

COUNCIL HOPES TO REMOVE INDUSTRIAL EXCEPTION UNDER ONTARIO OPEN FOR BUSINESS INITIATIVE

461st MEETING, APRIL 15, 16, 2010

By Jennifer Coombes

THE ONTARIO GOVERNMENT'S open for Business initiative has created an opportunity for PEO to submit proposals that may increase the clarity, transparency and effectiveness of the *Professional Engineers Act*. PEO council is seizing that opportunity and will soon submit a number of proposals for changes to the act that include long-standing council motions and problematic areas identified by PEO committees and staff, such as the industrial exception.

Council approved the following 23 proposed legislative amendments to the act for submission to the Ontario government.

1. replace the current definition of the practice of professional engineering in the act with the national definition. The new definition will read: "practice of professional engineering' means any act of designing, composing, evaluating, advising, reporting, directing, supervising or managing wherein the safeguarding of life, health, property or the public welfare is concerned and that requires the application of engineering principles";
2. provide the authority for council to establish PEO's head office location;
3. add a provision that LGA councillors are deemed reappointed until their successors take office;
4. broaden council's authority to prescribe the conditions under which a councillor can be disqualified from sitting on council to include appointed councillors;
5. provide the authority for council to establish all fees and prescribe them in PEO's bylaws;
6. provide the ability for council to approve bylaws that are effective without member confirmation, while maintaining the ability for council to seek member confirmation before a bylaw is effective if it so chooses;
7. enable PEO to conduct a bylaw confirmation by electronic means;
8. remove the requirement that licence applicants be Canadian citizens or have permanent resident status to be licensed. (Council requested that this amendment not be proclaimed until regulations have been established regarding the global practice of engineering by PEO licence holders);
9. enable PEO to include passing exams as one of a variety of methods for licence applicants to demonstrate compliance with academic, experience or professional requirements;
10. provide authority to council, in addition to the registrar and an applicant, to refer an applicant's application for licensure to the Academic Requirements or Experience Requirements committees for a determination;
11. provide authority for council to establish all requirements for the provisional licence;
12. enable limited licensees to apply for a Certificate of Authorization (C of A) to offer to the public or engage in the business of providing professional engineering services to the public, within their defined scope of professional engineering practice, and provide for protected titles of licensed engineering technologist and LET;
13. prescribe the three-person quorum for the Complaints Committee (COC) such that it is clearly defined to include two members of PEO and a person appointed to council by the lieutenant governor-in-council;
14. add requirements to notify a complained against member or C of A holder of a review and its outcome, and that all reports made by the complaints review councillor be given to the COC in addition to those currently listed;
15. add people approved by the attorney general as an alternative to councillors to maintain the required composition of committees;
16. require the Discipline Committee chair to carry out the committee's duties by changing "may" to "shall" in subsection 27(6), and add a requirement to set a date, time and place for a hearing within 90 days of referral. The subsection currently reads:
"27(6) When a matter is referred to the Discipline Committee for hearing and determination, the chair may,
(a) select from among the members of the committee a panel composed of at least one person described in clause (1)(a), at least one person described in clause (1)(b), at least one person described in clause (1)(c) and, if the council has made an appointment under subsection (1.1), at least one person described in that subsection,
(b) designate one of the members of the panel to chair it,
(c) refer the matter to the panel for hearing and determination, and
(d) set a date, time and place for the hearing. 2001, c. 9, Sched. B, s. 11 (34)";

17. amend the current wording of subsection 28(2) concerning professional misconduct to add the word “or” after the semicolon in s. 28(2)(a);
18. remove the industrial exception and repeal subsection 12(3)(a) to become effective five years after royal assent;
19. provide protection in legislation for the title engineering intern and the acronym EIT;
20. replace the word “prescribing” with “respecting” governing standards of practice and performance standards for the profession at paragraph 17 of section 7.(1) of the act;
21. require the Registration and Discipline committees to select vice chairs in addition to chairs, to provide a person to assume the chair’s duties should the chair be unavailable;
22. repeal the start-up provisions of the Ontario Society of Professional Engineers; and
23. add a requirement that no person be elected or appointed to council unless he or she is a Canadian citizen or a permanent resident of Canada and resides in Ontario.

The proposals were submitted to the Ministry of the Attorney General for consideration and possible inclusion in the Open for Business act changes.

Council also approved establishing an Appeals Process Task Force to provide council recommendations for implementing an appeals process.

The task force, comprising the CEO/registrar; Roydon Fraser, P.Eng. (Admissions Requirements Committee); Christian Bellini, P.Eng. (Experience Requirements Committee); Ross Judd, P.Eng. (past member of appeals task forces); George Comrie, P.Eng. (chair, Licensing Process Task Force); Michael Price, P.Eng., deputy registrar, licensing and registration; Richard Furst, P.Eng., manager, licensure; and Vice President Corneliu Chisu, P.Eng. (Registration Committee), met on April 29 and again on May 6 by conference call to develop a series of proposals.

At its May 8 meeting, council considered and approved the following recommendations put forth by the task force:

1. (a) Where an applicant is issued a negative Notice of Determination under s. 14(6), the applicant is entitled to a hearing by the Registration Committee if the applicant requests it in writing, within 30 days of the notice. When hearing such matters, the Registration Committee shall render one of the following decisions, with reasons:
 - (i) that the applicant has met the requirement;
 - (ii) that the applicant has not met the requirement; or
 - (iii) that the applicant is exempt from meeting the requirement; or
 - (iv) that the application is referred back to the registrar or Academic Requirements Committee (ARC), or Experience Requirements Committee (ERC), as the case may be, for reconsideration. This decision may be appealed by either party to court under s. 31,
- (b) Rework s. 19(7) to reflect the four existing options and expand the powers of the Registration Committee to include the ability to refer the determinations regarding licensing requirements back to the registrar, ARC

or ERC, as the case may be, for further consideration, with reasons. All of these decisions may be appealed by either party to court under s. 31, and

- (c) Where the Registration Committee has referred an application back to the registrar, ARC or ERC for reassessment, the decision(s) of the registrar, ARC or ERC regarding the specific requirement(s) is final. This final decision may be appealed by either party to court under s. 31;
2. Add to the act that registration hearings are public by default and provide the power to the Registration Committee to close all or part of a hearing for matters involving public security, financial, personal, or other matters that may be disclosed at a hearing;
3. Direct that the findings and the order of the Registration Committee be published in summary and without the name of the applicant or holder on PEO’s website and in such other manner or medium as the association considers appropriate;
4. Prescribe certain duties for the chair of the Registration Committee, including scheduling a hearing within 90 days of request by an applicant;
5. Clarify that an applicant’s opportunity to show compliance is up to the start of the hearing; and
6. Amend to include composition of the Registration Committee in the act instead of the regulation.

On May 10, however, PEO was advised that the window of opportunity for proposals to be included in the spring Open for Business initiative had closed, so the appeals process changes could not be included in the omnibus bill. PEO was advised to continue to develop the proposals, since it may be possible to include them in a future bill.

SELECTING THE PRESIDENT

On the recommendation of the Human Resources and Compensation Committee (HRC), council has approved sending out for consultation a motion carried at the February meeting that would see council select the PEO president to chair council from among the elected membership of council (see *Engineering Dimensions*, March/April 2010, p. 47). PEO is the only regulatory body reporting to the Ontario attorney general that does not have its council elect the president or chair. Council believes this change in procedure would have several advantages, including ensuring that the president enters office with a clear mandate and the support of council.

A peer review process involving consultation with stakeholders, including licence holders, PEO volunteer groups, allied organizations, government ministries and elected officials will now begin to explore:

- (a) changing the current positions of past president, president, president-elect and elected vice president to councillor-at-large positions;
- (b) increasing the term for councillors-at-large to three years;
- (c) council annually appointing the president to chair council from among the 17 elected members of council (10 regional councillors and seven councillors-at-large); and

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(d) maintaining the past president as an ex officio member of council.

HRC will review the results of the consultation and prepare a report for council to receive at its June meeting. If stakeholder consultation is supportive, HRC will propose changes to the regulation and election procedures for approval at a special meeting at council's 2010 workshop. Based on this schedule, changes would be implemented in time for the 2011 election.

PROFESSIONAL DEVELOPMENT

PEO will now require all licence holders as a condition of licence renewal to make the following statement: "I declare that I have maintained knowledge of developments in the areas of professional engineering relevant to the services I provide to my employer and/or clients, that I shall act with competence in the performance of those professional engineering services, and that I shall only undertake work that I am competent to perform by virtue of my knowledge, training and experience."

This follows from a decision by council concerning professional development made at the September 2009 meeting that all licence holders declare they will maintain competence in the performance of any professional engineering services that they provide (see *Engineering Dimensions*, November/December 2009, p. 51). Following considerable discussion of the matter at the September meeting, the policy was considered by councillors to represent a minimum level of professional development.

The CEO/registrar will now work with the Ministry of the Attorney General to prepare appropriate amendments to the regulation. The new requirements will be implemented 90 days after the approved regulations are filed with the registrar of regulations.

PEO-EWB ALLIANCE

At the April meeting, then President Catherine Karakatsanis, P.Eng., and CEO/Registrar Kim Allen, P.Eng., signed a council-approved agreement with Engineers Without Borders (EWB) that outlines principles of mutual support between EWB and PEO, and immediate and future opportunities on which the two organizations can work together.

The goals of the EWB-PEO relationship include:

- supporting PEO's self-regulation role by building the image of the profession within the public and among young engineers/engineering students;
- strengthening EWB global operations by increasing individual engineer awareness, financial and human resource contributions for EWB;
- strengthening EWB-PEO opportunities to lead globally; and
- strengthening engagement of engineers nationally.

With this new agreement, PEO will provide opportunities for PEO members to become EWB professional or student members and will add EWB to PEO invoices as a charity to

which members can donate directly. PEO will also provide a financial credit for licensure or EIT fees for the time volunteers are working overseas.

For its part, EWB will ensure that all of its staff, chapter presidents and Africa-based volunteers are connected with regulators as student members, engineering interns or licence holders, and will actively promote licensure to its full membership base.

PROFESSIONAL TECHNOLOGIST TASK FORCE

The Professional Technologist Task Force (PTTF) was formed in the wake of the announcement of changes to Alberta's *Engineering, Geology and Geophysical Professions Act* that would give professional technologists in that province self-regulatory status, and the introduction of a new P.Tech. licence (*Engineering Dimensions*, January/February 2010, p. 61). The PTTF was tasked with examining the model's potential impact on PEO's licensing regime, interprovincial mobility and the proposed national framework.

At the April meeting, council endorsed the task force's findings and recommendations. The PPTF:

1. confirmed the continued relevance and validity of the Technologist Licensure Task Group recommendations approved by council in 2002 and the subsequent motions approved by council;
2. found no compelling reason to abandon the LET (licensed engineering technologist) proposal in favour of Alberta's P.Tech. model;
3. has concluded there do not appear to be any potential implications of the Alberta P.Tech. model for interprovincial mobility rules, but recommends a legal opinion be sought to confirm that to be the case;
4. advised a legal review of the potential legal implications of a P.Tech. licence holder applying for an Ontario LET;
5. recommended this issue be addressed in the future development of the national framework as P.Tech. licence holders are practising engineering as defined by Alberta;
6. believes that when the LET program is implemented, it should not create a need for licensure where none already exists; and
7. recommended that PEO continue development of the implementation plan for the LET proposals through discussion with the Ontario Association of Certified Engineering Technicians and Technologists, following approval by the attorney general of the LET items in the Open for Business initiative.

With its work completed, council stood down the task force with thanks. Σ