



New Era for self-regulation about to unfold



At a time of increased demands for fairness and public accountability, PEO and other regulatory bodies for self-regulating professions must contend with an ever-changing regulatory landscape.

By Michael Mastromatteo



Former PEO president Pat Quinn, P.Eng., made frequent reference to a book, *Death of the Guilds* by Elliott A. Krause, in speaking engagements during his latest term as head of Ontario’s engineering regulator.

The book cites the various incidents throughout history that weakened the medieval guild system and left the practitioners of esteemed occupations with less independence and a loss of professional prestige. In many ways, the book is a lament that without vigilance in protecting their rights and privileges, self-regulated professions are just a government decree away from losing professional autonomy.

“Government ministries are trampling self-regulation without appearing to understand what they are endangering,” Quinn said in a 2006 *Engineering Dimensions* President’s Message. “But, in fact, we may be the ones who don’t understand an active plan to downgrade self-regulation in the mistaken belief that self-regulation is more protection of professions than of the public.”

Quinn’s point in referring to the guild system was to alert today’s self-licensing professions, engineering in particular, to a changing landscape for regulated occupations. It’s a landscape where the old rules appear to be changing and where the traditional ways of doing business no longer apply.



The hallmarks of this evolving regulatory landscape are readily apparent, ranging from a growing mistrust of government (and the authority it delegates to regulated professions), to declining respect for licensure as a symbol of professionalism and accountability for acting in the public interest.

On the political front, one of the most visible symbols of a changing regulatory environment is the demand that regulated professions review their licensing and registration practices in an effort to accommodate the increasing number of internationally trained applicants.

Over the last three years, the Ontario government has enacted its *Fair Access to Regulated Professions Act*, which put in place a fairness commissioner charged with auditing regulators’ registration practices.

While such activities don’t strike at the heart of regulators’ statutory privilege of self-regulation, they hint at a changing attitude on the part of provincial governments—one in which governments impose more conditions in exchange for the ongoing right to self-regulate.

And, as the political master of the regulated professions, the provincial government expects to have its priorities acknowledged.

The engineering profession in Ontario has been especially responsive to the province’s access initiatives, and has been working to accommodate the increasing number of international applicants. Nonetheless, the need to demonstrate more fairness and transparency in evaluating all applicants’ credentials for licensing continues to exert new pressure on regulators from all occupations.

Beyond the fair access question, regulators must also contend with what has come to be regarded as government “incursion” into the self-regulatory realm. For Ontario engineers, this was most dramatically demonstrated in PEO’s protracted battle with the housing ministry about amendments to the Ontario Building Code. The struggle occupied an enormous amount of PEO’s time and resources, beginning with the housing ministry’s formation of the Building Regulatory Reform Advisory Group (BRRAG) in 2000, and extending until the successful completion of the legal challenge, including the awarding of costs to PEO, in October 2007.

DEFENDING SELF-REGULATION

PEO had opposed the housing ministry’s proposal that practitioners involved in building design activities be required to pass ministry-mandated exams on the



building code. Although PEO prevailed in a legal challenge of these amendments to the building code, the experience revealed that regulators must be vigilant to maintain the integrity of their jurisdiction over the qualifications and practice standards of their regulated occupation.

Another lesson learned from this experience is that self-regulated professions must retain positive relations with political overseers to avoid misunderstanding, and to head off legislative proposals that might be at odds with self-regulation.

The new era of self-regulation now requires regulators to determine provincial government priorities, and to undertake more proactive government relations. Most regulated professions have beefed up their government liaison activities over the last five years, motivated at least in part by the recognition that self-regulation is a changeable thing.

It can be argued that PEO's building code challenge sensitized PEO and other regulatory organizations in Ontario to the government incursion issue. But before the dust had even settled, the licensed professions found themselves responding to external pressure for full labour mobility across Canada, raising questions of equivalency of admission standards from one jurisdiction to the next.

Canadian engineering regulators have taken up the mobility question in a number of ways, most notably by compiling a national database of practitioners as a prelude to allowing greater ease of movement by licensed members.

The action comes partly in response to the provincial premiers agreeing to amend the federal government's Agreement on Internal Trade (AIT). The Ontario government introduced Bill 175—the *Labour Mobility Act*—to implement AIT in Ontario. This proposed act has supremacy over the acts governing regulatory bodies and provides for regulatory bodies to indicate additional requirements. Such requirements must pass three tests:

1. The additional requirement must not impose any requirements on applicants already licensed in another jurisdiction that it does not impose on all other applicants for licensure;
2. The additional measure or requirement must not be a disguised restriction on mobility; and
3. The additional requirement must not prevent the expeditious certification of the applicant.

In July, Gordon Williams, P.Geol., past president, Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA), suggested the AIT and labour mobility legislation are “retrograde steps” that could threaten the authority and independence of regulated professions.

“Under AIT, applicants will automatically become licensed in the receiving jurisdiction,” Williams wrote in APEGGA's *The Pegg* publication. “Admittedly, this represents a low level of risk to the public, but it could be an increased risk just the same. It would appear that governments across Canada have decided that this level of risk is acceptable and that the loss of autonomy to the professional licensing bodies is also acceptable. Governments have that right and will apparently exercise their authority to make that decision.”

PEO remains committed to working with provincial and federal governments to improve national mobility for professional engineers. Its September meeting saw PEO council approve a position statement calling for the harmonization of provisions for interprovincial movement of engineers, without compromising its ability to protect the public. To support mobility efforts, PEO will list and publicize any additional requirements that may be needed in recognizing licence holders from other Canadian jurisdictions.

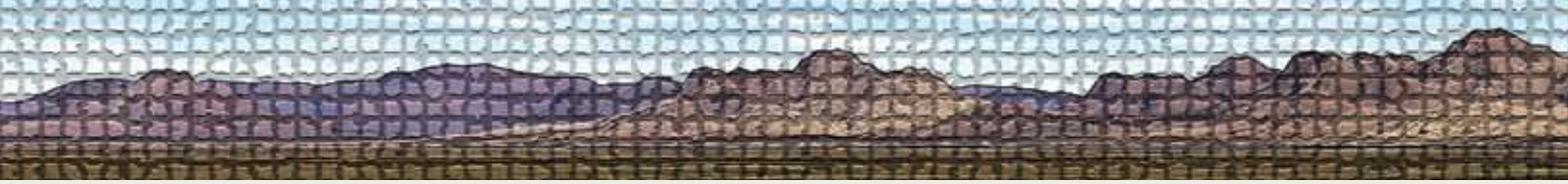
US EXPERIENCE

Mobility as a challenge to regulators is not limited to the Canadian scene. Jerry Carter, executive director of the National Council of Examiners for Engineering and Surveying (NCEES), the US engineering regulatory coordinating body, says his organization is concerned with showing consistency and uniformity in licensing models from state to state.

“We are not aware of any impending changes or pressure for changes in the regulatory structure for the practice of professional engineering,” he says. “[But] we are aware of the need for greater consistency in the qualification process between the various jurisdictions and the issues that are dominant these days, based on the need for enhanced mobility of the licence.”

PROFESSIONAL DEVELOPMENT REVISITED

Continuing professional development and competence assurance by licensed practitioners is also a challenge to self-regulated professions. Some engineering regulators have instituted or are considering



compulsory professional development and licence renewal programs to convince governments and the public that licensed members remain up to date in their professional skills. It's part of a growing concern that a one-size-fits-all engineering licence, with no renewal requirements beyond payment of an annual fee, is no longer sufficient to assure government overseers and the general public of a practitioner's competence and accountability.

PEO is aware of the importance of professional development and continuing competence programs in alleviating public concern about the relevance of the engineering licence. At its September meeting, for example, PEO council approved a plan requiring all licence holders to declare annually that they will maintain their competence in the performance of any professional engineering services they undertake.

Similarly, the Association of Professional Engineers and Geoscientists of British Columbia is engaged in a professional renewal program dedicated in part to showing the value of the engineering licence in protecting the public.

In Ontario, PEO is responding to a changing regulatory landscape in many ways. In addition to its efforts on the access question, PEO has added a full-time corporate legal counsel to help the regulator plow through the nuances of its statutory foundation and

regulation-making authority. PEO has also taken the lead in crafting a national licensing framework to bring consistency and uniformity to licensing and registration. In September, PEO council voted to review the national licensing framework later in 2010.

PEO also took the lead in helping to create a voluntary policy development network of the regulators of professions to share best practices (see "PEO at forefront of regulators' policy development network," p. 46).

LAY REPRESENTATION ON COUNCIL?

A further cloud on the self-regulatory horizon comes in the form of the Ontario government's Bill 179, the *Regulated Health Professions Statute Law Amendment Act*. Aimed at bringing greater public oversight of health-care related colleges and regulatory bodies, the bill conceivably could change the relationship between health regulators and the government. Of particular concern is a clause in the bill giving the provincial government authority to appoint a supervisor over the College of Physicians and Surgeons of Ontario. The bill also gives the province the power to audit regulatory bodies in the health sector.

Although Bill 179 does not refer to engineering regulation, it could have implications for the composition of regulatory bodies and how they interact with the provincial government.

Many of the current challenges to self-regulation came to light during a June 2009 workshop in Toronto organized by the Professional Associations Research Network (PARN). PARN is a not-for-profit organization specializing in research and network-

ing for professional bodies. PEO has been invited to become a member of PARN.

The June workshop brought out a number of fellow regulators concerned about preserving autonomy as governments impose new expectations. A high point of the workshop was discussion of the essay "Self-regulation under siege" by Toronto attorney Richard Steinecke. The lead counsel in PEO's legal challenge of the amendments to the Ontario Building Code, Steinecke specializes in regulatory and privacy issues. He suggested external forces can readily exert pressure on regulatory organizations.

"In recent years, a pattern has developed where the media releases concerns about the effectiveness of a particular regulator, and the government makes changes or amends legislation to increase the accountability of the regulator," Steinecke wrote in the "under siege" essay. "The nature and extent of the changes have cumulatively resulted in an erosion of the concept of self-regulation to the point that it is, in some circumstances, unrecognizable."

In an interview with *Engineering Dimensions*, Steinecke outlined four sources of trouble for regulators. These include a "spectacular" regulatory failure, media exposés of perceived regulatory wrongdoing, a well-organized interest group making a cause of a regulatory action (or inaction), and a formal review of the regulation of a profession, usually commissioned by the government.

"In my view, there are some basic reasons for today's higher expectations of regulatory bodies," he adds. "Among them are a general distrust of



authority, political initiatives, the media seeking out interesting stories, a declining sense of professionalism, and mistakes made by regulators.”

Steinecke’s essay offers strategies for regulatory organizations to defend their *raison d’être*. He urges these organizations to maintain positive relations with one’s controlling ministry, and to extol the benefits of self-regulation to the public through proactive public relations. Other key solutions include continuous improvement, or “doing a good job,” and making a case that excessive efforts to demonstrate accountability actually waste resources and work against more effective regulation.

Others believe more effective stakeholder consultation and a dramatic shakeup of regulators’ governance procedures will help regulators come to grips with the changing regulatory environment.

Karen Wiancki, director of practice with Planning Solutions Inc., a consultant specializing in stakeholder consultation and corporate governance, says regulators would do well to mimic provincial government best practices in developing policy and strategic direction.

DEMOCRATIC DEFICIT

Wiancki, who is scheduled to speak at the Ontario Profession Regulators’ Policy Network policy conference in late October, says a “democratic deficit” in which communities feel excluded from government policy-making accounts for a lack of trust in government and its delegated authority.

She believes that by engaging more stakeholders and by reviewing policy development processes, governments—and regulatory organizations—can win back lost prestige.

“The process you use today is as important as the product that comes out of that process,” Wiancki said in a September 9 interview. “There is a place for consultation or one-way information exchange, but I believe that certainly if you’re dealing with very complex issues, we need to think more strategically and we need to be able to demonstrate leadership. Leadership requires innovation and that innovation comes from engaging others. There is a benefit by engaging people in what matters to them, because what you end up producing are better decisions.”

Some engineering regulators, however, see no threat to self-regulation, so long as regulators stay well within their statutory objectives.

Robert McDonald, P.Eng., LLB, director of membership and legal services, Association of Professional Engineers and Geoscientists of Saskatchewan, says he believes close adherence to statutory foundations will guard against government incursion and other external threats.

“We need to remember that our role is to regulate the practice of professional engineering in the public interest,” McDonald says. “However, there are some of our members and volunteers who believe that we should be more almost self-serving rather than public-serving. When we are viewed by the public in this way, the legislators will be called upon to look at the privilege of self-regulation.”

McDonald also cautions that regulators should be sensitive to government priorities, such as labour mobility or procedural fairness, even if these appear to be imposed on regulators from on high.

“I think that when there is this strong of a commitment by the governments to make something happen, ignoring or fighting it, rather than finding a way to preserve public safety and still comply with it, is asking for the governments to intervene in our privilege of self-regulation,” McDonald warns. “We must remember that the legislation allowing for self-regulation belongs to each of the respective legislatures, and it can be easily amended or repealed. That’s why I always refer to it as the ‘privilege’ of self-regulation.”

So far, PEO has responded well to recent challenges to self-regulation and remains confident it can steer a safe course for the future. But with confidence comes a certain wariness and sense of caution. Notes Bruce Matthews, P.Eng., PEO deputy registrar, regulatory compliance:

“Our profession may be self-regulated, but that does not make us completely autonomous. We are ultimately accountable to the government and, if we want to maintain our self-regulating status, it behooves us to seek out and adopt the best practices in professional regulation and to be at the leading edge in responding and adapting to changing circumstances. We can only achieve that by looking outside ourselves and being actively engaged with other regulators and with government. Navel-gazing and seeking all of our solutions from within is a surefire formula for obsolescence.” Σ

