

COUNCIL APPROVES TIMING FOR PROCLAMATION OF REPEAL OF INDUSTRIAL EXCEPTION

476TH AND 477TH MEETINGS, MARCH 2 AND APRIL 13, 2012

By Nicole Axworthy

AT ITS APRIL MEETING, PEO council approved timing for proclamation of the repeal of section 12(3)(a) (industrial exception) of the *Professional Engineers Act* and directed the CEO/registrar to request that the attorney general of Ontario proclaim the repeal of that section to be effective on October 25, 2012 (see “Exception serves to cloud licensing situation in Ontario,” *Engineering Dimensions*, January/February 2012, p. 38).

The repeal of the exception to the requirement for licensure at section 12(3)(a) of the act is one of 66 changes to the engineering act made by the Ontario government’s *Open for Business Act*, 2010. Most of the changes to PEO’s act were effective when the Open for Business legislation received royal assent on October 25, 2010. However, some, like the repeal of section 12(3)(a), are effective when proclaimed by the lieutenant governor, a delay that gives PEO an opportunity to develop associated regulations or work with affected stakeholders to smooth the transition to new requirements.

Once section 12(3)(a) is repealed, those doing or taking responsibility for engineering work on their employer’s production equipment or machinery in their employers’ facility to produce products for their employer must be licensed by PEO.

Because of the potentially large number of affected companies, council also approved creating regulations to allow companies that have filed with PEO an acceptable plan to come into compliance with the new requirements for licensure, prior to proclamation of the repeal, up to 12 months after the repeal to come into compliance. An acceptable plan must set out a reasonable timetable toward compliance and include the management of all serious safety risks. Council directed that PEO’s Repeal of the Industrial Exception Task Force (RIETF) establish the criteria for an acceptable plan and

prepare a protocol for companies and individuals to submit a compliance plan prior to proclamation, for PEO’s acceptance.

To assist industry in developing a plan to achieve compliance within 12 months, the RIETF has also developed and tested a self-managed compliance tool kit (see “Staff, members and volunteers urged to spread repeal message,” p. 14).

Council also approved PEO providing additional resources to facilitate timely licensure: PEO’s Financial Credit Program, which waives the licence application fee, will be available for licence applications accompanying an acceptable compliance plan; and for groups of at least 20 applicants applying under a compliance plan, PEO will offer offsite application review and submission, professional practice exam (PPE) sitting, industrial engineering experience review representation and EIT seminars, and tracking of licence application status by compliance plan.

Since the council meeting, however, PEO has received notification from the attorney general that he will not proclaim the requisite section of the Open for Business legislation to give effect to the repeal of section 12(3)(a) or provide his required prior approval of the related regulation for 12 months of compliance relief, pending a determination on the application for judicial review of *J. David Adams vs. PEO* (see “*J. David Adams, P.Eng., brings motion in divisional court against PEO,*” p. 8).

COUNCIL ACCEPTS RESIGNATION OF COUNCILLOR, APPROVES POLICY FOR FUTURE

At its April meeting, council approved the March 3, 2012 resignation of Michael Hogan, PhD, P.Eng., from his position as councillor-at-large, effective immediately. Debate on whether to accept the resignation, or whether there was even a resignation to accept, since Hogan had withdrawn it before council could deal with it, was heated, and the vote, conducted by signed secret ballot, was close. Council’s acceptance of the resignation is now the subject of a motion for judicial review brought by 2011-2012 President David Adams, P.Eng., FEC (see “*J. David Adams, P.Eng., brings motion in divisional court against PEO,*” p. 8).

Because section 3(11) of the *Professional Engineers Act* requires that a vacancy on council caused by the death, resignation, removal or incapacity to act as an elected member of council be filled as soon as practicable by a member of the association, council directed the Human Resources and Compensation Committee (whose request for a name change to the Human Resources Committee (HRC) was approved by council later in

the meeting) to develop options for council consideration regarding a slate of candidates to fill the vacancy.

Since the *Professional Engineers Act* is silent on a procedure to accept a councillor's resignation, council also reviewed and approved a policy developed by HRC that provides the acceptable options for providing notice to council and states that resignations will be effective on the date specified by the resigning member or, if there is no date specified, effective immediately. The CEO/registrar was directed to prepare an amendment to By-Law No. 1 for council's consideration to reflect the new policy.

PEO POSITION ON BILL 15

Council approved a PEO position statement on Bill 15, *An Act Respecting the Ontario Society of Professional Engineers* (OSPE). The position highlights PEO's concern that an OSPE act could create confusion for the public about which organization licenses professional engineers and regulates professional engineering practice. Past President Diane Freeman, P.Eng., FEC, suggested that PEO's position is focused and positive, telling OSPE that "we value the work they do, but we don't think they need an act."

PEO first became aware of a proposed OSPE act in November 2009 when it was discussed at a Joint Relations Committee meeting (see In Council, *Engineering Dimensions*, July/August 2010, p. 64). On November 30, 2011, an OSPE act was introduced for the second time (OSPE's original Bill 148 died on the order paper in 2011) for first reading as Bill 15 and carried. It is scheduled for second reading on May 17, 2012. The current bill has been revised from earlier drafts to accommodate some of PEO's concerns; however, it still contains language in sections 1 and 4 that PEO has determined conflicts with the *Professional Engineers Act* and has the potential to mislead practitioners and the public as to the jurisdiction of each organization over the qualifications, standards of practice and protected titles for PEO licence holders.

The approved PEO position statement has been distributed to PEO Government Liaison

Program members, posted on PEO's website, and communicated to stakeholders (see "PEO launches 'Yes to OSPE, No to Bill 15' campaign," p. 10).

MONITOR FOR PROFESSIONAL EXPERIENCE

At its April meeting, council approved conditions for the use of a monitor by engineering interns (EITs) in lieu of a supervisor as an acceptable alternative to permit them to gain the requisite experience set out in Regulation 941, section 33(1)4. While some councillors expressed concern over how a P.Eng. monitor would compare to a P.Eng. supervisor in the workplace, most agreed it will help tighten up a program that is already in place and give another option for those trying to obtain their required 12 months of Canadian experience for licensure.

The new requirements will see EITs sign a declaration that they will not practise professional engineering unless a professional engineer has assumed responsibility in accordance with the *Professional Engineers Act*, s. 12.3(b). Monitors will be required to sign a declaration that they are a professional engineer who is assuming responsibility for the services within the practice of professional engineering their EIT is undertaking in accordance with the act; will comply with PEO's professional standard related to assuming responsibility for the services within the practice of professional engineering once set out in regulations; and will commit to being in the work location of the EIT at least 30 hours a month.

FINANCIAL ADVISOR

At its April meeting, council authorized a budget of \$50,000 to engage a financial advisor to support 2012-2013 President Denis Dixon, P.Eng., FEC. Over the past few years, council has authorized presidents to engage specialized support to meet their needs. President-elect Dixon argued that since the Finance Committee has challenged council to review its financial position, unfunded liabilities and reserve policy, the use of an outside financial professional for the upcoming council year will permit detailed examination of financial issues by an expert so that well-researched recommendations can be made to council about financial policy and appropriate financial oversight. While some councillors said they believe PEO has enough resources in-house and that work can be done through its committees and consultations, council ultimately approved the motion authorizing the expenditure for the advisor. The CEO/registrar, whom council appointed as treasurer in September 2010, will remain in the role while the advisor is undertaking a detailed study of council's financial oversight.

CANADIAN FRAMEWORK FOR LICENSURE ELEMENTS

At its March meeting, council concurred with the continued development of the conceptual policy direction and key considerations for the first three elements of the Canadian Framework for Licensure (CFL) and directed PEO's National Framework Task Force (NFTF) to forward PEO's documented concerns about aspects of the elements to Engineers Canada's Canadian Framework for Licensure Task Force (CFLTF).

[IN COUNCIL]

The licensure elements under consideration were:

- accountability of engineering organizations (ensuring that organizations engaged in the practice of professional engineering are held to the same standards as the licence holders who work for them);
- continuing professional development (regulators establishing an effective and relevant continuing professional development program); and
- negotiating international agreements (establishing uniform policies and procedures regarding the acceptance and use of international recognition agreements to facilitate foreign qualification recognition).

The first three elements of the framework were researched, developed, consulted and analyzed by the CFLTF. Initially, council had been asked to endorse the three elements, but concerns of some PEO committees with specific details led to council revising the motion so that the elements could be developed further, but stopping short of endorsement.

For elements to proceed to the next stage, i.e. implementation, they must be endorsed by the Engineers Canada board, which requires approval of two-thirds of the constituent associations representing 60 per cent of the registrants in Canada. During implementation, Engineers Canada will develop a guideline or other document to elaborate on the use of the elements by the constituent associations.

Past President Diane Freeman, P.Eng., FEC, chair of PEO's NFTF, told council the framework is "moving us [PEO] closer to raising the bar of licensure in Canada." She noted that Ontario is the only province that has a task force committed to the CFL and has the opportunity to take a leadership role. "The train has already left the station," she said. "Our committee is meant to hold Engineers Canada and the framework accountable."

The CFL is being developed as a dynamic model for all Canadian engineering regulators to enhance their ability to regulate the practice of professional engineering to better serve and protect the public interest. It is intended to develop foundational documents to help regulators

improve their legislative framework to enhance equity, consistency, fairness and timeliness of services and to result in enhanced national and international mobility through uniform qualifications recognition, admissions, and discipline and enforcement procedures (see "Breaking down barriers," *Engineering Dimensions*, November/December 2011, p. 20). Elements now in the consultation stage (until June 1) are competencies and requirements for professional engineering licensure, competencies and requirements for limited engineering licensure, competencies and requirements for engineers-in-training, and fairness in registration practices (see www.peo.on.ca/consultation/NationalFramework/NationalFramework.html).

ENGINEER OF RECORD UPDATE

Also at its March meeting, council directed the Professional Standards Committee (PSC) to revise the professional standard on General Review Commitment in Regulation 260/08 to provide a clear line of responsibility for the integrity of the design and general review by sealing and signing the drawings.

Council also directed the committee to revise the guideline for *General Review of Construction* to clarify the roles and responsibilities of the practitioner carrying out general review and to delineate the difference in roles of the design engineer and review engineer.

To start, the PSC subcommittee developing the *Guideline for Professional Engineers Providing Structural Engineering Services in Buildings* will develop guideline recommendations or standards that identify a specific practitioner on each project who is responsible for coordinating the flow of design information to all practitioners involved in the design and review of structural components. That engineer will also be responsible for reviewing shop drawings of all structural components to ensure that the various elements can be assembled into a complete structure with no conflicts and no missing elements. The PSC will then consider how to extend this concept to the mechanical and electrical disciplines and will form subcommittees as needed to address this policy.

However, it is recognized that PEO may need to define a plan for working with the Ministry of Municipal Affairs and Housing and other stakeholders to revise the Ontario Building Code to direct owners and developers to retain a professional engineer in each discipline as coordinating engineer.

REVISED PROFESSIONAL PRACTICE GUIDELINE APPROVED

Council approved publication of an updated guideline for *Professional Engineering Practice*. The original guideline was issued in 1988 and slightly revised a decade later. The approved new version has been updated to include additional information on specific commonly asked practice questions. It also reflects changes to the *Professional Engineers Act* and regulations that have been implemented since the last update in 1998. The new guideline is available from PEO's website at www.peo.on.ca/publications/guidelines.htm. Σ