of the province's major regulators also noted an increased onus on them to show greater accountability and transparency in regulating their respective professions in the public interest. Many of them said they are struggling with challenges similar to those facing PEO and the engineering profession, while others related unique regulatory challenges directly related to their professions. For some, a renewed focus on regaining the public's trust comes in response to perceptions they have been slow to mete out adequate punishment for practitioners found guilty of professional misconduct.

One issue common to all the professions surveyed is the call for the licensing body to recognize the training and experience of internationally trained professionals. This call is heard most loudly in the health professions, because of the shortage of practitioners in some specialties.

Although PEO has been at the forefront among Ontario regulators in licensing internationally trained engineering graduates, others have had more difficulty in

By Michael Mastromatteo

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responding to the especially thorny question of recognizing foreign credentials while maintaining their profession's high qualification standards. In any case, all the major regulators appear to have taken note of the inconsistency of a federal immigration policy that encourages highly skilled immigrants to come to Canada, without an adequate explanation of either Canadian job prospects in their profession or Canadian licensing requirements.

Certainly, professional engineering and, to a lesser extent, architecture, are also struggling with what might be termed provincial government "incursions" into their self-regulatory realm. Recent Ontario government initiatives in the areas of building permit reform and Brownfields legislation, in particular, have resulted in protracted engagement between PEO and government, focusing ultimately on provincial ministries' failure to recognize aspects of the profession's self-regulating authority under the *Professional Engineers Act*, or even the value of the licence as an indicator of specialty-specific professional knowledge.

In an era of increasing public demands for accountability, is the public losing confidence in the abilities of licensed professionals? Is the government questioning the overall effectiveness of self-regulation as an instrument of public safety and protection? While some of the regulators contacted expressed confidence the Ontario government remains fully committed to the self-regulatory model, others noted a host of undercurrents and con-

cerns that promise to keep their policy making governors on the hot seat.

Following are the top regulatory issues identified by the College of Physicians and Surgeons of Ontario (CPSO), the College of Nurses of Ontario (CNO), the Law Society of Upper Canada (LSUC), the Ontario College of Teachers (OCT), the Institute of Chartered Accountants of Ontario (ICAO), and the Ontario Association of Architects (OAA).

College of Physicians and Surgeons of Ontario

Three of the top issues for the 25,000-member College of Physicians and Surgeons are the need to increase the supply of qualified physicians in Ontario, the licensing and certification of internationally trained professionals, and the continuing professional development of the membership at large. In addition, CPSO is sensitive to the perception that its complaints and discipline system is not fully effective in punishing members for ethical or practice shortcomings.

In May 2005, the Ontario health ministry pledged to review the complaints and discipline process for Ontario's health professionals, including MDs. The ministry's action came in response to complaints that the college appeared too lenient with members who are the subject of complaints about their clinical or surgical skills. The college investigates 2000 complaints each year with only a small portion going to a public hearing. In its

defence, the CPSO argues that privacy, confidentiality, and other requirements of its governing legislation make its discipline cases unwieldy. It says it would welcome opportunities to bring more openness and transparency to its complaints/discipline efforts.

In response to the physician supply situation, the college recently released its 2005 registration statistics, which showed it issued more certificates of registration (medical licences) in 2005 than it has in 20 years. Over the past two years, CPSO licensed more internationally trained medical graduates (IMGs) than ever before, and reports internationally educated medical graduates now make up about one-quarter of its total membership. Internationally educated engineering graduates comprise about one-third of PEO licence holders and more than half of those who applied for licensure in 2005.

Despite the efforts to streamline the licensing process for both IMGs and domestic medical school graduates, CPSO president Dale Mercer, MD, holds to the view that efforts to deal with the physician shortage in the province must not compromise "existing standards of registration."

In addition to physician supply, complaint investigation, and foreign credential issues, CPSO is committed to examining the continuing competence of its members. The college is now consulting with the profession about a proposed system of "revalidation." CPSO's 2005 paper, *Consulting with the Profession—The Revalidation System under Consideration*, discusses public expectations for the lifelong education of MDs. "While the assurance of ongoing competence is a longstanding obligation of any professional, there is currently no system in place to ensure that every physician remains current in his or her field of practice," CPSO says. "In fact, it is possible that physicians could be licensed, practise independently, and never participate in any meaningful educational activity throughout their entire career."

College of Nurses of Ontario

For the organization regulating the practice of Ontario's 144,000 registered and practical nurses, an overriding issue

involves stabilizing the profession so that it can retain skilled and experienced personnel, and so it can continue to attract talented new recruits. The Ontario government recently committed additional funding to its nursing strategy, which is aimed at helping hospitals hold on to experienced nurses. The additional funding is also aimed at bolstering the profession by improving access to full-time employment opportunities and enhancing nurses' working conditions.

In response to the province's commitment to the profession, and to the ongoing review of the health care system's regulated organizations through the government's arm's-length Health Professions Regulatory Advisory Council (HPRAC), the CNO has made several recommendations for the development of the nursing profession, and its place as a key partner in overall health delivery. Among these is a call for new legislation that would give competent nurses the broadest scope of practice possible. The CNO proposes that nurses' legislated scope of practice be expanded to include four new "controlled acts," or procedures that are traditionally based on a system of medical directive or delegation.

In an environmental scan accompanying the CNO's recent strategic plan, the college suggested that with the growing complexity of the health care system, health care professionals will continue to evolve and expand their scopes of practice. "When existing professions expand," the CNO says, "gaps will arise in the system of care. CNO's mandate is the protection of the public, and the CNO has been active in providing feedback about potential new professions with the Health Professions Regulatory Advisory Council (HPRAC) review to ensure safe and competent practitioners in a quality health care system." Of concern to Ontario's nursing professionals is the possibility that new, unregulated health care providers will begin to fill any gaps in an evolving health care system. "Will the health care system become more layered with providers because of the complexity of the system and the expanded scopes of

practice?" the CNO asks. "Will it be more difficult to protect the public?"

To enhance openness and accountability, the CNO has recommended to the HPRAC that more information about complaints and executive investigations of members be made available to the public.

The HPRAC is an independent body established under the *Regulated Health Professions Act, 1991*, (RHPA) to provide policy advice to the Minister of Health and Long-term Care. Its mandate includes providing advice on:

- whether to regulate or deregulate health professions;
- suggested amendments to the RHPA and to related acts and regulations;
- the quality assurance programs of the health profession colleges; and
- any matter related to the regulation of health professions referred by the minister.

Law Society of Upper Canada

Among the top issues for the body regulating Ontario's 36,000 lawyers are regulation of independent "paralegals," streamlining of the licensing process for new lawyers, and efforts to facilitate ongoing competence and "practice management" support.

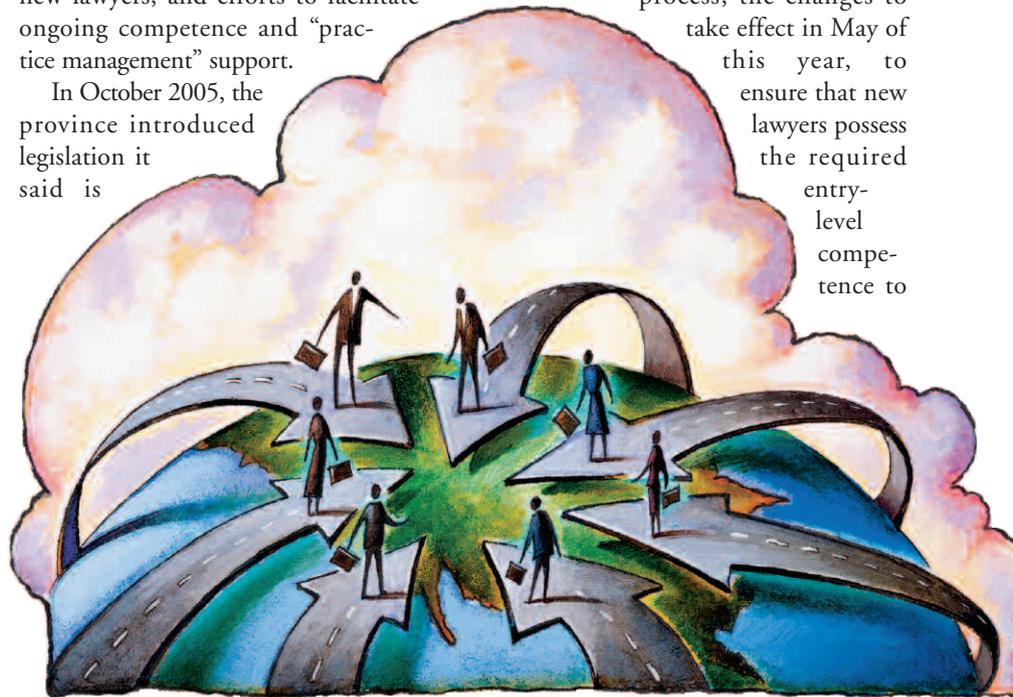
In October 2005, the province introduced legislation it said is

designed to extend protection to consumers of all legal services, including those who hire paralegals. The legislation extends the law society's "public interest mandate" by bringing even independent paralegals under its purview. LSUC had proposed some form of regulation of paralegals in a September 2004 report to Attorney General Michael Bryant.

"The Ontario government has introduced legislation that would expand the Law Society's public interest mandate to include the regulation of all legal service providers, including paralegals," said Malcolm Heins, LSUC chief executive officer. "In doing so, the government has made clear its view that the law society is well positioned to extend its mandate to protect consumers of all legal services."

The law society also identified creation of a task force on the rule of law and the independence of the bar as another significant regulatory issue. The task force mandate is production of a report that legislators and judges can consider a "comprehensive statement" of the reasons why an independent bar is essential to the rule of law.

LSUC has also revised its licensing process, the changes to take effect in May of this year, to ensure that new lawyers possess the required entry-level competence to



The arrival of many internationally trained professionals is putting new pressure on Ontario regulators to review licensing procedures.

provide effective legal services to the public.

As for demonstrating the ongoing competence of licensed practitioners, an issue PEO has struggled with for many years, the law society is pursuing an active member competence program that includes such dimensions as “e-learning,” continuing legal education, the development of practice management guidelines, a best practices self-assessment tool, and the creation of a certified specialist program.

On the issue of government incursions, the recent Thomson Report on the registration and appeals processes for regulated professions in Ontario (see *Engineering Dimensions*, January/February 2006, p. 14) is an item of interest for

the Ontario Regulators for Access (ORA) playing a key role. PEO is also a member of ORA. LSUC also questioned the utility of Thomson’s recommended independent appeal tribunal, noting a “one-size-fits-all” appeal body is not workable given the differences between the professions, and resources would be better spent at earlier points in the licensing process instead of at the end of what can be a long process. In fact, it said it is unclear how the proposed body would enhance the actual licensing outcomes for applicants.

Ontario College of Teachers

According to a spokesperson for the 200,000-member-strong Ontario Col-

- promotion of the college’s mandate to serve the public interest (OCT is exploring options);
- entry to practice assessments (in particular, the government’s intended replacement of a pencil-and-paper test with an induction program, including mentoring for newly certified teachers);
- tracking teacher supply and demand;
- creation of a voluntary privacy policy; and
- the college’s status as an investigative body.

Institute of Chartered Accountants of Ontario

A key regulatory issue for the body that certifies the province’s 31,000 chartered accountants and guides its 5000 accounting students centres on the question of liability reform. ICAO is seeking changes to Ontario laws dealing with the legal liability of accountants (and auditors) based on claims arising from financial loss due to errors or misstatements in reporting. According to the ICAO, the current “joint and several liability” system makes every party found responsible for financial loss arising from errors or misstatements in connection with an Ontario entity equally and totally liable for that loss. It contends the current system presents the risk of “catastrophic liability” to CA firms and, in turn, impacts negatively on Ontario’s economy and business enterprise opportunities. “Unless the impediment to audit services is removed by establishing a modern, fairer, proportional liability regime, Ontario’s suitability as a good place to invest will be increasingly questioned,” ICAO says.

In addition to liability reform, ICAO says it is sensitive to the need to integrate internationally trained financial professionals into the Ontario marketplace. Like PEO’s initiatives to make detailed information on its licensing process readily available, ICAO is working with the government to educate prospective immigrants to Ontario about the licensing and certification requirements in chartered and public accounting.

To educate the Ontario public about the chartered accounting profession, in

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many of those professions. In January, LSUC attended a consultation on the report’s recommendations, and provided written comments to the Ministry of Citizenship and Immigration.

While LSUC said it supports the importance of transparent, fair, objective and accountable registration practices, it suggested a mandated Fair Registration Practices Code, as Thomson recommends, is premature until all the professions are surveyed about the suggested elements of the code. Given that many of them might already have many of the fair registration practices in place, and the time involved in legislating the code, LSUC also suggested the professions and government should develop a Fair Registration Practices Protocol, with

lege of Teachers (OCT), the province’s professional educators face a regulatory landscape dominated by such issues as qualification review, the licensing of internationally trained teachers, the validation of recently revised ethical and practice standards, and administrative changes affecting governance of the OCT itself.

Brian Jamieson, of the college’s communications unit, summarized the remaining regulatory issues for teachers as:

- language proficiency scores (one of the major language assessors, the TOEFL, changed the way it assesses proficiency this year, but didn’t provide a connection to the past rubric for evaluation. OCT is still working through this);

May 2005 it began the “CA. Nothing Less” advertising campaign, aimed at promoting the integrity, high standards and international reputation of the profession. ICAO says the campaign is related in part to the recent passing of the *Public Accounting Act, 2004*, which makes public accounting licences more accessible. The act allows CAs, certified general accountants (CGAs) and certified management accountants (CMAs) who meet the requirements to obtain a licence to practise public accounting—an area that in the past was restricted primarily to CAs.

Ontario Association of Architects

Not surprisingly, the situation of the 2500-member Ontario Association of Architects most closely parallels PEO’s in terms of seeing a need to defend the profession’s self-regulation against legislative “incursions” by the provincial government. Although the OAA reached an understanding “under duress” with the Ontario housing ministry that enabled it to establish its own system (called the Building Code Designation System or BCDS) to qualify and register architects for *Ontario Building Code* knowledge under Regulation 305/03 to Bill 124, it put up a stout defence of its jurisdiction. Said late OAA President Randy Roberts in the midst of the Bill 124 imbroglio, “Bill 124 is a poignant example of how government is encroaching on our self-regulation and also interfering directly with our livelihood and the day-to-day practice of our profession. Bill 124 is a huge wake up call for the OAA and every member of this profession.”

With the requirement for a BCDS number in effect since January 1, but the dust not yet settled, the OAA is using the issue to become more proactive as a regulator. According to current OAA President David Craddock, such government incursions present an unnecessary obstacle to the OAA’s ability to regulate effectively.

“The Ontario Association of Architects is extremely concerned about the increased incursion by government on the self-regulating professions,” Crad-

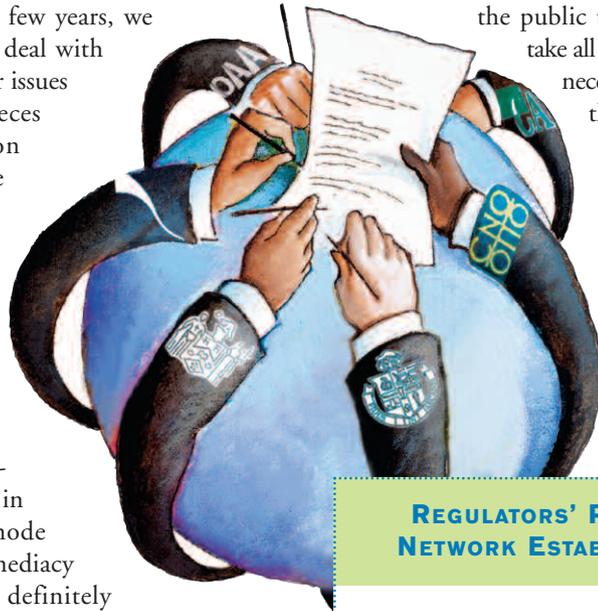
dock told *Engineering Dimensions*.

“In the past few years, we have had to deal with several major issues and new pieces of legislation that impede our ability to regulate. Our main concern is the fatigue we all experience dealing with these government issues in a reactive mode and the immediacy required. It definitely makes an impact on our ability to tend to our day-to-day business within the association and within the profession. To best serve the public, and make the most of our resources, it is imperative that we are all proactively engaged with government and aware of policy direction at the earliest stage. This is the most direct and efficient approach to achieving effective legislation, allowing the ‘regulators’ to ‘regulate.’”

From this overview of the pressure points for the bodies licensing and regulating some of Ontario’s largest professions, transparency and accountability must surely be considered essential in dealing with the inherent tension of self-regulation, in which the members of a profession establish their own qualifications and standards, admit individuals to practice, discipline practitioners, and enforce an exclusive scope of practice that prevents others from practising the profession—all in the public interest.

As Peter Varley, vice president of public affairs for the ICAO, told *Engineering Dimensions*, “Transparency and accountability are of increasing importance to self-regulating professional organizations as they are to most other public and private sector organizations. An increasingly aware public demands transparency and accountability and the ICAO fully supports it. CAs

and other professionals depend on the public trust and must take all reasonable steps necessary to ensure that they are not only serving the public interest, but are seen to be doing so.”



REGULATORS' POLICY NETWORK ESTABLISHED

The common challenges and concerns of Ontario’s major regulators were among the topics at the inaugural meeting of the Ontario Regulators’ Policy Network last November at PEO. An initiative of PEO’s policy unit, the meeting brought together invited representatives of many of Ontario’s regulated professions to share views on such matters as the self-governing model, governance, lay representation, incursion into regulatory authority, advocacy versus the public interest, and the integration of internationally trained graduates into regulated professions.

Although the network intends to focus on regulatory policy excellence, the free-flowing discussion at its first meeting suggests protecting the privilege of self-regulation requires a steady vigilance by those to which it is entrusted.

And while most major regulators remain confident the Ontario government is committed to the self-regulatory model, the recent experiences of PEO and the OAA relating to designer qualification changes to the *Ontario Building Code*, coupled with issues arising from the arrival of increasing numbers of internationally trained professionals, should present lively discourse on things like licensing, title, professionalism, independence and the public good.