In September 2008, self-regulating organizations took note when the British government’s Legal Services Board took over as the independent regulator for all bodies involved in the regulation of legal services in England and Wales.

At about the same time, Australia’s legal professionals had their self-regulatory authority restricted, thanks largely to a failure to accommodate the government’s demand for greater mobility of licensees from one province to another.

The regulators of several Canadian professions have also seen government take a more active interest recently in how they do their jobs. The Ontario government’s Regulated Health Professions Statute Law Amendment Act, 2009 (www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2189), for example, threatened to put some health regulators under more direct provincial control. The move was inspired in part by concerns that health regulators were too lax in disciplining wayward practitioners.
The Ontario College of Teachers, meanwhile, was criticized in the 2012 LeSage report (www.oct.ca/pdf/lesage_report_e.pdf) for delays in dealing with certain disciplinary issues, and for failing to put sufficient information about its discipline system on the public register.

While Ontario’s engineering regulator has not recently been under as direct scrutiny, such developments are reminders that the privilege of self-regulation shouldn’t be taken for granted. Engineering, as well as the other self-regulating professions, would do well to review its governance underpinnings and stay vigilant to looming discord.

PUBLIC INTEREST ONLY JUSTIFICATION

As Glen E. Randall, founding registrar of the College of Respiratory Therapists, noted in a 2007 study (Understanding Professional Self-Regulation, www.oavt.org/self_regulation/docs/about_selfreg_randall.pdf), “In the latter half of the twentieth century, criticism of the self-regulating professions became widespread. The public came to see the monopoly control these professions had as simply a means of increasing the personal wealth of their members, rather than as a way to protect the public from incompetent or unethical practitioners. During this time, formal models of self-regulation have undergone fairly dramatic transformations. The emphasis of self-regulation has shifted from a focus on protection of the profession, to a focus on protection of the public.”

This notion of putting the public first was the basis for Ontario’s most recent audits of the self-regulating landscape. In his discussion of occupational licensing (in Vol 3. of the expansive 1969 report of the Royal Commission on Civil Rights https://archive.org/details/royalcommissioni03onta), Commissioner James C. McRuer noted, among other things, that self-regulation should be granted to protect the public rather than to satisfy licensed members’ desire for the power of self-government.

In his report, Justice McRuer writes: the “granting of self-government is a delegation of legislative and judicial functions and can only be justified as a safeguard to the public interest.”

It was as a result of the McRuer Royal Commission, followed by then-attorney general Roy McMurtry’s Professional Organizations Committee study of architecture, engineering, law and account-
Goodings, meanwhile, says there is untold benefit in having the profession regulate its practitioners in the public interest, rather than leaving the job to a government agency. In addition to a near incalculable cost savings to the public, he writes in a 2006 memo, the benefits of self-regulation also accrue to industry, universities and all levels of government.

MEETING PUBLIC EXPECTATIONS

Bruce Matthews, a former deputy registrar at PEO, is a long-time member of the Council on Licensure, Enforcement and Regulation (CLEAR), an international resource for self-regulated professions and licensing bodies. After leaving PEO in 2010, he was also deputy registrar for the Real Estate Council of Ontario, before recently establishing Simplifico Inc., a consulting firm specializing in professional and occupational regulation.

“Among the various frameworks for professional and occupational regulation, self-regulation can be among the most controversial,” Matthews told Engineering Dimensions. “On the surface, there is a certain logic in allowing the practitioners of a particularly technical or complex field to set the appropriate standards for qualification and practice. Detractors, however, would say that it is tantamount to leaving the foxes in charge of the henhouse and gives rise to protectionism. This is why professional regulators in Canada, almost all of whom follow a self-regulatory model, are facing increased external pressures with respect to accountability, openness and transparency.”

Matthews says that in the wake of such increasing expectation, self-regulated professions can no longer rely on the “trust us” attitude toward the general public. He believes regulators need to evolve in their approach to addressing the risks that regulation is intended to mitigate, or they will become irrelevant.

Says Matthews: “As the public becomes more savvy and has easy access to a variety of sources of information, the regulator must evolve or else be effectively bypassed by the public it was created to protect.”

Other regulators contacted by Engineering Dimensions also say self-regulation can’t remain static. The College of Nurses of Ontario (CNO), for example, has stepped up its efforts to explain the benefits of self-regulation to its stakeholders. The college has also added a “transparency” page to its website to provide the public additional information about CNO activities.

“The CNO isn’t feeling under siege, but we have recognized that public, media and government expectations about accessibility to information about health-care providers have changed,” Bill Clarke, a spokesperson for the CNO, explains. “Several health regulatory colleges—nurses, physicians, pharmacists and dentists—have been involved in a collaborative initiative during the last two years looking at what other information about health-care providers should be available publicly. Work on this project began before the government and the media started calling for greater transparency and access to information.”

Reviews of the recent literature on self-regulation as public policy make little reference to the engineering profession. The bulk of the criticism about self-regulation as an anti-competitive practice not fully in tune with the public interest seems to fall on the legal profession. While most of these studies acknowledge the administrative efficiencies flowing to government by delegating some regulatory oversight to the professions, they all also reiterate the need for regulators of professions to continually demonstrate accountability and transparency of operations.

In his October 2014 study Who Watches the Watchmen? The Role of the Self-Regulator (cd.howe.org/pdf/commentary_416.pdf), written for the C.D. Howe Institute, Robert Mysicka says self-regulation provides professions some protection against “transitory political imperatives” that might negatively influence regulatory decision making, but that those governing these organizations must always be constrained by the public interest. “It is particularly important that independent public membership acts as a counterbalance to professional representation in the SRO’s [self-regulating organization’s] management,” Mysicka says. Σ