

November 15, 2021

Natalia Kusendova, MPP (Mississauga Centre)
Chair
Standing Committee on Social Policy
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Tanzima Khan
Clerk

Dear Ms. Kusendova and Ms. Khan,

SUBJECT: Submission in support of Schedule 3 to Bill 27, Working for Workers Act, 2021

The Association of Consulting Engineering Companies – Ontario (ACEC-Ontario) is the industry association representing the interests of consulting engineering firms in the province of Ontario. Our mission is to promote and advance the business interests of our member firms and the value of the engineering work they do. Consulting engineering companies offer an array of engineering and technical services and expertise to both public and private sector clients, and they make critical contributions to the social, environmental and economic welfare of Ontario.

Professional engineering has been a regulated profession in Ontario for almost 100 years. The need for that regulation is not at issue. The paramount duty of all professional engineers is to safeguard the public welfare. Therefore, it is essential that engineering work be carried out only by qualified, licensed individuals. Professional Engineers Ontario (PEO) is the regulatory body established under the *Professional Engineers Act* to establish standards of qualification and issue the P.Eng. licence to qualified applicants, allowing them to engage in the practice of professional engineering.

Before addressing the important elements of Bill 27, we would like to briefly address the concept of “qualification” for the practice of professional engineering. The qualification framework established by PEO is predicated on three things: knowledge, skill and judgment. We believe this to be appropriate in the circumstances, understanding the public interest risks associated with the practice of professional engineering. Knowledge is gained through formal education. PEO requires applicants to have at least a bachelor’s degree in engineering. Skill is gained through training and experience. PEO requires applicants to have at least 48 months of professional engineering experience, typically through a supervised internship under a licensed professional engineer. Judgment is gained solely through experience. PEO requires applicants to provide verification of their experience through references, who can speak to the applicant’s judgment in matters related to the practice of professional engineering. On the surface, PEO

has established a logical and reasonable framework for determining the “qualification” of applicants.

Unfortunately, the details of PEO’s framework include a requirement that, of the 48 months of professional engineering experience, at least 12 months must be acquired in a Canadian jurisdiction – i.e., the applicant must have at least 12 months of “Canadian experience”. This is problematic for a number of reasons, and this is why we support the changes to the *Fair Access to Regulated Professions and Compulsory Trades Act* (FARPACTA) proposed in Schedule 3 to Bill 27.

The executive leadership of ACEC-Ontario’s member firms have reported challenges in recruiting qualified, licensed professional engineers with intermediate levels of experience (typically in the range of 10 to 18 years). We know there is a good supply of internationally educated and experienced engineers of this type who have immigrated to Ontario, but the Canadian experience requirement described above creates a “catch-22” situation. The individuals can’t get a P.Eng. licence without 12 months of Canadian experience, and many of our member firms can’t make proper use of such individuals without a P.Eng. licence. Further, even when the Canadian experience has been obtained, PEO takes an inordinate amount of time to process a P.Eng. licence application, adversely impacting the businesses of our member firms.

On several occasions since 2014, the Office of the Fairness Commissioner (OFC) has identified PEO’s Canadian experience requirement to be an artificial barrier to licensure. The OFC concluded that PEO’s requirement is discriminatory, breaches human rights laws, and breaches PEO’s duties under FARPACTA. The OFC has also concluded that PEO is non-compliant with the Fair Registration Practices Code. Despite this, PEO continues to defend its Canadian experience requirement.

PEO’s rationale for their Canadian experience requirement is that it ensures the applicant has “sufficient familiarity with the applicable Canadian codes, regulations and standards for the practice of professional engineering”. We believe this rationale does not survive scrutiny, and that PEO’s 12-month Canadian experience requirement is arbitrary and therefore contrary to the principles of fairness and good regulation.

Clearly, a lack of familiarity with Canadian codes and standards represents a public interest risk for professional engineers practicing in Canada. However, it is our position that there is no cause-effect relationship between 12-months of Canadian work experience and the acquisition of an appropriate level of familiarity with Canadian codes and standards. This regulatory requirement is poorly targeted to the identified risk issue. We believe there are better and less disruptive ways for PEO to mitigate this risk.

Consider the qualification framework we described above. If PEO is concerned about “sufficient familiarity with the applicable Canadian codes” etc., then it is clear that the risk issue

relates to “knowledge” instead of “skill” or “judgment”. As such, it would be better for PEO to address this risk issue through academic means such as completion of a course or an examination prior to licensure. As it stands, it is unreasonable to expect any fixed amount of work experience to guarantee “sufficient familiarity” with codes in the absence of any form of subsequent verification or testing.

The majority of the other engineering regulators in Canada do not require any minimum amount of Canadian experience prior to licensure. They have found alternative ways to assure themselves that licence holders are sufficiently familiar with the applicable Canadian codes and standards. The Association of Professional Engineers and Geoscientists of Alberta, for example, uses a competency-based assessment tool to determine the adequacy of work experience. Engineers Nova Scotia identifies specific courses or programs of study as alternatives to the Canadian experience requirement.

Schedule 3 of Bill 27 will amend FARPACTA to prohibit a regulator like PEO from requiring licence applicants to have Canadian experience, unless it has been granted an exemption to do so from the Minister. This is a positive step and ACEC-Ontario is supportive of it.

We note, however, that the amended FARPACTA will allow a regulator to apply for an exemption by submitting documentation and reasons why the exemption is necessary for the purposes of public health and safety. As noted above, the practice of professional engineering is inextricably tied to safeguarding the public welfare, making for a superficially easy argument as to why PEO ought to be granted an exception. We recommend that the application for exemption go further to read as follows (our amendments in red):

Application for exemption

(2) A regulated profession may apply for an exemption referred to in subsection (1) by submitting appropriate supporting documentation and: (a) providing reasons that an exemption is necessary for the purposes of public health and safety, and (b) demonstrating why the public interest risk that would be mitigated through Canadian experience cannot be mitigated through other means, such as education, examination or competency assessment.

As noted above, PEO’s licence application process takes too long, even without the delays associated with the Canadian experience requirement. PEO has acknowledged that it has a significant timeliness problem, and a recent regulatory performance review described the PEO process as being lengthy, bureaucratic, complex, and difficult to follow.

PEO recently reported that in each of the past two years, it received almost twice as many licence applications as it processed and reported a backlog of 21,000 licence applications. Further, PEO reported that the average licence approval processing time was over three years.

The current situation is clearly untenable and unsustainable, yet PEO has failed to take corrective action.

These multi-year delays are adversely impacting the livelihoods of immigrants seeking their P.Eng. licence and disrupting the businesses of the engineering firms seeking to employ them. The disruptions affect the capacity of engineering firms to deliver the services required to make Ontario's public infrastructure projects a reality.

Schedule 3 of Bill 27 will amend FARPACTA to empower the Lieutenant Governor in Council to make regulations that establish "a maximum time period within which a regulated profession shall make a decision." We anticipate that such regulations will be made, and such time limits established for decisions on licence applications. Based on our mandate and our informed perspective, ACEC-Ontario would be pleased to contribute to the formulation of any such new regulations. Imposing such time limits on PEO's licensing process will not create an unreasonable burden because PEO has flexibility in its current statutory and regulatory framework to find alternative means of managing risk and processing applications in a timely manner that will still serve and protect the public interest.

To conclude, we support the proposed amendments to FARPACTA described in Schedule 3 to Bill 27 and would like to see a strengthening of the criteria for granting exemptions to the prohibition on Canadian experience requirements.

ACEC-Ontario stands ready to provide any input or perspective the Committee may require in its consideration of this Bill. To that end, you may reach out to Bruce Matthews at 416-620-1400, ext. 224, or by email at bgmatthews@acecontario.ca.

Sincerely,



Joe Sframeli, P.Eng.
Chair, Board of Directors



Bruce G. Matthews, P.Eng.
Executive Director