

Council unanimously approves legal action to clarify PEO jurisdiction

BY JENNIFER COOMBES

Council decided unanimously at its March meeting that at this juncture PEO has no other option available but to follow through with legal action to clarify the jurisdictional boundaries of the *Ontario Building Code Act*, 1992 (OBCA) and the *Professional Engineers Act* (PEA) over regulation of activities related to building design and general review of construction. Under amendments to the OBCA and the *Ontario Building Code* introduced by Bill 124/02 and Regulation 305/03, individuals who have not met the Ministry of Municipal Affairs and Housing's (MMAH) qualification and registration requirements are prohibited from engaging in building-related design and general review activities, regardless that these activities are within the practice of professional engineering, which is regulated by PEO under the PEA.

In speaking to the motion to initiate a legal challenge of MMAH's jurisdiction, PEO President-elect Pat Quinn, P.Eng., emphasized that PEO supports the government objective of streamlining the building permitting system (the original goal of the changes to the OBCA), including the testing of unlicensed designers. He also said PEO intends to continue to cooperate fully with the Ministry of the Attorney General, which administers the PEA, to support the government's original building regulatory reform policy objectives, and to work with building officials through their associations to address any concerns relating to plans and drawings submitted by professional engineers.

However, he said, overlapping responsibilities and requirements for the same licence holders is wasteful and inconsistent with self-regulation, and PEO has been provided no evidence the P.Eng. licence is insufficient to protect the public in matters involving building design.

The Council motion authorized an expenditure of up to \$500,000 to support the legal action.

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Recognizing that PEO continuing to develop regulations to support a Building Design Specialist designation in parallel to the MMAH qualification and registration regime does nothing to clarify jurisdiction, Council also approved putting a stop to any further work on the regulations.

However, P.Engs and temporary licence holders who have qualified and registered under the MMAH system may continue to apply to PEO for the right to use PEO's Building Design Specialist and BDS official marks (see "Building code impasse headed for court," p. 13 and "Bill 124 deadlock: PEO introduces Building Design Specialist and BDS official marks," *Engineering Dimensions*, January/February 2006, p. 11). To date, Council learned, PEO had entered into licensing agreements for the use of the official marks with 70 qualified P.Engs and temporary licence holders, which is proving to be an effective method for PEO to collect information about which licence holders have qualified under the MMAH system and to provide them a form of additional recognition.

Privacy Policy amended

Council approved recommendations from a staff working group to change the accessibility to the public of PEO members' personal information that Council had previously authorized making available, as well as an amendment to Principle 5 of PEO's Privacy Policy to enable PEO to better protect the public interest.

At its September 2004 meeting, Council adopted a PEO Privacy Policy covering PEO's collection, storage and public disclosure of member information. The policy included the principle of making more member information publicly available via an expanded public information model (EPIM) that balances transparency and openness in PEO's regulatory activities and accountability of practitioners to the public with safeguarding the privacy of

practitioners. Council approved the specific types of information PEO would collect and disclose at its meeting in November 2004 (see In Council, *Engineering Dimensions*, November/December 2004, p. 22, and January/February 2005, p. 47).

Since the adoption of the EPIM, PEO has implemented an online lookup directory of certificate of authorization holders and expanded the information in its online directory of professional engineers and engineers-in-training (EITs).

However, in reviewing the additional data that would be made available to operationalize the EPIM fully, the EPIM working group agreed on a need to propose to Council some changes to what Council had previously approved.

Specifically, the EPIM working group recommended and Council approved:

- providing information on immigration status only for EITs (Council initially approved providing this information on request for all licence holders and EITs);
- making available on PEO's website the date of licence status/change in licence status, work telephone number, year of first licensure in Ontario, allegations of professional misconduct or incompetence referred to discipline (once hearing is scheduled), name of organization (for certificate of authorization holders), information on revocations, suspensions, terms, conditions and other findings of the Discipline Committee directed to be published with names, and gender of EIT (Council initially approved that various of this information not be available, be available on request only, or be available only in relation to licence holders);
- not making available on the website the date practitioners were registered (Council initially approved making this information available on the website);

- not making publicly available a member's address of institution granting his or her degree and date practitioners were registered (Council initially approved making the information available on request only); and
- making available only by written request information available from public hearings, and engineering experience listed on applications for designation by designated consulting engineers, for example, location, client name, completion date (Council initially approved not making information from public hearings available and making information from the applications of designated consulting engineers available on the website).

A written request for information will require a requester to identify himself or herself and state an acceptable public interest need for the information. Members will also be able to request that their information not be released by filing a *Request to Withhold Information from the Public Form*, which will be available from PEO's website.

Information to be posted to the website will appear in stages, since some of it is not yet collected and will not be until implementation of other projects, such as the Strategic Plan Voluntary Annual Reporting project (see "PEO moves toward custom, online experience," p. 20).

For more on PEO's Privacy Policy see "Privacy protection is good business," *Engineering Dimensions*, January/February 2005, pp. 54-57, and "PEO to gain investigative body status," p. 18.

LPTF produces first report

Past President George Comrie, P.Eng., presented an overview of the work to date of the Licensure Process Task Force (LPTF), which Council established in January 2005 to review and make recommendations on the licensing issues raised in a review of the licensing process conducted by the registrar, as well as PEO's current admission requirements, including their effectiveness in protecting the public, their fairness to all classes of applicant, and their timeliness and operational efficiency.

Comrie said the work of the LPTF has built on the work of previous licensing-related committees and task forces.

Recommendations in its draft report, distributed to Council for review and feedback, include:

- maintaining current Academic Requirements and Experience Requirements committee procedures;
- providing alternative routes to meeting academic requirements;
- formalizing the engineering internship;
- strengthening PEO's assessment tools;
- retaining the Canadian citizenship or permanent residency requirement for licensure (Council approved eliminating this in 2001, but the required change to the PEA has not been implemented); and
- making regulation changes with respect to academic and experience requirements.

The LPTF is continuing to further develop its recommendations, Comrie said. Council will review the recommendations in detail at its annual workshop in May, after which stakeholders will be consulted. At present, it is proposed that a final report would be presented to Council in June, with any regulation changes slated for approval by Council in September.

LET implementation streamlined

Council approved exploring a new approach to expediting independent practice for limited licensees, based on a recommendation of the committee overseeing implementation of the approved recommendations of the 2002 Technologist Licensure Task Group and the *Joint PEO-OACETT Report on Licensed Engineering Technologist (LET)*, which Council approved in March 2005. The report had proposed a three-phase implementation approach to permit qualified engineering technologists to practise professional engineering independently (see In Council, *Engineering Dimensions*, May/June 2005, p. 40):

- Phase 1: Gold card approach for limited licences—faster processing;
- Phase 2: Regulation changes for LET implementation—specifying requirements; and

Phase 3: Act changes for LET implementation—*independent practice*.

The new approach involves developing regulations under the PEA to create a class of temporary licence for qualified limited licence holders thereby eliminating the need for the Act change phase of the previous plan. Eliminating Phase 3 avoids the uncertain outcomes and timeframes associated with amendments to the PEA, which permits only professional engineers and temporary licence holders to hold the certificates of authorization required for independent practice. It is thought that PEO is permitted under the PEA to create regulations for classes of temporary licence. In late February, the council of the Ontario Association of Certified Engineering Technicians and Technologists also approved exploring the new approach.

Financial statements show surplus

Council approved the report of PEO's Audit Committee, the audited financial statements (see pp. 23-29), and the internal financial statements for the year ended December 31, 2005. The audited financial statements show a surplus of \$1,270,000.

Council also approved a Finance Committee-recommended change in PEO's investment policy that will help PEO realize a higher rate of return on its portfolio. Rather than hold PEO's portfolio to maturity, PEO will invest a portion of its funds in equity and other financial instruments, and will adopt an integrated risk management approach. The change in policy was suggested by Scotia Cassel, PEO's investment counsel.

Council also directed the registrar to draft amendments to section 46 of By-Law No. 1 to replace the current bonding requirement for the registrar and treasurer with appropriate insurance coverage. The amendment will come to Council for approval and, once approved, must be confirmed by members in a letter ballot to take effect. In the meantime, Council approved increasing the coverage level of PEO's 3-D (comprehensive dishonesty, disappearance and destruction) insurance policy to protect the association against employee dishonesty for all staff, including the registrar and treasurer.

Inter-association mobility

Council approved an amendment to the Canadian Council of Professional Engineers (CCPE) Inter-association Mobility Agreement (IAMA) to allow the inter-provincial transfer of professional engineers who have been subjected to discipline but who are now in good standing with their home association. The current agreement prohibits transfer if a P.Eng. has ever been disciplined.

Council authorized PEO's president and CEO/registrar to sign the amended agreement at the CCPE annual meeting in June. Changes to the mobility agreement require the approval of all 12 engineering regulatory bodies in Canada, which are CCPE's constituent members.

Changes to Council

The most recent Lieutenant Governor-in-Council appointees are Chris D. Roney, P.Eng., and Rakesh K. Shreewastav, P.Eng. Both officially joined Council on December 7, 2005 and will serve three-year terms.

Lay LGA Councillor Henry Hill has taken on the role of Complaints Review Councillor, replacing Councillor David Rees, who has stepped down from the role.

Long-time Councillor Daniela Iliescu, P.Eng., will retire from Council at PEO's AGM on April 29, after serving a total of 12 years on Council over an almost 20-year period. President Goodings praised her commitment as a member of the Discipline, Regional Councillors and Women in Engineering Advisory committees, and her recent activities mentoring international engineering graduates through the licensing process.

AGM member submissions

For many years, members attending PEO annual business meetings have been permitted to submit resolutions on matters relating to the association. Members in attendance at the AGM voted on these resolutions, which, while non-binding, were then referred to Council for consideration, regardless of the outcome of the vote.

At the May 2005 Executive Committee meeting, President-elect Pat Quinn, P.Eng., and Vice President Diane Freeman, P.Eng., were tasked with reviewing the way member issues are brought before the

membership at AGMs, developing a standardized format and guidelines to assist members in structuring their thoughts, and permitting members to submit issues at the AGM and throughout the year.

The result of this review, which Council approved, is a new process for bringing member issues to the AGM. What used to be called "member resolutions" will now be called "member submissions" and will not be voted on at the AGM. Instead, movers or seconders will be allowed to make a presentation of a certain length about their submission, which will be considered after the meeting by the Executive Committee. The time available at the meeting for discussion of submissions will be divided equally among the submissions. Council also approved publication of a *Guidance Document for Members' Submissions* (available from the AGM page at www.peo.on.ca). To read the Notice of Annual General Meeting and Procedures for addressing member submissions at 2006 AGM, see p. 70.

CEO/registrar performance

Performance goals, projects to achieve them, and measures were approved by Council for CEO/Registrar Kim Allen, P.Eng., at the March meeting.

Among other goals and projects, the CEO/registrar will provide support for Council by continuing to increase the quality of information presented to Council in support of issues to make better use of Council time, and direct and implement short- and long-term plans for future activities. He is also tasked with developing a strong, cohesive, and effective Council and organization based on PEO's core values. The CEO/registrar is also responsible for overseeing the management of operating and corporate budgets in accordance with PEO's internal financial controls, and acting as staff liaison with key external organizations to improve relations. This year, Council directed that he focus on the relationship between the Ontario Building Officials Association and PEO. ◆