

COUNCIL APPROVES INCLUSION OF OCEPP AS A PEO DEPARTMENT

465th MEETING, SEPTEMBER 23-24, 2010

By Jennifer Coombes

THURSDAY EVENING OF the September council meeting was devoted to a plenary session to determine the fate of the Ontario Centre for Engineering and Public Policy (OCEPP). Council heard presentations on five possible options for what OCEPP should be and do, the level of PEO involvement in the centre, and what value the centre provides to PEO in terms of government and member relations efforts and opportunity for leadership in self-regulation.

Since OCEPP's creation by council in June 2008 to "help the engineering profession provide input into the creation and review of public policy in Ontario and, in turn, protect the public interest," there has been debate about its role, funding and relationship to PEO. In September 2009, council voted to establish the centre on an ongoing basis and asked that there be provision for the centre's funding in PEO's budget.

The options for OCEPP were presented by Jana Levison, PhD, EIT, OCEPP's acting executive director; Jim Chisholm, P.Eng., chair, Sustaining OCEPP Task Force, a group created to study the options for the structure and funding of the centre; John Schindler, P.Eng., president and chair, Ontario Society of Professional Engineers (OSPE); and Barry Steinberg, P.Eng., president, Consulting Engineers of Ontario (CEO).

Here are the options and supporting arguments:

A department of PEO

- strengthens PEO impact, communications and profile;
- informs public of importance of self-regulation, role of PEO and need for engineers' involvement in developing practical, effective and timely public policy;
- smart use of resources;
- sustained, impactful initiative;
- supports PEO's connections with decision-makers;
- helps protect the public interest; and
- contributes to leadership in self-regulation.

Separate entity with PEO the largest stakeholder

- separate corporate entity from PEO;
- acknowledges activities also influenced by other funders and stakeholders;
- some in-house research;
- continuing fundraising program required;
- less direct impact on PEO's Government Liaison Program;
- PEO to provide continuing support;
- make sustaining funding commitment part of PEO's mandate; and
- create OCEPP as a not-for-profit.

Canada-wide organization with range of stakeholders

- national focus;
- research network approach;
- broad mandate and stakeholder involvement;
- option with least PEO input;
- needs support of Engineers Canada; and
- less direct PEO benefit.

Part of OSPE

- OSPE believes OCEPP activities highly valuable;
- OSPE already doing many OCEPP activities, potentially creating confusion and duplication of effort; and
- engineers expressed concern over licence fees used for non-regulatory work.

Multi-stakeholder with business approach

- to survive, run OCEPP as a business;
- three core members: PEO, OSPE, CEO;
- OCEPP staff focused on mission; and
- OCEPP strengths: conducts research, publishes, facilitates discussion.

After discussing the options, most councillors remained unconvinced that OCEPP is ready to be a provincial or national organization with input from multiple stakeholders, and approved a motion the following morning directing that OCEPP:

- focus for the next year on regulatory matters;
- remain a department of PEO;
- present a business plan and budget at the November 2010 council meeting; and
- be reviewed by council in November of each year.

APPOINTMENT OF PRESIDENT AND OFFICERS

In February, council approved in principle a change in how PEO would select the president and officers, by carrying a motion: "That, each year, council would select the PEO president to be the chair of council from among the elected membership of council."

At the time, several advantages were cited for electing the president and chair in this way, including that it:

- ensures the president enjoys the confidence of council and enters office with a clear mandate and council's support to carry out that mandate;
- prevents conflicting agendas and messages so PEO speaks with a united voice;
- supports the implementation of council's long-term strategic direction and policy initiatives; and

- ensures both licence holders and the public, through the LGAs, participate in the selection, enhancing the legitimacy of the office.

PEO is also the only one of six regulatory bodies under the purview of Ontario's attorney general whose president is elected directly by and from among the body's members rather than by and from among the members of council.

However, after further discussion at PEO's annual general meeting in May (*Engineering Dimensions*, July/August 2010, p. 8) and council's June workshop, the proposal was considered again at council's June meeting, where council directed that stakeholders be surveyed on the issue (*Engineering Dimensions*, July/August 2010, p. 64).

Over 4000 members responded to council's survey, carried out in July and August, 42.8 per cent of whom supported "council's proposal to appoint the president, vice president and other officers," while 57.2 per cent supported "the status quo, where members annually elect the president-elect and one vice president."

The survey also generated over 100 pages of comments, which were forwarded to all councillors in September.

At its August meeting, the Human Resources and Compensation Committee (HRC) reviewed the comments and recommended to council at its September meeting that PEO conduct a member referendum on this issue. Council accepted the HRC recommendation.

Next steps will see the HRC draft a referendum question to accompany the ballots for the 2011 PEO council elections, for council's consideration at the November meeting. The president is also expected to attend town hall meetings throughout the province to answer members' questions about the proposal.

If the change were to be supported by the members, the CEO/registrar would draft a regulation change for council to approve at the April 2011 meeting.

BYLAW AMENDMENT AND CONSULTATION PLAN

Two of the changes to the *Professional Engineers Act* council approved for submission to the Ontario government as part of Bill 68 (*Open for Business Act, 2010*, which received royal assent as law on October 25), concerned PEO's bylaw-making powers. The first change provided PEO authority to make bylaws "specifying the amount and requiring the payment of" all fees. Previously, the act provided PEO authority only to prescribe the annual P.Eng. licence fee in a bylaw, and PEO had to prescribe all other fees in regulations, which was a cumbersome process requiring government approval of any fee change. The second change makes a bylaw passed by council effective when council passes it, unless the bylaw specifies that it must be confirmed by members, in which case it "is not effective until it is confirmed, in the manner specified by the council, by a majority of the members of the association." This qualification maintains council's ability to seek member confirmation before a bylaw is effective, if it wishes (*Engineering Dimensions*, May/June 2010, p. 26).

Before these changes to the act were submitted to government, they were reviewed by the Academic Requirements, Complaints, Discipline, Executive, Experience Requirements, and Registration committees, and the complaints review councillor. They were also discussed by members during the annual general meeting—at which the president confirmed that council was still developing a policy for which bylaw changes would require confirmation by members—as well as during regional congresses.

In August, the Executive Committee directed the CEO/registrar to draft a bylaw regarding the circumstances under which bylaws would require

member confirmation, and a consultation plan for council to consider.

In September, council approved the consultation plan, targeted only to members, since it is an internal issue. To implement the plan, PEO sent a request by email on October 13 for members to complete an online questionnaire, with an October 28 deadline for response. The questionnaire first asks for members' general views on whether council should be able to pass bylaws that are immediately effective, or whether members should confirm bylaws. It then goes through the 27 areas in which PEO is authorized under section 8 of the act to make bylaws, asking for each whether it is an area in which member approval of bylaws is needed.

The CEO/registrar will use the results of the consultation, as well as a review of the bylaws of other provincial engineering associations and other regulatory bodies under the purview of the Ontario attorney general, to draft bylaw language for council to consider at its November 2010 meeting.

REMOVAL OF INDUSTRIAL EXCEPTION TASK FORCE

With the passage of Bill 68, the so-called industrial exemption at subsection 12(3)(a) of the *Professional Engineers Act* has been repealed, effective at some future date on proclamation of the lieutenant governor. That exception to the requirement to be licensed to practise professional engineering enabled people "to do an act that is within the practice of professional engineering in relation to machinery or equipment, other than equipment of a structural nature, for use in the facilities of the person's employer in the production of products by the person's employer."

To prepare for this change, council accepted at its September meeting a recommendation of the Western Regional Congress and the Executive Committee that PEO establish a task force comprising licence holders from the impacted industries and representatives from relevant Ontario ministries and corporations to communicate with and help industry implement the removal of the industrial exception.

The terms of reference council approved for the task force include that it will:

- identify the industries affected;
- recommend a transition time period;
- suggest means of communication; and
- create a guideline to explain the scope of the repeal, the requirements to obtain a licence and how to interpret section 12(3)(b), known as the supervisory exception.

The task force will be a subcommittee of the Enforcement Committee.

[IN COUNCIL]

JOINT NATURAL SCIENTISTS TASK FORCE

To prepare for passage of Bill 68, which received royal assent on October 25, council in September also considered the concerns of representatives of advocacy organizations for natural scientists about the new definition of the practice of professional engineering, which no longer includes the clause “but does not include practising as a natural scientist.”

The intent of the new definition, PEO CEO/Registrar Kim Allen, P.Eng., told council, was to bring greater clarity to the legislation, because a definition “should not include language for what the practice of professional engineering is not.” A definition by exclusion, he said, is not in keeping with the court decision that PEO’s exclusive jurisdiction is to define and regulate the practice of professional engineering.

On August 31, the natural science community began a letter writing campaign to the Ontario attorney general, expressing concern that the elimination of “the natural scientist exclusion” from the definition of professional engineering might expose them to undue enforcement under the act, where the distinction between natural science and engineering may be unclear. Allen and President Diane Freeman, P.Eng., FEC, subsequently met with representatives of several of the natural scientist organizations to address their concerns, which they promised to bring to council at its September meeting (see “Natural scientists take exception to new engineering definition,” p. 12).

Attending council to participate in the discussion were Henry van Driel, Canadian Association of Physicists; Jim Salmon, Canadian Meteorological and Oceanographic Society; Joseph Hayward, Canadian Organization of Medical Physicists; and Terry Obal, Association of the Chemical Profession of Ontario.

“The issue is that the new definition of the practice of professional engineering is so broad it encompasses work that my colleagues do,” said van Driel. Vice President Corneliu Chisu, P.Eng., FEC, noted that “as an engineering physics graduate, I can see that we need to define the boundary conditions,” but was also emphatic that the act is clear that PEO only regulates engineering, so natural scientists should not be mentioned in it.

Going forward, council agreed to form a joint task force with the natural science community to attempt to come to an understanding on the matter and to invite Engineers Canada to participate. The task force will make recommendations to council at its February 2011 meeting.

Council also agreed that until there is a formal resolution to deal with possible overlaps in practice between natural scientists and professional engineers, the CEO/registrar will deal with possible enforcement matters involving natural scientists by:

1. seeking voluntary compliance from the practitioner;
2. consulting with the relevant natural science organization; and
3. seeking council’s direction on further legal actions, if any.

PRACTICE REVIEW AND USE OF SEAL

The Professional Standards Committee (PSC) has received authorization from council to develop new professional standards pertaining to both practice reviews and use of the professional engineer’s seal, to clarify best practices.

PEO’s Discipline Committee can retain professional engineers to review the practices of practitioners who have been disciplined for act violations. To ensure these practice reviews are carried out thoroughly and consistently, the committee requested the PSC to write a guideline for practitioners who provide these services. The PSC considered that it would be appropriate to

expand the scope of the project and produce a guideline that can be used by all practitioners undertaking practice reviews in their own engineering organizations.

Regarding the use of the professional engineers seal, PSC had proposed that the current practice (section 53 of Regulation 941), which requires only professional engineers who provide services to the public to seal documents, be discontinued and replaced with a requirement that all professional engineers seal their work, and is proposing to review the standard to capture specific policies described in the *Guideline for Use of the Professional Engineer’s Seal*, including the use of electronic seals.

When completed, the PSC will publish the draft documents on the consultations section of www.peo.on.ca for review by members.

COMMUNICATIONS INFRASTRUCTURE ENGINEERING

Council passed a motion at its September meeting to recognize communications infrastructure engineering (CIE) as a new discipline of professional engineering, based on the phase 1 report of the Emerging Disciplines Task Force’s (EDTF) CIE task group.

In 2008, council commissioned the EDTF to examine the emerging field of communications infrastructure/network engineering to identify areas of practice within the field requiring regulation in the public interest and the appropriate academic and other preparation for practice in these areas.

The CIE task group was formed in 2009 to develop the core body of knowledge for CIE.

The task group’s phase 1 report “summarizes the public safety risks that it believes can be mitigated through regulated, ethical, professional engineering practice in this area.” As stated in the report, some of the main public interest concerns for networks relate to their availability and stability; security from fraudulent use or malicious attack; preservation of client/user privacy and confidentiality; and data integrity and security.

The task group will now begin phase 2 of its work, which will involve consulting with PEO committees and external stakeholders in industry, universities and government, and assisting in defining scopes of practice and relevant legislation.

It has already begun consulting with the federal government to ensure its work is considered in the federal digital strategy (see “Task group seeks regulation of digital communications infrastructure,” p. 20). Σ