

October 17, 2012

**Delivered via Email**

Elliot Lake Commission of Inquiry  
1400 Blair Place  
Ottawa ON K1J 9B8

Attention: Commissioner Paul R. Bélanger

Dear Sir:

**Re: Application for Standing**

We are the solicitors for the Ontario Society of Professional Engineers (the "Society") and write on its behalf to seek standing at the Elliot Lake Commission of Inquiry.

**A. Motion**

Our client believes, with respect, that:

- (a) it has a substantial and direct interest in the subject matter of this Inquiry;
- (b) that its participation would further the conduct of the Inquiry; and,
- (c) contribute to the openness and fairness of the Inquiry.

We would ask, therefore, that this letter be treated as a motion on the part of our client for standing at the Inquiry and, further, a request that it be allowed, if necessary, to make oral submissions in support of its motion. Our client makes no application for funding.

It is that part of the Inquiry's mandate particularized in section 2(b) of the Order in Council establishing the Inquiry in which our client has a substantial and direct interest and to which its participation might both further the Inquiry and ensure the openness and fairness of the Inquiry. Our client therefore seeks standing with respect to that aspect of the Inquiry.

While our client does not need or seek standing with respect to that part of the Inquiry's mandate particularized in section 2(a) of the Order in Council, we should, out of abundance of caution, make plain that in order for it to participate in a meaningful way, should standing be granted to it, in that part of the Inquiry particularized in section 2(b) it would, of course, seek access to the information placed before the Inquiry that is relevant to that part of its mandate particularized in section 1(a) of the Order in Council.

## **B. The Society**

The Society is a not-for-profit corporation created jointly in April 2000 by the Association of Professional Engineers of Ontario ("PEO") and the Canadian Society of Professional Engineers ("CSPE"). The Society was created in order to separate the regulatory and non-regulatory affairs of the engineering profession in Ontario. The Society is primarily concerned with promoting the professional and economic interests of professional engineers in Ontario. To that end the Society, among other things, actively seeks to promote engineering excellence in Ontario for the benefit of its members and the public.

The Society has approximately 6,000 members who are professional engineers. Another 3,000 of its members are in other engineering categories. Its Board of Directors is composed entirely of professional engineers

As required by the Inquiry's Revised Rules of Standing and Funding we can advise that the particulars with respect to our client are as follows:

Ontario Society of Professional Engineers  
4950 Yonge Street, Suite 502  
Toronto ON M2N 6K1  
Fax 416.223.9963

Attention: Lee Weissling tel: 416.223.9961, ext: 230  
email: lweissling@ospe.on.ca

## **C. The PEO**

It is important to note that the role played by the Society is not the same as that performed by the PEO.

The PEO is, as is well known, the regulator of professional engineers in Ontario. It does so pursuant to the *Professional Engineers Act*.<sup>1</sup> The principal object of the PEO is to regulate the practice of professional engineering in Ontario and to govern the members of the PEO and those who hold licenses from it. The PEO has

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<sup>1</sup> *Professional Engineers Act*, R.S.O. 1990, c.P.28, as amended



approximately 73,000 members. The PEO has additional objects, including objects with respect to establishing and maintaining professional standards.

#### **D. The Differing Roles of the Society and the PEO**

The relationship between the Society and the PEO is analogous to the relationship between the Ontario Bar Association and the Law Society of Upper Canada and the relationship between the Ontario Medical Association and the College of Physicians and Surgeons.

It was believed, at the time of the creation of the Society, that the functions performed by the Society should be separated from those performed by the PEO for two principal reasons.

First, it was widely felt within the engineering profession that advocacy activities on behalf of professional engineers fell outside the objects of the PEO and, to some degree, would be in conflict with those objects. The creation of the Society would, then, allow for such advocacy activities, in both the professional and the public interest, free from the constraints of the *Professional Engineers Act*.

Second, the regulatory framework governing professional engineers can give rise to the perception that the PEO has a conflict of interest in that, on the one hand, it is regulating the profession in the public interest while, on the other, it is accountable to its members many of whom may, from time to time, take a different view of the degree to which the profession of professional engineers should be regulated. It necessarily follows that, from time to time, allegations may be made that the PEO has an inherent conflict between its role as a regulator and its obligations to its members.

The Society is not constrained in that way. The Society is free to, and does, take positions on public interest issues that are not being advanced, or will not be advanced, by the PEO.

#### **E. The Work of the Society**

The Society has long advocated, for example, that in Ontario there be continuing engineering education for professional engineers and that the regulatory environment governing infrastructure adequately protect the public. The Society brings, therefore, a unique perspective to public policy discussions and inquiries with respect to the necessary standards for professionalism for engineers and the regulatory environment within which engineers operate.

The Society has played a significant role in Ontario in contributing to the review of the regulatory framework within which professional engineers carry out their work. That work has included a number of initiatives germane to this motion. Those include, but are not limited to:



- (a) the Society received standing at the Walkerton Inquiry and participated in a meaningful way dealing with engineering and regulatory issues raised in that Inquiry;
- (b) advocating to both the PEO, and more broadly to the public, for mandatory continuing professional development for engineers;
- (c) providing submissions to the relevant legislative committee with respect to amendments to the *Professional Engineers Act* to, among other things, more clearly define the scope of engineering;
- (d) provision of submissions to the PEO relating to the establishment of a framework for a common national standard for licensure of engineers so as to ensure, among other things, protection of the public interest; and,
- (e) establishment of guidelines to ensure the fair treatment of engineers subject to the PEO's complaint and discipline processes.

#### **F. The Interest of the Society in the Inquiry**

The Society holds the view that the public interest requires that infrastructure, including buildings, within the province needs to be constructed and maintained in accordance with sound engineering principles and within an appropriate regulatory framework. That said, the Society is concerned that the regulatory environment that governs the construction and maintenance of such buildings is in need of reform.

A review of the relevant legislation, regulations and by-laws and relevant policies, process and procedures of the provincial and municipal governments with respect to the structural integrity and safety of the Algo Centre Mall necessarily, in our respectful view, calls for a review of the legislative and regulatory framework within which the Society's members regularly and routinely work. The Society is intimately familiar with that legislative and regulatory environment. Any recommendations with respect to changes to that legislative and regulatory regime that might be made by the Inquiry will have a substantial and direct impact upon the Society's members who would be greatly affected should any such recommendations result in legislative or regulatory change. The Society and its members would have, therefore, a direct interest in that aspect of the Inquiry.

Second, it is important, in the interest of fairness, that the interests of the engineering profession in Ontario be fully and properly represented at the Inquiry. While, undoubtedly, there will be other parties granted standing that will to some degree address engineering issues and the legislative and regulatory environment within which engineers operate, it is not unreasonable to think that those parties may well be advancing the interests of the specific engineers that they represent or the interests of the PEO as the regulator. In the interests of fairness and openness it is, in the respectful submission of the Society, make it desirable that there be an institution,



such as the Society, that can advocate on behalf of the engineering profession at large in Ontario rather than on behalf of the specific engineers that may be engaged in this matter or their regulator.

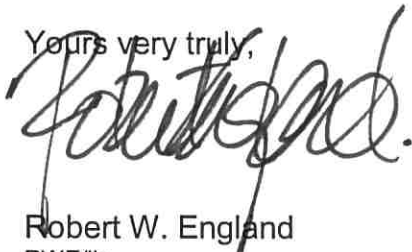
Finally, the Society has vital information to provide to the Inquiry both because of its intimate knowledge of the regulatory and legislative framework to be under review but, in addition, because of its having been directly involved in various issues - such as, for example, continuing education for engineers, licensing requirements, discipline of professional engineers and, more broadly, the regulatory environment governing infrastructure - that will undoubtedly be considered by the Inquiry. Our client respectfully submits that it is in a unique position to contribute to that review. In doing so it believes that its participation by way of standing will further the conduct of the Inquiry.

### **G. Method of Contribution**

Our client proposes, if granted standing, to contribute to the Inquiry by the making of submissions with respect to the existing legislative and regulatory requirements that govern the constructions and maintenance of buildings such as to the Algo Centre Mall and its position with respect to how that legislative and regulatory framework might be reformed so as to serve the public interest by the prevention in future of similar building failures.

We thank you for your consideration of our client's request for standing.

Yours very truly,



Robert W. England  
RWE/jlc

c. Lee Weissling  
Mark Deitrich  
Mark Frederick