



Minutes

LEGISLATION COMMITTEE MEETING

Friday, February 1, 2019 - 10:00 a.m.

Members:

Gary Houghton, P. Eng. (Chair)
Lisa MacCumber, P. Eng. (Vice-Chair)
Thomas Chong, P. Eng. [*via teleconference until 11:56 a.m.*]
Nancy Hill, P. Eng. (President-Elect, Ex-Officio Member)
Gregory Wowchuk, P. Eng.

Staff:

Bernard Ennis, P. Eng., Director, Policy and Professional Affairs
Linda Latham, Deputy Registrar, Regulatory Compliance
Leah Price, Counsel, Regulatory Compliance
Jordan Max, Manager, Policy
Andrew Tapp, Policy Analyst
Johnny Zucco, P. Eng., Interim Registrar

Regrets:

David Brown, P. Eng. (President, Ex-Officio Member)
Lola Hidalgo, P. Eng.

1. PROCEDURAL

1.1 Introduction

The Chair called the meeting to order at 10:08 a.m. and welcomed everyone.

1.2 Approval of Agenda

The members were asked if there were any additions or changes to the agenda. No additions or changes were provided.

A motion was made to approve the agenda as written.

Moved by: T. Chong Seconded by: L. MacCumber CARRIED

1.3 Approval of Minutes of November 23, 2018 Meeting

The members were asked if there were any additions or changes to the Minutes.

G. Wowchuk, referring to an e-mail written by L. Hidalgo prior to the meeting, indicated that the Minutes stated that L. Hidalgo's time on the Legislation Committee was coming to an end when, in fact, it was her time on Council that was coming to an end. N. Hill also brought the Legislation Committee's attention to a sentence in Item 3.4 that ended with "equal", when it should have ended with "equal basis". The Legislation Committee also noticed a repeated word in this same paragraph. The Minutes were amended to correct these errors.

A motion was made to approve the Minutes as amended.

Moved by: N. Hill Seconded by: L. MacCumber CARRIED

1.4 Action Items Update from November 23, 2018 Meeting

J. Max reviewed the action items presented, as follows:

Licensing Committee Academic Appeal Proposal

Inform the Licensing Committee of this recommendation and advise the Licensing Committee to not bring this proposal before Council in February 2019.
[Completed]

J. Max reported this item as completed and stated that, in light of the upcoming external review and the appeal to the Fairness Commissioner, the Legislation Committee had recommended that the Licensing Committee wait until these processes were concluded before bringing their proposal to Council, and that they should also seek a legal review of their proposal. L. MacCumber stated that Committees do not have a set budget for legal reviews and that the Legislation Committee needed to be able to advise Committees to go to the Registrar for funding for a legal review. J. Zuccon explained that legal reviews were expensive and that questions needed to be formalized before the reviews could be

conducted, so they were made the purview of the Registrar. The Legislation Committee decided that Committee advisors needed to be briefed on the process of seeking a legal review and of what information was required from their Committees when pursuing one.

Action: Staff will brief Committee advisors on the process of seeking a legal review and of what information was required from their Committees when pursuing one.

Regulation Amendments

(a) Council Term Limits – Vice President – Legal Opinion

Prepare a list of pros and cons relating to the question of whether an individual can serve as both an elected Vice-President and an appointed Vice-President in a ten-year period, or whether they can only be elected or appointed, and send it to the Succession Planning Task Force for resolution. [Completed]

J. Max reported this item as completed. The Committee questioned whether the Succession Planning Task Force was still operative to be able to provide an answer, and staff were directed to follow up with the Task Force.

Action: Staff to follow up with the advisor of the Succession Planning Task Force to determine its current operational status to provide policy direction.

(b) Provisional Licence

Draft a Briefing Note calling for Section 44.1 of Regulation 941 to be amended so that it clarifies what and what does not constitute an application, along with changing “may issue” to “shall issue”, for review by the Committee in January 2019 and Council in February 2019. [Completed]

J. Max reported this item as completed.

Add amending Section 18(1) to a list of potential Act changes. [Completed]

J. Max reported this item as completed. The updated draft Briefing Note is included as Item 2.1 at today’s meeting.

Regional Councillors Committee By-Law Changes

Send an e-mail to the Regional Councillors Committee staff support, detailing the Legislation Committee's response to their answers, and seeking further clarification on EITs having signing authority and alternate Chapters. [Completed]

J. Max noted this item as completed.

Investigate the issue of Chapter accountability to PEO and present it to the Legislation Committee. [Completed]

J. Max noted this item as completed. Corporate Services has determined that EITs can have signing authority on Chapter contracts.

2. FOR DECISION

2.1 Regulation 941 Provisional Licence - Draft Briefing Note for March 2019 Council Meeting

The Committee discussed the recent changes to the Briefing Note on the proposed Regulation 941 changes regarding the Provisional Licence. The Briefing Note urges Council to consider seeking the proclamation of subsections 5(2), 5(24) and 5(33) of Schedule 2 to the *Open for Business Act, 2010*, c. 16, regarding the Provisional Licence in Sections 1, 14(7) and 18(3) of the *Professional Engineers Act*. It is also requesting that Council approve the policy intent to amend Regulation 941 to align it with those proclamations by removing the Registrar's discretion to issue provisional licences to qualifying applicants who meet all licensing requirements other than one year of Canadian Experience, and to clarify that a provisional licence is to be issued to an applicant for a P. Eng. licence. The Briefing Note is complete but cannot move forward to Council until PEO receives comments from other Canadian engineering regulators (as required by the *Ontario Labour Mobility Act*) and the Office of the Fairness Commissioner, to be included in the Preliminary Regulatory Impact Assessment required by the Ministry of the Attorney General.

N. Hill asked why it was necessary to remove the Registrar's discretion to issue provisional licences, and J. Max explained that there is some confusion with the legislation; the Act says that Registrar WILL issue a provisional license, and the Regulation says that the Registrar MAY issue a provisional licence. The Registrar's discretion in the Regulation needs to be removed so that the conflict is resolved. Additionally, the wording of Section 44.1 could be interpreted as requiring the applicant to apply for a provisional licence and needs to be amended so that it is clear than an applicant applies for a professional licence and only receives a

provisional licence if they have met all the licence requirements, aside from that of Canadian experience.

The Legislation Committee moved to accept the Briefing Note pending the commentary from the other regulators and the Office of the Fairness Commissioner. Once the commentary is received, the Legislation Committee members will review it and the Briefing Note will be sent before Council.

Moved by: G. Wowchuk Seconded by: L. MacCumber CARRIED

Action: Staff will submit the Briefing Note to Council after commentary has been received from other regulators and the Office of the Fairness Commissioner and reviewed by the Legislation Committee.

3. FOR DISCUSSION

3.1 Act Change Proposal: Jurisdiction over Professional Misconduct Committed Prior to Licensure or During Gaps in Licensure

This proposal was presented for discussion prior to being submitted to Council to understand its policy intent and legislative authority. L. Latham and L. Price led the Committee in a discussion of a Briefing Note that L. Price had prepared, to be moved at Council by D. Brown, PEO President. The purpose of the Briefing Note is “to consider amendments to the Act to ensure jurisdiction over the misconduct of current licensees and holders, where that misconduct was committed prior to licensure or during gaps in licensure”. This gap became apparent when an engineer licensed in both New Brunswick and Ontario lost their licence in New Brunswick but not Ontario because the project that ultimately led to the loss of licences took place before the engineer was licensed in Ontario. According to L. Price, based on the Ontario court ruling in *PEO v. Leung*, PEO’s Act does not permit PEO to even examine complaints or incidents dating from before an engineer received their Ontario engineering licence. L. Price also demonstrated how this same logic would mean that, if an engineer committed an offence or violated the Act during a gap in licensure (such as the kind resulting in a late membership payment), this incident would also be beyond the purview of PEO.

G. Wowchuk expressed his concerns with this Briefing Note, stating that the purpose of Professional Engineers Ontario was to regulate the practice of currently licensed engineers practicing in Ontario and that, reaching beyond this, would be *ultra vires*. G. Wowchuk stated that practitioners are not engineers unless and they are licensed, and that courts are the proper authorities for dealing with unlicensed practitioners. G. Wowchuk also asked L. Price if alternatives other than changing the Act to allow for disciplinary powers to be invoked in these situations

had been considered, such as Registrar's Investigations. L. Price stated that the language in the Act, as written, would not even allow for a Registrar's Investigation of incidents that had occurred prior to licensure and, unless the language was changed, PEO would not be able to investigate pre-licensure infractions of the Act.

J. Max asked if this Act change would even be granted by the government and what the overall goal of this change would be. G. Wowchuk stated that the government would likely grant this Act change, but vigorous internal debate was required to determine if this was even a change PEO needed to make. The Legislation Committee was generally supportive of these Act changes, but desired to see a jurisdictional scan of other engineering and profession regulators to see if any of those regulators had similar provisions.

Action: Regulatory Compliance staff to prepare a jurisdictional scan of engineering and professional regulators to determine if any other organizations have Act provisions relating to jurisdiction over the misconduct of current licensees and holders, where that misconduct was committed prior to licensure or during gaps in licensure.

3.2 (a) Regulation 941 - Academic and Examinations - File Closing Survey Results

The Committee discussed the results of a survey PEO had conducted of those who could be affected by planned changes to Regulation 941 to allow PEO to close the files of license applicants who had not yet obtained their licence eight or more years after meeting their academic requirements. This survey was undertaken on the direction of the Attorney General, and the results will be included in the PRIA for the academic and examination Regulation changes. According to the survey, the top reasons respondents had yet to obtain their licence were difficulties in fulfilling their work experience requirement. Sixty-six percent of the respondents to the survey planned to attempt to obtain their licence prior to file closure. N. Hill stated that a transitional program would be required prior to closing applicant files. J. Max reminded the Committee that the Licensing Committee had given direction that NO grandparenting or transition provisions be included, while the Office of the Fairness Commissioner was in support of the proposal, provided that advance notice be given to the applicants prior to their file being closed to give them time to complete their licensure requirements.

3.2 (b) Regulation 941 - Academic and Examinations - Amended PRIA

The Committee discussed the most recent draft of the Preliminary Regulatory Impact Assessment for the academic and examinations Regulation changes to be sent to the Attorney General. J. Max stated that

PEO may need to obtain input from other Canadian engineering regulators on the “housekeeping” additions (as per the *Ontario Labour Mobility Act*) and the Office of the Fairness Commissioner (See Item 2.1, the Briefing Note with which this PRIA is associated). He also noted that further “housekeeping” additions to the PRIA address the improper sub-delegation of authority identified during the Legislation Committee’s analysis of the Regional Councillors Committee’s proposed Regulation changes, recommend changing the term “membership” to “licence” in Section 37(a) to be more consistent with the rest of Regulation 941, and recommend amending Section 44.1(1) to remove the Registrar’s discretion to grant a provisional licence to bring the Regulation into compliance with the Act. The PRIA cannot be completed at this time as the Legislation Committee is still awaiting a response from the Succession Planning Task Force regarding how term limits apply to both elected and appointed Vice-President positions. [see item 1.4 (a)]

3.3 (b) By-Law No. 1 - Council Approved Fee Changes

The Committee reviewed recent fee changes that had been approved by Council in November 2018 that would require amending By-Law No. 1, and which would be implemented this year. Councillor Olukiyesi is bringing a proposal to Council in February 2019 for a parity increase of 20% for all other fees. In preparation for this proposal, staff had sought a legal opinion on how to amend Section 39(5) of By-Law No. 1 (annual members’ fee), which concluded that Section 59 of By-Law No. 1, which requires membership confirmation of any member fee change, fetters Council’s discretion in Section 8(3) of the Act, which gives Council discretion over which changes require membership confirmation and should be repealed. J. Max also pointed out that the legal opinion indicated that member confirmation of Council’s decision to repeal Section 59 of By-Law No. 1 does not require member confirmation. The Council Briefing Note is in-camera due to the inclusion of the legal opinion, which is privileged information.

3.3 (a) By-Law No. 1 - Regional Councillors Committee By-Law Changes

The Committee discussed the work that the Legislation Committee had already done evaluating the Regional Councillors Committee’s proposed Act changes. In addition to the Regional Councillors Committee’s intention to ensure that EITs can serve in any Executive position in any Chapter, the Regional Councillors Committee has been examining how the laws governing Chapters can be standardized. This would possibly require changes to By-Law No. 1; however, as discovered previously, the current Act does not appear to give PEO direct authority to make By-Laws concerning Chapters. J. Max recommended a two-stage approach; firstly, seeking a legal opinion

on whether there was sufficient authority in the Act to amend Sections 2-9 of By-Law No. 1 and, if so, if would it be better to move all Chapter-related provisions into a new By-Law, add them to By-Law No. 1, or to have a standardized template to be used by all Chapters as their By-Law. J. Max held a teleconference with the Chair of the Regional Councillors Committee, the Northern Region Councillor and staff, who agreed with this approach. In the meantime, the Regional Councillors Committee should continue its work to draft a Chapter By-Law template, identifying which content is common to all Chapters and which is Chapter-specific (such as name, boundaries and executive positions or committees). That determination would be helpful in demarcating the common content which could be either moved into By-Law No. 1 or 2 or left as a model template which could not be amended by Chapters. L. MacCumber and G. Houghton confirmed that the Regional Councillors Committee is scheduled to meet in April 2019, but there may be an earlier teleconference.

The Legislation Committee moved that there should be a legal review to determine if PEO has the authority to make By-Laws governing Chapters.

Moved by: L. MacCumber Seconded by: G. Wowchuk CARRIED

Action: Staff to seek a legal opinion to determine if PEO has the authority to make By-Laws governing Chapters, and to forward the response to the Regional Councillors Committee.

4. NEXT MEETING AND ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 12:47 p.m.

The next meeting is scheduled for Friday, March 8, 2019, from 10:00 a.m. to 1:00 p.m.