ONTARIO SOCIETY OF PROFESSIONAL ENGINEERS

RE: Recommended Changes to *the Professional Engineers Act*

Dear Honourable Members of the Standing Committee on Social Policy,

The Ontario Society of Professional Engineers (OSPE) is the advocacy body and voice of the engineering profession. Ontario currently has over 85,000 licensed professional engineers who contribute to the social, environmental, and economic welfare of Ontario.

Professional Engineers Ontario (PEO) is established under the *Professional Engineers Act* (the Act), legislation that falls under the responsibility of the Ministry of the Attorney General (MAG). The Act grants the engineering profession the privilege and powers of self-regulation, but the last major revision to the Act was in 1984.

Some amendments were made in 2017, to address a few of the recommendations from the Elliot Lake Commission of Inquiry arising from the Algo Centre Mall collapse. The Act does not reflect the recommendations arising from the 2019 Coroner's Inquest into the death of Scott Johnson, as a result of the Downsview Park Radiohead concert stage collapse. OSPE supports and understands the need for a strong and focused engineering regulator in Ontario, but PEO has yet to address several known and clearly identified regulatory issues.

PEO is currently undergoing a governance review and is considering changes, based on recommendations from the External Regulatory Review Report conducted by the Professional Standards Authority in 2019. As part of these changes, PEO has announced that it will move forward with mandatory continuous professional development (CPD). OSPE has been an avid advocate of mandatory CPD, and we are pleased with this commitment from PEO. However, we would like to emphasize the urgency of this, as PEO is the only engineering regulator in Canada that does not have a mandatory CPD program. This poses a public safety risk but also an economic risk, as Canada could be removed from the International Engineering Alliance, which will impact the ability of Canadian engineering firms to do business overseas. As an exporter of engineering talent, this is problematic and will inevitably lead to economic losses for the province and the country.

PEO's Chief Legal Counsel conducted a review of all PEO's activities and identified a number that are, although permitted under the Act, not appropriate for a regulator to perform. As a result, PEO Council has or is planning to implement several structural and regulatory changes to its governance and operations. For your convenience, we have included these as an appendix at the end of this document.

To support this change effort, the Act needs to be amended. OSPE is presenting several recommendations for changes that will properly serve and protect the public interest and reduce red tape for applicants and engineering businesses. These recommendations come as a result of ongoing engagement between OSPE and the Ministry of the Attorney General. These recommendations are intended to strengthen PEO's ability to regulate the practice of professional engineering.

OSPE is proposing the following amendments to the Act:

1. Regulatory Focus

Recommendation: Amend Section 2 of the Professional Engineers Act by removing Section 2(3) and 2(4) of the *Professional Engineers Act* and replace these with the following:

General duty and responsibilities of the Association[1]

2(3) It is the general duty of the Association at all times to

a) serve and protect only the public interest with respect to the exercise of a profession, professional governance and the conduct of licensed engineering practitioners in the regulated practice, and
b) exercise its powers and discharge its responsibilities in the public interest.

2(4) The role of the Association is restricted to the following responsibilities:

a) to regulate the practice of professional engineering;
b) to preserve and protect reserved titles or reserved practices, as applicable, in the public interest;
c) to guard against the unlawful use of reserved titles or the unlawful practice of reserved practices;
d) to govern the licensed engineering practitioners according to this Act, the regulations and the bylaws;
e) to establish the conditions or requirements for licensing of a person as a licensed engineering practitioner;
f) to establish, monitor and enforce standards of practice to enhance the quality of practice so that licensed engineering practitioners avoid
    a. professional misconduct,
    b. conduct unbecoming a licensed engineering practitioner, and
    c. incompetent performance of duties undertaken while engaged in the regulated practice;
g) to establish and maintain a continuing competency program, including, but not limited to continuing professional development, to promote high practice standards for licensed engineering practitioners;
h) to establish, monitor and enforce standards of professional ethics among licensed engineering practitioners;
i) to establish and employ licensing, investigation and discipline procedures that are transparent, objective, impartial and fair;
j) to establish and employ assessment criteria and processes for the purpose of verifying that licensing, investigation and discipline procedures are transparent, objective, impartial and fair;
k) to administer the affairs of the regulatory body and exercise its powers and perform its duties under this Act or other enactments; and
l) any other responsibility that the Lieutenant Governor in Council may prescribe.

2(5) The Association shall establish and maintain only those committees, task forces, working groups, and other organizational structures needed

[1] This section is based on a similar section contained in the *Professional Governance Act* of British Columbia.

for the purposes of 2(4), and shall eliminate all those that are unnecessary within one year of the promulgation of these amendments.

2(6) The Association shall only act in an advocacy role in accordance with this Act and in accordance with rules, conditions or limits prescribed by the Lieutenant Governor in Council.

Rationale: The objectives of the Act in section 2 do not provide sufficient direction and constraint on how the Association should govern practitioners and regulate the practice. The external regulatory review noted that PEO has too many committees that generate a huge amount of administrative workload and cost while providing no benefit to the regulatory purpose. The reviewers recommended that Council review all existing committees and eliminate those that have no regulatory purpose. An internal review has been conducted; however, there are some challenges to remove non-regulatory or duplicative committees and task forces.

2. Cease Regulating the Consulting Engineer Title
Recommendation: Repeal Section 7(1)23 and amend regulation 941 to revoke Sections 56-71 inclusive.

Rationale: PEO's "consulting engineer" designation framework does not provide public interest protection beyond that which is already provided by the P.Eng. licence for individuals and the Certificate of Authorization for engineering businesses. PEO's "consulting engineer" framework is voluntary, and it does not convey an exclusive scope of practice beyond that of any other licensed professional engineer. Moreover, as Ontario is the only jurisdiction to regulate this title, this additional level of regulation adversely impacts labour mobility, the ability for businesses to operate across jurisdictions, and adds to the red tape burden these professional engineers and businesses already face. This recommendation is supported by the Association of Consulting Engineering Companies – Ontario (ACEC-Ontario) formerly known as Consulting Engineers Ontario (CEO).

3. Backstopping PEO Accountability through Ministerial Action
Recommendation: Amend Section 6 to read as follows:

6 (1) In addition to the Minister's other powers and duties under this Act, the Minister may,

(a) review the activities of the Council and require the Council to provide reports and information;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Act, the regulations and the by-laws and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations, by-laws and procedures;

(d) direct the Council to make, amend or revoke a regulation.

(2) If the Minister requires or directs the Council to do anything under subsection (1), the Council shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report to the Minister respecting the compliance.

(3) If the Minister directs the Council to make, amend or revoke a regulation under clause (1) (d) and the Council does not do so within the time specified by the Minister, the Minister may make a regulation to do the thing directed of the Association under clause (1) (d).

(4) For the purposes of subsection (3), the Minister may make a regulation with respect to any matter that the Council may make a regulation under section 7.

(5) If there is a conflict between a regulation under section 7 and a regulation made under subsection (3), the regulation made under subsection (3) prevails.

(6) The Council shall ensure that a copy of each regulation made under subsection (3) is available for public inspection in the office of the Association

Rationale: PEO has been informed repeatedly that it needs to make changes to its regulations, especially in relation to its licensing requirements and processes, to be an effective regulator. The External Regulatory Review, the OFC reports, the Elliot Lake Commission of Inquiry, and the Coroner's Inquest from the Radiohead stage collapse, and the recent Anti-Racism and Anti-Discrimination Report are only some examples of where PEO has been asked to make changes. These regulatory changes have been resisted by internal PEO committees, specifically the Academic Requirements Committee and the Experience Requirements Committee, who continue to defend the status quo and fail to acknowledge PEO's identified regulatory deficiencies. As a result, OSPE is recommending that the *Act* be amended to provide the Minister with powers to assist PEO in moving past existing governance obstacles and enact the necessary changes.

4. Grants, Scholarships, Bursaries & Prizes

Recommendation: Repeal sub-paragraphs 8(1) 20 and 8(1) 21

Rationale: As the regulator responsible for developing, establishing, and maintaining the standards of knowledge and standards of qualification (including academic qualifications) for the profession, it is inappropriate for PEO to be involved in the awarding of such grants, scholarships, bursaries, and prizes. These activities do not serve PEO's mandate and pose a risk for conflicts of interest.

5. Employment Advisory Service / Voluntary Retirement Savings Plan

Recommendation: Repeal sub-paragraph 8(1) 23.

Rationale: Sub-paragraph 8(1) 23 of the *Act* gives PEO the power to pass by-laws providing an employment advisory service and for the continuance of the voluntary retirement savings plan. When OSPE was created in 2000, it was agreed between PEO and OSPE that the provision of employment advisory services was non-regulatory in nature and would fall to OSPE. OSPE currently operates an employment advisory service through the Career Services Portal on its website. PEO does not have a voluntary retirement savings plan for its licence-holders, hence it would be impossible to pass a by-law for the "continuance" of such a plan.

6. Provide for a Single Type of Certificate of Authorization (C of A)

Recommendation: Repeal Paragraph 15(2) and delete the word "standard" from Paragraph 15(3).

Rationale: At present, the *Act* provides for two types of Certificates of Authorization – "general" and "standard" - but it is unclear why this differentiation is necessary. There are no differences in requirements that must be met for issuance of either C of A, nor are there any differences in what the holders of the two different certificates may do. Having two versions of the Certificate of Authorization creates regulatory confusion as applicants do not understand when or if they should request the general certificate.

7. Joint Practice Board

Recommendation: Amend Section 1 of the *Act* to eliminate reference to the Joint Practice Board, and repeal Sections 16 and 47. Corresponding changes to the *Architects Act* should also be made (s.1, s7(1) 23, s.19, s.51, s.52).

Rationale: While the provisions for the Joint Practice Board have existed in the statutes for over 35 years it has never met. There are no public interest risk issues associated with the purposes of the Joint Practice Board and it should therefore be eliminated.

OSPE believes that these recommendations are essential to safeguard the public interest, enable PEO to be a strong and focused regulator, and will contribute to the overall economic progress of our province. We look forward to working with the government to further develop these recommendations. If you have any additional questions, please contact Andrea Carmona, OSPE Policy and Government Relations Lead at advocacy@ospe.on.ca.

Sincerely,

Mark Frayne, P.Eng.
President and Chair
Ontario Society of Professional Engineers

Sandro Perruzza
Chief Executive Officer
Ontario Society of Professional Engineers

APPENDIX A: Activities Identified by PEO Council as Neither Governance nor Regulatory

Source: https://www.peo.on.ca/sites/default/files/2020-01/531CouncilAgenda.pdf (p. 42-28)

Group 3: Activities That Are Neither Governance Nor Regulatory

ID	Activity (A) and Output(s) (O)	Remarks	Responsibility currently assignedto…	Primary Legislative Authority (required or permitted, if known)[6]
1.	**A:** Devises and reports annually on metrics forwomen in the licensing process. **O:** Annual report on metrics to identify progress.	Task force mandate complements regulatory function but is not regulatory per se.	30x30 Task Force	Act: ss.8(1)14, 10(1) By-law: s.30 (permitted)
2.	**A:** Plans outreach workshops for stakeholder groups (Chapters, employers, universities, women's groups, etc.) **O:** Workshops delivered.	Task force is oversight and advocacy focused onincreasing number ofnewly-licensed female engineers.	30x30 Task Force	Act: ss.8(1)14, 10(1) By-law: s.30 (permitted)
3.	**A:** Develops means to recognize PEO volunteers andtheir employers. **O:** Recommendations to Council for volunteer and volunteer employer recognition	This activity, recognizing the importance of volunteerism, has anassociation focus.	Advisory Committee on Volunteers	Act: s.2(4)4 (permitted)
4.	**A:** Organizes annual meeting of committee and taskforce chairs **O:** Annual meeting / conference held	Activity is focused on volunteer contributions to the association	Advisory Committee on Volunteers	Act: s.2(4)4 (permitted)
5.	**A:** Encourages, solicits and considers nominationsfor PEO and joint PEO/OSPE awards.	Awards recognize excellence in engineering and volunteerism.	Awards Committee	Act: s.2(4)4 (permitted)

[6] As with the Core Regulatory, Regulatory Policy and Governance groups, legislative and by-law references are included to demonstrate legality and may not be exhaustive of all possible legal authority. In many instances in the “Neither” classification, legality is derived from the broad scope of section 2 of the Act, and in particular s.2(4), the additional objects provision. “Act” means the *Professional Engineers Act,* as amended. “Reg.” means Regulation 941 under the Act, as amended. “By-law” means PEO By-Law No. 1.

ID	Activity (A) and Output(s) (O)	Remarks	Responsibility currently assignedto…	Primary Legislative Authority (required or permitted, if known)[6]
	O: Award winners recommended to Council (and OSPE, depending on the award) for approval.			
6.	**A:** Encourages and solicits nominations for externalawards related to engineering. **O:** Nominations for awards given by other organizations.	External awards recognize excellenceamongst professional engineers.	Awards Committee	Act: s.2(4)4 (permitted)
7.	**A.** Plans Chapter AGM **O:** Election of Chapter executives	Chapter governance isnot the same as PEO governance. Chapters do not have a separate legal identify.	Chapters	Act: ss.2(4), 8(1)19 By-law: ss.2-9 (permitted)
8.	**A:** Presents licensing certificates **O:** Certificates presented to new members whochoose to receive certificates from Chapters	Presentation of a certificate is not synonymous with the issuance of a licence	Chapters	Act: ss.2(4), 8(1)19 By-law: ss.2-9 (permitted)
9.	**A:** Organizes PEO seminars. **O:** Seminars held by Chapters to help explainregulatory requirements.	Education and outreach about regulatory expectations is not synonymous with regulation.	Chapters	Act: ss.2(4), 8(1)19 By-law: ss.2-9 (permitted)
10.	**A:** Organizes technical seminars and tours. **O:** Seminars and tours conduct industry experts to demonstrate and/or explain new or current technicaland engineering content.	Education on current developments is not a regulatory function unless part of a structured licensing or CPD program.	Chapters	Act: ss.2(4), 8(1)19 By-law: ss.2-9 (permitted)

11.	**A:** Organizes networking events for members andEITs.	Networking is essentially an	Chapters	Act: ss.2(4), 8(1)19 By-law: ss.2-9 (permitted)

ID	Activity (A) and Output(s) (O)	Remarks	Responsibility currently assignedto…	Primary Legislative Authority (required or permitted, if known)[6]
	O: Summer picnics, golf tournaments, etc.	"association" function.		
12.	**A:** Plans and implements "education outreach" for JK to post-secondary students. **O:** Outreach programs on engineering delivered toschool groups.	Query the role of a regulator, as opposedto an association, in encouraging interest in a particular area of work	Chapters	Act: ss.2(4), 8(1)19 By-law: ss.2-9 (permitted)
13.	**A:** Organizes 30x30 events at the Chapters level. **O:** 30X30 related events held.	30X30 mandate complements regulatory function but is not regulatory per se	Chapters	Act: s.2(4)4 (permitted)
14.	**A:** Supports Engineering Innovation Forum **O:** Conference on innovation funded and held	Promoting a culture of innovation is a noteworthy association objective.	Education Committee	Act: s.2(4)4 (permitted)
15.	**A:** Plans outreach to JK-12 students. **O:** Materials about engineering for use in JK-12 classrooms.	PEO does not regulate or governprimary and secondary education	Education Committee	Act: s.2(4)4 (permitted)
16.	**A:** Considers Chapters proposals for special projectsfunding related to educational outreach in JK-12 **O:** Funding decisions for Chapters educationaloutreach projects.	PEO does not regulate or govern primary and secondary education	Education Committee	Act: s.2(4)4 (permitted)

17.	**A:** Develops advice for PEO Council regarding education-related policies.	Query to what extent PEO should be involved in matters of broader public policy. PEO does not	Education Committee	Act: 2(4)4 (permitted)

ID	Activity (A) and Output(s) (O)	Remarks	Responsibility currently assignedto…	Primary Legislative Authority (required or permitted, if known)[6]
	O: Advice to Council, and via Council to government, about educational issues related to engineering.	regulate or govern primary or secondary education		
18.	**A:** Plans Education Conference **O:** Conference to encourage innovative, engineering related outreach programs for pupils in JK to Grade12	PEO does not regulate or govern primary or secondary education	Education Conference Planning Subcommittee	Act: s.2(4)4 (permitted)
19.	**A:** Develops joint position statements related to elements of the design and construction industry. **O:** Position statements recommended to Council.	Advocacy is typically an association function.	Engineers Architects and Building Officials Committee	Act: ss.2, 10
20.	**A:** Assembles and shares information on constructionbest practices, new construction types, technical codes and standards. **O:** Information about best practices, etc., assembledand shared with EBAO members at meetings.	Information-sharing supports coordination of efforts amongst various professions involved in design and construction.	Engineers Architects and Building Officials Committee	Act: ss.2, 10
21.	**A:** Oversees use of online Equity and Diversity training module by chapter and committee volunteers. **O:** Report to Council on extent of online equity and diversity module completion.	This reflects concern about equity and diversity as reflected in association activities	Equity and Diversity Committee	Act: s.2(4)4 (permitted)

22.	**A:** Develops proposals to recognize equity anddiversity at the Chapters level. **O:** Award proposal to Council to recognize equity and diversity contributions at the Chapters level.	This reflects concern about equity and diversity as reflected in association activities	Equity and Diversity Committee	Act: s.2(4)4 (permitted)
23.	**A:** Considers recommendations for President's Award for non-engineers who have demonstrated	Awards raise the profile of the	Executive Committee	Act: s.2(4)4 (permitted)

ID	Activity (A) and Output(s) (O)	Remarks	Responsibility currently assignedto…	Primary Legislative Authority (required or permitted, if known)[6]
	extraordinary support for or promoted public awareness of the engineering profession. **O**: Award recipient recommended to Council for approval.	association and encourage support forand awareness of the engineering profession.		
24.	**A:** Trains ERC members on how to conductinterviews etc. **O:** Interview and related training programs for ERC members.	Training supports the regulatory role of ERC but is not regulatory per se.	Experience Requirement sCommittee	Act: s.10(1)(c)
25.	**A:** Oversees and advises Chapters on engagementwith local MPPs **O:** Recommendations and ad hoc assistance to Chapters on matters related to engagement withMPPs	Lobbying elected officials in this manner is typically an association activity.	Government Liaison Committee	Act: ss.2(4)4, 10(1) (permitted)
26.	**A:** Oversees the development of government relations communications tools such as newslettersEngineering Dimensions articles, etc. **O:** Newsletters, articles, etc. produced with committee oversight.	Advocacy is typically an association activity.	Government Liaison Committee	Act: ss.2(4)4, 10(1) (permitted)

27.	**A:** Plans Queens Park reception to educate MPPs onrole and work of PEO and discuss regulatory issues. **O:** Queens Park reception for MPPs and PEOrepresentatives.	Advocacy is typically an association activity.	Government Liaison Committee	Act: ss.2(4)4, 10(1) (permitted)
28.	**A:** Reviews and attempts to resolve significant staff HR issues	The CEO/Registrar is responsible for resolving individual staff issues.	Human Resources Committee	Act: s.10(1) (permitted)

ID	Activity (A) and Output(s) (O)	Remarks	Responsibility currently assignedto…	Primary Legislative Authority (required or permitted, if known)[6]
	O: Resolutions or recommendation (to Registrar?) on significant staff HR issues			
29.	**A:** Reviews and attempts to resolve significant volunteer HR issues **O:** Resolutions or recommendations on significant volunteer HR issues	Engagement of volunteers is an association function.	Human Resources Committee	Act: s.10(1) (permitted)
30.	**A:** Considers submissions from Chief Building Officials related to the requirement for a services of an architect and/or professional engineer related to general design or review. O: Replies to questions and comments from CBOs	Harmonious relations amongst the design and construction-related professions and with building officials serves an association function.	Joint Liaison Committee	Act: s.2(4)2 and 4 (permitted)
31.	**A:** Prepares bulletins to building officials to provide clarity on emerging issues and/or disputes. **O:** Bulletins prepared and issued.	Harmonious relations amongst the design and construction-related professions and with building officials serves an association function.	Joint Liaison Committee	Act: s.2(4) 2 and 4 (permitted)

32.	**A:** Builds and strengthens relationships between PEOand OSPE and provides a forum for the resolution of disputes. **O:** Disputes resolved.	Activity and related outputs are difficult to quantify, but do not appear to fit within either regulatory or governance functions as defined here.	Joint Relations Committee	Act: s.2 (permitted)
33.	**A:** Organizes Regional Congress to filter Chaptersissues to Councillors and relay regulatory information to the engineering community.	Conveying regulatory information is not regulation per se.	Regional Councillors Committee	Act: ss.2(4), 8(1)19 (permitted)

ID	**Activity (A) and Output(s) (O)**	**Remarks**	**Responsibility currently assignedto…**	**Primary Legislative Authority (required or permitted, if known)[6]**
	O: Regional Congress held, inputs received,regulatory information relayed.	Input to governors is not governance.		
34.	**A:** Chapters business plans analyzed for allocation offunds to Chapters. O: Chapters funded.	See above, re Chapters-relatedactivities.	Regional Councillors Committee	Act: ss.2(4), 8(1)19 (permitted)
35.	**A:** Plans volunteer leadership conference for Chapterand committee leaders, in conjunction with PEO AGM **O:** Volunteer leadership conference held.	This supports an association function.	Volunteer Leadership Conference PlanningCommittee	Act: s.(4)4 (permitted)

ANTI-RACISM & ANTI-DISCRIMINATION:

A Bridge To PEO's More Successful Future

April 2021

PATRICIA DeGUIRE
SHASHU CLACKEN

About this Report

This report focuses primarily on whether Professional Engineers Ontario (PEO) has risks regarding racism and discrimination. As a basis for the assessment, this report uses the "Policy and Guidelines on Racism and Racial Discrimination" published by the Ontario Human Rights Commission (OHRC). The OHRC is the authority that was established as an arm's length agency of government in 1961 to prevent discrimination and to advance human rights in Ontario. As a benchmark for the assessment, this report also uses the current state of anti-racism initiatives by the Law Society of Ontario (LSO). The LSO is the self-governing regulator for lawyers and paralegals in Ontario. The authors observe that the LSO is closer to best practices for a modern professional regulator.

The assessment was conducted by Patricia DeGuire and Shashu Clacken, independent consultants with collective expertise in human rights and civil liberties, anti-racism, diversity and inclusion, organizational transformation, and strategic planning. Both were called to the bar in Ontario, with background in constitutional law, administrative law, statutory interpretation, and direct experience with the LSO's equity initiatives.

DISCLAIMER:

As consultants – not currently practising lawyers – DeGuire and Clacken do not currently provide legal advice. Nothing in this report should be relied upon as legal advice.

The consultants and their related companies assume no responsibility or liability connected to the information contained in this report. Any steps that the PEO or its stakeholders may take further to this report will be strictly at their own risk.

> Science can amuse and fascinate us all, but it is engineering that changes the world.
>
> ISAAC ASIMOV

> Dreams do come true, but not without the help of others, a good education, a strong work ethic, and the courage to lean in.
>
> URSULA BURNS

Letter to the PEO's Board and its AREWG

May 3, 2021

Dear PEO Councillors,

We enclose our report, providing our assessment whether the PEO has risks in relation to racism and discrimination. We were selected as independent consultants to support PEO's Council working group – the Anti-Racism & Anti-Discrimination Exploratory Working Group (AREWG) – to "develop recommendations for Council to enable PEO to identify, study and address any issues of systemic racism and discrimination which fall within PEO's mandate."

Specifically, the scope of the assessment was: "scoping vulnerabilities to systemic racism and discrimination within the engineering profession and, in particular, within the range of activities overseen by PEO" and "proposing best-practice methodologies for identifying, studying and addressing any such vulnerabilities that exist." This scope was authorized by Motion 2.9, passed at the PEO's Council meeting on November 20, 2020.

Pursuant to the terms of reference approved for the AREWG, Council tasked the AREWG to work "with a qualified consultant to be recruited by the CEO/Registrar, with final vetting by the working group" to "examine and ultimately report to [Council] regarding:

- What potential vulnerabilities exist for PEO in relation to systemic racism and discrimination, in all major areas of PEO's operations and its role as regulator of the practice of professional engineering and governor of the engineering profession?
- What best practice methodologies are available to identify, study and produce recommendations on how to address any issues of systemic racism and/or discrimination that exist?
- What options are preferred and recommended, based on the Working Group's (and consultant's) understanding of PEO and the environment in which it operates?
- What mechanisms (e.g., a further working group, additional consultants, surveys, interviews, focus groups, etc.) are required in order to oversee and pursue the recommended options?
- Any other foundational or background information that Council needs in order to address these issues."

We were the successful bidders in the PEO's RFP process. Our bid included our written response to RFP and, upon becoming a finalist bidder, delivery of a virtual presentation to the AREWG, the CEO/Registrar and the Director, Human Resources. We commend the PEO for the considered and merit-based approach it took to this procurement process. We appreciate the PEO's decision to have selected us to conduct this assessment.

Thanks to various staff members for their considerable work gathering documents we requested and participating in interviews. We also thank the various committee members, volunteers, Council members, individual engineers, and external stakeholders who participated in interviews. All were generous with their time and treated the matter with seriousness and respect. We recognize that racism is not easy to discuss, but that it is critical to do so to make progress for the benefit of all. We commend all interviewees for their willingness to engage. Given the sensitivity of the topic, we observe strict anonymity to protect the identity of the interviewees. Comments are not attributed to any individual.

From our review of the interviews and substantial documentary evidence, we have identified various risks and offered recommendations to assist the PEO.

In **Section 1**, we level-set on contextual information that readers must keep in mind to properly appreciate the significance of the noted risks and recommendations. This contextual information includes an explanation of the PEO's regulatory duties regarding anti-racism, and core concepts regarding racism.

In **Section 2**, we briefly describe our methodology. We also discuss the risks identified in our assessment and relate them to the OHRC's Policy and Guidelines on Racism and Racial Discrimination to help the PEO understand the risks in context.

In **Section 3**, we provide recommendations in a workplan format, pursuant to the terms of our engagement.

Our analysis and our recommendations are entirely our own, even though they are based in part on what we saw and heard from others. We trust they may be of assistance to the PEO. We wish you success in embedding anti-racism and anti-discrimination within your wider commendable transformation.

Sincerely,

Patricia DeGuire **Shashu Clacken**

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Executive Summary

As an executive summary of our assessment, we answer the questions from the Terms of Reference that framed the AREWG's work and this engagement. It is necessary to review our full report to adequately understand this summary. (Where abbreviations are not defined in the body of this report, their definitions are set out in **Appendix D**.)

Question 1: What potential vulnerabilities exist for PEO in relation to systemic racism and discrimination in all major areas of PEO's operations and its role as regulator of the practice of professional engineering and governor of the engineering profession?

Our assessment identified various vulnerabilities to systemic racism and discrimination in relation to:

a) inadequate engagement with stakeholders, particularly outside the PEO;

b) the PEO's emphasis on "Canadian experience" and the risk that it perpetuates disadvantage of marginalized groups;

c) recurring stories alleging exclusionary conduct within the engineering profession, impacting racialized persons, most notably Black persons and Indigenous persons;

d) the PEO not yet following best practices regarding disaggregated race-based data;

e) recurring stories alleging exclusionary conduct at several of the PEO's chapters, within the PEO's elections (at all levels), and impacting the overall organizational culture;

f) insufficient knowledge-sharing, learnings, or understanding regarding racism and anti-racism;

g) allegations of unfair conduct in the PEO's discipline processes in relation to racialized Councillors and licensees;

h) allegations of exclusionary or unfair practices in some of the PEO's procurement processes;

i) the PEO not yet implementing the various recommendations from several commentators over several years in respect of the PEO's licensing process and practices;

j) notable gaps in resourcing and support for the PEO's equality-promoting initiatives;

k) perceived significant underrepresentation of Black persons and Indigenous persons in the PEO's Council, staff, and committees, and in the wider profession;

l) the PEO not yet prioritizing anti-racism and anti-discrimination in its strategic planning, transformation, or 'tone from the top'; and

m) notable gaps in the PEO's policies, procedures, and processes regarding protections for persons impacted by discrimination.

Question 2: What best practice methodologies are available to identify, study and produce recommendations on how to address any issues of systemic racism and/or discrimination that exist?

Question 3: What options are preferred and recommended, based on the Working Group's (and consultant's) understanding of PEO and the environment in which it operates?

Question 4: What mechanisms (e.g., a further working group, additional consultants, surveys, interviews, focus groups, etc.) are required in order to oversee and pursue the recommended options?

Our assessment identified six (6) categories of recommendations, with several sub-components each. These recommendations are set out in **Section 3**, located at pages 49 to 63 of this report. We encourage readers to review the recommendations in detail. Highlights include:

a) Utilizing the mechanism of a Board Committee (the Strategic Anti-Racism Group (SARG)) to perform the legwork on Council's behalf in developing and overseeing an anti-racism strategy.

b) Publicly affirming the PEO's commitment to anti-racism, and making this report's recommendations and related reporting publicly available.

c) Utilizing project methodologies and continuing to engage anti-racism and anti-discrimination consultants ("ARD Consultants") to benefit from subject-matter expertise, independence, and work-load assistance.

d) Engaging stakeholders via ARD Consultants (utilizing qualitative methods such as interviews, surveys, focus groups, and/or receiving submissions).

e) Adequately funding anti-racism and anti-discrimination initiatives.

f) Ensuring alignment, integration, and coherence between the prospective anti-racism strategy and the wider organizational strategy and transformation.

g) Pursuing 'quick wins' in the interim to be proactive about some of the top risks identified. These 'quick wins' include starting a mentorship program, and applying an anti-racism lens to enhance the PEO's efforts to date regarding the top issues raised. The top issues relate to developing alternatives to the "Canadian experience" requirement; the PEO's elections procedures and practices; and the PEO's discipline processes and practices applicable to Councillors.

h) Committing to embedding within the PEO's anti-racism strategy certain key components in keeping with anti-racism norms and aspirations in Canada. This sets the tone for developments by the SARG, by the PEO's operational team, and within the wider profession.

Question 5: Any other foundational or background information that Council needs in order to address these issues.

In **Section 1** below, we outline foundational information that is essential to adequately appreciate the risks and recommendations identified in this report and to address them in turn. This contextual information concerns the proper role for modern professional regulators regarding anti-racism, and key considerations about racism.

At a summary level, it suffices to note that anti-racism falls squarely within the regulatory mandate of professional regulators, and that the PEO is bound by human rights laws that require it to address racism in all areas that it governs. Notably, the Ontario *Human Rights Code* (the "*Code*") is quasi-constitutional. This means that it is almost as important as the constitution, and that it takes precedence and priority. The PEO must therefore "comply with the *Code* before other laws, unless there is a specific exception."[1] Also, the PEO's conduct constitutes "government action or inaction" and must comply with the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

Opening Remarks

Engineering is a noble and essential profession and the PEO's mandate is critical for the posterity of society. The PEO exists to uphold the profession's duty to public welfare in regulating the practice of professional engineering in Ontario.

To echo Isaac Asimov, it is engineering that can change the world. The year 2020 brought global respect and compassion for helping others to achieve their goals. We are fortunate to be living in this historic time of global awakening and opportunity to shape a more equitable and successful society.

Organizations are now poised to seize the rare opportunity to effect transformational changes that make them more successful. We commend the PEO for taking this first step towards identifying and addressing vulnerabilities to racism. The possibilities are endless if society's members – from all races, ethnicities, gender identities, sexual orientations, abilities, income levels, religious or faith identities, immigration statuses or other identities – have fair opportunity to become and succeed as engineers.

Racism, and in particular anti-Black racism, has been revealed as one of the most pernicious and intractable social ills that pervades Canadian society. No space is immune. Addressing this problem also yields benefits to persons from other equity-seeking identities.

The most effective barrier removal strategies prioritize solutions that reach the most marginalized groups. The solutions in turn generally reach persons in between the most marginalized and the least marginalized. If PEO takes an inverse approach, it will rarely reach the most marginalized. Instead, it will likely perpetuate their marginalization and thereby breach the *Code* and the *Charter*.

Additionally, the wins from anti-racism efforts provide precedents and learnings that may be leveraged to address other forms of inequality and discrimination. These areas were not in scope for this engagement. Once the PEO builds its anti-racism strategy as a necessary priority, it must continuously expand its focus and efforts to target all remaining forms of inequality.

Ultimately, when the PEO is further along its anti-racism journey, it and its stakeholders will be more successful. They will demonstrate greater contributions to society.

Section 1: Key Context to Understanding the Report

A) PEO becoming a modern regulator, and current state

1.1 The PEO is on a commendable journey to becoming a modern professional regulator. It is responsible for self-governance of the engineering profession in Ontario to protect the public. This is delegated authority from the government. The PEO effectively exercises governmental authority, bound by the *Code* and the *Charter*. The delegation of authority is based on trust that the profession can govern itself in a manner that is demonstrably appropriate. The PEO's viability as a self-governing authority therefore turns on public confidence in its effectiveness. The PEO is alive to this reality and is taking steps to understand and address its risks and future-proof the organization. A significant step in this regard was the PEO's regulatory review that Mr. Harry Cayton and his team performed. The PEO publicly released the corresponding report in 2019 (the "Cayton Report").[2]

1.2 The Cayton Report involved a comprehensive review of how well the PEO is performing its regulatory functions. To achieve efficiencies and maximize value for the PEO's resources, we did not duplicate the Cayton Report's work. Instead, we built on the Cayton Report to the extent of its account of:

- the applicable legislative and operational frameworks (including licensing requirements, processes, and practices; complaints and discipline processes; and the relevance of FARPACTA (the *Fair Access to Regulated Professions and Compulsory Trades Act 2006*, to which the PEO is subject); and

- the PEO's organization and structure (notably, the structure and functions of its Council, staff, chapters, and volunteers).

We encourage any readers who lack familiarity with the PEO to read the Cayton Report for a better understanding of some matters foundational to this report.

1.3 We also had regard to the factual findings of the Cayton Report. We accepted as a tentative "current state" description all Cayton Report findings relevant to this engagement. We assessed whether interviewees or documents signalled any material updates or corrections. We specifically probed interviewees if they disagreed with any factual findings in the Cayton Report. We heard very little disagreement on the facts. We also heard that there have been a few developments from the PEO's action plan that responded to the Cayton Report. Overall, we accept the Cayton Report's findings on certain points as being relevant to this engagement. They underscore certain risks that we separately identified. We cross-reference some relevant Cayton Report findings in **Appendix C**.

1.4 One Cayton Report finding that is particularly important to the present assessment is the observation that there is inadequate focus on the public interest and ethics. The Cayton Report noted that opportunity exists for the PEO's Council to remain "constantly cognizant of key present and future engineering risks that its activities should be directed to prevent."[3]

B) Anti-racism is central to a professional regulator's duties

1.5 In its transformation objectives, the PEO is committed to ensuring primary focus on its regulatory function. What falls within its regulatory function is a topic of significant discussion and may not yet be fully clear to all PEO policymakers and leaders. It is therefore worth recognizing that anti-racism and anti-discrimination are critical dimensions of the PEO's regulatory duty to protect the public interest; promote and ensure ethics of the profession; and comply with its public duties.

1.6 We note that PEO got this question right in its 2020 RFP for this engagement, which states:

> "The problem of widespread systemic racism has been a major focus of international public attention, in particular in the past year. As a regulator in the public interest, [the PEO] is required to identify and address any such concerns as they relate to its mandate and activities."

This is correct and must be kept squarely in mind, for reasons explained below.

1.7 We also note that the PEO was on the right path in the message that its CEO/Registrar issued in August 2020 in response to the global developments. The CEO/Registrar's message is reproduced at **Appendix B**.[4] It is imperative that the PEO honours and builds on this public message. Our report discusses risks relevant to areas that the CEO/Registrar's message rightly identified as being important. We identify opportunity gaps and further areas requiring a robust response. As the CEO/Registrar noted, "there is much more work still to be done". The public will be interested in this anti-racism report, and in the steps that the PEO takes next. Robust assessments and robust responding measures are essential to protecting the public interest.

1.8 A professional regulator's purpose to govern in the public interest necessarily also means upholding human rights laws (and *Charter* values). The Law Society of Ontario's statements are illuminating. (The Law Society is a professional regulator in Ontario, which we observe to be further along in best practices applicable to modern regulators). In launching the Law Society's anti-racism strategy, its working group stated on its behalf that:

- "…the Law Society must take a leadership role… to bringing about lasting culture change. The Working Group has concluded that prescribing minimum standards of equality, diversity and inclusion are consistent with the human rights responsibilities of the profession – **obligations already required by**… **the Human Rights Code**. Reform in addressing barriers faced by racialized licensees is an **essential component of ensuring a healthy and successful legal profession, and to advancement of the public interest** – goals that we all share and must achieve."

- The Law Society "has a **duty to**… **protect the public interest**. Furthermore, the Law Society is committed to **adhering to its obligations under the Human Rights Code**. In fulfilling its mandate, the Law Society integrates equality and diversity values and principles into all of its policies, practices and programs."[5] (emphasis added)

1.9 The PEO is equally bound by the Ontario Human Rights Code (the "*Code*"). Moreover, as the OHRC notes, *Code* obligations take precedence over other obligations:

> "The Supreme Court of Canada has said that human rights legislation such as the *Code* is not like other laws. It should not be treated the same as other pieces of provincial legislation because **it is almost as important as the constitution, or "quasi-constitutional." This means that you must comply with the *Code* before other laws, unless there is a specific exception**. The requirements in other legislation may be considered to be minimum standards that can be exceeded to comply with the *Code*."[6] (emphasis added)

1.10 The OHRC's Policy and Guidelines on Racism and Racial Discrimination ("OHRC Anti-Racism Policy") are clear about the related responsibilities. As this document is key to our assessment, we include a link in-text: OHRC Anti-Racism Policy. We encourage readers to study this policy. We note key excerpts relevant to the PEO's responsibilities:

- "all organizations, institutions and levels of government should take steps to address historical disadvantage. This expectation is even higher for public bodies as they are more likely to have contributed to the causes of historical disadvantage in the first place and because government has an enhanced responsibility to ensure that everyone can benefit equally from its services."

- "we all have a shared responsibility for addressing historical disadvantage."

- "organizations and institutions have an obligation to be aware of whether their practices, policies and programs are having an adverse impact or resulting in systemic discrimination vis-à-vis racialized persons or groups. It is not acceptable from a human rights perspective to choose to remain unaware of the potential existence of discrimination or harassment, to ignore or to fail to act to address human rights matters, whether or not a complaint has been made."

- "An organization violates the *Code* where it directly or indirectly, intentionally or unintentionally infringes the *Code* or does not directly infringe the *Code* but rather authorizes, condones, adopts or ratifies behaviour that is contrary to the *Code*."[7]

1.11 A reputable authority on governance for professional regulators, Richard Steinecke, also makes it patently clear that:

- perhaps the most important work a professional regulator's Board can do is "clearly identifying its mission, setting priorities and developing a plan to achieve those priorities";
- this is part of the regulator's governance function; and
- priorities such as "reconciliation with Indigenous peoples and promoting equity, diversity and inclusion [are] being emphasized" by many professional regulators as part of their duty to ensure ethics to further the public interest.[8]

1.12 It is therefore unequivocal that anti-racism, and anti-discrimination, is central to the regulatory duties of a professional regulator. As a public body, the PEO has an "enhanced responsibility" to demonstrate leadership in this regard to meet the "higher expectation" applicable to public bodies.

1.13 With the shift in consciousness around the globe since the death of George Floyd, the public has entered a new era where it is widely perceived that "silence is violence" on the subject of racial inequality. To maintain public confidence, it is therefore imperative that modern professional regulators pursue and sustain an effective anti-racism and anti-discrimination strategy.

1.14 The PEO may take cues from the Law Society's anti-racism strategy. We offer recommendations that are compatible with the Law Society's strategy. We tailored and enhanced our recommendations to fit the PEO's unique reality, objectives, and current transformational journey.

C) Understanding racism: key considerations

1.15 To understand the significance of the risks noted in this report, it is essential to have a working understanding of racism. While this report lacks scope to offer comprehensive education about racism, it notes some key pointers. We encourage each PEO Councillor to start or continue an anti-racism education journey to further their understanding and preparedness to address the risks identified. Below are key extracts from the OHRC Anti-Racism Policy:[9]

- Race is a social construct that was created to justify slavery and other forms of "European imperial domination of nations and peoples deemed "non-white" and was used to establish a classification of peoples."

- The process of social construction of race is termed "racialization". The term "racialized person" expresses race as a social construct rather than as a description based on false perceptions of biological traits.

- Racism is "perpetuated through socialization, stereotypes, fear, protectionism, [and] bias", and it "can be more deeply rooted in attitudes, values and stereotypical beliefs." In some cases, these beliefs are "unconsciously maintained by individuals and have become deeply embedded in systems and institutions that have evolved over time."

- Racism persists today and there is a "continuing impact of the historical legacy of racism, such as the effect of colonialism and slavery, including the trans-Atlantic slave trade", post-colonialism and perpetuation of disadvantage affecting "Indigenous persons, persons of African descent and persons of Asian descent."

- "Racism operates at several levels, including individual, systemic or institutional, and societal:

    - Racial discrimination can be impacted by related *Code* grounds such as colour, ethnic origin, place of origin, ancestry and creed. In addition, race can overlap or intersect with other grounds such as sex, disability, sexual orientation, age, and family status to create unique or compounded experiences of discrimination.

    - Racial discrimination can occur through stereotyping and overt prejudice or in more subconscious, subtle and subversive ways.

    - Racial discrimination also occurs in significant measure on a systemic or institutional level. Policies, practices, decision-making processes and organizational culture can create or perpetuate a position of relative disadvantage for racialized persons."

- "It is no coincidence that communities which historically experienced racial discrimination continue to be placed on the lowest rungs of the social, economic, political and cultural ladder in Canada. The legacy of racism in Canada has profoundly and lastingly permeated our systems and structures. As such, it must be acknowledged in any policy statement, particularly when considering such matters as institutional or systemic discrimination, inclusive design, barrier removal and methods to respond to racism."

1.16 Countering anti-Black racism and Indigenous marginalization warrants special focus. This is being acknowledged world-wide in the new era. It is now well-documented in Canada and globally that Black and Indigenous communities face the harshest realities. The OHRC Anti-Racism Policy endorses:[10]

- Emphasizing the "particular and extreme marginalization" of Black and Indigenous people; the unique issues raised in relation to legacies of the trans-Atlantic slave trade, slavery, and post-colonialism; and treaties, land disputes, and Indian Act issues.

- Understanding of the context of racism and racial discrimination in Canada, which requires understanding barriers constricting the opportunities of most Canadians of African ancestry, notably:

- "African Canadians were excluded from schools, churches, restaurants, hospitals and public transportation.
- They were restricted to menial, low-paying and exhausting labour.
- Many African Canadians lived in segregated communities in Ontario, Nova Scotia, and New Brunswick.
- In addition, residential segregation was perpetuated through racially restrictive covenants attached to deeds and leases.
- The Ontario legislature established segregated schools, and legal challenges to these failed.
- The legislation remained on books as late as 1964."

- "The experience of other racialized Canadians is similarly tainted by a history and perpetuation of racism". For example, a "contemporary and emerging form of racism in Canada has been termed 'Islamophobia'." This involves discrimination against persons from countries with a large Muslim population, such as countries in the Middle East.

- "At various times, Canada's immigration policies and practices have either directly or indirectly made it easier for some groups (such as northern and western Europeans), and more difficult for racialized groups, to gain entry."

1.17 It is therefore important for the PEO to understand racism in the noted context of exclusion from opportunities, with extreme impact on Black and Indigenous persons, and impact on all racialized persons, including contemporary impact on Muslims and persons from places like the Middle East.

1.18 Notably, the Supreme Court of Canada has made clear that "the principles applied under the Human Rights Acts are equally applicable to questions of discrimination under s.15" – i.e., the equality guarantee in the *Charter*.[11] We encourage the PEO's leadership to read the Supreme Court of Canada's decision in *Andrews v. Law Society of British Columbia*[12] which involved a British citizen who successfully challenged the citizenship requirement for admission to the British Columbia bar. Some would argue that there are parallels, for example, to the PEO's requirement for Canadian experience and other practices and policies, and that these perceived parallels have a high risk of being found to create a distinction on an analogous ground. Some would argue that such a distinction creates additional burdens that are unlikely to be justifiable as rationally connected or minimally impairing, given a high risk that alternatives may be deemed less infringing of equality rights. We do <u>not</u> offer any legal opinion in this regard. We make these comments to highlight the risks and likely public perceptions that the PEO must evaluate and address.

1.19 We also provide below some instructive excerpts from Supreme Court of Canada equality decisions.[13] Again, we do not offer these excerpts as legal advice. We illuminate for the PEO how Canada's top court reasons on related matters, so that this reasoning may inform how the PEO understands and assesses matters concerning racism and discrimination:

- "The approach to s. 15 was most recently set out in *Quebec (Attorney General) v. A*, [2013] 1 S.C.R. 61, at paras. 319-47. It requires a flexible and contextual inquiry into whether a distinction has the effect of perpetuating arbitrary disadvantage on the claimant because of his

or her membership in an enumerated or analogous group. **It is an approach which recognizes that persistent systemic disadvantages have operated to limit the opportunities available** to members of certain groups in society and **seeks to prevent conduct that perpetuates those disadvantages**. The focus of s. 15 is on laws that draw *discriminatory* distinctions – that is, distinctions that have the effect of perpetuating arbitrary disadvantage based on an individual's membership in an enumerated or analogous group. The s. 15(1) analysis is accordingly concerned with substantive equality."

- "Non-citizens are a group of persons who are relatively powerless politically and whose interests are likely to be compromised by legislative decisions."

- "Relative to citizens, non-citizens are **a group lacking in political power and as such vulnerable to having their interests overlooked** and their rights to equal concern and respect violated. They are among "those groups in society to whose needs and wishes elected officials have no apparent interest in attending": … Non-citizens, to take only the most obvious example, do not have the right to vote. **Their vulnerability** to becoming a disadvantaged group in our society **is** … **that "in the absence of its natural defenders, the interests of the excluded is always in danger of being overlooked**…" I would conclude therefore that non-citizens **fall into an analogous category** to those specifically enumerated in s. 15. I emphasize, moreover, that this is a determination which is not to be made only in the context of the law which is subject to challenge but rather **in the context of the place of the group in the entire social, political and legal fabric of our society**. While legislatures must inevitably draw distinctions among the governed, such **distinctions should not bring about or reinforce the disadvantage** of certain groups and individuals by denying them the rights freely accorded to others."

- "…**facially neutral qualifications like education requirements may well be a proxy for, or mask, a discriminatory impact**", "disparate impact on members of an enumerated or analogous group."

- "…whether the impugned law **fails to respond to the actual capacities and needs of the members** of the group and instead imposes burdens or denies a benefit in a manner that **has the effect of reinforcing, perpetuating or exacerbating their disadvantage**:

  > The root of s. 15 is our awareness that certain groups have been historically discriminated against, and that the **perpetuation** of such discrimination **should be curtailed**. **If the state conduct widens the gap** between the historically disadvantaged group and the rest of society rather than narrowing it, **then it is discriminatory**."

- "The **effect of this facially neutral requirement was to disproportionately exclude** African Americans from positions in the plant… practices, procedures, or tests **neutral on their face,** and even neutral in terms of intent, **cannot be maintained if they operate to "freeze" the status quo of prior discriminatory** employment practices… employment requirements that are unrelated to measuring job capability can operate as "built-in headwinds" for minority groups, and will therefore be discriminatory." (emphasis added)

Section 2: Methodology and Risks Identified

A) Approach to the assessment

2.1 We performed this assessment between February 2021 and April 2021. Given the pandemic, we conducted all meetings by video and audio conferencing. We requested and reviewed substantial documentary evidence provided by the PEO. We also obtained and reviewed considerable documentation available publicly. This included information from certain other engineering regulators and organizations relevant to professional regulation.

2.2 To ensure an adequate overview, we identified categories of interviewees necessary to offer a cross-section of stakeholder perspectives. To identify individual interviewees, we then reviewed organizational charts, committee listings, and publicly available information regarding stakeholders. We also received some requests to participate. All contact information shared to us was generally available, obtained by the AREWG on consent of those seeking to participate, or otherwise obtained on consent. We sent all interviewees the same invitation letter, which set out the high-level subject matter and anonymity terms and related information. Given the sensitivity of the subject matter, as indicated to the interviewees, their names and specific roles are kept confidential. Information shared is not attributed to any individual.

2.3 As the present task is to scope vulnerabilities, all information is valuable in helping to identify potential risks. We make no findings whether details alleged in fact constitute racism. The information received is not relied upon for the truth of the contents. Instead, we identify areas where the information engages material risks or vulnerabilities to racism, which warrant further study and appropriate action. This said, the consistency of various stories and recurring themes lend weight to the information heard. This underscores a pressing need for adequate attention by the PEO.

2.4 We interviewed well over fifteen (15) interviewees, being the number we proposed in our response to the PEO's RFP for this project. The AREWG welcomed the increase.

2.5 We interviewed a cross-section of stakeholders from the following categories:

- PEO policymakers / Council members;
- Volunteers;
- Members of committees that we identified – based on the Cayton Report's account of committees – as likely having the most relevance to anti-racism;
- Staff;
- Individual engineers;
- Officials outside the PEO with sophisticated direct knowledge of matters relevant to the engineering profession and professional regulation; and
- With the world's heartbeat centred on anti-Black racism, in particular, we were sure to include some Black interviewees and probe specifically about this area.

2.6 The documentation we reviewed included: relevant sections of the governing *Professional Engineers Act* and Regulation; a sampling of the PEO's processes, policies, procedures and practices

in various areas (notably, anti-bias, code of conduct, licensing, complaints, discipline, elections, Council, procurement); sample Council meeting recordings; sample ERC interviews (where applicants were successful and unsuccessful in interview);[14] sample human rights complaints and informal complaint communications; the PEO's recent financial statements; the OHRC's policy regarding Canadian experience;[15] documentation between Ontario's OFC and the PEO regarding the PEO's Canadian experience requirement, and related materials; documentation from the website of the PEO's equivalent in British Columbia regarding competency based assessments and Canadian experience;[16] some of the PEO's governance transformation roadmap documentation; and others.

2.7 The information we received covered a wide range of matters in all major areas of PEO's functions. It was sufficient to enable a meaningful scoping assessment to identify vulnerabilities to racism. While deeper study and actions are needed, this report positions the PEO well for next steps.

B) Risks identified

2.8 We provide below an account of the risks we identified through our thematic analysis and synthesis of the interview responses and documentary evidence. We also relate them to the OHRC Anti-Racism Policy to aid further understanding.

2.9 This is a non-exhaustive listing of vulnerabilities to racism and discrimination that may be present within the PEO's scope. It, however, offers as holistic a view as possible from a scoping engagement.

2.10 The risks identified are discussed in the following order: going from matters in the wider profession to matters at the PEO's centre, all within scope of the regulator. Below each heading, we first set out examples of information shared to us. We then comment on the significance of the risks, based on the guidance from the OHRC Anti-Racism Policy and related contextual information.

1. Stakeholder engagement including the public

2.11 One of the three key considerations that the OHRC notes for identifying and addressing systemic discrimination is an organization's decision-making processes / practices / policies.[17]

2.12 Several interviewees, inside and outside the PEO, indicated that the PEO's decision-making, practices and policies are not informed by strong engagement with key stakeholders or external events. The perceived gaps relate to employers or industry representatives; organizations of equality-seeking groups; other members of the public; the Black Lives Matter wave of events since mid-2020; among other things.

2.13 Some interviewees indicated that there is some engagement with organizations like Engineers Canada and its CEAB; OSPE; universities; and other engineering regulators. However, some interviewees within the PEO demonstrated limited awareness of these stakeholders' developments and practices that are relevant to this assessment. For example, some senior PEO interviewees demonstrated limited familiarity with the details of the competency-based assessment approach, and alternatives to "Canadian experience", as used by some engineering regulators in Canada.

2.14 Several interviewees stated that the PEO has limited visibility into what goes on in the industry. For example, they told us there is no formal reporting by industry participants regarding

adherence to ethical practices, notably non-discriminatory practices. Several interviewees also noted that there is little to no awareness-building in the industry to help reduce systemic barriers. For example, on one hand, the PEO created the provisional license category, which essentially means the license holder meets all PEO licensing requirements except the Canadian experience requirement. On the other hand, this license category is not well-known or well-understood in the industry or even within the PEO, some interviewees said.

2.15 Some interviewees perceived that the PEO has been largely silent throughout the 2020-to-present global reckoning regarding racism. They stated that some sister regulators and related groups issued statements. They said the PEO's voice has been lacking.

- Some other interviewees acknowledged that there was a message sent from the PEO's CEO/Registrar to staff, Council, and licensees, and posted as a blog on the PEO's website. They said it was not clear to them whether this message was also endorsed by the PEO's Council, as they said Council has been largely silent on the subject to date.

2.16 Some interviewees asserted that there is little engagement with schools to promote equitable knowledge sharing of critical information like the need for grade 12 Physics if students may wish to pursue engineering in the future. They stated that female and Black students are often not adequately informed, for example.

2.17 Several interviewees indicated that: lay-person representation in Council and on committees is inadequate; there is no coordinated approach to connecting with equity-seeking groups; and there is no centrally-coordinated mentorship or outreach.

2.18 Several interviewees also noted insufficient clarity or coordination with OSPE regarding role definition and which organization owns what. Of note, it has been debated where initiatives like '30 by 30' should belong. (30 by 30 aims to raise the percentage of newly licensed female engineers to 30 per cent by 2030.)[18] Some interviewees also noted a lack of clarity and coordination regarding government liaising. Notably, some interviewees stated that there is no communication or coordination with the federal government that recruits engineers from around the world. They lamented that there are significant disconnects in the criteria used by the federal government and the criteria used by the provincial regulator. They felt the PEO should seek to close this gap.

2.19 One interviewee stated that there is little to no public consultation before changing the governing Act or Regulations, or regarding significant transformation affecting the profession. In the documents we reviewed, we did not see reference to public consultations. We also did not hear from any interviewees that public consultation is part of the PEO's change strategy.

2.20 **Item B1 Risks: if these perceptions are valid, the reported lack of awareness, collaboration and coordination would be a material risk for the PEO and the profession in multiple dimensions. Of relevance to a racism and discrimination dimension:**

(i) Lack of visibility into, or failure to shape, conduct in the industry presents significant vulnerabilities to racism and discrimination. In any profession, it is in everyday work and service that employees, clients and stakeholders most frequently face the impact of discrimination and barriers. Engineering is a regulated profession because of the

heightened impact its professionals can have. The PEO is ultimately accountable for the conduct within its profession.

(ii) We also reviewed the PEO's Regulation, Codes of Conduct, and certain related documents. A significant opportunity gap is evident regarding ethical rules, training requirements, and reporting requirements that reinforce the professional obligations of all licensees to uphold equitable and non-discriminatory principles in keeping with human rights norms and public expectations. There is also a significant opportunity gap regarding appropriate mechanisms for complaints, compliance, and disciplinary measures related to racism and discrimination.

(iii) In the new era of anti-racism priorities where "silence is violence", silence or inaction in this area is a significant risk. It is a risk in terms of public perception and confidence. It is also a risk regarding potential lawsuits and/or negative press. Applicants and licensees are more sensitized to racism issues in the new era. Even one bad case can be very costly to the PEO. Costs may include high legal fees; a drain on Council's and senior management's time; high burnout rates; and reputational damage. The ripple effects can include a depressed ability to attract top talent and top industry players in the future. Top talent and leading businesses are attracted to environments seen as winning, leading, or cutting-edge.

(iv) There is a significant racism and discrimination risk associated with a professional regulator's failure to adequately engage stakeholders when setting priorities, determining strategy, or undertaking transformation (legislative, operational, or other). This is especially so if equality-seeking groups are excluded or omitted during the design processes. Below are some risks, if the PEO does not adequately engage relevant stakeholders:

- It risks missing unintended consequences that increase or perpetuate barriers facing marginalized groups, which would breach the PEO's human rights duties.
- It also misses the rich and valuable perspectives that diversity offers as the PEO looks to design a future state to future-proof the organization and profession.
- Notably, we reviewed the new governance structure to which the PEO's committees are transitioning. We note that the plans for the governance and regulatory structures and organs do not refer at all to anti-racism, anti-discrimination, or EDI. Specifically:
    - The Transitional Committees Chart indicates, under the PEO's policymaking role, that several current committees will transition to the future Regulatory Policy and Legislation Committee (RPLC).
    - The committees listed as transitioning to the RPLC include: the 30 by 30 initiative (aimed at licensing more female engineers), Consulting Engineer Designation Committee (CEDC), ARC, ERC, LIC and others.

- However, no placeholder for a successor to the AREWG is listed under any policymaking or governance function. The Equity & Diversity Committee (EDC) is also absent.

- Overall, there is no reference to anti-racism and anti-discrimination as part of any governance or regulatory function.

- This is a material omission that carries significant risk regarding racism and discrimination.

- As explained in **Section 1(B)** above, a professional regulator that fails to address racism in its strategic priorities and policy actions risks perpetuating racism. This risks breaching human rights obligations. Ultimately, it risks failing in the duty to ensure ethics in the profession to protect the public interest.

(v) Inadequate coordination with relevant organizations and initiatives (like OSPE, Engineers Canada, Engineering Connections[19] and others) risks: (a) working at cross purposes; (b) wasting resources and missing opportunities; (c) being or being perceived by the public to be "out of touch", which erodes public confidence; or (d) dropping the ball on key priorities. For example, if the anti-racism agenda item gets tossed back and forth, it is likely to get dropped if the catcher fails to see that they are responsible to catch it. Ultimately, failures in the PEO's public interest function carry material risks.

2. Title, employment impact, and conduct in the profession

2.21 In exploring the context in which the PEO's practices operate, we heard accounts of several racialized interviewees' experiences with perceived barriers. Several interviewees also described situations where they perceived barriers facing persons from disadvantaged or vulnerable groups.

2.22 Notably, the accounts reveal common stories regarding immigrants, particularly from Africa, the Caribbean, and the Middle East. Interviewees perceived that these immigrant groups face unfair treatment in the PEO's licensing process. They were also said to face barriers in the job market, as exacerbated by the licensing process. The interviewees described the detrimental impacts they perceived. These included financial, emotional, psychological, reputational, and vocational costs. The interviewees told us of grave impacts to the well-being of the engineers and ultimately their families. Anecdotes from the stories are set out below:

i. The need for "Canadian experience", as promoted by the PEO, was said to detrimentally impact employment prospects. One Black engineer described their path to licensure and employment as an engineer. They said that:

- Like many others they have encountered, they were an immigrant and highly qualified. They were top performers in their cohort. Their family members were also engineers, medical doctors, or other highly accomplished professionals.

- On arrival in Canada, they got more interviews in the first two weeks than in their remaining several years in the job market. They said it became evident to them that the interviews dwindled to zero because their experience was acquired in an African country. The interviewers would ask “where was that experience obtained”, “ where was the factory”. Upon giving the name of their African home country, the interviewer would become awkward, surprised, or uncomfortable. The interviewer would quickly end the interview, saying “we will call you”. The interviewee received no call back. They said this happened multiple times.

- They resorted to taking any job they could get. They worked retail at the cash register. They worked entry-level jobs at a factory. They resorted to persuading a manager to allow them to work for free in an engineering role. They concluded this was the only way they could obtain the “Canadian experience” needed for licensure. They worked multiple minimum-wage jobs just to put food on the table.

ii. One Black engineer who emigrated from an African country described that: they obtained their Canadian permanent residency before they landed in Canada; their engineering credentials were also reviewed before they came to Canada and they were told it was equivalent to what is in Canada; and they had to pay for this evaluation in their home country. When they arrived in Canada, they discovered that this evaluation had no relationship to the evaluation required to practice in the province where they landed. Further, they said:

> “After establishing that your degree is equivalent, you must then show that you have very specific work experience: the ability to design and use principles of engineering… You must show it, and one of these years must be in Canada… The biggest struggle is to get the “Canadian experience”. You face discrimination as a foreigner, especially as a Black immigrant from Africa.
>
> When you are a foreigner, they want you to have a P. Eng. Only years later, I realised that if you are White, there are many who do not have a P. Eng. You are able to get jobs through your networks... In all the years that I've been working in Canada, I do not know any Black people who have gotten an engineering job in this way and without a P. Eng.”

iii. One engineer who emigrated from a Middle Eastern country described experiencing over 10 years of perceived unfair hurdles trying to get licensed. They said they were a managing director in engineering in their home country and graduated from a world-renowned institution. They recounted facing many difficulties trying to get an engineering job during the years that they were also navigating challenges in the licensing process. They said they managed to get a job because someone from their home country was able to vouch for them at a company where that person had worked. They said, but for this, “it would be impossible to get hired in an engineering role without a P.Eng.” They said they have seen other immigrants affected by the problem.

iv. Another engineer expressed a similar view as the foregoing accounts. They also stated that it cost “two months’ gross salary” to pay for our Canadian government’s evaluation, which turned out unrelated to eligibility to work in the province, they said.

v. One official outside the PEO, who has direct sophisticated knowledge of the workings between engineering regulators and governments, said that there is little to no communication or collaboration between the PEO and our Canadian government to try to achieve alignment in the vetting requirements. They also told us it is common for foreigners

to be recruited as skilled immigrants in engineering and have their engineering credentials evaluated as equivalent, but upon arrival in Canada to learn that evaluation is entirely unrelated to the evaluation by the provincial regulator.

vi. One PEO interviewee made a similar comment, stating that this disconnect was flagged at the PEO's chapter level some 15 years ago.

vii. Several interviewees inside and outside of the PEO described the process as creating a "Catch 22" situation for immigrants in Ontario. They said immigrants generally cannot get engineering work without a license and they cannot get the license without "Canadian experience". Some interviewees within the PEO also noted that despite the presence of the provisional license category, employers generally will not hire based on a provisional licence. (A provisional license is where one meets all licensing requirements except the "Canadian experience" requirement.) These PEO interviewees acknowledged that the PEO has not taken steps to improve education, awareness, or acceptance in the industry concerning provisional licenses.

viii. One interviewee said:

> "only about 10% of engineering graduates get an engineering job, even among Canadians. It is therefore very difficult for international people to compete for these same jobs to get the Canadian experience that licensure requires. And once you get the experience recognized finally, and this is hard enough to do, then you have to do the equivalency interview. The process is a little unfair…
>
> That test is highly technical. The average Canadian graduate couldn't answer these questions. This is unfair. Then you need one year on the ground; how will an international graduate even get this experience? And why, having seen graduates repeatedly from certain schools, there is still the need to continually assess equivalency; there are international agreements like the Washington Accord."

One official outside the PEO expressed remarkably similar sentiments.

ix. One interviewee said persons who come from Europe and the US "of course" receive a different (better) experience than those coming from places like Africa. A related perspective was expressed by an official outside the PEO, who has direct sophisticated knowledge of provincial engineering licensure. They said, "it is easier for Europeans to become licensed."

x. One engineer from the Middle East told us they resorted to changing their last name to improve employment prospects. They said they were expressly told they would not get hired with their original last name. They got hired after the name change, they said.

xi. One interviewee recounted witnessing a situation where a female engineer, who was wearing a hijab, attended a job hiring location. They said she was told, "What are you doing here? You are not going to be hired here. Go back to where you came from."

xii. One racialized interviewee told us, at the beginning of the interview, that they had not seen or experienced racism. However, they later volunteered in the interview: "All our supervisors were White. Immigrants would get hired, but would never get promoted. We were just happy

to finally get certified and to have a job. You keep your head down… I'm just trying to survive." … "Honestly, being able to tell you was like a therapy session."

xiii. One Black engineer said, "there are lots of Black engineers, but they can't get jobs." They said they joined an organization that was recently formed by Black engineers precisely to try to assist these Black engineer jobseekers. The interviewee said "99.5% of Black engineers have to struggle. They all have the stories."

xiv. One interviewee said "the White female engineers had a hard time. For example, the Montreal Massacre. That is real. But EDI doesn't even get to Black people, because you have to be a P. Eng. first" to even be in the environment to face individual discrimination.

xv. Several interviewees within the PEO stated that there are very few Black or Indigenous persons hired by the PEO. They said this has been the status quo since the PEO was established. As discussed in **Sub-sections 2.B5** and **B9** below, several interviewees made similar statements regarding the PEO's committees and Council. Some interviewees also stated that when inquiries are made within the PEO about a "lack of diversity" or the absence of Black or Indigenous persons, they are often summarily dismissed. They said the response is generally along the following lines: "no, we had one, remember?"; "no, there are lots."

xvi. One interviewee told us of a Black engineer they know who had to move to a different province to work in a mine because the PEO required them to demonstrate remarkably detailed experience to become licensed. The interviewee said this applicant "had to take a pay cut just to get this design experience, whereas they saw that their White colleagues were able to progress without the P. Eng."

xvii. One interviewee said:

> "It also impacts the ability to innovate. The lack of ability to progress means that some of these engineers are not making the best of their contributions and the state of our art and our economy is impacted. Protectionism does not work in a global economy. If we do not maximize our talent, multinationals go elsewhere… Our economy isn't as advanced because the talent is being wasted… Multinationals are moving elsewhere partly for talent reasons…
>
> For example, in trying to find solutions to fight COVID, I know an immigrant who is highly qualified, with sophisticated knowledge, training and expertise that would help address the COVID problem, but she can't get a foot in the door... Canada attracts a rich talent pool and squanders it…
>
> It is inevitable that in the global economy, the government may one day change the Act to better allow free movement. Once that happens, PEO will be extinct if they do not modernize."

2.23 **Item B2 Risks: these reported experiences and perceptions provide important context within which the PEO's regulations, rules, policies, processes, and practices must**

be evaluated in assessing whether they contribute to or perpetuate barriers facing marginalized groups:

i. We keep in mind the Supreme Court of Canada's reasoning as outlined in **Section 1(C)** above. Some would argue that the PEO's requirement for Canadian experience "has the effect of reinforcing, perpetuating or exacerbating disadvantage" faced by already marginalized immigrant groups, notably those from Africa, the Caribbean, and the Middle East. Some would argue that the PEO's requirements have a disparate and detrimental impact on the licensing and job prospects of persons from these groups. They would also argue that the reported negative reactions by recruiters in the industry flow from the example that the PEO sets in elevating "Canadian experience" as a key standard for competence. Ultimately, there is a high risk that the PEO's practices may be seen to "widen the gap" between these vulnerable groups and others in society and in engineering.

ii. Notably, a recurring theme was that – given networks and not having to face racism barriers – engineers who are White may be able to gain employment and promotions in engineering without a P. Eng. By contrast, a recurring theme was that engineers who are not White may not have the same opportunities. This was observed particularly regarding those who, the OHRC noted, are on "the lowest rungs of the social, economic, political or cultural ladders in Canada." These include Black persons, Indigenous persons and, in contemporary times, some persons who appear to be Muslims.

iii. This is important context for assessing the "disparate impact" that a prolonged, complicated, and difficult licensing experience has on immigrants. Further, when the "Catch 22" of the Canadian experience requirement is added to the equation, the disparate impact is multiplied. The OHRC Anti-Racism Policy is again instructive:

> "Systemic or institutional discrimination is a major barrier to racialized groups, particularly in the **employment context, in education** and in the criminal justice system. The impacts of systemic racial discrimination can be experienced differently based on intersection with other grounds of discrimination such as … place of origin, etc. For example, in a workplace that relies heavily on culturally and gender specific sporting activities to build informal networks, which, in turn, lead to promotions… **A man who has recently emigrated from Africa may face similar barriers in networking and ultimately advancing in this organization**. Therefore, addressing systemic discrimination requires **sensitivity to the interacting and cumulative effects** of discrimination on multiple grounds." (emphasis added)

iv. The stories also indicate a high risk that the pattern of exclusion that taints Canadian history, continues in Ontario's engineering profession. There is a high risk that the status quo also continues "particular and extreme marginalization" of Black and Indigenous persons, to use the OHRC's words. This signals the gravity of the risk that the PEO must address as falling within its mandate.

v. The perceived underrepresentation of Black persons and Indigenous persons in the profession and in the PEO is a red flag. The underrepresentation of racialized persons in the PEO's management is equally a clear warning sign. As the OHRC Anti-Racism Policy notes:

> "Numerical data that demonstrates that members of racialized groups are disproportionately represented may be an indicator of systemic or institutional racism. Numerical data can be evidence of the consequences of a discriminatory system in the following ways: • **Underrepresentation**… **suggests systemic discrimination in hiring practices or** may be indicative of **on-the-job discrimination** resulting in a failure to retain racialized persons. • Unequal distribution of racialized persons in an organization (for example, high concentration in entry-level positions and **low representation in managerial positions**) may demonstrate inequitable training and promotion practices. …[This] **will constitute strong circumstantial evidence of the existence of inequitable practices**." (emphasis added)

While the OHRC Anti-Racism Policy refers to numerical data, we note that the PEO does not track disaggregated race-based data. This is a notable risk that is addressed next.

We also note that, while the OHRC indicates that an organization can seek to counter the circumstantial evidence of racism by demonstrating a non-discriminatory reason for disproportional representation, there is a high risk that the PEO would not succeed in demonstrating non-discriminatory reasons.

3. Race-based data

2.24 Numerical data is one of the three key considerations that the OHRC notes for identifying and addressing systemic discrimination.[20]

2.25 Several interviewees within the PEO's Council, committees, and staff indicated that the PEO does not track disaggregated race-based data.

2.26 Disaggregated demographic data involves a breakdown of statistics to show representation based on equity-seeking subgroups. The Anti-Racism Data Standards (ARDS) issued by the Government of Ontario include the following definition:

> "Disaggregated data is broken down into component parts or smaller units of data for statistical analysis. In the context of race-based data, this means breaking down the composite (aggregate) "racialized" category into its component parts such as Black, South Asian, East/Southeast Asian, Latino, Middle Eastern, White, etc."

The ARDS sets out applicable standards and underscores the OHRC's guidance that disaggregated race-based data should be collected as part of an institution's anti-racism efforts.[21]

2.27 A few interviewees said they have previously raised a concern within the PEO that race-based data should be tracked and reported.

2.28 One interviewee said the PEO responded that it does not consider race when looking at qualifications. They said one concern was that asking applicants to identify their race may invite complaints that any lack of success in the process is based on racial discrimination.

2.29 This interviewee also told us:

> "but it is generally not hard to tell if an applicant is not White. You see their name. You see their past experiences, activities, locations. So evaluators generally can tell if they are not White. It is important to see, then, if unconscious biases are translating to underrepresentation in the numbers."

2.30 Some interviewees told us of their perceptions that racialized persons are over-represented among: (i) unsuccessful applicants; (ii) applicants who are assigned the highest number of exams; (iii) applicants whose licensure experience takes unduly long; and (iv) licensees who face discipline, among other perceived denials of benefits or impositions of burdens. They said they rely on anecdotes because the PEO does not track demographic data and statistics that measure matters like the foregoing. One interviewee said, "it is vital that PEO should start to collect race-based data in order to have proper metrics to ensure equity and diversity within its committees, volunteers and also employees."

2.31 **Item B3 Risks: It is a risk to public confidence that the PEO is not yet in keeping with the prevailing views in Canada about disaggregated race-based data. As the Canadian Centre for Diversity and Inclusion (CCDI) notes, gathering and reporting on such data is "widely considered a basic practice for organizations truly dedicated to diversity and inclusion".[22] The corollary to this is that it must be done in a manner consistent with best practices to protect applicants, licensees, and employees from harm that could result from reporting their demographic information.**

i. As CCDI notes, "understanding the demographic makeup is an instrumental first step in identifying gaps in representation, and determining inclusion issues and barriers to advancement."[23]

ii. If the PEO is unaware of the demographic breakdown of its applicants, licensees, staff, and volunteers, it will not know whether the above-noted perceptions are true; how far from inclusive the current state is; or where focus may be needed.

iii. Gathering and reporting data may sometimes show that there is better representation than perceived.

iv. Further, the data can also be leveraged for strategic planning that is beneficial to the PEO and Ontario. For example, it may reveal the distribution of certain

expertise that may be leveraged or bolstered within different communities and for unique community needs.

v. As CCDC notes, "what gets measured can help organizations understand how effective their programs and policies are; where they have issues; and what relevant and reasonable goals they can establish to improve performance."[24]

vi. A modern regulator must utilize data accordingly. This positions it to identify priority areas, set goals, tailor appropriate initiatives, and track and report on outcomes.

vii. The PEO has a duty to serve the public interest by ensuring inclusive processes and outcomes, and being transparent about this. The PEO must therefore measure its progress. Tracking disaggregated data is key to this end.

viii. The PEO must gather the data needed to know the demographic breakdown of how different peoples are faring. This is important because discrimination, systemic or otherwise, operates in Canada with disparate impact. Serving the public interest requires monitoring whether, and if yes where, the disparate impact continues.

ix. The PEO must undertake measurements in all key areas and phases. These include, without limitation, a breakdown by key identities regarding: who are governed and managed; who are seeking entry; who are unsuccessful or delayed in the licensing process; who are the subjects of complaints; who are the recipients of disciplinary sanctions; and who are the recipients of key opportunities. Only then can the PEO deliver appropriate responses that serve the public interest.

4. Chapters and elections

2.32 In looking at the organization's practices, we heard from several interviewees, inside and outside of the PEO, that there are significant issues of exclusion at several of the PEO's chapters. They also reported similar issues within the PEO's election processes at all levels. These matters also impact organizational culture, which is the third key consideration that OHRC notes for identifying and addressing systemic discrimination. Culture is discussed further in **Sub-section 2.B5**, below.

2.33 The exclusiveness was described as: an "old boys club"; "country clubs"; "exclusive little clubs"; "exclusive club"; "mini clubs"; "club system"; "uncontrolled clubs"; "cliques in the larger chapters"; "perhaps 12 of the 36 chapters have clique issues"; and "people not wanting to give up what they have nurtured for the last 20 years". The reported experiences and perceptions included:

i. Several interviewees said that in the PEO's elections at all levels, BIPOC candidates have been excluded from meetings and from running. This, they said, included elections that determine the Council that governs the profession.

ii. One interviewee stated that the PEO receives about 80 complaints per year alleging poor conduct by chapter members and candidates, with acts of exclusion and 'in-fighting'.

iii. A male interviewee told us he had personally seen evidence of racism and sexism at a chapter and is aware an investigation was done. He said:

> "gender for sure is an issue regarding getting into the chapter executives… There are guys cliques where they go to fancy restaurants and women are excluded… women couldn't rise in the chapter executive. And among the men there are also ethnicity issues. It is not pretty at all."

iv. One interviewee said, "Black, Indigenous, and Persons of Colour would have trouble to rise in the chapters, as it is hard to break through the cliques." This was regarding the dominant culture. They also added, "and where there are a couple enclaves with cliques from a particular ethnic nationality, it is difficult for Black, Indigenous, or other Persons of Colour to rise." A similar view was expressed by another interviewee.

v. One interviewee said, "You can only run in the chapter where you normally reside and the BIPOC are generally residing in the metropolitan areas where there are the largest chapters. Those are the chapters where there are the most clique issues."

vi. One interviewee of colour said that they faced exclusionary tactics in a chapter Board context. They said, "if there are disagreements, instead of resolving the matters, they make it difficult for you personally. They pull the supports and introduce roadblocks… It is difficult for new persons to navigate. There are close existing relationships. This discourages people from participating."

vii. One interviewee told us of physical violence against a female engineer at a chapter event. They said she was "shoved, yelled at, and belittled". The interviewee is aware that there was an investigation, but they believe there is no process to remove volunteers for misconduct.

   a. Incidentally, one PEO interviewee told us it is possible to have individuals removed via a harassment complaint. They said this process was "recently used to ban a volunteer from volunteering within the PEO." As a few interviewees stated that it is "virtually impossible" to remove individuals, it is unclear if these processes are accessible, well-distributed, prominent, transparent, or consistently applied. The Cayton Report found deficiencies in this regard (see Cayton Report paras. 4.113 and 4.114).

viii. One interviewee said that the content of some campaigning is quite concerning and that it has the effect of discouraging newcomers (including persons from equality-seeking groups) from running.

ix. One interviewee said that the "PEO lacks visibility into its chapters and this makes things ripe for misconduct including racism." Another interviewee expressed a similar view and added that chapters receive significant funding and "there is no visibility or accountability with what is done with the money". We observed in the PEO's financial statements that chapters receive approximately one million dollars in funding annually.

x. One interviewee stated that some candidates of colour have alleged irregularities, tampering, and lack of transparency in respect of elections, and that the alleged misconduct operates to favour candidates who are White.

xi. One interviewee also stated that the election procedures were changed to introduce requirements that have the effect of increasing barriers facing immigrants. For example, they said nomination requirements were changed to require nomination by fifteen nominees who are professional engineers and who have known the candidate for at least two years. The interviewee said the addition of the two-year requirement is a significant barrier to newcomers.

xii. One interviewee stated, "it is very difficult to be elected to Council if you never served on a chapter executive prior. Unless you work for a very large employer that actively encourages their employees to vote." They saw this as a barrier to newcomers.

2.34 **Item B4 Risks: If even some of these perceptions are valid, it is a great risk for the PEO in several dimensions, including racism or discrimination. Notably, some may argue that chapter members and volunteers, acting under the PEO's umbrella, are agents for the organization, and that the PEO may be liable if they engage in misconduct. The overlay of elections affairs increases this risk, as dynamics may be particularly heated, with participants who may have the will, skill, resources and/or access that may pose significant costs to the PEO. The costs may relate to publicity, legal affairs, or other dimensions. The PEO's mandate to ensure ethical conduct necessarily encompasses conduct within its chapters and elections, and concerning volunteers. A few component risks are worth noting:**

i. Having regard to systemic racism, if the PEO's elections processes are tainted by exclusionary practices and other misconduct that has the effect of disproportionately "limiting the opportunities available" to persons from historically disadvantaged or vulnerable groups, this would breach the PEO's human rights duties. This is the case even where misconduct is carried out by other members of disadvantaged or vulnerable groups (see OHRC's Anti-Racism Policy).[25]

ii. The risk in the PEO's elections processes is particularly serious. The PEO's elections determine the highest level of leadership and governance of the organization and profession. It is paramount to the public interest that the elections processes are transparent, demonstrably fair, accessible, inclusive, and in keeping with all ethical expectations for the profession.

iii. Regarding the question of resourcing, it is not within our scope to comment in detail on spending within the chapters. It is sufficient to note that activities funded by the PEO must conform to equitable, inclusive, and ethical expectations. This is so whether the activities involve restaurant outings, or other social activities. Serving the public interest also requires ensuring that resources are appropriately utilized. This is especially true because the PEO's finances are heavily sourced through the applicants' fees. Applicants are members of the public.

5. Culture

2.35 **Subsections 2.B2** and **B4** above touched on culture and it is worth elaborating on this dimension. Organizational culture is one of the three key considerations that the OHRC notes for identifying and addressing systemic discrimination.

2.36 The OHRC Anti-Racism Policy describes organizational culture as "shared patterns of informal social behaviour, such as communication, decision-making, and interpersonal relationships, that are the evidence of deeply held and largely unconscious values, assumptions and behavioural norms. **An organizational culture that is not inclusive can marginalize or exclude racialized persons**."[26] (emphasis added)

2.37 We heard from several interviewees about their perceptions of the unconscious values, assumptions, and norms in Ontario's engineering profession and at the PEO.

2.38 One interviewee said:

> "People like me don't exist in engineering… I'm accustomed to being the only one in the room... I don't believe I have felt bias against me based on race or accent. The issue is how they do things. That is, the old guard. It is like a private Country Club. They feel they have a sense of ownership. Older folks feel they had to pay their dues, so you should have to do the same… The face of the PEO comes across as White, male-dominated, and of a socio-economic class that is different from the average person. They're living the good life. And they've been living the good life for a long time. They're very traditionalist… If you come from an elite background, you will fit in. Scholarship kids would find it daunting. People can be put off… I think there may be unconscious bias… there is correlation with class, but I do not think it is about race."

2.39 Some female interviewees said that over the years there has been some progress with women. However, they also said:

> many women leave engineering roles "because of the treatment they are getting"; "some people don't believe women are competent"; "arrogant men"; "many women take a business course and exit"; "it is difficult for women to navigate the profession because of its maleness"; "it is still an old boys club; I am sure other groups are facing the same challenge"; "people are enjoying their privilege; they won't give this up easily"; "there is arrogance... there is the sense that engineering is different… things are done without malice, but also without humility."

2.40 Several other interviewees spoke about perceived "arrogance" and insularity, which they believe negatively impacts inclusiveness and effectiveness:

- "there is the sense that the dominant group does not have time to make accommodations that would be required by OHRC"
- "there's a sense that they are uncomfortable and that the onus is on BIPOC to make them feel comfortable"
- "they see no value of Black persons; they don't have to interact with them at all"

- "there is a false perception that we are doing well because a large percentage are foreign-trained. However, when you look within that percentage, Blacks and Indigenous, for example, are severely underrepresented. But no one thinks there is a problem."

2.41 Some interviewees revealed insufficient understanding of what constitutes racism or widely understood concepts relevant to equity, diversity and inclusion (EDI). The revelations were either from their perceptions or from indications regarding their own knowledge levels:

- "People lack understanding. EDI training is limited and not well-embedded"
- "The EDI policy is not well-distributed. The HR department is new"
- "Some have exited because things were dysfunctional in terms of EDI efforts"
- "There is a lack of understanding of how racism works and how [people] contribute to it. The sense is that *I* am not biased, without looking at the systemic impacts"
- One PEO interviewee said, "There is no systemic discrimination. There is nothing built into the system." However, they went on to say, "the licensing process itself is discriminatory. It makes it difficult for certain people… people not Canadian-trained… It creates unfair differences … unfair tracks"
- "There is a lack of understanding of *bias*. People see it only as *conflict of interest*. When they think of ethical rules about being free from bias, they do not turn their minds to things like racial bias"
- Several interviewees mentioned an EDI web training module. It is not evident how well learnings are being embedded through this module. For example, one interviewee who, like many other committee members, has been active in licensing-related committees for over 20 years expressed the following:
    - "I learned nothing new… these trainings are good for the workforce, but maybe not for PEO. We have always been in the correct frame of mind. At the committees, it is almost overdone. Everyone is very respectful."
    - He also said he had not seen any gender discrimination or racial discrimination in the decades serving on several licensing-related committees.
    - When asked about his understanding of the term "microaggression" he said, "it is if you lose your temper on a specific item; if you overreact."

2.42 Another committee member who has been active in licensing-related committees for over 20 years also made noteworthy comments.

- He said, "everyone is doing a good job."
- He told us he does not share the views expressed in the Cayton Report: "Cayton had no experience with engineering in Canada. The selection of Cayton was a mismatch."

- He referred to Mr. Cayton's female colleague as “the lady assistant”.

- He said he has not seen any racism in panels and that he has participated on many panels very frequently.

- Regarding the current global attention surrounding racism, including in Canada with Black Lives Matter, he said,

  > “if people are saying these things, there must be some facts, but I don’t know what those facts are. Things have improved a lot. There were systemic issues back when, but it is different now. There is some discrimination against Black folks in California.”

- This interviewee also said he had not heard of any issues regarding the chapters:

  > “It is the easiest thing to get in and be included. It is also the easiest thing to get involved in committees. You simply send an email and show interest.”

- He stated that he had not heard of any discrimination (whether race-based, gender-based, or other forms of discrimination) at all at the PEO.

- He concluded, “PEO is leading in EDI”.

2.43 By contrast, several interviewees expressed opposite views, some of which are indicated earlier in this report. Additional views expressed by several committee members and others include:

- Some applicants face challenges, and applicants are from all races. When asked if they had observed any pattern, they said, “it is Blacks and Browns. Who are we kidding?”

- One interviewee of colour said, “it is not clear how one gets on to committees. I sent many applications over years and got no response.”

- One PEO interviewee explained that as a check-and-balance, if persons are thought to have an agenda, “we prevent them from getting on to committees.”

- One committee member said, “it’s who likes you, versus what your skills are… it’s who you know… there are inherent biases.”

- One interviewee’s comments suggested that perspectives will differ based on differential experiences: “…each chapter is different. Some have very low engagement and will gladly accept any volunteer, while others have more volunteers than they know what to do with.”

- Several interviewees, including various committee members, indicated that there are very few Black persons or Indigenous persons in key committees. These committees include academic requirements (ARC), experience requirements (ERC), discipline, licensing, and registration committees.

- One committee member said they had heard of many cases where applicants feel other committees, notably the ERC, discriminated against them.

- One interviewee noted they had experienced a lot of covert racism particularly in industry and added: “Persons of Colour are seen as incompetent”.

- One committee member told us that there are committee-selection discussions where candidates are excluded because of their accents. One example concerned a candidate of East Asian descent. Another committee member ruled this candidate out, saying the candidate “didn’t even speak English”. This, the interviewee told us, was not true; the person speaks English fluently and with “good grammar”. The candidate had a strong accent. The interviewee was uncomfortable, they confessed, and did not challenge the exclusion. They told us that no one challenged the exclusion and that no one else looked uncomfortable.

- One committee member noted that some Council members of colour allege that they are: frequently interrupted during meetings; not given the same opportunity to speak as their peers who are White; and spoken to in a dismissive or irritated tone or in a condescending manner. We reviewed sample Council meeting recordings and observed a Council member of colour voicing similar concerns repeatedly.

- One racialized interviewee said they were told by someone, who was a PEO Councillor at the time and who is White, that “EDI…is not for [the then Councillor] to bring up”, because he is “a White guy.” They said his tone was “slightly condescending” and he suggested that EDI was more for racialized persons to address.

- One interviewee said that it is a “big issue at PEO” where racialized persons who do not participate in activities for cultural reasons are viewed as not fitting with the team and they lose out on opportunities.

- One interviewee said, “consulting engineering is the epitome of the old boys club… they advocate against anything to open it up.”

- One interviewee told us that they have previously “mentioned equity and diversity and anti-discrimination” when asked at a PEO meeting what was important for the organization to consider. They said “there was no further discussion” about this.

2.44 In assessing discrimination vulnerabilities from a culture standpoint, it is also noteworthy that, despite their candour, almost all interviewees demonstrated a degree of fear, or we sensed this, in relation to speaking about their perceptions and experiences. In advance of the interviews, all interviewees received our interview invitation letter which promised anonymity. Each interviewee consented to being interviewed on that basis. Despite this, almost every interviewee urged us at their interview, sometimes multiple times, for assurances of anonymity. Some expressly told us they were afraid speaking might adversely impact their role or standing. Some expressed relief and gratitude at the end of the interview for being able to speak to us. For example, one person said, “it is nice being able to talk to someone about this; and you are not even PEO”.

2.45 Several interviewees also stated that:

- "there is systemic lack of inclusion, but people are afraid to report the behaviour"
- "some are afraid to raise questions because they are worried"
- "fear is … evident in licensing where applicants are afraid to [raise questions about] what they feel is an unfair assessment"
- "Council members are afraid to touch difficult subjects like anti-racism because no one wants to say something unpopular. It will cost them in the elections. The base still has inclusivity issues."

2.46 **Item B5 Risks: considering that committees, chapters, and meetings are part of the organization, most interviewees expressed views that indicate concerns about the culture in the organization and the profession for which it is responsible. If these perceptions are valid, they represent serious vulnerabilities to racism and discrimination. As the OHRC notes:**

> a culture that is not inclusive can marginalize or exclude racialized persons. In addition to practices and data, it is culture that the OHRC assesses as a key consideration in determining whether systemic discrimination exists in an organization. Further, the OHRC, "expects organizations and institutions to use these three considerations as a basis for proactively monitoring for and, if found to exist, addressing systemic discrimination internally."[27]

The various accounts shared in this Section 2(B) suggest that the PEO is at risk, as illuminated by the following OHRC examples of systemic racism in organizational culture:

- "A White woman's straightforward communication style leads co-workers to appreciate her as a "straight talker." An African Canadian woman's similar style results in her being characterized as "abrupt."
- "A Pakistani Canadian man was not given a teaching job for which he was the most qualified candidate because a White woman was perceived to be more enthusiastic and to have greater potential to motivate students. In fact, the Pakistani Canadian man was extremely enthusiastic about teaching and had great potential to motivate students but demonstrated this in a different manner. The Tribunal found discrimination because of the employer's failure to take into account cultural differences."
- "The Tribunal found that "visible minorities" were viewed by senior management as culturally different and not considered suitable for managerial positions."
- "A related issue can be an organization's tendency to undervalue the strengths and contributions of racialized employees. Example: A Chinese Canadian teacher was placed on a surplus list because the school principal took a narrow view of what types of activities qualified as "extra-curricular." Activities that for cultural reasons

Chinese immigrants would be unlikely to undertake were included while legitimate activities that they would be more disposed to engage in were excluded."

- "Social relationships and networks are also an important part of organizational culture. These networks can allow some people to know what is required for success in an organization, with others being excluded from this critical knowledge. In addition, social relationships can result in perceptions about whether a person "fits" within an organization or is seen as an outsider. Example: A company emphasizes evening social events outside of the workplace as an important part of team building. Racialized employees who do not participate for cultural or religious reasons are seen as not being team players and miss out on significant networking opportunities."[28]

2.47 Ultimately, from most interviews conducted, strong themes emerged regarding perceived exclusion, insularity, lack of humility, lack of cultural sensitivity and EDI competency, elitism, fear, and undervaluing Black persons, Indigenous persons, and Persons of Colour. This critical risk warrants significant attention and an adequate institutional response.

2.48 Notably, while a recurring perception was that elitism, classism, arrogance, and insularity are root causes (and not racism *per se*), this is unfortunately misguided. The OHRC explains the impact of intersectionality, such as the relationship between low-income and historical disadvantage. The question is always whether the prevailing norms and practices perpetuate racial disadvantage. Some would argue that stories like the foregoing are indicative of systemic racism, and that the Human Rights Tribunal would likely reach a similar conclusion. The following excerpts from the OHRC Anti-Racism Policy are instructive:

- "The **significance of these decisions from a racial discrimination perspective** lies mainly in their recognition of **the link between socio-economic status and race**. They represent a successful challenge of a policy that affected low-income individuals because of the **relationship between poverty and historical disadvantage experienced by racialized groups**."

- "The issue of access to professions and trades is of significant concern to foreign-educated and trained persons who seek to practice their profession or trade after their arrival in Ontario. While it is an issue that is based primarily on the ground of "place of origin" it also has intersectional implications for racialized persons. The **intersection of "place of origin" with race, colour or ethnic origin appears to compound the barriers to employment integration and intensify economic and social vulnerability for foreign educated and trained persons**."[29]

2.49 Overall, it is a significant risk to public confidence that so many interviewees inside and outside the organization perceive the profession's culture as sorely lacking in inclusivity. It is also a material risk if people are afraid to communicate their concerns honestly to the PEO. Without the benefit of the honest views and insights, the PEO may have significant blind-spots and remain ill-equipped to mitigate growing risks.

6. Discipline and rewards

2.50 Another dimension of culture and practices that was raised in some interviews is the PEO's approach to disciplining licensees, including Councillors.

2.51 We heard allegations of a differential approach to discipline regarding Council members and other licensees. The difference was alleged to split along racial lines. Some interviewees told us about incidents where they perceived that:

- Councillors who are White received leniency and/or their misconduct was overlooked or justified.
- The disciplinary process was abused in a retaliatory manner, and legal action was unduly threatened, against Councillors of colour who had raised concerns, or it was used to settle personal vendettas.
- There was a lack of consistency in the application of rules, standards, principles of procedural fairness, and consequences.
- Some respondents who did not have the means to afford an adequate defence accepted or received undue consequences as a result.

2.52 We have also reviewed some written comments that expressed similar concerns from other engineers. For example, similar concerns have been published in the PEO's bimonthly magazine (*Engineering Dimensions*) distributed to all PEO licensed professional engineers. Similar concerns have also been communicated by emails to a wide audience of officials inside and outside of the PEO.

2.53 Regarding the discipline process in relation to licensees in general, we heard allegations consistent with the findings in the Cayton Report. One such allegation is that the discipline committee and its hearing panels do not adequately represent the diversity of the profession or Ontario's society. We were also told:

- No disaggregated demographic data is tracked regarding: matters referred to discipline; the matters where respondents were sanctioned; the kinds of discipline in relation to kinds of misconduct; or which matters are publicly reported.
- Most decisions are anonymized when it would better serve the public interest if they were all public.
- There are serious deficiencies regarding: selection criteria; training requirements; training; competency assessments; performance appraisal; and ability to remove discipline committee members. Incidentally, we heard similar views from various interviewees concerning various committees.
- Certain requirements in the Regulation operate to create disproportionate barriers facing immigrants and BIPOC persons. For example, committee members must have 10 years' minimum experience as a professional engineer; and there are certain 'quorum' requirements.

These requirements were seen as unnecessary. They were also seen to have a disparate impact on racialized persons who are less represented in the specified groupings.

2.54 We also heard concern that the discipline committee is comprised of too many retired engineers who are not trained in principles of procedural fairness. We read similar concerns in some of the public comments in the PEO's *Engineering Dimensions* magazine. The sentiment expressed is that it is a brand of 'peer justice' that is outdated and not in keeping with modern standards for a regulator's discipline process.

2.55 On the other side of the coin, regarding rewards, some interviewees alleged notable conflicts of interest in the PEO's procurement processes. They stated that some contracts are "awarded without a clear process" and some contracts are awarded within the "old boys club".

2.56 **Item B6 Risks: if even some of these perceptions are valid, it is a notable risk for the PEO in several dimensions, including racism or discrimination. All comments under item B4 above are equally applicable to this item B6. Irrespective of the merits of any of the allegations, it is critical for the PEO as a professional regulator to demonstrably uphold all standards of propriety, ethics, and fairness when imposing burdens, denying benefits, or allocating opportunities. Any failure to do so would go to the heart of the definition of discrimination and would be a serious breach of human rights and ethical duties. It is noteworthy that concerns have been published widely and raised at all levels, which means this question is on the radar of many in the profession, the public, and public bodies. Public confidence in the PEO as a regulator will turn on how it handles these high-profile issues.**

7. Licensing

2.57 We have reviewed several previous assessments of the PEO's licensing process. This subject has been extensively reviewed for over ten years, including by various consultants retained by the PEO. Significant concerns have been identified and solutions have been proposed. We will not repeat them. We will instead note the significance of failing to implement the recommendations to date.

2.58 Of greatest significance, we note that Ontario's Office of the Fairness Commissioner (OFC) has raised concerns, over a 13-year period, about the PEO's Canadian experience requirement. There has been extensive back-and-forth between the PEO and the OFC on this subject. The OFC concluded[30] that the PEO's requirement is:

- discriminatory (citing also the OHRC's opinion that a strict requirement for Canadian experience is discrimination on its face and can only be used in very limited circumstances);
- breaches human rights laws; and
- breaches the PEO's fair registration practices duties under the *Fair Access to Regulated Professions and Compulsory Trades Act* (FARPACTA), to which the PEO is subject.

The OFC also noted that the PEO's rationales for the requirement do not demonstrate that the requirement is a *bona fide* requirement.

2.59 It is evident that the OFC has been taking a progressively stronger stance on this subject given the passage of many years and as no corrective action has been taken. While the OFC has not yet resorted to issuing a compliance order against the PEO, it is well within its powers to do so. There is a high risk that this is inevitable, if the PEO does not take corrective action.

2.60 It is also noteworthy that during this same period, other provinces have already proactively taken reformatory action. This was led by British Columbia's initiative in reaction to the OFC's concerns about the PEO's requirement. They have managed to not only develop alternative approaches, but also to have already implemented them. They are communicating positive outcomes, positive feedback from applicants and licensees, and no increased risk.

2.61 Of note, the OFC commented that the PEO's participation in British Columbia's pilot, which launched in 2014, did not lead to any change ("demonstrated results") in Ontario.[31]

2.62 It is also noteworthy that several PEO interviewees were unable to tell us details of the PEO's work to develop an alternative, or to comment on details of the alternatives in other provinces. Several PEO interviewees indicated that they lacked awareness, understanding, or current information specific to the Canadian experience requirement, and regarding competency-based assessments.

2.63 Some PEO interviewees asserted that they are impeded by barriers to changing the Canadian experience requirement. They asserted that these include: the "archaic" and complex governing Act, and risk-averse opinions from lawyers. However, when we commented that we see the Canadian experience requirement in the Regulations – not the Act – and that the Regulations are within the power of the PEO to change readily, the interviewees expressed surprise.

2.64 Leaving aside the Canadian experience requirement, the various assessments regarding the PEO's licensing process have offered solutions for concerns about subjectivity, inconsistency, bias, vagueness, lack of transparency, unreasonable thresholds, unreasonable assignments, undue barriers, unfairness, and a host of other concerns.

2.65 Our review of some ERC interviews – and various statements by persons we interviewed during this project – provided further indications that there are material risks in the PEO's licensing processes. These risks relate to fairness, reliability, and integrity of the processes.

2.66 Notably, some PEO interviewees revealed that they do not consider the Canadian experience requirement to be necessary or helpful. They revealed that they were not personally persuaded by the rationales the PEO has previously given for this requirement. Some PEO interviewees articulated why each of the rationales given was non-sequitur or in the words of one interviewee, "red herrings". Notwithstanding these comments, only a few of the PEO interviewees demonstrated a desire or will to move away from Canadian-centric requirements. Below are examples of some final comments on the subject, notwithstanding the foregoing revelations:

- "It still does not hurt to have someone in Canada validate their experience."
- "But tell me what alternative there is? How will we know they have the stated experience if a Canadian cannot validate it?"

- "How can we trust that the experience was what was stated by the international validator or referee?"

- When asked about the possible disparate impact of certain facially-neutral requirements like "Canadian experience", one PEO interviewee responded,

> "I do not know what obligation a regulator has or should have to assist people on their paths to licensure… the issue seems to be that the licensure process has become so complicated that people need help to navigate it… this is what should be solved for."

2.67 By contrast, when we posed similar questions to an official outside the PEO, who has sophisticated knowledge of engineering licensure across Canada and outside of Canada, they noted that:

- "Many applicants are far along in their experience and would have a hard time passing these exams… even Canadians at that equivalent stage in their careers would have the same difficulty passing these University-curriculum exams."

- "Ontario does attract a lot of talent, but many people are not getting the licenses, so it limits their employment prospects… There is also likely a limit to the contribution they can make if they can't get a license as it limits their advancement within employment; some positions require a P. Eng. to stamp."

- Canada competes with Australia for international talent and Australia has no similar 'Australian experience requirement'. "Australia simply uses a competency-based assessment and references."

- Relying on a person to assess equivalent experience is subjective. It often expresses itself in looking for the same experience that the assessor had, "which is not the standard."

- Relying solely on Canadian supervisors, "presupposes that the Canadian-licensed person doing the assessment is practising in accordance with expected norms and codes of conduct, when there is actually no oversight regarding what they're doing."

- "Just because a supervisor is Canadian-licensed doesn't automatically mean they act properly. And just because an international validator isn't Canadian-licensed doesn't mean they cannot be trusted."

2.68 Leaving aside the "Canadian experience" question, some PEO interviewees also expressed concern about subjectivity, lack of consistency, unreasonably high bars for some, and unfairness in the licensing process. Below are examples of comments we received from some PEO interviewees. Some expressed all these sentiments:

- "Assessing based on Canadian university curriculum is not an effective approach… and even Canadian graduates would not likely pass the interviews."

- "Some of the exams are highly unfair", "they are quite the stretch"

- "It is unfair"; "unfair differences"; "unfair tracks"; "subjectivity in who is required to do exams and how many exams"; "it is like when female engineers were assigned many exams in past"; "archaic like hiring from a textbook"; "duck test"

- "The process is discriminatory. They can't complain to the Registration Committee without a formal decision and tonnes of times they can't get a decision." "There is no real right of appeal."

- The licensing-related committees have "developed many unclear rules and policy documents that… applicants are [not] aware of and [these requirements are] not clear in the published guideline[s]". (The interviewees also suggested that it is unclear whether there is legal authority to support these developments.)

2.69 One interviewee also stated that:

> "there are 'consultants' that sit on these committees that provide 'training' to pass the requirements… or [they] translate… academic documents. [If you engage these consultants,] you will not have any issues [getting licensed]… This appears to reveal unfair, biased, and discriminatory practices, in my opinion. [This] should be a focus for [the PEO] to fix."

2.70 Incidentally, given the challenges that are well-documented and discussed about access to and the journey to licensure, we asked some PEO interviewees about access-promoting initiatives like the Licensure Assistance Program (LAP) and the Financial Credit Program, which are mentioned on the PEO's website. These interviewees conveyed that they did not know or remember many details about these initiatives. However, a few committee members shared the following views:

- The LAP "requires better coordination and support. Currently, there is little oversight, little consistency, and little accountability. While this is a program that should be run by the PEO, there are risks in how it is currently being run and this is likely affecting some of the more marginalized communities."

- The LAP "currently relies on volunteers in the chapters, with a PEO Staff coordinator [providing some support]. Volunteers receive a very small training."

- "There is a lot of misinformation that is not intentional. The people running [the LAP] know the rules only partially. When something happens, they don't know how to react to it. People complain about this. Every chapter has a different version. The idea is that the chapters were trying to help applicants prove their academic background, help them know what to present, showing them an example of how to write a report." However, members of the licensing-related committees "could not believe their eyes" regarding what was being taught, for example, suggesting it "should be like a master's thesis". They concluded:

  > "This is not at all what we want. You end up having a situation where the applicant has gone through this assistance program and received a lot of guidance only to be rejected on the basis of following such guidance."

- Other members within the organization were unclear or could not speak in detail about what the LAP is about. However, they told us they know that it is being run through the chapters and that it is not clear whether it is well aligned to the actual expectations.

- Nearly all interviewees indicated that the licensing process is extremely complicated and cumbersome. Some noted that it took a consultant some 250 pages to document the process. The Cayton Report similarly found that the "current licensing and registration process is lengthy, complex and difficult to follow."[32]

- One committee member said, "there is a sense that we are bending over backwards to help people through this cumbersome process." They told us that there was a short version of a document that a committee had prepared that set out the licensing expectations and the committee had recommended that it be made public. It appears this was not implemented.

2.71 **Item B7 Risks: it is surprising and striking that there is not yet material progress in reforming the licensing process, given the considerable attention, time, resources, and recommendations that have been dedicated to this area. While the solutions are undoubtedly large undertakings, failing to implement them promptly is detrimental to many things, including the PEO's image and the public's trust in engineering as an effective self-governing profession. Public attention to matters such as these is growing in contemporary times, and the PEO is in an untenable position in this area. This is a major risk requiring attention. A few elements are particularly noteworthy for purposes of this engagement:**

i. If inaction continues, it appears inevitable that an OFC compliance order will ultimately be issued. This would be devastating to the PEO's credibility as a self-regulator. The risk is also high that the government, in turn, would be prompted to step in and relieve the PEO of certain self-governing authority.

ii. There is precedent in Canada for alternative models to professional regulation. For example, the introduction of a Superintendent (see for example in British Columbia: Superintendent chosen for professional governance office | BC Gov News).[33] Even in alternative models, varying degrees of autonomy may be allowed or denied depending on the level of trust earned and maintained.

iii. It is unclear the reasons progress has not yet been made after about 13 years. A range of perceived causes were asserted: the Act is archaic; the PEO has been consumed with governance transformation and pandemic challenges in the past year; alternative models are unknown; and Canadian validators are needed. Leaving aside the last reason stated, all other *perceived* causes were not actual barriers in recent pre-pandemic years and are not barriers going forward. We therefore deduce that the perceived need for "Canadian validators" may be a root cause of inertia. It also appears possible that the perceived need is based, perhaps unconsciously, in a lack of trust regarding international validators.

iv. It is appropriate that safeguards are included in any system that validates credentials and experiences. Additional measures can also be introduced to monitor or mitigate risk. However, it would be inherently and deeply problematic from a systemic racism and discrimination perspective if implicit assumptions, stereotypes, or fears that are not evidence-based or rationally connected are among the reasons underlying the continuation of barriers. This is especially true where the barriers significantly impact the life chances of persons from historically oppressed backgrounds. While this may be

unconscious, it would go to the heart of the matters discussed in **Section 1(C)**, above. Each person must search within themselves for any unconscious bias and root this out.

v. In unpacking the potential for unconscious bias, we encourage each decision-maker to ask themselves:

- Why has there been a need for so many justifications, and changing justifications, that even some PEO persons see as 'red herrings'?
- What does it mask; why is there a need for a mask?
- What is the harm sought to be prevented and does the requirement actually prevent that harm?
- Is the fear valid, as being based in evidence and rationally connected to such evidence?
- If the fear is valid, are there less discriminatory ways to address the fear?
- Does the requirement introduce harms, not only to immigrant applicants but also to Ontarian engineers? Think of reciprocity agreements and the barriers Ontarian engineers will face as other signatories increasingly resort to sanctions.
- Would reputational damage and related detrimental impacts to Ontario's future ability to attract top engineering talent and top industry participants outweigh the harm sought to be prevented? Do you think these costs would follow if Ontario is seen as backward?
- Would the cost of losing self-governing delegated authority, whether fully or in part, outweigh the harm sought to be prevented?

vi. On the question of trusting international validators, it is noteworthy that various professional regulators in Canada accept validation of experience by international professionals. For example:

- The Law Society of Ontario has three simple validation requirements for international lawyers licensed to practice law in a common law jurisdiction and who have practised as a lawyer for a minimum of certain number of months:
    1. Candidate Letter
    2. Referee Letter(s) which may be from the candidate's jurisdiction
    3. Certificate of Standing sent directly from the issuing jurisdiction.[34]
- British Columbia's engineering regulator also relies on reference letters. On the face of the requirements, they contemplate that referees may be from outside Canada or the US:

"All candidates are required to nominate four or more Canadian and/or US referees. All should be professional engineers with first-hand knowledge of the candidate's work. At least two of the referees should have directly supervised the candidate and at least one professional engineer familiar with the candidate's work from outside his or her company should be nominated if possible. **If experience outside Canada/United States must be verified, additional referees are required**. A separate letter is required to explain if the candidate cannot nominate the required referees. Professional engineers with indirect knowledge of the candidate's work may be nominated if absolutely necessary. Please refer to the reference forms for more information."[35] (emphasis added)

vii. We offer comments regarding the question whether it is the duty or role of a professional regulator to assist applicants on their paths to licensure. The answer is that professional regulators have a duty to: ensure fair and equal access to their profession; and to remove barriers to access, particularly those that have a disparate impact and perpetuate disadvantage. The PEO has created and sustained practices that, many say, operate as barriers to persons from BIPOC or equity-seeking groups. These perceived barriers continue notwithstanding various assessments and recommendations about how to effectively remove them without compromising the regulator's mandate. The assessments have documented that there is unequal access. It is unclear what if any corrective steps are being taken. The Licensure Assistance Program and the Financial Credit Program are in principle some of the kinds of initiatives that are appropriate as barrier removal initiatives. These programs require proper attention, resourcing, support, and delivery. There is significant vulnerability to exacerbating systemic racism if facially ameliorative programs operate to sustain or increase disadvantage.

8. Adequacy of efforts

2.72 The previous sub-sections commented on the adequacy of some measures by the PEO in fulfilling its duty to protect the public interest as it concerns anti-racism and anti-discrimination. There are notable vulnerabilities to racism and discrimination, as discussed above.

2.73 There is also a consequential risk that in a human rights lawsuit, the organization may be found deficient in meeting its responsibilities. The OHRC lists the following factors as considerations for determining whether an organization met its responsibilities: procedures in place at the time to deal with discrimination and harassment; the promptness of the institutional response; the seriousness with which the matter was treated; resources made available; whether the organization provided a healthy work environment; and the degree to which the action taken was communicated to complainants.[36]

2.74 In addition to the items discussed above, we also note the following in relation to the factors that the OHRC lists:

(a) Policies, procedures, processes, and training. Comments above indicated that there are risks related to the adequacy of EDI information. This concerned accessibility, distribution,

prominence, emphasis, and the extent of learnings embedded. We have also reviewed the PEO's policies that are relevant to discrimination. We observed that PEO persons who gathered these documents had some difficulty identifying or locating all the relevant policies. PEO persons advised that some of these documents are in the process of being updated. On reviewing the policies, we saw opportunity for these policies and procedures to be updated to better address racism and discrimination. We also noted opportunity gaps related to the absence of processes that offer sufficient protections for complainants of discrimination. PEO interviewees and others told us there are no ombudsperson, whistleblower, workplace investigation, or other complaints processes that are independent of the complaints process designed to address professional incompetence.

(b) Resourcing. Comments above indicated risks related to the adequacy of resourcing and support for the EDI committee and for other facially ameliorative initiatives like the Licensure Assistance Program and Financial Credit Program. We also note the following:

1. Looking at the PEO's publicly available financial documents, there is only modest funding allocated to anti-discrimination initiatives:

    - As a reference point, we observe that the PEO budgets approximately $800,000 yearly for volunteer expenses. Based on the PEO's 2020 financial documents, these expenses appear to be primarily for meals, travel, and accommodation. The PEO declared that it saved "$504,976" of the volunteer expenses budget in the 2020 pandemic year, "largely due to reduced travel costs for accommodation, meals, mileage, air/train fare, bus/car/taxi, and parking for events".

    - Looking at the PEO's anti-discrimination line items:

        i. In 2019, the PEO spent $22,819 on the 30 by 30 Taskforce. This represents less than 3% of the above-noted spending on certain meals and travel.

        ii. In 2020, the AREWG's budget was $50,000. This represents roughly 6% of the above-noted spending on certain meals and travel.

        iii. The budget for the current anti-racism assessment is a fraction of the PEO's spending on its 2019 regulatory assessment. To deliver an adequate report relative to the PEO's RFP, our engagement team dedicated a great deal of pro bono hours to this project.

    - The PEO is fortunate to receive extensive voluntary hours from many stakeholders. This said, it is not sustainable or sufficiently effective to rely on pro bono work to fulfill the PEO's legal duties. This is especially so if there is inadequate coordination or coherence.

    - It would also be more cost-effective to allocate resources to the appropriate level of expertise upfront, than to incur significant incidental costs that may be associated with donated work. The Cayton Report makes some similar observations at its paragraph 3.38.

    - Ultimately, the risks we identify engage the PEO's obligations under Ontario's *Human Rights Code* and accountability rests with its Council. Council must ensure

a coordinated and coherent response, supported by the requisite expertise and resourcing.

2. To elaborate on the resourcing and other concerns raised in respect of the EDI committee:

    - Several members of the organization stated that the EDC has had limited effectiveness.

    - We were told that: there are only four members of the EDC; the EDC meets only a few times per year; there have been no material outputs other than things like some social events; the EDC's terms of reference were flagged as requiring an update and this is underway; and there has not yet been an effort from the organization to increase the profile of the EDC or recruit more members or support.

    - Regarding a topic that emerged in 2020 whether the PEO would develop formal Indigenous Land Acknowledgements and begin efforts to better engage Indigenous communities, one EDC member said "this is a huge amount of work. This is an enormous task. We do not have the expertise. We are volunteers."

3. One interviewee said that the EDC's focus was originally on licensing and that:

    "since the Montreal Massacre, gender equality has been the overriding issue… There is much less talk about other media issues like racism."

4. One interviewee told us that the EDC's report presentations to the Council are very infrequent, with several years elapsing in between. They said the EDC reported to Council that "we are at more than 50% foreign trained engineers, so we're doing well." This, they said, was notwithstanding the EDC's awareness of more robust performance evaluation approaches being followed by other prominent professional regulators.

(c) Promptness of the institutional response, and the work environment. In considering these factors in relation to concerns raised (about "Canadian experience"; disaggregated data; resourcing issues; inclusivity issues at chapters and in elections; deficiencies in the licensing and discipline processes, among other things), the following should be noted in addition to comments discussed earlier:

1. Several interviewees told us that one reason for delays and gaps in responses is that the organization lost several staff members who occupied key roles needed to fulfil the PEO's regulatory function. They said vacancies have not been filled in more than a year, because the organization is awaiting the redesign of roles and structures as it undergoes transformation to becoming a modern regulator.

2. Several interviewees said some key staff members are "stretched thin" as some are serving in two or three large roles.

3. We also noted the various comments in the Cayton Report regarding a lack of role clarity and accountability as between staff and volunteers, with various challenging dynamics; working at cross purposes; focusing on distracting matters at the expense of essential matters; confusion; and strain. Several employees and volunteers also told

us similar views and conveyed the sense of a particularly challenging work environment. One staff member noted that there is a positive dynamic among senior staff despite the wider challenges.

2.75 **Item B8 Risks: As it is self-explanatory that the above-noted inadequacies present considerable risks in relation to racism, discrimination, and the organization's exposure to claims, no further elaboration on risk is offered regarding most of the factors. However, one factor that warrants elaboration is the question of the organizational transformation and related stalled changes:**

i. One may empathize with staff and volunteers who may be occupying roles that are under-resourced and/or lacking in role clarity or other necessary enablers. However, these challenges would not be a justifiable reason for failings in the institutional response.

ii. Ultimately, the organization exercises authority delegated from the government, and which authority has immense impact on the lives of over 87,000 licensees and thousands of applicants. It also impacts staff and countless members of the public. This public organization must prioritize responding to serious public interest issues like systemic racism risks.

9. The role of Council

2.76 The PEO's Council is ultimately responsible for the proper exercise of the regulatory authority delegated to the PEO. This delegated power cannot be further delegated. Notably, it is ultimately the Council's responsibility to ensure regulatory performance that adheres to human rights laws and the values of a free and fair democratic society.

2.77 As Steinecke (a reputable authority on governance for professional regulators) makes clear:[37]

(a) The Council acts through the CEO/Registrar in *implementing* its strategic plan and policy directions. However, the Council must determine the organization's mission, goals, priorities, policy directions, and strategy. The Council must also ensure effective ways to oversee the performance of the regulator, including the CEO/Registrar's performance in implementation.

(b) The CEO/Registrar in turn must "act within the public interest mandate of the regulator". They are responsible to ensure "staff perform the necessary operational functions of the regulator such as managing…human resources activities, and finances". They also ensure "compliance with the requirements of the enabling statute and other legislation such as employment standards, occupational health and safety, and human rights", among other things.

2.78 In our assessment, among other things, we reviewed the PEO's strategic plan, some transformation planning documents, and several Council documents including some Council meeting recordings and minutes. We also interviewed some Councillors and others about related matters. It appears there is nothing to date in the goals, priorities, policy direction, or strategy set by the Council that addresses racism. This is a significant omission.

2.79 We commend the Council for starting to look at this question by commissioning this scoping engagement. Significant work remains to be done by the Council further to its *Human Rights Code* (*Code*) obligations.

2.80 To help to prepare the Council for next steps, our review identified examples of risks and gaps regarding the PEO's performance at the policy or strategic level in relation to its human rights duties:

1. As mentioned earlier, several interviewees told us that the PEO has not issued a formal anti-racism public statement at the policy or strategic level. The CEO/Registrar's August 2020 anti-racism email, which was also publicly posted as a blog message, was a good start. There is an opportunity gap regarding a policy statement endorsed by the Council.

2. The PEO's strategic plan and governance transformation plan appear largely devoid of any anti-racism strategy, and minimal resources have been allocated to anti-racism and anti-discrimination to date.

3. There are no performance measures, whether tied to the CEO's performance or otherwise established, to evaluate the regulator's performance regarding anti-racism or other *Code* obligations.

4. Anti-racism is not a priority that is discussed at Council meetings. A small exception involved brief discussions at two recent Council meetings regarding the motion a Councillor brought to seek this engagement. Concerning that motion, it is noteworthy that:

    i. On one hand, there were challenges getting the motion heard and supported the first time it was raised in Council.

    ii. On the other hand, the matter was taken away and the mover of the motion collaborated with senior staff, and a few other Councillors. An updated motion was brought back to the Council. It received unanimous support. This is positive.

5. Other than some steps by a few leaders (examples below), the evidence suggests a significant gap regarding the "tone from the top" and robust anti-racism and anti-discrimination efforts.

6. The positive preliminary steps we heard about included:

    i. The efforts by the Councillor, and a few who assisted him, to bring the AREWG motion and get it approved.

    ii. That a racialized Councillor has on some occasions asked at the Council about anti-discrimination, raised "the race issue", and informed the Council about initiatives by other prominent professional regulators that are intentionally addressing challenges faced by racialized licensees and applicants. (However, interviewees told us that the response by a few other Councillors was that "they don't know if there is an issue".)

    iii. That a few female Councillors incorporate EDI language in their comments at Council.

    iv. That Council has discussed whether to do Indigenous Land Acknowledgements, and that some Councillors suggested a more robust approach. (Additional details are provided below.)

v. That the CEO/Registrar has communicated commitment to EDI.

7. While these points are positive, the noted gap remains.

8. There has also been some conduct at the Council that some interviewees perceived as retaliatory or counter to anti-racism:

   - They told us that there was an attempt to bring a motion to recognize European Heritage and Europeans' contribution to engineering. They said this attempt followed an earlier discussion about Indigenous Land Acknowledgements. The "European motion" was removed from the Council agenda as not being in the public interest.

   - It is unclear what if any other steps the organization took to monitor or address the risk of retaliatory conduct in the organization or profession. Given the global climate regarding anti-racism since mid-2020, and retaliation to these efforts, leading organizations implement safeguards. We did not hear of any additional steps by the organization.

   - We also did not hear of any follow-up regarding education, training, or other focused response following the "European motion".

9. In addition to the perceived concerns noted earlier regarding the PEO's elections, some interviewees told us that they perceived a closed network approach to the Council's elections that operates as a barrier to newcomers and racialized candidates:

   - One interviewee told us there seems to be "a correlation" between "who wins and who is a part of the group".

   - One interviewee told us of a group that is perceived to be involved in a closed-circle approach to elections.

   - One interviewee said there is a closed group that supports candidates for elections. The interviewee also said they perceived an "agenda" by some in this group to keep "the Consulting Engineers license exclusive."

10. Regarding the motion that was previously brought at the Council to implement Indigenous Land Acknowledgements, this motion did not pass. The reasons most Councillors did not support the motion are unclear:

    - Interviewees stated that a few Councillors opposed the motion on the basis that it did not go far enough and risked being 'tokenism'.

    - One interviewee told us that:

      > "several Councillors stated that they felt it would have been preferable to mandate cultural competency training for staff, Council and volunteers, and engage an expert consultant to assist with land acknowledgements. … The requirement for cultural competency training was part of the Truth and Reconciliation recommendations and has been implemented by other regulatory bodies for a few years now, such as in the Ontario Public Service."

    - One interviewee told us that:

some Councillors were “not convinced that only doing a land acknowledgement prior to every meeting would satisfy the recommendations (over 100 if [they recalled] correctly)” and that they thought the PEO should consider “a broader strategy and policy to deal with the recommendations.”

- One interviewee recounted that:

  a Councillor requested that Council “look into training for all of Council”. They said, “when Council transitions every year, these types of items get forgotten, especially with the lack of staff resources available.”

11. In pursuing anti-racism and anti-discrimination, it is important to ensure a robust response. It is appropriate to consider whether the approaches amount to, or may be perceived by the public, to be ‘tokenism’.

12. This said, even considering any risk regarding ‘tokenism’, it is noteworthy that the Council did not pursue any next steps regarding the Indigenous affairs raised. While we heard that some Councillors raised the need for a more robust approach, the Council did not follow up on this. This is concerning.

13. Regarding “diversity at the top”, we observe that the diversity that is perceived to exist within the PEO’s volunteer base does not extend to the top of the organization. This is evident regarding the composition of the PEO’s Council and its senior staff. To date, there have been no measures to actively seek to correct the BIPOC underrepresentation. Several interviewees, including several Council members, also told us that:

    - Since the PEO was established, “all but one of the Presidents have been White.” The exception was a man of East-Asian descent.

    - “There is only one Black member of Council, and they were appointed by the Lieutenant Governor.”

    - “There is only one Indigenous Council member, who may or may not self-identify.”

    - The HRC, where “all the power lies”, … “is always White” and racialized candidates are “never selected”. (We were told that there has been one racialized member of the HRC, and that she is not an immigrant and does not have an accent.)

    - “There are only two Black members of staff.” (Our review of the PEO’s organizational chart suggests that the two noted positions are not at the senior management level.)

14. Finally, we see a large opportunity gap regarding oversight and accountability measures by the PEO’s Council. The delays and risks discussed in this report all point to this conclusion. For example, several of the risks have previously been flagged to the Council and time continues to pass without robust responses.

2.81 **Item B9 Risks: from our review of the interview comments and various Council documents, we see high risk that the PEO’s Council is not adequately fulfilling its duties**

concerning human rights and the public interest. There are notable perceived silences and omissions that are untenable. They are also associated with significant vulnerabilities to racism, with related reputational, financial, legal, and cultural risks to the organization.

2.82 **Without robust policymaking, strategic actions, and accountability measures, all risks identified in this report are, unfortunately, attributable to the Council. If the Council is seen to fail in these critical areas, with uncontrolled risks to the organization and within the profession, the PEO's viability as a self-regulator will likely be at risk.**

2.83 **Admittedly, yearly changes in the Council's composition and other transformation issues do present a challenge. However, there is an existential risk if the Council does not prioritize rising above these challenges. It is critical that the Council effectively addresses the risks that significantly engage its paramount human rights duties.**

2.84 **It is therefore imperative that the Council further examines the noted risks and determines an anti-racism strategy to be operationalized by the CEO/Registrar, together with stakeholders. The Council must oversee the implementation, progress, and performance of the strategy. The Council retains ultimate accountability for its outcomes.**

Section 3: Recommendations

3.1 Based on the risks we identified, we offer the recommendations in the tables below (the "Recommendations"). We have prepared the Recommendations in the form of a workplan for ease of the Council's adoption, should the Council wish to proceed with the recommended next steps.

Recommendation 1

Create a Board Committee to Embed Anti-racism in Council's Policy and Strategy Function

Implementation Timeline:

By July 2021

a) **The PEO's Council will authorize the creation of a standing Board Committee (the Strategic Anti-Racism Group (SARG)) to continue work started by the Anti-racism and Anti-discrimination Exploratory Working group (AREWG).**

   i) The SARG will be a governance committee, an organ of Council, focused on policymaking and strategy using an anti-racism lens. This strategic work will be embedded within and aligned with the PEO's broader strategic planning and transformation endeavours.

b) **The SARG will be well integrated with all the PEO's other governance committees and will be enabled annually with adequate resourcing and information flow.**

   i) In particular, the SARG will collaborate regularly with the (former, or as transformed) Executive Committee (EXE); Human Resources Committee (HRC); elections committees; academic and experience requirements committees (ARC and ERC); discipline and complaints committees; Equity & Diversity Committee (EDC); 30 by 30 gender initiative; Consulting Engineers Designation Committee (CEDC), and other committees of high relevance to anti-racism.

c) **The SARG will perform the legwork on Council's behalf in developing and overseeing a robust anti-racism strategy, policy-direction, goals, and prioritization.**

   i) The SARG's mandate involves applying an anti-racism lens within Council's strategy-making and policy-setting function regarding:

      - the PEO's statutory and regulatory role;
      - the PEO's governance structure;

Methodology will include:

- Standing Council (Board) Committee
- Standing Council meeting agenda item at regular intervals
- Regular meetings of the SARG, including with resources, stakeholders, and collaborators as needed (e.g., anti-racism consultants and HR)
- Periodic 'alignment meetings' between liaisons of key committees. Timing and frequency as needed, depending on subjects in focus
- Future state: collaborative work between the SARG and operations to design accountability measures and mechanisms

- the performance accountability mechanisms applicable to Council, the CEO, and other areas within Council's direct responsibility;
- the PEO's budgeting and procurement practices;
- the PEO's elections and committees' selection practices at all levels;
- stakeholder engagement; and
- anti-racism policies, processes, education, and culture.

ii) Based on collaboration and consultations, the SARG will develop recommendations and draft documents, for approval by Council, in building out the PEO's anti-racism strategy.

d) The SARG will liaise with senior staff on Council's behalf, in helping to perform Council's oversight function.

i) The SARG will collaborate with staff to help ensure alignment and desired outcomes, as operations implements the strategy over time.

e) The SARG will have regular segments of Council meetings dedicated to discussing anti-racism matters.

i) The frequency of these segments will be determined by Council, on recommendation from the SARG.

f) For continuity and to bring forward learnings from this anti-racism assessment, the AREWG's members will become members of the SARG for the initial 1-year term. For inclusivity, one or two additional positions will be open to other Councillors.

i) Going forward, selection of Councillors to serve on the SARG will be merit-based, where merit in this context means a demonstrated interest in, understanding of, and/or commitment to anti-racism, with value placed on the lived experiences of candidates who

are members of equality-seeking groups. Interested Councillors will submit to Council brief statements expressing their interest and indicating their relevant track-record, knowledge-base, experience, and/or commitment. Councillors will vote, via "recorded votes", based on the submissions, and will seek to select Councillors that best qualify for the role, based on merit as defined above. All materials in this selection process will be made available to the public.

g) With the support of external anti-racism and anti-discrimination consultants, Council will determine the SARG's Terms of Reference in conformity with these Recommendations. Council will include further details in keeping with the spirit of these Recommendations.

i) Selection of the external consultants will be merit-based. Merit in this context takes a similar definition to that in recommendation 1(f), above. (External anti-racism and anti-discrimination consultants selected in this merit-based manner, and in a fair and transparent manner, are referred to in these Recommendations as "**ARD Consultants**").

ii) In designing the Terms of Reference, Council will not be limited by any rules that are within Council's power to change. Any rule changes must serve substantive equality objectives.

iii) The SARG's Terms of Reference will incorporate nuanced processes that serve substantive equality objectives.

Commentary to Reco. #1

1. We are aware of the PEO's current Governance Direction not to create new committees during the PEO's current period of transition, "except to the extent that [developments] coincide with the governance initiative itself."[38] This direction has commendable objectives in seeking to stabilize affairs and to modernize and streamline the PEO's committee structure.

2. As we noted earlier, the absence of anti-racism from the PEO's strategic planning and transformation is a notable gap with existential risks for the organization. It is appropriate and necessary for Council to create the SARG as a Board Committee to "coincide with the governance initiative itself". Recommendation 1 will achieve this end.

3. To ensure adequate time, attention, resources, and skillsets are dedicated to developing and overseeing an anti-racism strategy, Council must establish a Board Committee that can seamlessly continue the work that its AREWG started.

4. The reasons the AREWG was created are the same reasons a dedicated organ of Council is necessary. These reasons include the following:

    a. As this work must be done at the policymaking and strategic level for Council, a Board Committee is imperative. Once the strategy is developed and approved, it will be over to operations to implement, and Council will retain responsibility to oversee the performance of the strategy.

    b. Existing committees are not well calibrated to an anti-racism purpose. For example, the HRC is concerned primarily with the performance of the CEO/Registrar; the EDC is not a Board Committee; and 30 by 30 is dedicated purely to gender affairs.

5. While the PEO is on a journey to reduce unnecessary committees, it must continue or create committees that are critical to its duties as a regulator. As this report makes clear, anti-racism is one such area and it must have primacy.

6. Continuity in the transition from the AREWG to the SARG is important to achieve alignment with the work done to date and to effectively leverage the learnings for the organization's benefit. We opine that the AREWG members meet the merit-based selection criteria that applies to the SARG going forward. This is based on their demonstrated leadership in: establishing the first anti-racism initiative in the PEO's history; developing the AREWG's Terms of Reference in collaboration with others; commissioning the work of external experts; and dedicating their time and attention to ensuring this engagement meets the PEO's expectations per the authorizing Motion 2.9 passed at the PEO's Council meeting on November 20, 2020.

7. To enable the SARG to be agile and to enable a sufficiently deep dive into matters that are inherently complex and potentially contentious, the SARG must be right-sized. We recommend an optimal size of 5 members. It is also essential that the SARG has adequate continuity from year to year and effective succession planning, so that its initiatives do not stall or get dropped.

8. A "recorded vote" means that Councillors' names and how they voted (in favour, against, or abstained) are listed in the public records.

9. The scope of this assessment is about racism and racial discrimination. This is clear from the surrounding contextual information: (i) the CEO/Registrar's August 2020 message; (ii) the Council recordings and minutes regarding the AREWG motion; (iii) the briefing note to the AREWG motion; (iv) the AREWG's Terms of Reference; (v) the related RFP; and (vi) the consulting contract.

10. Other areas relevant to discrimination were not explored in any depth during this assessment. It remains for the PEO to address these other areas. As explained throughout this report, a top priority focus must remain on anti-racism, and on its most pernicious forms (anti-Black racism, Indigenous marginalization, and contemporary Islamophobia).

Recommendation 2 Publicly Commit to Anti-Racism	**Implementation Timeline:** **By August 2021**
a) The PEO's Council will issue a public statement expressing: **i. the PEO's commitment to anti-racism, with Black and Indigenous affairs as lead priorities;** **ii. that the PEO accepts all Recommendations of this report;** **iii. that the PEO has established the SARG to lead Council's strategy development and oversight in this area; and** **iv. that the PEO will publicly report annually on its progress against these Recommendations and will conduct reassessments at the 3-year and 5-year marks.** **b) The PEO will make this report's Recommendations publicly available and prominently noted.**	Methodology will include: ▪ Press release ▪ Posting prominently on the PEO's website ▪ Prominent publication in *Engineering Dimensions* and in other communications to the profession

Commentary to Reco. #2

1. Given the issues that have surrounded Council's perceived silence regarding anti-racism, it is important for Council to declare its commitment promptly and openly.

2. Transparency regarding the issues under study, and the approach the PEO will take in response, best serves the public interest.

3. The selection of the lead priority areas noted (Black and Indigenous affairs) is based on the focus needed to ensure that those who face the "harshest realities" are not overlooked. The OHRC Anti-Racism Policy endorses special attention to these areas. Our assessment also identified high risk that Black persons and Indigenous persons face heightened barriers in Ontario's engineering profession and its regulatory processes.

Recommendation 3 Ensure Adequate Resourcing, Expertise, and Consultations to Support the SARG	**Implementation Timeline:** **By July 2021**
a) To inform the SARG's strategy work, Council will continue engaging ARD Consultants to benefit from their expertise and independence. **b) Council will ensure that a fair cross-section of relevant stakeholders is adequately engaged as it builds out and oversees its strategy. It will utilize ARD Consultants to assist in this regard.** **c) Council will allocate ample funding annually to enable the SARG's work. This includes funding for ARD Consultants and stakeholder engagement, and financing Council-approved programs or initiatives. Council will value the SARG's recommendations regarding funding required. Council will ensure equitable funding, commensurate with fair market norms and with practices of organizations leading in EDI in Canada.**	Methodology will include: ▪ ARD Consultants retained on discrete project bases, with a specified scope of work per project. Project methodology and project management to be utilized. ▪ Calling for input from stakeholder organizations and interested persons. ARD Consultants will be utilized to allow anonymity where participants prefer. ▪ Various qualitative methods, like surveys and focus groups, may be used. ▪ Funding proposals and recommendations to be submitted to Council by the SARG, with the assistance of PEO staff as appropriate.

Commentary to Reco. #3

1. These steps will help to ensure a well-informed and robust strategy. They will equally help to address concerns about the PEO's degree of engagement with the public.

2. Continuing to utilize ARD Consultants, as in the present engagement, offers the benefit of subject matter expertise and independent professional viewpoints. This reduces the risk of blind-spots and may foster greater public confidence in the SARG's outputs.

3. Adequate funding is an imperative for sustainability. It will also send a strong message about the importance the PEO is placing on anti-racism. It is well understood in Canada that where an organization invests funding is indicative of what it deems important.

4. These steps also set the tone for the developments in the profession. The changes required to address the risks identified in this report are significant. They require impetus for a culture shift. As the governor of the profession, the PEO will lead this culture shift.

Recommendation 4 Develop an Anti-Racism Strategy, Aligned with the Organizational Strategy and Transformation	**Implementation Timeline:** **By December 2021**
a) With the assistance of ARD Consultants, the SARG will develop a holistic 3 to 5-year anti-racism strategy, integrated with the PEO's wider strategic plan and transformation: **i. To ensure coherence and alignment, the SARG will review and propose to Council improvements to the existing (or as amended) strategic and transformational plans, using an anti-racism lens.** **ii. The SARG will also propose to Council additional measures which, without limitation, may relate to:** • race-based data; updated policies and procedures; updated training plans; recommended amendments to the governing Regulation; reinforcing professional obligations as requiring non-discriminatory practices; • stakeholder engagement and relations; mentorship, sponsorship and talent-pipeline support; showcasing BIPOC talent and achievements; recognition of anti-racism champions; • process improvements and design (re licensing, complaints, discipline, elections, selection practices (re committees, panels, Council groups), committee performance appraisal, procurement, hiring, and advancement); • key performance indicators; accountability measures and mechanisms; ameliorative programs; whistleblower and other protections for complainants of discrimination; and culture and belonging. **b) To embed anti-racism into all PEO policies, practices, programs, and changes going**	<u>Methodology will include</u>: ▪ The SARG, assisted by ARD Consultants, will receive and review documentation that outlines details of all PEO strategy and transformation plans, and provide written recommendations. ▪ The Council's delegate, assisted by ARD Consultants, will draft the SARG's Terms of Reference and submit them to Council for approval. They will also propose a recommended interaction model and SLAs applicable to the SARG's review of existing planning documents. ▪ The SARG will retain ARD Consultants on a project basis to advise it in developing the integrated anti-racism strategy. This includes determining prioritization and target timelines for initiatives. ARD Consultants will also be utilized to draft proposals and updated documents, in collaboration with the SARG and staff.

forward, the SARG will review all future PEO strategy or transformation plans with an anti-racism lens. On a timely basis, the SARG will recommend improvements to these plans. **c) To promote efficiency and reduce the potential for bottlenecks, Council will agree on standard timeline expectations for review and comment by the SARG. The SARG will provide comments to Council in written form. To promote transparency of the regulator, the SARG will generally recommend that its official comments be made publicly available.**	

Commentary to Reco. #4

1. As this report identifies, there are significant risks in failing to achieve coherence among the organization's strategic and transformational endeavours. This includes evident gaps in the transformation plan having regard to anti-racism. The risks also relate to working at cross-purposes, which undermines the efficiency, effectiveness, and image of the regulator.

2. The PEO is on a highly commendable transformation journey. *Now* is therefore the opportune time to embed anti-racism into the changes being made. The cost to redesign later would be high. A disjointed redesign effort may stall or derail the 'benefits realization' related to current transformational changes. Identified risks would grow. The organization would also lose momentum in consensus-building.

3. With the PEO's governance transformation in progress, improvements can readily be embedded mid-course, sparing the need for costly redesign later.

4. It is a best practice to make major design changes before or during the implementation phase of significant transformation. It is also a best practice to ensure continuous improvement after implementation. The SARG's role should be understood in this light. The PEO will modernize and continuously improve with the benefit of ongoing feedback from the SARG, which will leverage insights from stakeholders and ARD Consultants.

5. There will be an initial adjustment period concerning the SARG's involvement. However, the interaction model may quickly progress to a lean and smooth state, if participants focus on optimization for the organization. These are necessary 'growing pains'. The alternative is an unmitigated existential risk for the organization and stifled growth.

6. It will be essential for Council to establish efficient and fair expectations regarding the turn-around times for the SARG's input. It will be equally essential that adequate information is provided to the SARG in a timely manner. To promote transparency of the regulator, the SARG's comments on adequacy and timeliness of information should be publicly available.

Recommendation 5 Achieve Quick Wins for the Strategic Plan	**Implementation Timeline:** Initiatives implemented by **March 2022** | Public report by **June 2022**
a) In anticipation of the holistic anti-racism strategy, Council will direct the immediate pursuit of the following steps which will form part of the strategy: **i. The SARG will collaborate with stakeholders and ensure the launch of the first wave of a Mentorship and Sponsorship program. This Wave 1 will focus on Black and Indigenous engineers.** • Wave 1 will start small and, based on learnings, will be enhanced. • Wave 2 will incorporate Muslim and Middle-Eastern engineers. • The end state will be a robust program open to racialized engineers / applicants of all identities. • The end state will facilitate mentorship at all stages within the PEO's mandate, including licensing, engineering practice, and professional development. • OSPE, equality-seeking groups, and others will be among the stakeholders engaged. **ii. Using an anti-racism lens, the SARG will perform a deep-dive study, and offer recommendations for improvement, regarding:** • **the PEO's efforts to develop an alternative to "Canadian experience";** • **the PEO's elections procedures and practices at all levels; and**	<u>Methodology will include</u>: ▪ The SARG, assisted by ARD Consultants, will receive and review documentation and provide written recommendations. The documentation will include all outputs or in-progress drafts prepared by the PEO's staff, volunteers, or consultants in connection with assessing alternatives to "Canadian experience". ▪ A similar approach will apply to the elections and Councillor-discipline subject matters, except that confidential interviews will also be utilized to obtain richer context. ▪ The mentorship and sponsorship Wave 1 efforts will be built in collaboration with volunteers from equality-seeking groups, as facilitated by ARD Consultants.

• **the PEO's disciplinary processes and practices applicable to Councillors.** **(b) The PEO will publicly report by June 2022 on the progress of the foregoing "quick wins".**	

Commentary to Reco. #5

1. These items are selected as "quick wins" because their topics stood out during our assessment as being:

    a. top of mind for many interviewees;

    b. at the center of various criticisms by consultants, PEO representatives, members of the profession, and persons seeking entry;

    c. of significant potential for high favourable impact regarding the anti-racism issues identified, and regarding the PEO's standing in relation to concerned parties; and/or

    d. objectively of importance from an anti-racism perspective, given the potential impacts on how 'burdens' and 'benefits' are distributed. This is central to the definition of discrimination. The items selected can substantially affect the life chances, livelihood, advancement prospects, reputation, and overall well-being of any person impacted. The PEO must ensure that the status quo does not operate to perpetuate disadvantage for members of historically disadvantaged or contemporarily vulnerable groups.

2. The PEO must start and achieve key quick wins to signal to concerned parties and the public that it is committed to improvement. The noted quick wins will also build momentum and morale while there is optimism from this engagement. They also mitigate the risk of matters later exploding. As the year 2020 laid bare to the world, there can be great costs from leaving racism matters to get to a boiling point.

3. The selection of identities for Wave 1 mentorship and sponsorship efforts (Black and Indigenous) is based on these groups generally facing "the harshest realities" in Canada, as explained in the OHRC Anti-Racism Policy. As the OHRC highlighted, Islamophobia is also a contemporary notable challenge. It warrants focus and is therefore also prioritized (for Wave 2).

4. We also note that the Supreme Court of Canada has made clear that ameliorative initiatives are justifiable; they promote substantive equality.[39] For example, we view the above-noted focused mentorship items as ameliorative. The PEO must also be vigilant and act appropriately to contain any retaliatory conduct that could possibly follow the introduction of ameliorative initiatives.[40]

Recommendation 6 Commit to key components in principle for the strategy	**Implementation Timeline:** **By July 2021**
a) The details of the PEO's anti-racism strategy will be fleshed out via a robust process led by the SARG. To commission the way forward, the PEO commits to embedding the following components in its anti-racism strategy and will make this known publicly. Council will retain oversight to ensure the strategy is developed and implemented accordingly. **i. Gathering and reporting disaggregated race-based data** in conformity with statutory, equitable, and secure best practices, and anti-racism aspirations. Stakeholders will be consulted in developing this strategy. The PEO contemplates that the scope will include, without limitation, statistics related to applicants, licensees, and employees, and may also relate to their experiences with: academic assessments and experience assessments; interviews; complaints processes; discipline processes; PEO elections; hiring; promotions; dismissals; selection for committees, Council, and management; among other things. **ii. Robust regulations, policies, procedures, and training** that conform to anti-racism and anti-discrimination norms and aspirations, and further substantive equality. **iii. Fair practices, using an anti-racism lens, concerning selection, retention, and advancement** regarding BIPOC inclusion in committees, Council, staff, management, and other opportunities. **iv. Increasing access, inclusiveness, and representation** regarding Black persons, Indigenous persons, and Persons of Colour in relation to opportunities.	<u>Methodology will include</u>: ▪ Council will express its commitment by publicly reporting that the PEO accepts this report's Recommendations and by making them publicly and prominently available. The publication methods will include: press release; prominent publication on the PEO's website; and prominent publication in *Engineering Dimensions.* ▪ Council will instruct the SARG to ensure that the listed components are embedded in the anti-racism strategy. ▪ Council will establish requirements applicable to the SARG for reporting to Council at regular intervals regarding the progress of the strategy development. ▪ Future state: Council will establish monitoring, measurement, public reporting, and accountability mechanisms regarding the implementation,

v.	**Quantitatively tracking and publicly reporting the progress** regarding access and representation.	performance, and sustainment of the strategy over time. In developing these mechanisms, Council will rely on recommendations from the SARG, based on insights it formed through collaboration with ARD Consultants, staff, and stakeholders.
vi.	**Qualitatively assessing and publicly reporting the progress.** Qualitative assessments will include surveys, focus groups, and/or other forms of feedback from an adequate sample of Black persons, Indigenous persons, and Persons of Colour.	
vii.	**Embedding equity, diversity, and inclusion learnings throughout the organization. This includes time-bound requirements to gain and maintain competency** in these matters if persons wish to serve in any PEO capacity. Greater emphasis applies regarding the more senior or impactful roles.	
viii.	**Achieving process improvements that adequately address the risks identified in this report**, including those related to: licensing, complaints, discipline, elections, selection practices (re committees, panels, Council groups), committee performance appraisal, procurement, hiring, advancement, among others.	
ix.	**Establishing effective accountability measures and mechanisms, and publicly reporting on them** to promote and sustain the changes that address the risks identified in this report. Accountability measures will be determined through a collaborative process where impacted stakeholders are adequately consulted during the design, implementation, and post-implementation phases.	
x.	**Creating a specialized team and processes to address complaints of discrimination**, which creations will conform to anti-racism norms and aspirations. They will also ensure best practices as protections for complainants.	
xi.	**Enhancing education and oversight of Ontario's engineering profession to promote anti-racism norms.** This will	

involve making clear that any instances of racism or discrimination are breaches of professional ethical duties and that sanctions may follow. **xii. Leading a culture shift in the organization and profession to trigger developments that increase and track BIPOC representation, inclusion, and belonging.** **xiii. Enhancing collaboration with and for affected communities.** This will include mentorship, sponsorship, and other outreach to BIPOC communities; coordination with engineering organizations; and collaboration with industry participants, among others. The purpose of this collaboration is to increase BIPOC representation, inclusion, and belonging. **xiv. Continuously nurturing an anti-racism culture in all the PEO's activities and interactions with the profession and the public.** This will include, without limitation: - showcasing BIPOC talent and achievements, and recognizing anti-racism champions and allies; and - fostering a culture of belonging. This requires investing in resources that enable racialized persons to achieve an equitable degree of comfort, connection, and contribution. **xv. Periodically reporting publicly on the PEO's anti-racism efforts, and performing robust reassessments over time to identify and address areas that still require solutions.**	

Commentary to Reco. #6

1. The details of the anti-racism strategy that Council will commission, vet, and approve need to be built out via a robust process with adequate engagement of stakeholders and the support of external expertise. This said, the PEO must promptly commit to embedding into its anti-racism strategy key components that are in keeping with anti-racism norms and aspirations. These

components must also address matters that this report identified as having material vulnerabilities to racism. The above-noted components satisfy this need.

2. Committing to the above-noted components sets the stage for how the anti-racism strategy must be developed. It serves as a framework of expectations to guide the SARG's work.

3. This upfront commitment also serves transparency and public interest goals. Notably, it helps to inform stakeholders who may wish to participate in the strategy-building consultations.

4. It also provides leadership and direction as expectations to guide the work of the operational teams that will be responsible to implement various aspects of the strategy.

Closing Remarks

The PEO is undergoing significant transformation in a sincere and laborious effort to improve the organization, and performance of its duties as a regulator. It is led by a Council of representatives who passionately seek to serve the engineering profession. The Council has yearly elections, with some annual changes in its composition, and with continuity by some Council members. Its staff do extensive work to support and carry out the directions of Council and the range of the PEO's operational activities. Its volunteers give generously of their time in commitment to what they understand to be the regulator's purpose and their roles as volunteers. The tasks in the last year have been monumental for Council and staff – and volunteers have also been impacted – given historic organizational transformation, human resourcing vacancies, and a global pandemic. The PEO's representatives have understandably been consumed with these matters.

At the same time, it remains that the PEO is the governor of a key profession in society. One that literally and metaphorically builds foundational structures that enable society to function and progress. The PEO, in exercising delegated governmental authority, must ensure that it governs this profession, and access to this profession, in a manner that is demonstrably fair and effective. This report identifies various areas in which there is considerable risk that the PEO is not adequately fulfilling its public interest duties. Specifically, it identifies areas where the status quo presents significant vulnerabilities to racism.

The PEO's transformation is coinciding with transformation around the world, as global citizens awaken to the appalling reality of the insidious disease, called racism, that plagues nations including Canada. Public confidence in the PEO – and engineering's viability as a self-governing profession in Ontario – turns on how well the PEO wears the mantle of serving the public interest. This necessarily requires serving the objectives of equity, diversity, and inclusion. The world's focus remains on one of society's greatest ills – racism, and anti-Black racism as one of its most pernicious manifestations. Ontarians will watch with hopeful anticipation that this esteemed profession will do what it does best – engineer effective solutions. Engineers will design and build a sturdy anti-racism bridge to a more successful future.

Engineering will again change the world.

* * *

Appendix A – Consultants' Profiles

- ADJUDICATOR
- ARBITRATOR
- MEDIATOR

Called to the Bar – Ontario, 1993

Osgoode Hall Law
- LL.M.

Articling – Ministry of the Attorney General

Osgoode Hall Law
- J.D.

Fellow Chartered Insurance Professional, 1988

PATRICIA DeGUIRE

LL.M., J.D., F.C.I.P.

DeGuire brings the value of a personal and professional lifelong commitment to public service, over 25 years of experience in anti-racism, anti-discrimination, and understanding systemic barriers to equity. Her deep and rich perspectives carry learnings from a range of relevant areas including creating policy, processes, adjudication, and mediation in constitutional law and human rights; pay equity, labour and employment; and immigration appeals. She has extensive experience founding and leading organizations and initiatives that promote access and contributions by racialized and gendered individuals in Canada, and abroad.

DeGuire also brings valuable learnings from her extensive work with the governing bodies for lawyers in Ontario, the Law Society of Ontario (LSO) and Legal Aid Ontario (LAO). She has served for many years, including serving on Committees helping to further regulatory and constitutional mandates; and assisting in matters concerning internationally trained lawyers. She is a mentor-extraordinaire: she influences, guides, and directs the personal and professional growth of many youths, professionals, or those seeking to become professionals. She has used this experience in corporate spaces, *e.g.*, the OBA, the CBA, CABL and the LSO to develop or maintain their mentorship programs.

DeGuire is a recognised leader in the legal and broader communities. She braids her extensive experience, knowledge, and skills to transform public and corporate spaces. In serving her clients, DeGuire leverages skills from her proven track record as an adjudicator, arbitrator, mediator, barrister, and solicitor, and leader. She has dealt with processes, policies, procedures, and practices from every angle, and relating to a range of affairs including licensing, enforcement, complaints, discipline, and other matters.

DeGuire's leaderships skills and excellence have been recognized by various awards. She is the recipient of the Canadian Bar Association's Touchstone Award 2020; OBA's Distinguished Service Award, 2012; LSO's Lincoln Alexander Award, 2006; LAO's Gem Award; and various others.

CN Consulting
www.cnconsulting.ca

Called to ON Bar, 2007

University of York, U.K.,
- Masters in Management: Strategic Management
  - Top graduate

Osgoode Hall Law
- LL.B. / J.D.
  - Top tier graduate

York University
- Business & Society: Economics & Poli. Sci.
  - Top tier graduate

Bay Street Trained
- Commercial Law
- Constitutional Law
  - Top tier firm
  - A top performer

SHASHU CLACKEN

TRANSFORMATION STRATEGIST

Clacken transformed from being a lawyer at a leading Bay Street business law firm to being an organizational strategist and management consultant. Her strategic management master's education and track record of successfully leading large transformational projects bring valued expertise to her clients.

She has consistently received the highest honours, which span over 20 years of awards for academic and business excellence, leadership, people engagement, and community contributions. Her expertise (with multimillion-dollar savings annually) is in strategic planning, organizational transformation, cost management, and policies & procedures. She has also led racial diversity initiatives for several years.

Clacken also leverages skills from her legal background to the benefit of her clients. She developed at the right hand of Canada's pre-eminent Constitutional Law scholar, the late Professor Peter W. Hogg. She has appeared before the Supreme Court of Canada in four matters, and participated in the Ashley Smith inquest, concerning civil liberties. She was one of three lawyers from Canada who journeyed to southern Africa in an unprecedented effort by a Stephen Lewis organization towards building an international human rights case against Robert Mugabe.

Her awards include: Osgoode Law Dean's Gold Key; Excellence Award from Canada's top insurer, and several awards for exceptional performance.

Appendix B – Registrar's Anti-Racism Message August 2020

A message from PEO's CEO/Registrar: Supporting positive culture change

BLOG Monday, August 10, 2020

I hope this message finds you and your loved ones safe and healthy.

In my recent columns in Engineering Dimensions, I have shared the progress being made on revising PEO processes and protocols as a result of the COVID-19 pandemic and the need to create a remote work environment. The successes we've achieved on these fronts have been the result of the dedication and perseverance of all our staff and volunteers. I'm grateful to be surrounded by such a devoted group committed to fulfilling PEO's mandate of protecting the public interest.

Despite the trials and tribulations that we've encountered along this journey, and the attention required to overcome the obstacles in our path, PEO has not lost sight of the more serious issues affecting society at large.

As the engineering regulator in the Province of Ontario, and as an employer, PEO is acutely conscious of, and sensitive to, the strong and compelling public interest that has recently developed regarding issues of race and discrimination, in particular with respect to the treatment of Black and Indigenous people. **As the regulator of a diverse profession in a diverse province, we are committed to doing our part to help eliminate racism and racial bias**. We do this by actively promoting equity, diversity and inclusion in all the endeavours and activities with which we are associated. (emphasis added)

As an employer, PEO has developed strong anti-discrimination policies related to hiring and employment, as well as to the involvement of our volunteers. These policies continue to evolve to promote equity and diversity and to reflect best practices. We continually review our policies and ensure these are communicated so as to provide clarity and transparency, and are being followed appropriately.

As a regulator, PEO will continue to monitor our licensing processes so that instances of bias or discrimination are addressed promptly and effectively whenever they arise. PEO will also continue to assess and, as necessary, amend our policies and processes to ensure that they do not reflect any unconscious or systemic bias. In addition, we will respond vigorously to any regulatory complaints against licensed engineering professionals or holders of certificates of authorization that raise issues of bias, prejudice or discrimination based on race or any other prohibited ground.

PEO also acknowledges the important work of its Equity and Diversity Committee. Since its establishment in 2007, this committee has been exploring ideas and initiatives that will make the engineering profession and the practice of professional engineering more reflective of the public which it serves. This work is continuing, and will ultimately be reported on with recommendations to PEO's Council.

PEO is proud to have this strong foundation of progressive policies and initiatives in place, even as we acknowledge that there is much more work still to be done. As an organization charged with regulating in the public interest, we are committed to providing an open, dynamic, and highly inclusive culture in our own organization and to doing our part to support meaningful and sustained change in society as a whole.

Sincerely,
Johnny Zuccon, P.Eng., FEC | CEO/Registrar

Appendix C – Cayton Report Cross-references

Much of the information shared by interviewees was consistent with some of the findings in the Cayton Report. We encourage readers to see the relevant Cayton Report findings for additional context. References below are to the relevant paragraph numbers in the Cayton Report. They lend further weight to the risks noted in our report. They further highlight to the Council the need for prompt and adequate attention, action, and sustainment.

Paragraph No.	Cayton Report Finding
3.23 – 3.25	"Only rarely is there mention of protecting the public or improving regulation of engineers... volunteers are not appraised in relation to their performance…The relationship between staff and volunteers is unclear. The Council should create strategy, measure performance, ensure financial probity. Staff should deliver operations and be held to account for doing so."
3.37	"The language which PEO uses to describe people reveals a strong hierarchy. Professional engineers are 'members' not 'licence holders'. Anyone who is not a professional engineer is defined by what they are not rather than by what they are: public members of the Council are 'non-engineers', professional members of staff are 'non-practising P.Eng.' International graduates are 'non-Canadian'. There is a strong sense in the culture of PEO that to be a P.Eng. is to be a person apart and above others. The staff of PEO who hold P.Eng. licences are subject to professional discipline in relation to performance complaints whereas [the] other professionals working for the association are not."
3.38	"It is sometimes suggested that running an organization through volunteers is cost-effective. This is by no means necessarily the case. PEO states proudly that it has over 1000 volunteers. Volunteering is often thought to be an inexpensive way of providing services but volunteers have travel and accommodation expenses to be met and meals to be provided. We were told that over 8000 meals a year are provided in the dining room. According to the accounts for 2018 PEO spent $817,000 supporting the Chapters, $726,000 on volunteer expenses and $141,000 on awards."
4.14, 4.18, 4.19, 4.27, 5.7, 5.10	"Notwithstanding efforts that staff have made to improve the interview and review processes, we find the current ARC and ERC reviews to be subjective in nature and we find no evidence to demonstrate how decision-making by interviewers/reviewers or amongst assessments is analysed or how inter-rater and assessment reliability is assured. We heard that although staff make every effort to ensure consistency in decision-making, it is difficult to achieve it. We were told by numerous sources that outcomes can differ greatly from one assessor to another and in some cases, even the same assessor could reach a different conclusion for two applicants with similar academic backgrounds. We were told of one occasion where assessors were observed discussing and anticipating their decision before the interview. Failure to adequately address and manage personal bias gives rise to high risk, and we fail to find evidence that sufficient steps are being taken to manage and minimize these risks to a fair process."

	"As previously noted, we find that the ARC reviews and its determinations of academic equivalency and qualifications are subjective in nature. Notwithstanding evidence of training that has been offered to members of the ARC, we were unable to determine at the time of this review, how potential risks associated with personal biases amongst decision-makers are mitigated or addressed. We were given a copy of a Policy on Eliminating Bias in the Registration Process of the PEO which was approved by Council in February 2019 but the policy has not yet been implemented." "The ERC's personal interviews with applicants are also subjective in nature and we found no evidence that personal biases or conflicts are avoided. We find no evidence to show that PEO conducts appropriate post interview analysis and then revises ongoing training to assure inter-rater reliability amongst its ERC interviewers/assessors. If an applicant complains the recording of the interview is reviewed and another interview may be offered. The PEO staff told us that the ERC will be working towards a quality assurance framework with a view to addressing concerns that the ERC's decision-making processes are not currently founded on principles that support consistency and fairness." "The current licensing process relies heavily on the individual and personal assessment of each applicant's file. Any positive impact of these individual assessments however is diminished in the subjective process which includes numerous volunteers with varying levels of skill in conducting assessments. We found no evidence that rigorous measures are in place to address variation and to produce reliable results." "PEO's processes for awarding licences to engineers have come in for a great deal of criticism from a wide range of informants: applicants, engineers, PEO staff, council and committee members, employers and the OFC. There is no doubt that the staff and volunteers working on the process are working hard and diligently but they are working with a massively over complicated set of procedures, with too many options, too little objectivity and some built-in discriminatory practices. For example, the requirement for a year's practice in Canada has no objective engineering justification. When we asked why it was necessary we received different answers: you have to understand the geology of Canada, you have to understand Canadian culture, it gives people a chance to acclimatize. Similarly, the use of face-to-face interviews with no ethnic or gender balance of panels and no compulsory annual training for panelists is deeply unsatisfactory." "We are concerned in particular about the inherent unfairness of the licensing process, its potential for bias and PEO's slow response to criticism from the OFC."
4.16	"The current licensing and registration process is lengthy, complex and difficult to follow. It includes many different processes that are dependent on numerous volunteers, each of whom possess varying levels of experience and expertise. Each volunteer assessor or interviewer brings their own personal style and experience to the academic and experience reviews and the OFC and many whom we spoke with in our interview process raised 37 concerns that personal biases are not adequately managed or addressed currently by PEO."
4.20 – 4.22	Unsuccessful applicant must "request the Registrar to issue a Notice of Proposal to Refuse a Licence (NoP) in order to obtain an appeal hearing before the Registration Committee. We consider that this latter requirement, that applicants must request that the Registrar issue a NoP in order to obtain an appeal hearing before the Registration Committee, is not aligned with the principle of fairness and appears to be in

	contravention of section 19(1) of the Act, which places the onus on the Registrar to issue a NoP where an applicant is not considered to meet requirements for licensure. The number of Registration hearings is relatively low and we were told that PEO rarely issues NoPs for this purpose. Staff also told us that if applicant requests to issue NoPs were not required the number of requests for hearings could significantly increase and would be difficult to manage. Notwithstanding, we find this policy by PEO acts as a potential deterrent to applicants who are unhappy with decisions made at the ERC and that changes to remove this requirement should be pursued. "In four letters throughout 2018, the OFC identified key areas where it considered PEO was not compliant with requirements under the FARPACTA. The expressed concerns were: the current requirement that applicants possess at least one year of Canadian experience is not aligned with requirements across Canada and is deemed unreasonable… the current process to addressing bias was not viewed as satisfactory or adequate; and finally, there was a need for timelines for response to applicants' inquiries or requests to be developed and articulated… At the time of our review, the Council had not yet managed to satisfactorily address all of the issues identified by the OFC and we found the delay in responding troubling."
4.23, 4.24	"The Registration Committee hears registration appeals. We found that panels conducting Registration Committee hearings and those conducting ERC interviews are not required to include at least one member who is representative (in gender, race, background) of the applicant who is appealing or being interviewed. We observed a hearing involving an international applicant where not one member of the panel, the expert witness or PEO legal counsel were themselves of an ethnic minority background and find this apparent disregard for equality concerning." "PEO staff told us that panels are constituted primarily on the basis of volunteer availability, and this largely influences panel composition. Although female members make up approximately 15% of the PEO register, we confirmed that female applicants are usually interviewed by panels that do not include a female member. PEO staff told us that it would be very difficult to arrange interviews with female ERC members with similar work experience without causing delays. We find that the process is not as fair as it should or could be."
4.25	"We question why PEO does not follow examples of regulated professions and occupations in other provinces and the USA in replacing the interviews with alternate assessment methods, such as Prior Learning Assessment Reviews (PLARs) or competency-based assessments, both of which are commonly used across Canada to facilitate for inter-provincial and inter-continental mobility."
4.69	"Members of the public or the profession who wish to file a complaint must complete a Complaints Form. Among the questions that must be answered is one that asks, 'What is the public interest relating to your complaint?' which appears to put the onus on a complainant to demonstrate that their complaint is being made in the public interest and may act as a deterrent to making a complaint. We understand that this was introduced to deter trivial or vexatious complaints but this is not the right way to solve that problem. Notwithstanding the fact that public interest is included on the complaints form, it was our observation at the COC meeting we observed that it did not consider the public interest in its deliberations, but primarily focused on whether or not an engineer had breached a standard."

4.82	"PEO commits significant human and financial resources to its Enforcement process, and encourages members of the profession to identify and 'turn in' persons who are not authorized to practice. The numbers of reports received from professional members far outweigh those received from the public and we believe, in the absence of evidence related to public 'harm', that the amount of resources committed to the current enforcement process is non-proportionate to any evidence or risk of public harm"
4.92	"With respect to Discipline, a number of sources expressed a lack of confidence in the DIC decision-making processes… It is a widely held view among those who provided evidence to us, …that the DIC generally puts the interests of the members and PEO before that of the public. We do not know if this widely held view is justified…"
4.110	"Ethical standards and guidance do not appear to receive the same attention [of the PSC] as technical engineering issues do"
4.113, 4.114	"The document 'Making a Complaint - a public information guide' takes a potential complainant through the process but says nothing in plain English about what would be a valid complaint. It includes two extracts from the Regulation: the Code of Ethics and Definition of Professional Misconduct. These are hardly accessible to a member of the public or engineering client." "The standards and guidance are published but not in accessible formats. It is not easy to find them and although there is guidance on how to make a complaint there is little help on what a person can complain about. It would be helpful if the Standards, Guidance and Code of Ethics were accessible together in a single place on the website."
5.6	"a much greater focus on the public interest is necessary"
5.17	"Our consideration of council meeting agendas and our observation of meetings suggest that the majority of time is taken up with the internal affairs of PEO, with fees and finance, chapters and volunteers, awards and recognition and less with the broader public interest, with the standards and safety of engineering or with the ethics of the profession"
5.18	"We also did not find that the Council had addressed and was constantly cognizant of key present and future engineering risks that its activities should be directed to prevent"
5.19	Council "will need to redirect its resources very substantially towards professionalizing its regulatory processes"… "This change of focus will require courage to challenge the existing culture and established ways of working."
Reco. 11	"pay more regard to professional conduct and ethics, as breaches of these bring the profession and its regulator into disrepute (4.56 – 4.57)"

Appendix D – Abbreviations

ARC	Academic Requirements Committee
AREWG	Anti-Racism and Anti-Discrimination Exploratory Working Group
BIPOC	Black persons, Indigenous persons, and Persons of Colour
CEAB	Canadian Engineering Accreditation Board
CEDC	Consulting Engineers Designation Committee
EDC	Equity and Diversity Committee
ERC	Experience Requirements Committee
EXE	Executive Committee
FARPACTA	Fair Access to Regulated Professions and Compulsory Trades Act 2006
HRC	Human Resources Committee
LIC	Licensing Committee
LSO	Law Society of Ontario
OFC	Office of the Fairness Commissioner of Ontario
OHRC	Ontario Human Rights Commission
OHRC Anti-Racism Policy	Policy and Guidelines on Racism and Racial Discrimination issued by the Ontario Human Rights Commission
OPSE	Ontario Society of Professional Engineers
P.Eng.	Professional Engineer
PEO	Professional Engineers Ontario
PSC	Professional Standards Committee
RFP	Request for Proposal
SLAs	Service Level Agreements
The Regulation	Ontario Regulation 941

[1] See Ontario Human Rights Commission, online: http://www.ohrc.on.ca/en/ii-introducing-ontario-human-rights-code/2-code-prevails-over-other-laws ["Supremacy of the Code"].

[2] See Professional Standards Authority, A Review of the Regulatory Performance of Professional Engineers Ontario (April 2019), online: https://www.peo.on.ca/sites/default/files/2019-10/PEOReviewReport.pdf [the "Cayton Report"]

[3] Cayton Report at para. 5.18.

[4] The CEO/Registrar indicated that his message was sent "by email to all PEO staff… by email to PEO Council…via e-blast to all PEO members" and was "posted on the PEO's website (online at: https://www.peo.on.ca/latest-news/message-peos-ceoregistrar-supporting-positive-culture-change) and posted on the PEO's social media accounts (Twitter, Facebook, LinkedIn)." This is positive and Council's strategy must honour and build on these promises made publicly.

[5] See Law Society of Ontario, Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions, online: http://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf [the "LSO Anti-Racism Strategy"] at 11-12.

[6] See Supremacy of the Code, above.

[7] See Ontario Human Rights Commission, Policy and Guidelines on Racism and Racial Discrimination, online: http://www3.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf [the "OHRC Anti-racism Policy"] at 37, 38, 40.

[8] Richard Steinecke, Governance for Regulators, online: https://www.sml-law.com/wp-content/uploads/2020/07/Governance-for-Regulators.pdf ["Steinecke"] at 8-10.

[9] OHRC Anti-racism Policy at 6,7,8,12,13.

[10] OHRC Anti-racism Policy at 7, 9.

[11] See e.g. *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, online: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/407/index.do ["SCC Andrews Decision"].

[12] See SCC Andrews Decision.

[13] See SCC Andrews Decision; see also *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30, online: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15383/index.do at paras. 15, 23.

[14] Interviews by the PEO's Experience Requirements Committee (ERC) are recorded. We requested and reviewed the recordings from: the five most recent interviews where candidates were successful, and the five most recent interviews where candidates were unsuccessful.

[15] Ontario Human Rights Commission, Policy on Removing the "Canadian experience" Barrier, online: http://www.ohrc.on.ca/en/policy-removing-%E2%80%9Ccanadian-experience%E2%80%9D-barrier.

[16] We refer to British Columbia's (BC) developments, as BC was the leader across Canadian provinces and territories in developing alternatives to the Canadian experience requirement and in implementing competency-based assessments. Various other provinces have followed BC's lead. We confirmed this information in interviews with officials who have sophisticated knowledge of affairs at engineering regulators across Canada, and by reviewing sample information from various related websites.

[17] OHRC Anti-racism Policy at 31.

[18] The PEO adopted the 30 by 30 initiative, further to Engineers Canada's lead. The initiative's goal is to raise "the percentage of newly licensed engineers who are women to 30 per cent by the year 2030". See Engineers Canada, online: https://engineerscanada.ca/diversity/women-in-engineering/30-by-30.

[19] Engineering Connections is a program provided by ACCES Employment that is aimed at supporting internationally-trained engineers to succeed in the Canadian labour market. See ACCES Employment, online: https://accesemployment.ca/programs/bridging-and-sector-specific-programs/engineering-connections.

[20] OHRC Anti-racism Policy at 31.

[21] Online: https://www.ontario.ca/page/anti-racism-data-standards-order-council-8972018.

[22] Canadian Centre for Diversity and Inclusion, What Gets Measured Gets Done: Measuring the Return on Investment of Diversity and Inclusion, online: https://ccdi.ca/media/1071/ccdi-report-what-gets-measured-gets-done.pdf ["CCDI Report"] at 12.

[23] CCDI Report at 14.

[24] CCDI Report at 14.

[25] OHRC Anti-racism Policy at 24.

[26] OHRC Anti-racism Policy at 35.

[27] OHRC Anti-racism Policy at 32.

[28] OHRC Anti-racism Policy at 34.

[29] OHRC Anti-racism Policy at 36.

[30] Letter from the Office of the Fairness Commissioner for Ontario to PEO dated March 15, 2018 ["OFC 2018 Letter"].

[31] OFC 2018 Letter.

[32] Cayton Report at para. 4.16.

[33] See example in British Columbia where the Office of the Superintendent of Professional Governance (OSPG) was introduced as a new oversight body for engineering and certain other professions. "The new superintendent's office will bring independent oversight and help restore public trust in qualified professionals by ensuring transparent and consistent best practices regarding qualifications, continuing education and potential conflicts of interest. With this new approach, we can support responsible resource development and the good jobs that result. … The superintendent's office will have the power to issue guidelines and directives to regulators to ensure compliance and enforcement of best practices and high professional and ethical standards. Staff will be able to investigate potential breaches of whistleblower protections and administer penalties…", online: https://news.gov.bc.ca/releases/2019ENV0075-001265#:~:text=The%20Government%20of%20British%20Columbia,acting%20in%20the%20public%20interest.

[34] See Law Society of Ontario, Application for Exemption from the Experiential Training Program, online: https://lawsocietyontario.azureedge.net/media/lso/media/becoming-licensed/ar08-exemption.pdf.

[35] See Professional Engineers and Geoscientists of BC, Satisfactory Engineering Experience, online: https://www.egbc.ca/getmedia/c721f7d8-1fbf-4a6c-a06d-16d9227c4c13/APEGBC-Guidelines-for-Satisfactory-Experience-in-Engineering.pdf.aspx at 4.

[36] OHRC Anti-racism Policy at 37-39.

[37] Steinecke at 23-25.

[38] See the governance transformation deck presented at the PEO's Council meeting on March 26, 2021.

[39] See e.g., *R. v. Kapp*, 2008 SCC 41, online: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5696/index.do at para. 3.

[40] The need to monitor and guard against retaliatory conduct is relevant to the PEO's duty under section 8 of the *Code* to protect people from reprisal.