Council takes steps to improve Council/committee outcomes

449th MEETING, JUNE 26, 27, 2008

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The June meeting began Thursday evening with a plenary session to discuss strategies for improving the working relationship between Council and committees to better carry out PEO's governance responsibilities, ensure accountability, broaden the engagement of volunteers and staff, and improve communication between Council and its committees.

Council heard from Paul Ballantyne, P.Eng., chair, Advisory Committee on Volunteers (ACV), that there are recurring friction points in the relationship between Council and committees, including lack of compliance with the Committee & Task Forces Policy, in particular concerning the lack of turnover on committees, the need for better succession planning, and a possible misunderstanding of the terms "mandate" and "terms of reference."

Also, while some committees report to the CEO/registrar, under the current policy, some report to the Executive Committee and 14 directly to Council. In this situation, the responsible authority (RA), the person or body responsible for assigning work, providing direction, approving budgets, etc., is collective, which creates confusion as to who on the Council or the Executive Committee is really the RA.

The Committee & Task Forces Policy, adopted in 2004, guides the operation of each committee, defines the committee/Council relationship and assists Council, the Executive Committee and the CEO/registrar in executing the requirements of the *Professional Engineers Act* (PEA). It covers such elements as the role of the RA, the appointment and roles of the committee chair and committee members, the development of terms of reference and annual work plans, and procedures for making recommendations, carrying out performance appraisals and preparing annual reports.

The issues regarding the relationship between Council and its committees were first raised in December 2007, at which time Council requested a review and formal report on the situation.

In March 2008, the ACV convened a workshop for committee chairs, senior PEO staff and committee staff advisors to deal with the issues raised. Council received a report based on the outcomes of the workshop at its March meeting. And a series of meetings in March and April resulted in a decision to review the current policy.

At the June plenary session, Councillors, committee chairs and committee staff advisors, and PEO staff in attendance, broke out into five groups to brainstorm possible elements to include in a new or revised Committee & Task Forces Policy and to develop a clear direction that would support enhanced Council/committee outcomes.

Four topics were provided as discussion points: improving Council/committee accountability, rationalizing committee governance, broadening volunteer engagement and improving Council/committee communication links. The groups were each asked to develop up to three recommendations for each of the four themes. At the conclusion, a set of more than 30 recommendations was put forth. Once Council was back in formal session on Friday morning, it approved the following motion:

"The CEO/Registrar draft the required recommendations to the Council Committee and Task Forces Policy to reflect the discussion of the plenary session for Council's consideration at its September meeting."

Public policy centre

At the June meeting, Council approved a motion directing the CEO/registrar to hire an executive director for a Centre of Engineering and Public Policy on a one-

year contract to set up the centre, authorizing a budget of $200,000 for this purpose, and specifying a minimum of $300,000 be included in PEO's 2009 budget for the centre.

The idea of creating a Centre for Engineering and Public Policy was approved by Council in principle at its February 2008 meeting, as a means to help engage the profession in the development of public policy and increase the reach of PEO's Government Liaison Program. Council discussed the matter further at its workshop in May.

It is intended the centre will develop policy papers and position statements, be a think tank research centre, and provide support for engineers with political ambitions. It is envisioned the centre would also host an annual engineering and public policy conference, and facilitate focus groups, seminars, town hall meetings and workshops, providing links through these activities to university programs related to engineering and public policy and to all of the profession's stakeholders.

The plan is that PEO will develop the centre, create the infrastructure and provide financial support initially as a function within PEO. Subsequently, it would become a separate legal entity that other interested organizations could join.

CEO/Registrar Kim Allen, P.Eng., told Council that at a recent Council of Ontario Deans of Engineering meeting, several universities expressed interest in becoming members of the centre and that Engineers Canada would also like to explore a role.

Professional development

At the June meeting, Council approved a three-part motion directing the CEO/registrar to prepare a continuing professional development system for presentation at the September meeting. Specifically, the CEO/registrar has been tasked with developing:

- a system requiring licence holders to declare they have maintained competence in the performance of any professional engineering services that they will be undertaking;
- a protocol for Council to use in approving the ongoing learning requirements for future specialist designations; and
- a position paper to support PEO's continuing professional development system.

Under the PEA, PEO is required to establish, maintain and develop standards of knowledge and skill among its members. How to accomplish the maintenance aspect (i.e. continuing competence) has been the subject of intense debate for over 30 years.

While to date PEO has relied on the professionalism of its licence and certificate holders to fulfill the competence requirements set out in Regulation 941, at the May 2008 Council workshop there was consensus the issue needs to be moved forward to address the public perception that PEO may not be ensuring that its licence and certificate holders are maintaining the required standards of knowledge and skill.

When initially presented, the motion would have required PEO to develop a "competency assurance" system, which wording posed a problem for some Councillors, who agreed with the motion's spirit but felt PEO cannot, in fact, ever assure an engineer's competence, but can prescribe a professional development system.

Said Councillor Chris Roney, BDS, P.Eng., when presenting the issue to Coun-

cil, "PEO doesn't want to impose a bureaucratic approach on members, but having licence holders declare is a small but important step for public perception."

Licensure uptake study

At the June meeting, a representative of opinion research firm Ipsos Reid presented findings of a survey of final-year engineering students conducted on behalf of PEO. The survey was part of a larger research project (see *Engineering Dimensions*, May/June 2008, p. 62) to uncover the reasons why graduates from Ontario's Canadian Engineering Accreditation Board (CEAB)-accredited engineering programs do not choose to become licensed.

Nine universities participated in the engineering student survey: Lakehead University, Royal Military College, Ryerson University, University of Guelph, University of Ottawa, University of Toronto, University of Waterloo, University of Western Ontario and University of Windsor.

Among the survey findings:

- 75 per cent of the respondents plan to go into the workforce after graduation, 20 per cent to pursue further education;
- 81 per cent plan an engineering career upon graduation (or after postgraduate education);
- 76 per cent intend to apply for licensure as professional engineers;
- of those who won't be applying for the licence, most are not planning an engineering career, or will not be staying in Canada;
- 97 per cent of those intending to apply will pursue the licence in Ontario, 61 per cent of them in

Ontario only, 35 per cent in Ontario and also in another jurisdiction;
- 30 per cent of respondents initially reported intending to apply for their P.Eng. within six months after graduation, but after learning some fees could be waived through the Engineering Intern Training Financial Credit Program (see PEO homepage) if they apply within six months of graduating, 91 per cent said they would likely apply within six months.

Based on these survey findings, combined with the earlier reported results of surveys of applicants who had applied for licensure since January 1, 2006, and of a select group of engineering employers, the CEO/registrar requested Council's direction on the project's next steps.

In response, Council directed the CEO/registrar to:

- work with university alumni associations to determine the feasibility of surveying engineering graduates who have not applied for their licence;
- identify Ontario CEAB graduates who applied for licensure more than five years after graduation and invite them to take part in focus group discussions or in a survey to determine their reasons for delaying their application; and
- ask for the universities' cooperation in repeating the survey of final-year engineering students annually.

The CEO/registrar will now develop a detailed project plan, schedule and estimated budget for each of these potential projects.

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Enforceable Code of Ethics

At the March meeting, Council approved making changes to section 77 of Regulation 941, which concerns the Code of Ethics, and section 72(2), which concerns the definition of professional misconduct (see *Engineering Dimensions*, May/June 2008, p. 61), based on the conclusions of a strategic project to determine whether the Code of Ethics could be made enforceable. The project's review of the current Code of Ethics concluded certain of its provisions are subjective, vague and worded as guidance, making them difficult to enforce, and that certain others overlap with the definition of professional misconduct.

The changes to the Code of Ethics Council approved in March would create a more comprehensive code and simpler definition of professional misconduct, so that a breach of the Code of Ethics would constitute professional misconduct. However, Council significantly revised the recommended changes at the meeting without benefit of a legal or stakeholder review. Accordingly, at the June meeting, the CEO/registrar sought Council's approval to undertake a legal review and stakeholder consultation of the approved changes before submitting them to the attorney general to amend the regulation.

Council agreed and directed the CEO/registrar to consult with stakeholders on the proposed regulation changes and undertake a legal review, and present the findings to Council for consideration at its September meeting.

The CEO/registrar was also directed to prepare a final draft of the changes to Regulation 941 to be approved by Council at its November meeting, before submitting it to the attorney general.

LPTF character issues

In its review of PEO's licensing process, the Licensing Process Task Force (LPTF) noted there is little guidance in PEO's current process to help the registrar in dealing with negative responses to any of the questions on the licence application designed, along with the reports of the referees, to ascertain if an applicant is of

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good character (see *Engineering Dimensions*, January/February 2008, p. 46), which is one of the requirements for licensing. The LPTF proposed that Council approve criteria to aid the registrar in making the decision to propose to deny a licence on grounds of character.

In June, Council was presented these criteria for approval, developed based on a review of the policies and procedures of other regulators, in particular the Law Society of Upper Canada, and PEO's experience and past practices. The criteria are intended to help staff make consistent and legally defensible decisions when dealing with negative responses to the licence applications questions, or in referees' reports.

Following is the policy Council approved:

"1. The Registrar will always seek further information or evidence to substantiate a 'negative' response and to provide context for the response.

2. When the 'negative' response is vague and cannot be substantiated, or the source is either unable or unwilling to provide specific evidence, that response may not necessarily be sufficient cause to propose to refuse to issue a licence.

3. For matters related to refusals, revocation or suspensions by other engineering associations, the Registrar will consider the seriousness and currency of the matter relative to the applicant engaging in the practice of professional engineering with competence and integrity in Ontario.

4. For matters related to alcohol or drug dependency and medical conditions,

the Registrar shall consider the specifics of the case, what steps have been taken, how does the condition relate to engaging in the practice of professional engineering with competence and integrity, and the length of any remission.

5. For incorrect responses to questions on the application, incorrect answers which would have been material to the applicant's licensure will be grounds for proposing to refuse a licence.

6. That, when allegations such as the above are substantiated, the Registrar will consider both mitigating and aggravating factors related to:

(a) the nature of the misconduct (how serious, how relevant to engaging in the practice of professional engineering with competence and integrity);

(b) the penalty imposed, and whether that penalty has been served;

(c) the duration of the misconduct, and how long ago it took place;

(d) whether the applicant has shown remorse for the conduct;

(e) whether the applicant has taken any steps to rehabilitate and, if so, the success of such efforts; and

(f) the applicant's conduct since the proven misconduct.

7. For criminal matters, the Registrar shall act according to the following guidelines:

(a) Any conviction for any indictable offence will result in a proposal to refuse to issue a licence, except in extraordinary circumstances (such as a pardon). The presumption is that

such offences render an applicant unfit for licensure.

(b) Conviction for a summary conviction offence or provincial offence should only result in a proposal to refuse to issue a licence where the offence is more serious, or it is relevant to engaging in the practice of professional engineering with competence and integrity, or the conduct is repeated."

Software engineering definition

At the June meeting, the Enforcement Committee requested Council to approve a working definition of software engineering the committee and enforcement staff can use when dealing with alleged unlicensed practice in this area.

Accordingly, Council approved the following working definition of software engineering:

"Software engineering is deemed to fall within the practice of professional engineering

- where the software is used in a product that already falls within the practice of engineering (e.g. elevator controls, nuclear reactor controls, medical equipment such as gamma-ray cameras, etc.);
- where the use of the software poses a risk to life, health, property or the public welfare; and
- where the design or analysis requires the application of engineering principles within the program (e.g. does engineering calculations), meets a requirement of engineering practice (e.g. a failsafe system), or requires the application of the principles of engineering in its development."

Although PEO has the responsibility to enforce both the practice and title provisions of the PEA, in the case of software engineering, some activities associated with the practice fit the definition of software engineering and some do not, which created the need for the working definition to guide PEO's enforcement efforts. As stated in the *Final Report of the External Groups Task Force–Software*: "PEO is charged with the responsibility of ensuring that the public interest is served and protected when engineering is practised. It must therefore ensure that only P.Engs are engaged in the practice of engineering. Pragmatically, the lines of

what is engineering are blurred and indeed changing and expanding over time. Nevertheless, PEO must strive to find and track these boundaries so it is not derelict in its duties to adequately protect the public interest; or, conversely, so it does not overstep its authority and prosecute unnecessarily."

Council was told the approved working definition would likely need revision when the Task Force–Software Engineering Specialist Program reports to Council.

Elections procedures review

At the June meeting, Council authorized the 2008-2009 Central Election and Search Committee to:

- develop a protocol for the annual review of election procedures;
- review the current election procedures and submit a report with recommendations to Council at its September meeting; and
- consult, in preparing the report for Council on the current elections procedures, with 2007-2008 Central Election and Search Committee members, 2007-2008 election candidates, the 2007-2008 chief elections officer, the PEO elections agent, PEO staff involved with the elections, the mover of the member submission regarding elections procedures at the 2008 annual general meeting, and any other party the committee feels necessary.

During the 2007-2008 Council elections, concern was expressed regarding some of the procedures used to tabulate the ballots and candidates' inability to determine preliminary ballot totals. Other concerns were raised regarding candidate election material, election publicity pro-

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cedures, the Central Election and Search Committee's terms of reference and the general handling of queries and complaints about the conduct of the elections.

The review of PEO's election procedures will be conducted on the premise that election of PEO's Councillors must be fair and transparent, from an operational perspective, and be seen as fair and transparent to candidates and members at large.

Review of AGM member submissions

Under current policy, submissions by members to PEO's annual general meeting are to be considered by Council at the first meeting after the AGM.

As such, Council considered the two member submissions to the 2008 annual general meeting, one requesting that a clear election process be developed prior to the next Council elections, and one requesting that major PEO events be conducted on weekends.

Council addressed the first submission through the election procedures review by the 2008-2009 Central Election and Search Committee, and its development of a protocol for the annual review of election procedures.

To address the second, Council passed a motion that states, "PEO supports the participation of volunteers by conducting major events on weekends, where possible." At present, most major PEO events–the AGM, regional congresses, awards galas and Council workshops–are held on weekends, although some related events, for example, the Public Policy Conference or Chapter Leaders Conference might be held on the Friday of a weekend event for cost effectiveness.

New CRC

PEO's new Complaints Review Councillor (CRC) is James Witmer, C.E.T., replacing Henry Hill, whose term as a Lieutenant Governor Appointee expires this August.

The CRC is appointed by and from the members of the Council appointed by the Lieutenant Governor-in-Council and must be a non-member of PEO. The CRC reviews, on request, PEO's handling of complaints where the complainant is dissatisfied with the outcome of the complaint at the Complaints Committee. ◈