

# Access to the Profession of Engineering in Ontario

A multi-tiered legal approach to licensure of  
CAPE members

Presented at the CAPE AGM, November 26, 2011  
Toronto, ON

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# Urgent need for Action

- 85% of CAPE members not working in Engineering
- 30% of these individuals hold masters degrees or higher
- 70% of members have applied for licensure with PEO but only 15% are licensed
- Hurdle to licensure is requirement for 12 months Canadian experience

# Approaches to Problem

1. Work with and lobby PEO to propose changes to PEO registration requirements
2. Lobby Provincial Government to amend Regulations
3. Lobby Federal Government to force change to be consistent with immigration policy
4. Follow up with office of Fairness Commissioner regarding registration requirements of PEO
5. Complaint to Competition Bureau that registration requirements anti –competitive
6. Complaint to Ontario Human Rights Commission that PEO's registration requirements are discriminatory and in contravention of *Human Rights Code*
7. Bring a test case by challenging PEO refusal to license a CAPE member
8. Bring an application for a declaration that the registration requirement are discriminatory and in contravention of the Charter and an order that it be struck down

# Value in Multi-tiered Approach

- This approach should be most cost effective for CAPE
- All options can be undertaken simultaneously
- Complaints to Competition Bureau and Human Rights Commission require little legal advice
  - If complaint proceeded with, these agencies bear the cost of prosecuting complaint
- Combination of approaches will increase pressure for change
- Most costly is test case because CAPE would have to finance appeals and possible application for judicial review

# Option 1 - Lobby the PEO

- Meet with PEO and present the following:
  - research (some of which has already been prepared by CAPE)
  - Experience of other jurisdictions
  - documentation from the Fairness Commissioner
  - case law
  - Try to negotiate a solution with PEO - let them know of approach to be taken if they are not prepared to consider change

# Option 2 – Lobby Provincial Government

- Meet with Ministry of the Attorney General
- Lay out same information as will be presented to PEO
- Explain our plan if we do not get results



# Option 3 – Lobby Federal Government

- Meet with representatives of Ministry of Immigration
- Presentation of same information as with last two options
- At a minimum get their support for requests of PEO and Ministry of Attorney General
- Without this their admittance of Engineers on the promise of employment empty



# Option 4 – Office of Fairness Commissioner

- Review reports, audits and reviews and compare to requirements and policies of PEO
- Point out any places where PEO has not followed through on recommendations
- Urge Fairness Commissioner to take action
- In addition point out ongoing plight of foreign trained engineers and urge Commissioner to do something about it

# Option 5 – Complaint to Competition Bureau

- Competition Bureau is federal agency that ensures fair business practices
- Complaint could be made that the PEO's registration practises are anti-competitive by excluding foreign trained engineers
- Competition Bureau prosecutes case themselves if they decide it contravenes law
- They try to get voluntary compliance with law and if not administrative hearing before Competition Tribunal
- There is an exemption for regulated professions which would make it difficult for this option to succeed however, together with the other options it may be worth

# Option 6 – Complaint to Ontario Human Rights Commission

- Complaint would be made that the registration requirements are discriminatory and therefore contrary to the *Human Rights Code*
- As with complaint to Competition Bureau the Commission does the work , investigation complaint and determining if there is a case worth prosecuting
- CAPE would provide research and documentation establishing complaint
- Commission prosecutes case

# Option 7 – Test Case

- This option involves appealing decision of Registration Committee of PEO to refuse to grant a licence to a particular CAPE member
  - Choose best possible candidate here with PhD, ample foreign work experience, foreign licensure and good references
- Appeal decision to Divisional Court and argue work experience requirement contrary to *Charter*
- If appeal unsuccessful appeal to the Court of Appeal of Ontario
- This option obviously more costly as CAPE would be funding the litigation

# Option 8 – Application for Declaration

- This would be a generic application – brought by CAPE to get this issue before the court
- We would rely on all of the information and research CAPE has gathered on this subject
- We would ask the Court for an Order declaring the 12 month Canadian work requirement to be unconstitutional because it violates CAPE members section 15 *Charter* right – to be free from discrimination – and to strike the requirement down
  - The impact would be the removal of this requirement from the regulation
- This would require a lot of work from CAPE and a lot of legal work – for the best chance of success a great deal of preparation and research must go into such an application
- This option is the most costly of all those recommended but also the most direct one to tackling this problem