Professional Engineers
Ontario

Action Plan to Implement
the Recommendations from the
External Regulatory Performance Review, 2019

September 2019

Contents

Introduction and Background

In September 2018, PEO's Council approved a motion to have an external regulatory performance review conducted to identify any gaps between PEO's current practices and the process, procedures and policies exhibited by the best regulators. This voluntary initiative was undertaken as part of Council's commitment to ensure that PEO is effectively fulfilling its mandate as set out in the *Professional Engineers Act*.

The independent review was led by Harry Cayton, an international advisor to the United Kingdom–based Professional Standards Authority (PSA), an organization recognized for their expertise in developing international standards for regulatory effectiveness and applying them to professional regulatory bodies around the world. The review assessed PEO's performance against its statutory mandate and legislative requirements, internal policies and the standards of good regulation across its core regulatory functions:

- Licensing and registration;
- Complaints, discipline, compliance and enforcement; and
- Professional standards.

The review did not assess the governance of PEO.

In addition to Mr. Cayton, who served as chief executive of PSA from 2007-2018, the review team comprised Deanna Williams, a former registrar and CEO of the Ontario College of Pharmacists who was also appointed by the provincial government as a supervisor to the College of Denturists of Ontario, as well as Kate Webb, a regulatory policy specialist with over 10 years' experience of oversight regulation.

The report was received on April 30, 2019 and it was the major discussion topic at the annual Council Workshop held May 31 and June 1.

At its June 21, 2019 meeting, Council unanimously passed the following motions:

"That Council direct the Registrar to develop a high-level action plan related to the 15 recommendations contained in the April 2019 report *A review of the regulatory performance of Professional Engineers Ontario* from Harry Cayton, Kate Webb and Deanna Williams for consideration at the September 2019 Council meeting."

"That Council receive the April 2019 report *A review of the regulatory performance of Professional Engineers Ontario* from Harry Cayton, Kate Webb and Deanna Williams, and authorize the Registrar to release it no later than June 27th, 2019.

Communications will be developed and guided by one or more of the following statements as necessary:

- **Voluntary initiative was undertaken as part of PEO Council's commitment to ensure PEO is effectively doing the job as set out in the *Professional Engineers Act***

- **External regulatory review conducted to identify any gaps between PEO's current practices and the process, procedures and policies exhibited by the best regulators**
- **PEO Council is releasing the report to the public at the earliest opportunity following its first official meeting since receiving the report**
- **PEO Council is pleased with the thoroughness of Mr. Cayton's review and the subsequent report**
- **Final report provides 15 recommendations on how to improve PEO's regulatory performance**
- **PEO Council accepts the report in its entirety and is developing an action plan**
- **The report will now serve as the framework to develop a high-level action plan**
- **PEO Council accepts that there is room for improvement and is committed to making the significant changes necessary to enhance PEO's legislative mandate. This is PEO's highest priority for the foreseeable future**
- **PEO Council commits to being open and transparent**
- **Final report helps PEO to refocus the objectives of PEO's Strategic Plan."**

At the June meeting, Council also approved the following motion relating to a Council governance advisor:

> **That Council approve the Scope of Work for a Council Governance Advisor as presented to the meeting at C-528-2.16, Appendix A, for issuance of a Request for Proposal for the remainder of the 2019-2020 Council year.**

The Registrar was subsequently tasked by Council with developing a high-level action plan to implement the recommendations from the external regulatory performance review.

Over the summer, the Registrar and the Senior Management Team developed this plan with the assistance of Shenda Tanchak of Magnetic North Consulting. The resulting plan outlines the organizational transformation required to implement the recommendations while ensuring that a steady state in PEO operations is maintained. The required transformational efforts exceed PEO's current agility and capacity.

With this in mind, and accepting that maintaining the status quo is not an option, this three-year plan was developed as a component of an overall strategy that also includes the following elements:

1. Implementing the structural changes to PEO's operational organization required to produce the capacity and agility needed to achieve the objectives; and
2. Integrating the work of the governance advisor to assist Council in enhancing its governance capabilities.

Change Vision

PEO aspires to become a professional, modern regulator that delivers on its statutory mandate and is supported by a governance culture that consistently makes decisions that serve and protect the public interest.

As a *professional, modern regulator*, PEO will have:

a) Adopted right-touch regulation principles[1] and applied them to all of its work;
b) Professionalized its regulatory practices based on right-touch regulation principles;
c) Focused its resources on delivery of its statutory mandate; and
d) Built a modern IT infrastructure for business practices and the management of confidential information and data security to support its work and increase efficiency.

Delivering on its statutory mandate means that PEO functions as a public interest regulator and not as a professional association.

Governance culture is defined as the mindset, structures, processes, practices and behaviours needed to support PEO's statutory mandate and its ability to serve and protect the public interest, while respecting the separate accountabilities of Council and the Registrar.

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[1] Right-touch regulation means using only the regulatory force necessary to achieve the desired effect. It sees regulation as only one of many tools for ensuring safety and quality and therefore that it must be used judiciously. Professional regulation exists not to promote or protect the interests of professional groups but to enhance public safety and protect the interests of the public. (A review of the regulatory performance of Professional Engineers Ontario, April 2019, page 9)

Guiding Principles

The following guiding principles describe the necessary conditions and ground rules to prepare for and support the action plan.

These principles will serve as the foundation of the plan and be used to help guide PEO's decision-making processes by ensuring that all decisions being considered align with the desired objective and long-term outcomes.

Commitment

- Council affirms its commitment to fully resourcing PEO's core regulatory functions: licensing and registration; complaints, discipline, compliance and enforcement; and professional standards.
- Council endorses the change vision.
- Council will continue to serve as the guiding force and fulfill its fiduciary duties in the execution of the change vision.
- Council will support structural changes as needed to execute the change vision.
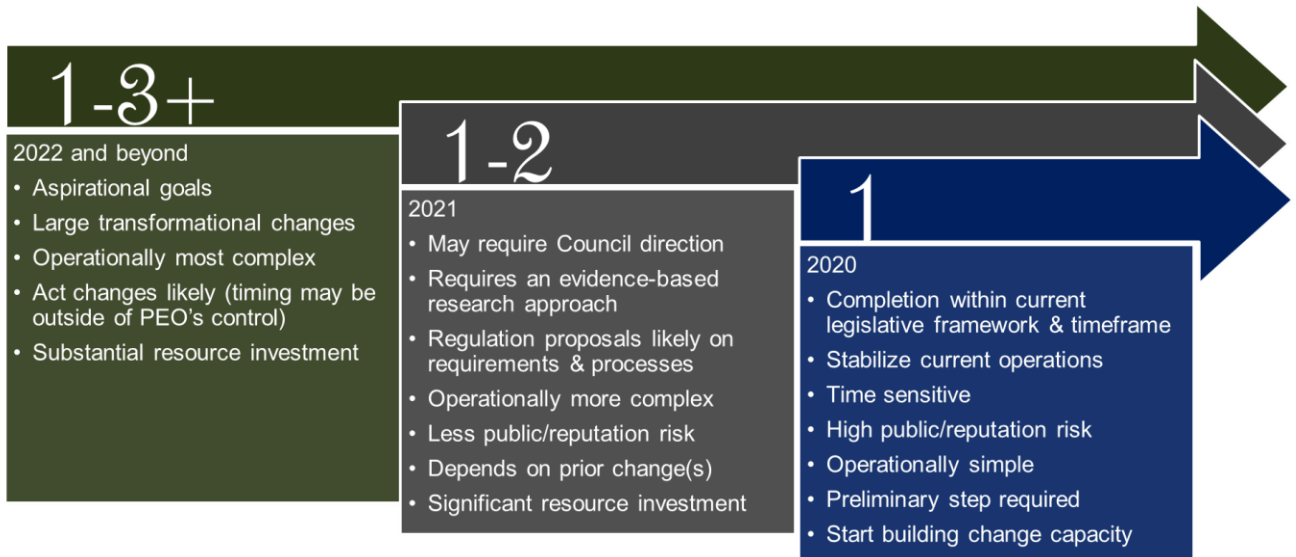
Priority

- Implementing the recommendations is PEO's highest priority.
- Initially, the Registrar will address inefficiencies within the existing operations to bring greater focus to PEO's regulatory role.
- New initiatives outside the scope of the action plan will be considered only after the plan has been fully implemented.

Authority

- Council sets policy and direction.
- The Registrar makes all operational changes within the legislative framework.

Implementation Timeframe for Change Activities and Criteria

The definitions below were assigned to each of the stages of the three-year transition plan.

1-3+

2022 and beyond
- Aspirational goals
- Large transformational changes
- Operationally most complex
- Act changes likely (timing may be outside of PEO's control)
- Substantial resource investment

1-2

2021
- May require Council direction
- Requires an evidence-based research approach
- Regulation proposals likely on requirements & processes
- Operationally more complex
- Less public/reputation risk
- Depends on prior change(s)
- Significant resource investment

1

2020
- Completion within current legislative framework & timeframe
- Stabilize current operations
- Time sensitive
- High public/reputation risk
- Operationally simple
- Preliminary step required
- Start building change capacity

Short-term (less than one year): Activities that can be completed in this timeframe do not require any legislative changes (e.g. process improvements, streamlining, automation, etc.). These activities reduce inefficiencies, are time sensitive and may need to start before other activities can begin. They are intended to help stabilize and modernize current operations.

Medium-term (1-2 years): Activities that likely span 1-2 years to implement as they could require Council direction/decisions that may include regulation changes. These types of activities will necessitate an evidence-based approach with research and data review, leading to regulation proposals that are founded on right-touch regulation methodology. These activities are operationally more complex than those in year one and may require additional resources.

Long-term (3 years and beyond): These activities represent changes that are operationally complex and may require a substantial resource investment. They likely require Act amendments. Aspirational goals could be included in this category (e.g. a modern Act, new licensure models, entity regulation, Canadian experience alternatives, reinstatements, non-practising class of licences, specialist designations, etc.).

Objectives and Key Steps

For each of the 15 recommendations in the Cayton report, an identified problem, objective and key activities were developed to direct the implementation process.

Identified problem(s)—Each identified problem describes an issue to be addressed or a condition to be improved upon that resulted in the recommendation.

Objective—Each objective is a high-level statement that outlines the desired outcome and will position PEO as a modern, effective regulator acting in the public interest.

Key steps—The key steps are actions, not goals, since that presumes the solutions needed to achieve the objectives are known before hand. Each key step is assigned to either Council or the Registrar. Council is responsible for approval of PEO policies, approval of finances, and Council-related issues, such as governance policies. The Registrar is responsible for all other activities.

Recommendation 1	PEO should review all its committees, subcommittees and working groups to ensure they are both necessary and fit for a regulatory purpose (3.28-3.36).
Identified Problem(s)	PEO has committees, subcommittees and working groups that may not serve or be able to fulfill a regulatory function.
Objective	PEO's human resources carry out its governance and regulatory activities efficiently and produce measurable outputs to fulfil the obligations mandated by the Act, regulations and bylaws.
Key Steps	1. Registrar will create, for Council approval, a tool for analyzing the activities and responsibilities of all PEO committees, subcommittees and working groups in relation to PEO's regulatory obligations. 2. Registrar will evaluate, using the approved tool, and report to Council the regulatory necessity of each committee, subcommittee and working group. 3. Registrar will prepare for Council's approval an implementation plan pertaining to changes required as an outcome of the review.

Recommendation 2	PEO should clarify the roles of Council members, staff and volunteers. It should delegate more operational decision-making and responsibility to executive staff and streamline its internal accountabilities, policies and procedures (3.17-3.27).
Identified Problem(s)	The delineation between operational and governance roles and responsibilities, and accountabilities is not well defined. Council and volunteers are inappropriately involved in operational issues.
Objective	PEO is governed by policies that clearly define and respect the distinctive roles and responsibilities of Council, staff and volunteers.
Key Steps	1. Governance Advisor role created and filled (per Council direction in June 2019). 2. At each meeting over the next year or more, Council will consider elements of its governance materials that require revision: for example, roles and responsibilities and other governance policies (including a Code of Conduct with a compliance process). 3. Registrar will arrange for ongoing training for councillors, staff and volunteers on their roles and responsibilities.

Recommendation 3	PEO should consider if its Chapters are either necessary or desirable in delivering its functions as a regulator and should redirect its financial support for them to its core regulatory functions and activities (3.17-3.21).
Identified Problem(s)	Chapters' activities do not fulfill a statutory role and divert PEO's attention and resources from its regulatory mandate.
Objective	PEO has completed a comprehensive review of all chapters' activities to determine which activities are regulatory or association functional roles and has made the necessary decisions.
Key Steps	1. Registrar will create, for Council approval, a tool to analyze chapter activities. 2. Registrar will carry out a comprehensive review of all chapters' activities using the approved tool and make recommendations to Council.

Recommendation 4	*PEO should implement all the recommendations of the OFC in his report of 2014 and his subsequent letters. It should consider the way it uses negative language about everyone who is not a licensed P.Eng. and describe people as what they are rather than as what they are not (3.37, 4.10–4.27).*
Identified Problem(s)	PEO is still not fully compliant with the OFC's 2014 recommendations and subsequent letters for improvements in its licensing process. PEO uses negative language to refer to persons who are not licensed.
Objective	PEO is in compliance with the Ontario Fairness Commissioner's 2014 recommendations and subsequent letters. PEO does not use negative language to refer to persons who are not licensed professional engineers.
Key Steps	1. Registrar implements an objective, psychometrically valid, digital professional practice examination. 2. Registrar implements and enforces a policy applicable to staff and volunteers to prevent bias in all licensing and registration processes. 3. Registrar develops a protocol to deal with internal reviews. 4. Registrar implements a system for responding to applicant inquiries and requests in a timely manner. 5. Registrar implements and enforces a policy applicable to all PEO staff and volunteers on use of appropriate language to refer to persons who are not licensed professional engineers.

Recommendation 5	The process for application for a professional engineering license should be simplified and speeded up, the discriminatory aspects of written examinations, a Canadian year of experience and face to face interviews should be discarded. Appeals against refusal of licence should be made available on request of the applicant, who should be provided with legal support in the event of an appeal hearing (4.16–4.27).
Identified Problem(s)	PEO's current licensing process is lengthy, complex, inherently subjective, still largely paper-based and is not fully aligned with the statutory requirements.
Objective	PEO's licensing process is straight-forward, timely, objective and commensurate with the existing *Professional Engineers Act* and its regulations.
Key Steps	1. Registrar identifies and implements changes to simplify, accelerate and limit subjectivity in the licensing process within the constraints and capabilities of existing technology and regulations. 2. Registrar identifies gaps between the existing licensing and registration procedures and current statutory requirements, including any FARPACTA[2]-compliance issues. 3. Registrar develops a plan for Council approval to address the gaps identified in step 2.

Recommendation 6	PEO should review and revise all its current licensing categories and designation and eliminate those that do not directly contribute to protection of the public/serving the public interest (5.9).
Identified Problem(s)	PEO's current licensing and designation categories are in need of a review against the principles of right-touch regulation to ensure that they serve and protect the interests of the public.
Objective	PEO provides licences and designations for the sole purpose of serving and protecting the public interest. All licences and designations will have qualifications and ongoing requirements to ensure that risk to the public interest is mitigated.
Key Steps	1. Registrar undertakes a comprehensive review of existing categories of licences, designations and certifications to identify how they contribute to the protection of the public interest. 2. Registrar proposes, for Council approval, changes to existing legislation to eliminate or fix those licences, designations or certifications that do not serve and protect the public interest. 3. Registrar initiates the necessary change process.

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[2] *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*

Recommendation 7	The public register of licensed engineers and other public directories published by PEO must be complete and kept up-to-date. Currently they are neither (4.6, 4.33–4.36).
Identified Problem(s)	The information contained in PEO's public register of licensed engineers and other public directories is inconsistent, incomplete and not up-to-date. This situation undermines public confidence in PEO.
Objective	PEO's registers and public directories of licensed engineering practitioners and of Certificate of Authorization holders are complete, accurate, current, accessible and displayed in a manner understandable by the public.
Key Steps	1. Registrar to undertake a gap analysis and identify any legislative changes that are required 2. Registrar to develop an implementation plan and implement changes. (Note: This action may be contingent on completion of recommendation #13)

Recommendation 8	Licensed engineers employing another engineer should be required as a matter of good practice to check their registration status. PEO should promote to employers and the public the value of checking the register before engaging an engineer (4.37–4.38).
Identified Problem(s)	Employers or supervising engineers are not currently expected to check the status of licence holders or C of A holders to ensure those they hire are licensed and in good standing. PEO does not conduct outreach to employers or supervising engineers on this matter.
Objective	Licensed engineering practitioners are required to use the public register to check registration status before engaging another engineer.
Key Steps	1. Registrar to report to Council on the need, if any, for practice guidelines or standards to facilitate this recommendation. 2. Upon completion of recommendation #7, the Registrar will implement a communications plan informing licensed engineering practitioners of this guideline or standard.

Recommendation 9	PEO should establish a formal process for keeping engineering standards up to date and relevant to contemporary practice in all the fields of engineering that it aims to regulate. PEO should engage fully with setting standards as well as with guidance. PEO should be clear about the enforcement of guidance in complaints and discipline (4.103–4.108, and recommendation 11, below).
Identified Problem(s)	PEO's current practice guidance documents are primarily guidelines, which are not consistently enforced in the Complaints and Discipline Process, with only a few standards in the regulation. There is no consistent process for regularly reviewing and changing practice standards.
Objective	PEO's standards of practice address areas of highest risk and are directed to protecting the public interest. The role of practice guidelines as a basis for establishing a standard of care is clearly and universally understood.
Key Steps	1. Registrar to implement a process for reviewing and revising existing standards modelled on periodic regulatory review processes used by governments. 2. Registrar will investigate enforceability of PEO practice guidelines.

Recommendation 10	PEO should revise its PEAK program to ensure it is proportionate and outcome focused and achievable by licensed engineers. It should then make participation in this CPD program mandatory for licensed engineers (4.39–4.42).
Identified Problem(s)	Mandatory participation of regulated professionals in a continuing professional competency program with corresponding assessments to validate results represents international best practices. Council has not made participation in CPD mandatory.
Objective	PEO assures continuing practitioner competency through an appropriate mandatory continuing professional development program.
Key Steps	1. Registrar to provide, for Council approval, the legislative framework needed to implement a mandatory continuing professional development program. 2. Registrar to create and implement a mandatory CPD program, that is pedagogically sound, has measurable and achievable goals, and is proportionate to the need to maintain public trust in the profession. 3. Registrar to consult with and educate PEO licence holders on matters dealing with continuing professional development program.

Recommendation 11	PEO should review its approach to complaints and discipline. In particular, it should:
	• *take a more confident approach to the interpretation of its legislation, seeking to protect the public rather than itself (4.46–4.52)*
	• *enforce guidance (4.105)*
	• *pay more regard to professional conduct and ethics, as breaches of these bring the profession and its regulator into disrepute (4.56–4.57)*
	• *be more active in bringing its own complaints (4.46)*
Identified Problem(s)	PEO's complaints and discipline process does not efficiently deal with frivolous and vexatious complaints, including complaints against staff and volunteers. At the same time, it is insufficiently transparent and inconsistent in dealing with issues of professional misconduct.
Objective	PEO's complaints and discipline system is risk-based, efficient and demonstrates best practices in protecting the public interest.
Key Steps	1. Registrar to conduct gap analysis and identify changes that can be made within the existing regulatory and legal framework, and implement the necessary changes.
	2. Registrar to identify any changes that require alteration of existing legislation, draft proposed changes, and provide, with supporting documentation, to Council for approval.

Recommendation 12	*Members of the COC and the DIC should not be drawn from the members of the Council. The members of these committees must be able to make judgements independent of the interests of PEO's Council (3.15, 4.78, 5.11).*
Identified Problem(s)	Councillors who also are members of the Complaints or Discipline Committee (whether on panels or not) are inherently in a conflict of interest.
Objective	No current members of PEO Council are also members of the Complaints Committee or the Discipline Committee.
Key Steps	1. Council to take the appropriate steps to comply with the recommendation by not appointing councillors to the COC.
	2. Council to invoke its Act Change Protocol to comply with the recommendation regarding the DIC.

Recommendation 13	*PEO should commission a full digital strategy for the organization. This should include implementation of an electronic case management system and a database to manage licensing and CofA applications, CPD and complaints and discipline. It should aim for automation of processes. In the meantime, it must improve the security and confidentiality of paper files (3.40, 4.17, 4.100-4.101).*
Identified Problem(s)	The organization's operations are still largely paper-based and many of the existing business rules are not readily conducive to implementing a digital strategy. For example, licensing applications and complaints cannot be filed online, files are scanned for storage only after all requirements for licensure are met and the files are considered complete. Files generally are insecurely stored; this does not comply with modern best practices in terms of the management of confidential information and investigation and prosecutorial data security.
Objective	PEO operations are compliant with a digital strategy that increases efficiency, fully supports its mandate and business activities, and mitigates confidentiality and security risks.
Key Steps	1. Registrar to take immediate steps to ensure security and confidentiality of paper files. 2. Registrar to develop a digital strategy and incremental implementation plan for Council approval.

Recommendation 14	*PEO should work with the Attorney General's office to seek changes to its statute to modernize its organization and regulatory powers (for example, 4.58, 4.62, 4.63, 4.85).*
Identified Problem(s)	PEO has limitations in its statute and regulations that need to be addressed in order to modernize its organization, such as a defined process for dealing with member impairment, mandatory response by a complained against licence holder to a request for information or action, lack of interim suspension powers by the DIC or COC.
Objective	The *Professional Engineers Act* and its regulations are exemplars of modern, evidence-based, right-touch regulation
Key Steps	1. Registrar maintains an ongoing relationship with the Attorney General to identify opportunities to introduce changes to existing legislation. 2. Registrar develops a comprehensive list of evidence-based regulation and legislative changes required, prioritizes these and identifies the opportunities to make changes. 3. Council invokes its Act Change Protocol and Regulation Change Protocol as required.

Recommendation 15	Council should assess and implement these recommendations. It should require an action plan and time-frame for implementation from its executive staff. When it approves the action plan, Council should commit the necessary resources to deliver it (5.19).
Identified Problem(s)	PEO has failed to effectively and efficiently fulfil its public protection mandate.
Objective	The action plan prepared by the Registrar has been approved by Council and a new strategic plan is in place.
Key Steps	1. Council to approve this action plan. 2. Council initiates a strategic planning process to implement the action plan. 3. Registrar leads strategic planning process.