

WHAT IT MEANS TO BE A SELF-REGULATING PROFESSION



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PREVIOUSLY IN THIS COLUMN
I have written in defence of our unique Canadian model of professional self-regulation (*Engineering Dimensions*, July/August 2004, p. 3). In spite of a chorus of voices telling us that professional “guilds” are dying or dead, I remain convinced that the system we have here—of which PEO is a good example—represents the best value proposition for both the profession and the public it serves. And I would consider dilution or loss of our self-regulatory status to

be a severe blow to the engineering profession. So that we can remain focused on what we need to do to preserve and strengthen that status, it may be useful to remind ourselves from time to time how this concept is supposed to work, and what it means (and doesn't mean) for organizations like PEO and for their members/licensees.

Let me begin by noting that professional self-regulation did not come about through the now-typical “downloading” of responsibilities from higher levels of government to lower ones. As former PEO President Peter DeVita, P.Eng., FEC, points out in his book *A Search for Advocacy—Creating the Canadian Engineering Profession* (www.g7books.com/search4.html), our forerunners at the beginning of the 20th century sought and secured from government the privilege of self-regulation. What they obtained in the various provincial statutes like Ontario's *Professional Engineers Act* was essentially a contract with the public in which the profession secured the right to govern and regulate itself in exchange for committing to put the public interest first—ahead of any individual or collective self-interest (*Engineering Dimensions*, September/October 2004, p. 3). The contract was a win-win for both parties: the professionals gained status and substantial control over their own destiny as a profession, and the public gained assurances that competent professionals would be protecting their interests. When one considers the overall quality and reliability of engineering across all sectors in Canada in comparison to many other jurisdictions, I think it is fair to conclude that our profession has lived up to its part of the bargain substantively.

Note that the profession and its members are not precluded from having any self-interest—just from putting that self-interest ahead of the public interest. The public will be best served by a strong, independent profession with a clear,

self-regulatory mandate and exclusive rights to practise. And the fact that professional bodies like PEO operate at arm's length of government means they are free to advocate for sound public policy within their spheres of expertise, even if their advice ends up at odds with government policy. However, to avoid any perception of conflict of interest, many professional regulators like PEO have created separate, independently governed organizations—in our case, the Ontario Society of Professional Engineers (OSPE)—to advocate for the economic and professional self-interests of their members. Even then, the two professional organizations are not precluded from collaborating on activities in which there is no inherent conflict of interest, such as informing the public of the importance of the engineering profession to their economic prosperity, safety and quality of life.

Professional self-regulation does not mean that individual members of the profession are free to decide when and how to regulate their own individual practices. Our contract with the public requires the profession to maintain an organization (PEO) that establishes and enforces consistent standards of admission, practice and professional conduct for the profession. Individual members of the profession are expected both to contribute (their time and expertise) to the establishment of those standards, and to adhere to them in their day-to-day work. So while members of the profession have the democratic right to participate in its governance and leadership, they are subject to its regulation in their practice, for the collective good of the profession and the public. They can also be expected to report to their regulatory body information on their scopes of professional practice, and on measures they are taking to maintain their currency and competence, and to mitigate risks to the public inherent in their practice. Such data is essential for the profession to maintain public confidence that it is, in fact, regulating itself in the public interest.

A former council colleague used to say that PEO is in the competence *assurance* business. Given the diversity of engineering practice, it may be difficult for anyone other than an individual practitioner to accurately determine his or her competence in a given situation. That is why professionals are expected to limit their practices to those areas for which they are properly prepared by education and experience. And that is why elements of good character, such as honesty, integrity, responsibility and judgment, are so important to professional practice. But that does not alleviate the requirement for the professional regulator to set standards of knowledge and skill for practitioners, as well as work product standards for various professional activities, and to assess practitioners and

[PRESIDENT'S MESSAGE]

their work against them. Public confidence may require regulators to do more than just discipline those practitioners who are the subjects of legitimate complaints. Another crucial aspect of the contract between the profession and the public is that of exclusive rights to practise. It is widely believed that the percentage of professional engineers who require their licence to practise to earn their living is low (perhaps 30 per cent) compared to other senior professions, such as law and medicine. To make matters worse, the percentage of those with engineering education who are licensed to practise is also low (less than 50 per cent). The simple reason for this is a licence to practise professional engineering is not required—or not believed to be required—for much of the work that graduate engineers do. And while it is accepted that many graduate engineers enter or advance to careers where their work falls outside the definition of the *practice of professional engineering* in the *Professional Engineers Act* (section 1—Revised Statutes of Ontario, 1990), it is clear that much activity that falls within the definition is being performed with impunity by unlicensed individuals.

OUR CANADIAN MODEL OF SELF-REGULATING PROFESSIONS IS PREDICATED ON THE REGULATED PROFESSIONALS HAVING EXCLUSIVE RIGHTS TO PRACTISE IN ALL AREAS WHERE THERE IS A PUBLIC INTEREST INHERENT IN THE WORK.

This situation is highly undesirable from the perspectives of both the profession and the public. As originally drafted, the act precluded anyone without a licence from performing engineering work unless a licensed professional engineer assumed responsibility for that work. Unfortunately, this exclusivity was undermined in the 1984 revision of the act by what has come to be referred to as

the industrial exception at section 12(3)(a), which permits those doing professional engineering in relation to machinery or equipment in their employers' manufacturing facilities to be unlicensed. The current Ontario government agreed in 2010 to repeal the offending section of the act, but has since reneged on that commitment.

The problem of the industrial exception is compounded by the fact that there is a prevalent belief in many industries that all their engineers are exempt from the requirement to be licensed. This leads to the untenable situation in which unlicensed and licensed co-workers are working side by side on the same engineering tasks that fall outside the exception. This constitutes a violation of the act, but PEO's ability to enforce against this illegal practice is hampered by the difficulty of discovering, investigating and prosecuting such infractions. Further complicating the problem is the fact that much engineering work product is being imported from offshore and used in Canadian jurisdictions without the involvement of a licensed Canadian engineer. Relatively few scopes of engineering practice are subject to demand-side legislation that requires the signature and seal of a professional engineer before the engineering work product can be used.

Our Canadian model of self-regulating professions is predicated on the regulated professionals having exclusive rights to practise in all areas where there is a public interest inherent in the work. I believe it is critical to the ability of our profession to regulate in the public interest that this untenable situation be corrected through a combination of elimination of the industrial exception, expansion of demand-side legislation to additional scopes of practice, and expansion of enforcement powers.

As members of this self-regulating profession, we must be prepared—and I believe we are prepared—to uphold our end of the deal and do what it takes to maintain the public's confidence in our self-regulation. The Ontario government must be prepared to do the same. I, therefore, call on them to uphold their part of the bargain. Σ