

*At its regular meeting on November 19<sup>th</sup>, 2010 PEO Council passed a motion to suspend the additional requirements it had previously established under Ontario's Labour Mobility Act on the recommendation of PEO's Mobility Task Force. Following this decision, the Registrar directed Licensing and Registration staff to license immediately, without further assessment, all applicants who are already licensed in another Canadian jurisdiction. As a result, some thirty (30) "transfer" applications that were in the process or being assessed against PEO's academic or experience requirements were approved.*

*It is likely that some of these applications would have been approved in due course without the applicants having to demonstrate further that they meet PEO's requirements for licensure, while others would have been assigned examinations or interviews. Licensing and Registration staff estimate that PEO licenses each year approximately three hundred (300) transfer applicants (already licensed in another Canadian jurisdiction). Of these, approximately sixty (60) transfer applications per year receive additional assessment pursuant to PEO's "additional requirements" because they have been licensed for fewer than five years - the threshold that has historically triggered additional scrutiny. PEO's licensing system does not track accurately how many of those applicants are actually required to do anything further to demonstrate that they meet PEO's requirements for licensure, or how long it takes them to do so. Over the past several years, very few transfer applicants have complained that their licensure was delayed or denied.*

**This November 19<sup>th</sup> Council decision was a serious error that materially undermines PEO's ability to regulate engineering in Ontario in the public interest through licensure.**

**On behalf of all those who care about the integrity of PEO's licensing requirements and processes, I am asking that Council take the following actions at its earliest possible opportunity:**

- (i) Rescind its November 19<sup>th</sup> decision and reinstate the additional requirements as set out on PEO's website prior to November 19<sup>th</sup> until such time as recommendation (ii) that follows is implemented in the Regulations;**
- (ii) Include in any licensure-regulated Regulation changes approved by Council the exceptions that exist in the current version of the draft regulation changes (14-TK) at Section 33.(3)(c) and (d) - which are less stringent than the additional requirements in force prior to November 19<sup>th</sup>;**

- (iii) **Direct the President to meet with the Attorney General of Ontario at the earliest opportunity to explain to him why it is necessary in the public interest for PEO to maintain the additional requirements until such time as all Canadian jurisdictions adopt a common set of licensing criteria and processes that are at least equivalent to PEO's current requirements.**

### **Rationale – Why PEO Needs Additional Requirements**

The Canadian engineering community prides itself in the fact that it addressed the issue of national mobility of P.Eng. licensees long before labour mobility was on any government's radar screen. An Inter-Association Mobility Agreement (IAMA) signed by all constituent associations of Engineers Canada (CCPE) has been in force since 1999. Since then, over 23,000 Canadian professional engineers have applied for licensure in a new jurisdiction under that agreement.

*It is worth noting, however, that there is currently nothing in the professional engineers act or regulations of most jurisdictions, including Ontario, that supports mobility or special treatment for "transfer" applicants. For this reason, PEO's Licensing Process Task Force (LPTF) recommended to Council, and Council agreed, that such a provision be added to Ontario Regulation 941 under the Professional Engineers Act. It is currently included in Version 14-TK of the draft regulation changes being finalized for Council approval, at Section 33.(3).*

Under this agreement, the vast majority of applicants for licensure in any Canadian jurisdiction who are already licensed in another Canadian jurisdiction (so-called "transfer applicants") receive their licences in a matter of days without further assessment of their qualifications. This approach is possible because the engineering licensing bodies in all Canadian jurisdictions have similar requirements for licensure (at least for the unlimited / unrestricted P.Eng. licence).

There are, however, certain "exceptions" to automatic licensure of transfer applicants. These exceptions stem from material differences in the way that different jurisdictions interpret their requirements and/or assess applicants against them. In fact, there exist material differences in both the licensing processes, and the requirements for licensure themselves, between jurisdictions.

Examples of these differences include:

- **The length of experience required to meet the experience requirement**  
Quebec requires a total of three (3) years of engineering experience; all other jurisdictions require four (4) years.
- **The assessment of academic credentials**

Larger jurisdictions like PEO have [academic requirements or examinations] committees or boards that assess the academic credentials of applicants who are not graduates of [CEAB] accredited Canadian engineering programs. When the depth or breadth of the applicant's engineering education is in question, they may require the applicant to pass examinations to demonstrate that he/she meets the [implied] knowledge requirement for competent professional practice. Other jurisdictions do not have the volunteer or staff resources necessary to perform this function, and so rely instead on the so-called "CCPE List" of foreign academic institutions that are considered to offer credible engineering programs. PEO has never accepted the CCPE List or used it to determine if non-CEAB applicants meet its academic requirements.

- **The treatment of mutual recognition agreements (MRAs) entered into by Engineers Canada**

Most Canadian jurisdictions honour certain agreements negotiated between Engineers Canada and foreign engineering bodies, which provide for mutual recognition by the parties of each others' members' academic credentials, and in some cases experience. PEO has not accepted any such mutual recognition agreements, because the foreign jurisdictions involved do not license engineers in a comparable manner to Canada, if at all.

- **Local requirements**

Some jurisdictions impose additional requirements on applicants for licensure to address special conditions that prevail in their jurisdiction. For example:

- British Columbia (APEGBC) requires applicants for licensure as structural engineers to demonstrate competence in seismic engineering, because of the Province's susceptibility to earthquakes;
- Alberta (APEGGA), British Columbia (APEGBC), NWT and Nunavut (NAPEG) and Yukon (APEY) require their applicants for licensure to demonstrate knowledge of conditions and practices related to engineering in permafrost.

These requirements apply to all applicants, including those already licensed in another Canadian jurisdiction, notwithstanding the Agreement on Internal Trade.

- **The insistence on Canadian experience**

As part of an effort to achieve reciprocity in licensing of professional engineers within the Pacific North West Economic Region (PNWER) - which includes Alberta, British Columbia and Yukon Territory in Canada, plus the states of Alaska, Idaho, Montana, Oregon, and Washington in the United States - the Association of Professional Engineers, Geologists, and Geoscientists of Alberta (APEGGA) automatically licenses professional engineers who are already licensed in the PNWER states without requiring them to meet its published requirements, including the requirement for 12 months of Canadian experience under the supervision of a licensed professional engineer.

- **Interviews**

PEO permits foreign-trained applicants with at least five (5) years of documented engineering experience to request an interview with a panel of its Experience Requirements Committee (ERC) in order to demonstrate that:

- they have sufficient knowledge of the scientific and engineering principles underlying their discipline to be exempted from confirmatory examinations; or
- their foreign experience meets 36 months of the total experience requirement (i.e., all they are required to complete is the 12 months of supervised Canadian experience).

No other Canadian jurisdiction uses interviews in this way, as the other jurisdictions do not support waiving of assigned confirmatory examinations.

These are some of the more substantive inter-jurisdictional differences in Canadian engineering licensure. They are not trivial or inconsequential. And they are not about to go away any time soon, as some have irresponsibly suggested, as a result of current discussions around a possible common national framework for licensure. The differences cited above are deeply entrenched in the rubrics – and in some cases the enabling legislation - of the various provinces and territories, and cannot be changed quickly or easily. It is worth noting that professional regulators in other Canadian jurisdictions are not similarly encumbered; since no other jurisdiction has passed any legislation pursuant to the Agreement on Internal Trade. So national mobility is clearly a one-way street in which Ontarians, and Ontario regulators, are disadvantaged over their counterparts in other provinces and territories.

When the Ontario Government passed the Labour Mobility Act in December of 2009, PEO Council established a National Mobility Task Force, of which I was a member, to recommend a response. The Task Force recommended that Council establish and publish on its website, as required under the Act, additional requirements that transfer applicants would have to demonstrate they meet beyond simply demonstrating that they are already licensed in another Canadian jurisdiction. The Task Force's underlying position was that PEO should not license automatically any applicant under a mobility agreement that it would not license if the applicant applied to PEO without already being licensed elsewhere, on the grounds that to do would result in inequitable treatment of applicants (different requirements for different classes of applicants) and would undermine PEO's requirements for licensure that it imposes on all other applicants.

The default premise behind the Mobility Act is that the licensing body should not require an applicant already licensed in another jurisdiction to demonstrate that he/she meets all of that body's normal requirements for licensure. That premise is, in turn, predicated on the assertion that all Canadian [engineering] licensing bodies have substantively the same requirements and assess applicants against them in substantively the same manner. But as we have already seen, this assertion is incorrect. Of course that does not mean that the transfer applicant would not meet all the requirements to be licensed in the "receiving" jurisdiction; it simply means that further inquiry into the background of the applicant may be required. That is what the "additional requirements" are intended to accomplish. They are not additional qualifications that the transfer applicant must

meet; rather they are additional information [beyond proof that the applicant is already licensed elsewhere] that PEO must obtain either from the applicant or from the other jurisdiction. For instance:

- Does the applicant have at least 12 months of Canadian experience?
- How did the applicant meet the academic requirement in the other jurisdiction?
- Was the applicant previously denied licensure by PEO, and if so, what has changed since then? (i.e., is the applicant trying to get licensed in Ontario via the “back door”?)

Since the same application form is currently used for all applicants for [P.Eng.] licensure, and since all Canadian engineering licensing bodies share information on applicants with the applicants’ consent, it is generally not difficult or time consuming to determine the answers to these questions.

Finally, the Mobility Task Force believed that the additional requirements are reasonable and necessary in order for PEO to protect the Ontario public by ensuring that transfer applicants, like all other applicants, will be able to practise competently in Ontario.

### **Why PEO Should Insist the Ontario Government Respect its Additional Requirements**

I believe PEO should be prepared to “go to the wall” over this issue. To simply capitulate to a threat of government interference and suspend the additional requirements, as Council did in November, is to cede responsibility for licensing professional engineers in the public interest to incompetent bureaucrats. And since licensure is still PEO’s main method of “regulating the practice of professional engineering in the public interest”, it begs the question why we should continue in existence as a professional regulator. Since we have little in the way of practice standards and guidelines relative to the scope of modern engineering practice, and since we do not require licensees to demonstrate their continuing competence, how exactly do we accomplish our mandate, other than through the complaints and discipline process?

Some have suggested that licensing a small number of applicants who do not or may not meet our requirements for licensure is not likely to affect public safety or well-being significantly, and that we can always fall back on the complaints and discipline process for any problems that occur with them. But that is a specious argument because:

- (i) Our Canadian regulatory model is designed to prevent problems before they occur, not assign blame after they occur (as is the preferred approach in jurisdictions like the U.S.A. and France.);
- (ii) It ignores the fundamental principle on which the Canadian self-regulating professions are based, namely that members of the professions know better than any government official what is necessary for competent practice, and how to ensure competency.

We cannot afford to accept incursions of this nature into PEO's regulatory mandate without fighting back. If the Government of Ontario really believes it knows better what is required for competent engineering practice, then it should revoke our mandate and license professional engineers itself as is done in the United States, not interfere without justification in the affairs of the independent delegated authority it created.

I want Council to direct the President to meet with the Attorney General of Ontario to explain to him why we cannot and should not dispense with our legitimate additional requirements, and get him to agree to call off his [colleague's] troops and leave us alone. We also need his agreement to enshrine the additional requirements in the proposed licensure-related Regulation changes now being finalized.

If he refuses to do so, then PEO should:

- Take the matter public with a press release explaining that the Ontario Government is interfering with our ability to protect the public interest by forcing us to license applicants without verifying that they meet our legitimate requirements for licensure. This is an election year in Ontario, and I do not believe the Liberal government will want to give its opposition any ammunition, especially when there is no fundamental political issue at stake (i.e., it is just bureaucratic interference).
- Defer further consideration and approval of the licensing-related regulation changes until after this fall's provincial election.

Here are some salient arguments to be used with the Attorney General as to why PEO's additional requirements must stand until they are no longer required because inter-jurisdictional licensing differences have been eliminated.

**1) National mobility does not trump public safety**

The Labour Mobility Act even says so in its preamble.

**2) National mobility is a two-way street**

A few years ago, when Quebec projects refused to employ Ontario contractors and construction workers while Ontario projects remained open to Quebec firms and workers, the Ontario Government passed the Fairness Is A Two-Way Street Act. Today, we are in precisely the same position with respect to licensed professionals. Ontario is the only Canadian jurisdiction to enact legislation to implement the AIT; regulators in other provinces continue to treat applicants already licensed in Ontario according to their established procedures and requirements. Ontario professionals and Ontario regulators are being unfairly discriminated against by their own government.

**3) National mobility of licensed professional engineers was long established and already working well before the Labour Mobility Act**

Over 90% of applicants for licensure as professional engineers in Ontario who are already licensed in another Canadian jurisdiction receive their Ontario licences quickly and without additional scrutiny, and have no complaints about

the application process. Fewer than 10% receive additional scrutiny, and even fewer are asked to demonstrate further that they meet PEO's established requirements for licensure.

**4) The proposed application of the Labour Mobility Act offends the Fair Access To Regulated Professions Act**

The Ontario Government's Fair Access To Regulated Professions Act, passed in 2006, attempted to ensure that all applicants for licensure in Ontario are treated equally in terms of basic requirements. PEO's so-called "additional requirements" are not actually additional requirements for "transfer" applicants; rather they are restatements of requirements that apply to all applicants for licensure in Ontario, to ensure that all applicants are treated equally and fairly. To do away with the additional requirements has the effect of lowering the admission requirements for transfer applicants, after which it is only a matter of time before some regular applicant not licensed in another jurisdiction complains that he/she is being held to a higher standard.

**5) MCU staff are not competent to rule on licensing requirements**

It is offensive in the extreme that staff in the Ministry of Colleges and Universities - which does not regulate any profession and has no responsibility for public safety - should express any opinion with respect to requirements for professional licensure. Such matters should be left to the delegated authorities established by government to regulate the professions, who know what licensing requirements are necessary to protect the public interest.

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