[VIEWPOINT]

PROFESSIONAL SELF-REGULATION: PROTECTING THE CORE

By George Comrie, P.Eng.

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A MEMBER OF Ontario's licensed engineering profession for some 35 years now, I continue to encounter confusion within our ranks as to the role and purpose of Professional Engineers Ontario (PEO) and its counterparts across Canada, and the concept and value propositions of the self-regulating engineering profession. In this article, I'll review the fundamentals of our system of professional regulation, and urge members of the profession to value, strengthen and preserve them.

DELEGATED AUTHORITY

So, what kind of entity is PEO anyway? PEO is the embodiment of the self-regulating engineering profession in Ontario. It is a creation of the government of Ontario, and has been delegated authorities and responsibilities through an act (and regulation) of the provincial legislature.

In that sense, PEO is a so-called *delegated authority*, an organization created by government to carry out responsibilities that it could otherwise carry out itself directly using public servants. The theory behind a delegated authority is that it can function more easily and more effectively as an independent corporate entity than if it were an integral part of government bureaucracy. The years since the end of the Second World War have seen a proliferation of delegated authorities in Canada at various levels of government (e.g. the Liquor Control Board of Ontario and the Technical Standards and Safety Authority in Ontario). Each of these organizations has its own enabling legislation, board of directors, identity and branding, management and staff (who are not members of the Ontario public service).

But are these delegated authorities really independent of government? For most of them, the answer is no. The majority of their directors are appointed by government, and their chain of public accountability links back to government. Moreover, the government of the day is swift to intervene should a delegated authority become involved in any controversy. Witness the recent publicity surrounding accusations that lottery ticket agents were claiming more than their rightful share of prizes. The former CEO of the lottery corporation was forced to fall on his sword, even though the procedures that permitted the abuses had already been tightened up by the time they became public and the Ontario ombudsman had commenced an investigation.

AT ARM'S LENGTH

PEO, and Ontario's other regulators of professions, are not in this same category of delegated authority. PEO was created to be truly at arm's length from, and independent of, government. While it is true the government could rescind the act that created PEO and put it out of business, no government would contemplate doing so unless PEO seriously failed in its regulatory obligations or breached public trust. Similarly, while it is also true that under section 6 of the act the attorney general of Ontario can instruct council to do certain things, this power to intervene has never been exercised in 87 years and is unlikely to be unless PEO fails to carry out its responsibilities to the public. The majority (17 of 29) of PEO's directors (councillors) are elected by members of the profession, not appointed by government. PEO is outside the jurisdiction of the Ontario ombudsman.

In other words, PEO is in a special class of delegated authority–the self-regulating professional body. This arrangement is no accident or anomaly, but the result of true wisdom on the part of our legislators across Canada. The concept is that the profession itself

is in a much better position than any government department or agency to understand what is necessary to protect the public within the profession's sphere of activity, and can be engaged to undertake this regulatory responsibility on the public's behalf in exchange for exclusive rights to title and to practise. I have articulated in the past[1] why I believe this arrangement has tremendous value for both the Canadian public and the professions.

One important implication of our self-regulation is that, unlike other non-professional delegated authorities, we are in a position to stand up to and challenge government on policies or programs affecting our sphere of influence that we believe are not in the best interest of the public. In fact, I would assert that we are not only empowered, but obligated, to do so. Since we have no political bias or vulnerability, the public should be able to expect the engineering profession will advise the government diligently, honestly, impartially and fairly, and will speak out if that advice is ignored. This is not a new idea for PEO. I have in my office an issue of the APEO monthly publication from April 1954, the masthead of which reads, "Silent service is not enough."

UNIQUE MODEL

Many professional practitioners do not realize the Canadian model of professional self-regulation is virtually unique in the world. Only a few other jurisdictions, like Australia and Hong Kong, have similar arrangements. Because engineering takes place all over the world, we tend to think it's organized and regulated similarly everywhere. But the fact is, most countries in the world have no organized engineering profession–never mind a self-regulating one–and no licensure of engineers.

Even our two most highly developed neighbours have different systems of professional regulation. In the US, most engineers do not require licences to practise, and those who do have licences issued to them by state licensing boards that are direct agencies of government, as opposed to the engineering profession. In addition, accreditation of engineering programs in the US by the Accreditation Board for Engineering and Technology (ABET), is radically different from ours in Canada by the Canadian Engineering Accreditation Board (CEAB), in that ABET does not impose any content standards on the engineering programs it accredits. The UK has mature professional organizations and standards, but no licensure at all. Representatives of engineering organizations in both these countries (and elsewhere in the world) remind us regularly how fortunate we are to have our Canadian system of self-regulation and licensure, and wish they could emulate it in their jurisdictions. On the other hand, we Canadians, with typical self-effacement, sometimes seem bent on changing our system to match those of other countries. I am perplexed and dismayed that we do not value more highly what we have, and are not more committed to preserving it.

CONTINUED VIGILANCE

That is why I believe it is so important for us to resist government incursion into our self-regulatory mandate and affairs. PEO had nothing to lose by challenging the Ministry of Municipal Affairs and Housing's attempted incursion into regulation of professional designers through amendments to the building code regulations, but everything to lose by not resisting it–including the eventual erosion of our self-regulatory status. We will need to be continually vigilant against threats like this to our regulatory model and processes, which may well be the unintended consequences, or collateral damage, of seemingly innocent government policy initiatives.

Such threats seem to be occurring with greater frequency as time goes on and governments intervene in more and more aspects of our daily lives. For example, PEO has experienced external pressure to modify its requirements for licensure to more readily accommodate applicants with international credentials and experience. In 2005, Ontario Ministry of Training, Colleges and Universities staff wanted us to modify or waive the requirement for 12 months of engineering experience under the supervision of a licensed Canadian practitioner and replace it with a training program, in exchange for funding of an admissions portal project. Fortunately for the profession, PEO's volunteer leadership recognized that the Canadian experience requirement is essential to our ability to protect the public through licensure, and declined to modify or waive it. Had we not resisted this pressure, we would have started down the slippery slope to irrelevance.

Of course, we must always be prepared to review our requirements for licensure–and the processes by which we evaluate applicants against them–to ensure they are indeed necessary and appropriate for protection of the public, and not

arbitrary barriers to joining the profession. That has been the task of the Licensing Process Task Force for the past several years. I believe we should be proud of the extent to which PEO has proactively modified its applicant assessment tools and processes over the years to ensure they are fair to all applicants, including those with international credentials and experience, at the same time maintaining uniformly high admission standards. Indeed, in 2001, the Ontario Liberal Party (in opposition) awarded PEO a commendation for its openness to internationally trained engineers.

PRESERVING THE CORE

This distinction between what needs to change and evolve and what needs to remain the same is discussed in Jim Collins' management classic *Good To Great*[2]. He wrote:

"Enduring great companies preserve their core values and purpose while their business strategies and operating practices endlessly adapt to a changing world. This is the magical combination of 'preserve the core and stimulate progress.'"

Although Collins' research focused on for-profit enterprises, I believe this principle can be applied to regulators of professions like PEO. We need to understand clearly what the core of our existence is and be prepared to fight to preserve it, while constantly updating, renewing and innovating non-core aspects of our business.

But what is the "core business" of a regulator like PEO? Surely it is *to regulate the practice of the profession in the public interest*. As a former council colleague put it, "*PEO is in the competency assurance business*." We do this using four main instruments: licensure, professional standards, discipline and enforcement/compliance. Everything else we do is ancillary to, and supportive of, this core business.

Of these instruments, the most important is licensure. Why is licensure so important? One reason is that we concentrate most of our effort to protect the public on initial licensure. Once a person obtains a licence, so long as he or she "stays out of trouble" (is not the subject of a complaint or a conviction) and continues to pay the association's annual dues, that person does not receive further competency assessments. Applicants for a licence must demonstrate that they meet fairly rigorous admission criteria in terms of knowledge and skill but, for the most part, we trust them to do what is necessary to maintain their competence to practise throughout their careers. I would point out that this situation is no different for medical doctors or lawyers in Ontario.

In other words, we protect the public by limiting access to the practice of engineering to only those who the profession believes can and will do it with competence and integrity. This is *proactive* public protection, as opposed to discipline, which is *reactive*. The idea is to prevent undesirable outcomes from occurring as a result of engineering works, instead of trying to attach blame and administer punishment when they do occur. The advantage of this Canadian approach to professional regulation is not as widely appreciated as it should be, in my opinion. Jurisdictions that do not license practitioners must rely mainly on their legal systems to deter acts of incompetence and irresponsibility. Ask someone who has suffered serious harm as a result of a preventable "accident" if they would rather have compensation from the courts or have avoided the harm in the first place. It is easy to see that proactive regulation is very much in the best interest of the public.

ROLE OF PEER REVIEW

An essential component of licensure that is at the core of the existence of any self-regulating profession is peer review, which occurs:

- when applicants for licensure demonstrate their knowledge, practice skill and readiness to take professional responsibility for their work, while working under the supervision of those already licensed in the jurisdiction (their future peers);
- when members of PEO's Academic Requirements Committee review the academic credentials of applicants who do not automatically meet the academic requirement for licensure by virtue of having graduated from a CEAB-accredited engineering program; and
- when licensed professionals interview applicants for licensure to assess the extent of their knowledge and experience acquired outside the jurisdiction (for example, before imigrating to Canada), as do panels of PEO's Experience Requirements Committee.

Peer review is important because knowledge alone (which could be adequately assessed by examinations alone) is not sufficient to determine competence to practise. That is why it is impossible for PEO to eliminate the requirement for Canadian experience under the supervision of a licensed professional engineer and still protect the public. Again, I would point out that engineering is in line with the other senior professions like accounting, law and medicine in insisting that applicants for licensure demonstrate their practice skills in a supervised setting to the satisfaction of experienced, licensed practitioners.

Peer review is also important because it provides the flexibility necessary to treat all applicants for licensure fairly, even those with atypical educational backgrounds and/or experience.

PROPOSED LICENSING FRAMEWORK

The latest example of a challenge to PEO's "core" comes from within our own ranks. I refer to the CEO/registrar's proposed National Framework for Membership and Licensure. While on the surface of it, this proposal appears to have commendable objectives, such as standardization of enabling legislation, licence types, admission requirements and enforcement policies across Canada, it also contains other elements that represent departures from–and potential threats to–PEO's established core.

The first such threat lies in the notion that we should include within the profession, and within its governance, individuals who are not licensed to practise any aspect of engineering, but who wish to associate with it, and possibly even enjoy titles available through the association. I see this notion as fundamentally in conflict with the concept of a self-regulating profession responsible to serve and protect the public interest, because:

- People not licensed (and not required to be licensed) are, by definition, not obligated to protect the public, and so would be participating in the association solely out of self-interest;
- The profession has little or no "leverage" over such individuals, since they do not have a licence to defend; and
- The potential for confusion of the public over titles and rights to practise is huge.

I contend that only people licensed to practise some aspect of engineering, and those in the process of becoming licensed (e.g. engineering students and interns), can be included in the profession and its governance and, further, that PEO should avoid licensing anyone without some exclusive right to practise (i.e. to do things that anyone else can do without a licence).

Finally, I contend that we should be diligent in protecting the title P.Eng./ing., which designates the "unlimited" professional licensee, and that any other engineering titles, such as "engineering student," "engineering intern" or "licensed engineering technologist," should clearly indicate the status of the holder relative to protection of the public. Meaningless titles like "graduate engineer" should be discouraged. Keep in mind that engineering and accounting are the only senior professions that have titles that denote a licence to practise. Doctors and lawyers use their degrees as titles (e.g. MD, LLB), but one must check the registry of their professional body to determine if they are licensed to practise.

A driving force behind this proposal is ostensibly recent amendments to the Agreement on Internal Trade (AIT)[3], endorsed by Canada's premiers in January, and the resulting proposed *Ontario Labour Mobility Act, 2009* introduced in the Ontario legislature on May 5[4].

Barriers to mobility of Canadian workers in some trades and occupations have become problematic, as witnessed by Ontario's *Fairness is a Two-Way Street Act* introduced in 1999 to deal with mobility of construction workers between Ontario and Quebec[5]. However, this has never been an issue for professional engineers who have, for all intents and purposes, enjoyed full mobility across Canada for many years as a result of an Inter-Association Mobility Agreement (IAMA) to which all Canadian engineering regulators subscribe. With very few exceptions, a professional engineer licensed in one Canadian jurisdiction can apply for a licence in another Canadian jurisdiction and receive it in a matter of days, without having to submit academic or experience credentials and without having to go through the normal admissions process for a new licensee. The few exceptions that do exist take into account regional differences between jurisdictions, such as the seismic engineering requirement for structural engineers in British Columbia, or the permafrost engineering requirement for those working in Canada's far north, or the French language proficiency requirement in Quebec. The AIT recognizes the need for, and the proposed Ontario Labour Mobility Code will accommodate, such "additional requirements," which are clearly necessary to protect the public.

The constituent members of Engineers Canada have been working together for years to maximize mobility of professional engineers across Canada, and to minimize differences in their licensing requirements and processes. PEO has not invoked the "notwithstanding" clause in the IAMA since 1997. It is therefore ironic–indeed offensive–that PEO should have been mentioned specifically in the minister's introduction of the bill in the legislature as an example of a regulated profession.

THE FUNDAMENTALS

No doubt it would be ideal if all jurisdictions in Canada were to have identical–instead of similar–licensing requirements and processes for engineers. However, there remain significant differences among jurisdictions even in the rigour with which they apply their similar criteria. For the smaller jurisdictions, this may be a matter of limited volunteer and staff resources to assess applications and applicants.

So the question remains: What are the core requirements that must be met to protect the

public before an applicant can be licensed, regardless of where else in Canada or in the rest of the world he or she may have been trained, licensed, accredited or worked?

To answer this question, we must go back to the fundamentals of professional licensure that apply to any regulated profession:

1. Knowledge

For every field or sub-field of engineering practice (e.g. structural engineering, software engineering), there exists a body of knowledge the practitioner must have mastered to be able to practise competently. In the case of a limited-scope licence, that body of knowledge may be narrowly defined in breadth of subject matter. In the case of an unlimited licence (like the P.Eng. licence), however, the body of knowledge must be defined broadly enough to permit the licensee to recognize when he or she is beyond his or her scope of competence and needs to engage outside expertise. That is why the engineering profession in Canada has content standards for its accredited engineering programs, and why the academic requirement for licensure is expressed in terms of both depth and breadth of study.

2. Practice skill

Clearly, it is not enough for a professional practitioner to have studied certain subject matter and acquired the requisite body of knowledge. To be able to practise competently, he or she must have developed the necessary practice skills through practical experience. Consider, for example, the would-be surgeon who has studied and demonstrated sound knowledge of anatomy, physiology and surgical procedures, but has never actually wielded a scalpel or suture–would we ever want the College of Physicians and Surgeons to license such a person? Because of our obligation to protect the public, the self-regulating professions place great importance on internship in which the professional-in-training practises under the close supervision of an already licensed practitioner, thereby acquiring invaluable practical experience and developing the necessary practice skills. Note that experience gained in a setting in which there is no licensure and no established culture of professional accountability/responsibility is of limited value in protecting the public. That is why the engineering profession in Canada has a licensing requirement for practical experience gained in a Canadian jurisdiction under the supervision of a practitioner licensed to practice in Canada.

3. Professional attitude

Finally, to practise competently in a particular field, it is not enough to know everything you need to know and to have developed all the necessary practice skills–you must be prepared to assume professional responsibility for your work and for its impact on public safety and well-being. In most professions, we refer to this fundamental criterion as *character*, and we examine applicants for licensure for evidence of lack of character (dishonesty, illegality, irresponsibility, etc.). However, there is no more important licensing criterion in terms of protecting the public than evidence of a professional attitude consisting of diligence, care, honesty, integrity, responsibility and accountability. As David Maister says:

"Professionalism is predominantly an attitude, not a set of competencies. A real professional is a technician who cares. As the old slogan goes, 'People don't care how much you know until they know how much you care.'"[6]

That is why the engineering profession in Canada has a licensing requirement for references from licensed professionals with or for whom the applicant has worked, and who have first-hand knowledge of the applicant's work habits and attitudes.

These fundamental licensing criteria, which together constitute competence to practise independently as a professional, are at the very core of the self-regulating profession. They, and the pillars on which they are based–depth and breadth of knowledge in defined subject areas, practice skill demonstrated under the supervision of a licensed practitioner (i.e. peer review) and a professional attitude consistent with protection of the public interest–must be defended at all cost if the self-regulating profession is to continue to do the job entrusted to it by the Canadian public.

In conclusion, I contend the Canadian engineering profession should continue to explore new tools to assess competency that can be adopted nationwide. In particular, I would like to see a national task force work on development of more discipline-specific, competency-based assessments of practice skills demonstrated through work experience, as recommended by the Licensing Process Task Force. And we should continue to work towards elimination of differences in admission criteria and processes across jurisdictions. For the most part, this can be accomplished without the need for regulators to amend their enabling acts. Means can be found to assist regulators with limited resources to meet common standards for due diligence in assessing applications for licensure. In so doing, however, we must be diligent to protect and strengthen the core principles of our system of licensure, on which our continued existence as a self-regulating profession depends. Σ

REFERENCES

[1] President's Message, *Engineering Dimensions*, July/August 2004 and September/October 2004

[2] Collins, James C. *Good To Great: Why Some Companies Make the Leap…and Others Don't.* New York: HarperCollins, 2001

[3] AIT backgrounder: pm.gc.ca/eng/media.asp?id=2385

[4] Ontario legislature: Bill 175 introduced May 5, 2009

[5] *Fairness is a Two-Way Street Act* (Construction Labour Mobility), 1999

[6] Maister, David H. *True Professionalism.* New York: Touchstone, 1997