

REGULATIONS THAT PROTECT THE PUBLIC ARE NOT RED TAPE

By Howard Brown and Blake Keidan



PEO remains committed to repealing the industrial exception, which allows unlicensed workers to carry out engineering acts on machinery or equipment in their employers' facilities.

PEOPLE OFTEN SEE the same thing but through a different lens.

In early June, the Ontario government introduced legislation that halted the proclamation of PEO's repeal of section 12(3)(a) of the *Professional Engineers Act*, often referred to as the industrial exception. The industrial exception allows unlicensed people to carry out engineering work on machinery or equipment in manufacturing facilities.

When it was announced in Finance Minister Charles Sousa's fall economic statement, PEO was disappointed. PEO has worked on removing this section for years.

"We are shocked the Ontario government has taken this course of action and feel misled by them," said PEO 2015-2016 President Thomas Chong, P.Eng., FEC. "In coming

to its decision, the government held consultations to which PEO was not a party. This is not in keeping with PEO's position as a valued stakeholder that traditionally works in partnership with government to serve and protect the health, safety and economic interests of all Ontarians."

PEO does not believe the repeal is a regulatory burden. It's smart legislation.

Regulations are designed to reduce and manage risks to public safety. Every industry has risks associated with how it operates. Determining which are reasonable and which should be managed through enforceable regulation is the role of government, a principle held by the Honourable Mr. Justice Todd Archibald, who was appointed justice of the Superior Court of Justice in 1999. Between 1992 and 1999 he was a partner at Borden Ladner Gervais LLP and practised in the fields of civil, criminal and environmental litigation. Justice Archibald is a prolific writer and teaches lawyers about key issues in regulation and other fields. His books are required reading for law students, lawyers and regulators. One of his books, co-written with lawyers Kenneth Jull and Kent Roach, is *Regulatory and Corporate Liability: From Due Diligence to Risk Management*. They write extensively about the reasoning behind regulatory law.

Justice Archibald discusses the tragedy at Lac-Mégantic as an example of the failure to anticipate risks and introduce relevant legislation.

"In Canada, only 500 car loads of crude were shipped in 2009, but by 2013 that number jumped to 160,000 car loads," wrote Justice Archibald.

"When domestic North American oil production began to increase rapidly from 2008 onwards, producers starting looking for ways to get their product to refineries across the continent.

"In reality, no additional permissions were required in order to start sending unit trains of oil crisscrossing the country. Under the regulations in force at the time of the Lac-Mégantic derailment, there was no obligation on railways to modify shipping methods, test product volatility, or warn municipalities about the presence of potentially hazardous cargo. There was nothing in the law that differentiated between shipping a single tank car of crude oil or 100 of them."

Public safety is at stake and poor regulation is not something to be taken lightly. The same failure to anticipate regulatory consequences created an inadequate system of oversight and inspection, contributing to the Algo Centre Mall collapse in Elliot Lake.

On June 23, 2012, a segment of the parking deck collapsed at the Algo Centre Mall, sending metal and concrete debris crashing down through two floors of the shopping centre, injuring more than 20 people and resulting in the deaths of two people.

Hindsight shows us the value of filling regulatory gaps. Maintaining the industrial exception opens up the public to avoidable tragedies.

We need to examine how we regulate and understand potential risks that may arise based on what rules are in place. Events like these should underscore the need to evaluate, update and adapt current legislation.

Justice Archibald shows us where simple regulation fixes were overlooked and the consequences for those mistakes. We need to listen to wise counsel. Σ

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