



Position Statement

ISSUE: Provincial Government intrusions into PEO's regulatory authority

PEO POSITION

1. PEO has been established in law under the *Professional Engineers Act* (PEA) for over 80 years and authorized by the Ontario Legislature to regulate the practice of professional engineering in the public interest.
2. PEO has the exclusive legislative powers to issue licences, govern holders, and regulate the practice of professional engineering so the public interest is served and protected. This includes imposing penalties on individuals found to be guilty of professional misconduct or negligence.
3. PEO calls upon the Government of Ontario to adopt processes and procedures to involve PEO early in development of any policy initiative that might have an impact on the regulation of professional engineering practice, or that aims to introduce regulatory instruments to provide public accountability for professional engineering.
4. PEO calls on the Government of Ontario to respect and make appropriate use of the instruments under the PEA to effect public accountability regimes relating to the practice of professional engineering, rather than to impose overlapping external ones.
5. PEO calls on the Government of Ontario to bring to PEO's attention any perceived defects in the PEA, or in the practice of PEO licence holders, before proceeding with unilateral certifications, so PEO can use its regulation-making powers to address the situation, if necessary.

THE ISSUE OF EXTERNAL CERTIFICATION

Under the *Professional Engineers Act* and Regulation 941, PEO is solely responsible for regulating the practice of professional engineering, and is obligated to investigate, conduct hearings and, where necessary, discipline licensees who are found to be guilty of professional misconduct or negligence.

One of the grounds for professional misconduct under Regulation 941/90 is "failure to make responsible provision for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner". [s. 72(2)(d)].

No ministry has presented evidence to PEO of any systemic deficiency in the powers of the *Professional Engineers Act* or in the practice of PEO licensees in Ontario that would warrant creation of certification requirements for PEO licence holders that are outside of and in addition to the qualification requirements of the *Professional Engineers Act*.

Nevertheless, several provincial ministries have produced amendments to legislation under their jurisdiction to introduce additional regulatory control. In some cases, these impositions have taken the form of certification and qualification regimes. In others, legislation has been amended to include definitions of "Qualified/Competent Persons" that apply equally to licensed practitioners, governed and regulated via the statutes of self-regulating professions like engineering, and to unlicensed practitioners.

Such additional regulatory regimes typically create conflict for the established regulatory bodies, and provide questionable enhancements to public protection.

PEO's exclusive jurisdiction to regulate the practice of the province's 75,000 professional engineers and certificate of authorization holders was confirmed in May 2007 by the Ontario Superior Court of Justice when it ruled on PEO's application for judicial review. The association asked the court to interpret the application to PEO licence holders of amendments to the *Ontario Building Code Act* that took effect January 1, 2006. The amendments purported to require professional engineers, as designers, to qualify and register under a Ministry of Municipal Affairs and Housing regime to continue to be able to undertake designs and reviews associated with building permit applications.

In its written ruling the court declared:

1. Article 2.3.1.1 of the Building Code is not authorized by s.34(1)10 of the *Building Code Act* and is invalid to the extent that it purports to allocate responsibility for designs between professional engineers and architects.
2. Article 2.3.1.1(4) of the Building Code is not authorized by s.34 of the *Building Code Act* and is invalid.
3. Clause 1.1(1)(c), subsection 1.1(2), clause 8(2)(c), and subsections 15.11 (5) to (7) of the *Building Code Act* conflict with the exclusive regulatory jurisdiction of the PEO and do not apply to any holder of any licence or certificate issued under the *Professional Engineers Act*.
4. Article 2.17 of the Building Code conflicts with the exclusive regulatory jurisdiction of the PEO and does not apply to any holder of any licence or certificate issued under the *Professional Engineers Act*.

(Note: Renumbering took place in the 2006 Building Code, such that Article 2.3.1.1. of the former Building Code is Article 1.2.1.1. of Division C of the 2006 Building Code; sentence 1.2.1.1.(4) of the former Building Code is sentence 1.2.1.1.(4) of Division C of the 2006 Building Code; section 2.17. of the former Building Code is section 3.2. of Division C of the 2006 Building Code.)

PEO is pleased to note that under amendments to Ontario Regulation 153/04 – Records of Site Condition – Part XV.1 of the *Environmental Protection Act*, filed April 1, 2008 and effective October 1, 2008, holders of a limited licence under the *Professional Engineers Act* have been permanently recognized as qualified persons for the purposes of conducting and supervising environmental site assessments and making certifications in records of site condition filed to the Brownfields Environmental Site Registry.

PEO commends the Ministry of the Environment for recognizing that public protection in Brownfields remediation begins by working within the existing statutory frameworks in Ontario and not by setting up a duplicative regulatory regime under the *Environmental Protection Act*. To this end, PEO is also pleased to note that as a transitional measure the current qualified person provisions of the Regulation will be effective only until March 31, 2009 and that, thereafter, only licensed individuals will be considered qualified persons to conduct and supervise environmental site assessments and to file records of site condition.

Impact on Public Safety

PEO feels strongly that external certification regimes duplicate and thus undermine the existing legal instruments of PEO's professional engineer (P.Eng.), temporary, provisional and limited licences and its protection of public safety. Moreover, they create confusion for the public as to who is responsible for monitoring compliance and performance. This duplication may result in less public safety, not more.

What has PEO done about this?

PEO has challenged the involved ministries on the principle of external certification and its weakening of the powers of the *Professional Engineers Act*. Over the course of several years, PEO Presidents and staff wrote to Ministers and met with Ontario government staff to try to avoid unnecessary intrusion.

PEO's application for judicial review of certain amendments to the Ontario Building Code was intended to clarify the exclusive jurisdiction of self-regulating professions.

PEO's submission re EBR Registry Number 010-2364, Proposal to amend Ontario Regulation 153/04 – Records of Site Condition – Part XV.1 of the *Environmental Protection Act*, was similarly intended to ensure recognition of PEO's jurisdiction over the qualifications and practice of its licence holders.

PEO continues to raise this issue on a regular basis with appropriate decision makers through its Government Liaison Program.