



Public trust: PEO's appointed Councillors

by David Sims, BComm, LL.M., QC

Who are Lieutenant Governor-in-Council appointees to Council? How are they appointed? How do they differ from elected members of Council—and more importantly—what is their role?

A recent report recommending that the governing body of the Ontario College of Physicians and Surgeons be comprised mostly of non-physicians has focused public attention on the governance of self-regulated professions. The report states that if a majority of the body that governs doctors were members of the public, confidence in the method that the College uses to deal with complaints concerning the medical profession in Ontario would be restored.

The Council of our regulatory body is, at present, comprised 41 per cent of Lieutenant Governor-in-Council appointees (LGAs). These appointees can be members of the public. At present, there were three public members of

Council out of a possible five: a lawyer, a chartered accountant and a certified engineering technologist. Another LGA is a practising lawyer, but is also a P.Eng. Normally, an LGA's appointment is for three years, with the intent that there be a one-third turnover each year.

LGAs are appointed to PEO Council pursuant to section 3(2) of the *Professional Engineers Act*. When all positions are filled, Council comprises 29 members, 17 of who are elected from PEO's licensed practitioners and a maximum of 12 of who are appointed by the Lieutenant Governor-in-Council. A minimum of five and a maximum of seven of the LGAs must be professional engineers; between three and five LGAs are non-professional engineers (or public members).

Public/P.Eng. distinctions

The only distinction between an LGA who is a professional engineer and one who is a public member is that the latter cannot serve on the Discipline Committee. The Complaints Committee must have an LGA, but the legislation is silent on the type of LGA required. Also, the *Professional Engineers Act* creates the position of a Complaints Review Councillor, and requires that the incumbent be a public LGA. In the past, PEO has chosen to appoint lawyer LGAs to this position, although there is no statutory requirement that this person be a lawyer. PEO has chosen to use its lawyer LGAs in this way, however, because the Complaints Review Councillor's responsibility is to review the processing of complaints against professional engineers, a task for which lawyers are seen to be well-suited by virtue of their training and experience.

Except for these few additional duties and responsibilities, the duties of LGAs are precisely the same as those the Act and PEO's By-law No. 1 impose on elected

members of Council. Section 28 of the by-law outlines specific duties for all councillors, including:

- ◆ taking part in general PEO committee work;
- ◆ appearing at chapter meetings as a panellist, speaker or representative of Council;
- ◆ participating at the AGM;
- ◆ performing such duties as PEO officers may request;
- ◆ serving on PEO's statutory committees dealing with admissions and discipline;
- ◆ ensuring that confidentiality is maintained of confidential matters Councillors may become aware of through their positions;
- ◆ disclosing any conflict of interest they may have in any matter coming before Council, as well as refraining from voting on any matter that is a conflict of interest.

Rationale for LGAs

Why are there Lieutenant Governor-in-Council positions at all? The appointment of LGAs who are engineers ensures that every major engineering discipline is represented on Council, which cannot be guaranteed via PEO's election process. The appointment of non-engineers provides Council with the perspective of non-practitioners. Their greatest contribution is in providing alternative views that help give balance to Council deliberations and ensuring that engineering does not become (and is not seen by the public to become) a legislated professional closed shop.

In fact, representatives appointed by the Lieutenant Governor-in-Council sit

on the governing bodies of every self-governing profession in Ontario, although the number of appointees may vary between professions.

As a matter of first impression, the appointment of outsiders seems contradictory to the concept of a self-governing profession, especially where some of the appointees are public members who have little first hand knowledge of the profession they are asked to govern. Self-regulation does not mean autonomy, however; LGAs serve as instant reminders to members of the profession and to the public that professional regulatory bodies like PEO are designed to protect the public.

To some extent, of course, the perception of LGAs as the public's representatives is not entirely accurate, because in fulfilling their fiduciary duties to PEO, all Councillors work in good faith toward helping the association discharge its principal object. That is not to say that Councillors should not have strong views on many issues; they should and they do. But in championing those views, each must ask himself or herself whether his or her views are consistent with the public interest. The presence of LGAs on Council is a powerful symbol that PEO exists to serve the interests of the public, and not necessarily those of the profession.

Public interest vs. members' interests

A Councillor's proper role may be easy to state, but experience demonstrates that it is not as easy to practice. Unless continual vigilance is exercised, it is to be expected that, over time, decisions will be made that favour the interests of the membership, sometimes at the expense of the public. Often, such member-interest decisions are taken separately and are quite small, and no one decision starkly raises the conflict. However, unless carefully monitored, the cumulative and inevitable effect is that member's interests creep in and receive preference over those of the public. That is not to suggest that this is done deliberately, but that it is only human nature that individuals, or for that matter organizations, will view the world from their own perspectives and seek to address their interests.

This is why in accepting the privilege of self-regulation, a profession also accepts an obligation to put the public's mind at ease. Self-regulated professions must not only regulate themselves well—they must be seen to do so.

Non-adversarial roles

Although an LGA may perceive his or her role on Council as somewhat different from that of an elected member, because he or she has been appointed by the Attorney General, elected and appointed Councillors should have a non-adversarial relationship. In the end, they are all working toward the same goals. And while there is no special LGA caucus to develop common positions on issues before Council, past experience has been that PEO's elected Councillors and LGAs work harmoniously.

PEO's mission is to "regulate the practice of professional engineering and to govern its members, holders of certificates of authorization, holders of temporary licences and holders of limited licences in accordance with this Act, the Regulations and

the By-laws in order that the public interest may be served and protected." At the Council level, PEO sets the strategic direction and makes policy decisions that determine how it fulfils this mission.

Few restrictions

Apart from a few statutory restrictions, an LGA's duties and responsibilities are the same as those of elected Councillors, and are the same as those who serve on similar bodies of other professions. Their job is to ensure that those admitted are qualified and that they practise ethically and competently. ◆

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